

**LAND REFORMS AND PASTORALISTS' LAND ACCESS:
IMPLEMENTING COMMUNITY LAND LAW IN KENYA**

BY

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A thesis submitted in fulfilment of the requirements for the award of the Degree of
Doctor of Philosophy in Development Studies of the University of Nairobi.

NOVEMBER 2023

DECLARATION

This thesis is my own original work and has not been submitted either in this or a different form to this University or any other for a degree.

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ABSTRACT

Access to land is an indispensable right of pastoralists. It is the source of their livelihoods and the basis of their long-term resilience towards external stresses associated with climate change. The rights to land by pastoralist communities reinforces this resilience because individual members enjoy the rights collectively, as community land rights. They face limited or no restrictions of access brought about by individualization of community land. However, there are emerging trends towards formalization of communal land rights. In Kenya, the community land law now protects community land by giving communities the collective rights of ownership and access. How this has impacted on rights of access among individual pastoralists and groups of pastoralists remain an issue of scholarly debate. Whether formalization of community rights reinforces or changes existing forms of access by exerting inclusion or exclusion of access to land is of interest because it affects communities' livelihoods directly.

This thesis contributes to the growing studies on formalization of communal rights of access to land. Drawing on the Theory of Access, Decentralization and Resilience, it focuses on the relationship between law-based land rights and access for community land among pastoralists. The findings highlight the challenges of access to pastoralists' community lands because of formalization of community land through the Community Land Act 2016 and reveal tension between formal laws and customary tenure and new forms of exclusion based on identity. Moreover, the changing land laws have implications for different groups of pastoralists with pastoralist women drawing on resilience strategies through substitution, negotiation, and power.

The study research questions focus on the process of implementing the Community Land Act, the institutional framework of devolved land governance and the resilience of pastoralist women in the context of the changing land laws. The study further draws on qualitative methods to investigate the implementation of Community Land Act, the institutional framework governing land among Samburu pastoralists and the resilience of Samburu pastoralists women. This is through focus group discussions and key informant interviews across the national, county and local level.

In summary, this thesis finds that the process of implementing the Community Land Act has been faced with challenges among the pastoralists. Questions about access and security of land rights are central to the process and there are different avenues that could benefit and exclude different

groups. Those who have no assurance of securing land after the formalization process could be rendered landless. Therefore, formalization of community rights does not guarantee pastoralists rights to their communal land. Successful implementation of land law reforms is thus dependent on the inclusion of local communities and the value systems that pastoralist communities adhere to in their access to land.

ACKNOWLEDGEMENTS

This thesis is a product of a strong support network, collaborations and safe spaces offered to me by many individuals and groups. Being part of the Rights and Resilience project, a double degree programme at IDS and University of Copenhagen has been a great privilege. My supervisors Prof. Karuti Kanyinga and Prof. Iben Nathan have offered me incredible support and mentorship. Many thanks to Prof. Karuti Kanyinga for believing in my work and guiding me through multiple ideas and such incredible support. I have learnt so much from you. Iben Nathan, thank you for welcoming me to The University of Copenhagen, and for your incredible ever-present support throughout this process.

Special thanks to our entire Rights and Resilience project team for accompanying me in this discovery and for being present to offer input and insights in my work. Special thanks to the community I found at BIEA and to Prof. Paul Kamau of IDS for your support in my entire journey.

To the people I met in Denmark who became family. Charlotte Maybom for the incredible sisterhood that sprouted out of our work together. Maja Jeppesen for all the work and writing we did together. All the Danida Fellowship Centre staff and colleagues at Global Development Section in Copenhagen, Christian Lund for all the time spent discussing my initial research ideas, and everyone I encountered who made this journey worthwhile.

To all community members in Samburu who shared their insights and experiences with me, Edward of the Ministry of Lands Samburu for your support in data collection phase. To everyone who read my papers and gave feedback on drafts; Leah Kenny, Moses Karanja, Susan Gichuna, Kathy Dodworth and Teela Sanders. Thanks to Rachel Keighley for proofreading, Kafui, Amina, Abdia, Juliet and all my friends for cheering me on. This PhD was made possible by the generous financial support of the Danish Ministry of Foreign Affairs. Further support was offered by the Social Science Research Council under the Next Generation of social science dissertation completion award.

Finally, to my father, who made me nomad, thank you for seeing me and encouraging me to go beyond. And to my mother, for showing and instilling resilience in me. Persistence I needed to complete this PhD.

DEDICATION

For my parents, and to all those who supported me in this journey.

LIST OF ACRONYMS AND ABBREVIATIONS

CLA: Community Land Act

CLMC: Community Land Management Committee

FAO1; Food and Agricultural Organisation

FGD: Focus Group Discussion

FGD: Focus Group Discussion

GOK: Government of Kenya

IDS: Institute for Development Studies

IPCC: Inter-Governmental Panel on Climate Change

KNBS: Kenya National Bureau of Statistics

NGO: Non-Governmental Organisation

NLC: National Land Commission

SID: Society for International Development

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CHAPTER ONE

INTRODUCTION

1.1 Introduction

The objective of this study is to contribute to the debates around land law reforms, community rights, and access to land for pastoralists. This debate occurs against a backdrop of ongoing global land reforms which have focused on formalization of property (Benjaminsen et al., 2009). The idea that formal rights and the subsequent enactment of statutory laws to secure rights dominated earlier discussions on reforms as this was considered an important condition for economic development and wellbeing of the people (Greiner, 2016). Consequently, de Soto (2000) and Hardin (1968) have suggested that individualized rights property have been fronted as models of sustainably managing land. This argument, which stems from neoliberal theory, underlines that individual ownership of land provides exclusive rights of control and access, and that it is more profitable and productive (Mitchel, 2005). This is in contrast with ‘The tragedy of the commons’ argument, which labelled open access resources as prone to exploitation and would be mismanaged and depleted (Okoth- Ogendo, 2002). This thinking on its own continues to shape discussions around pastoralism as a mode of production and as a viable livelihood for pastoralists in Kenya, where this study is based.

Some scholars have argued, however, that communal management of natural resources among pastoralists has proved sustainable over time (Behnke, 2018; Goetter and Neudert 2016). Indeed, Scoones (2021) found that pastoralists, communally, can utilise and manage their communally owned land and to handle the variability in their environment as well as identify innovative ways to adapt to climate stress. This unique ability by pastoralists to live in and with uncertainty could be a source of inspiration for agrarian communities (Scoones, 2021). Parcellation of land, bounded

territories, and enclosures, which are the main features of individual private property, do not support pastoralists' mode of production that rely on their mobility. (Pas, 2019; Scoones, 1995).

There has also been evidence presented to counter this notion of formal rights to property and the universality of private property towards securing rights (Hann, 1998). The debates have gone further to suggest how land law reforms can support solutions and policies to address the challenges that communities face to access communal resources. Bruce and Knox (2009) suggest that land reforms can work to secure rights of marginalized groups and those with less land through establishment of equitable systems. Such equitable systems could determine how land is held, administered, and managed and therefore focus is placed on equity in managing the resources (Agrawal and Ribot, 1999).

The formalization of land and legal recognition as a solution towards land reforms have been questioned, and instead establishment of local effective systems fronted specially to support access to land (Sjaastad and Cousins, 2009). For these locally established systems, different considerations come into play around how the community is organised to manage land (Elmhirst, 2011). Ostrom (2009) finds that different considerations around how groups benefit from resources have mainly focused on rights of ownership and those who use the resources thereby centering the importance of access in such communities (Ribot and Peluso 2003; Ostrom, 2009). Whereas formalization of communal resources has been found necessary by development actors for safeguarding community rights, access, and sustainability, it has also been faulted for changing existing patterns of access and reinforcing mechanisms of exclusion among communities (Gargule and Lengoiboni, 2020).

There is a need also to recognize that the debates about land rights and land access center around questions about formal versus customary rights in regulating access; communal versus individual ownership of natural resources; and decentralized governance versus national government in managing the resources. These debates generally centre on how different communities regulate access to land, allow use of land and the available common resources, and the institutional challenges they experience (Li, 2010). Indeed, the process of gaining access to land is a process that entails several stages all geared towards rights and negotiations to use the land (Lund, 2002). For common pool resources and where land is communally owned, land reforms have taken a similar route of formalization in attempts to organize communities to suit requirements by modern state institutions (Scott, 1998). All the same, the move to push for legally recognizable land rights and claims poses challenges given the complex nature of how communal land is accessed (Bruce, 1998).

It is noteworthy that the challenges of access persist even where access rights are formalized. The formal rights of access to land, for instance, have been hung on the ability to make or influence the laws that govern natural resource use. These considerations have also been found to bring about benefits to individuals and to those who make decisions thereby using their positions of authority to benefit themselves (Boone and Lund, 2013).

The debates have not fully taken into consideration other factors determining access to land and other natural resources. Climate change is of particular concern to land access for many pastoral communities. In Kenya for instance, pastoralists' mode of production has relied on exploiting forage across variable rangelands and has depended on their mobility and communal rights to access land and water for their livestock (Behnke, Scoones and Kerven, 1993). Droughts, floods, and extreme weather conditions in general have affected conditions of access to land in many ways

(Mwangi *et al.*, 2009). Pastoralists' rely on different seasons over the years with defined routes to support their mobility during different weather conditions (Milgroom and Ribot, 2020). Authors such as Lund (2000) suggests that it is in the interest of pastoralist groups to secure expansive land to sustain their mode of production in different seasons, yet this continues to be hindered by climate change.

These challenges have stimulated the need for pastoralist communities to adapt to climate change by reducing livestock, renting pasture and part time grazing (Agrawal, 2010). There has also been a need for continuous negotiation and reciprocal processes in access to land for pastoralists (Ensminger, 1996). These adaptation measures have aroused new challenges of access especially because they have presented a need for pastoralists to embrace a new and changing nature of land rights. In some instances, adaptation measures have also aroused inter-community and intra-community conflicts. Indeed, the need for adaptation and resource scarcity has been cited as among the root causes of resource-based conflicts among pastoralists. (Adan and Pkalya, 2005).

Over the years, studies on common pool resources and communal property rights have provided overwhelming evidence of effective communal systems for governance of natural resources (Agrawal, 2003; Bromley,1992). Local and devolved governments have also taken a central position in the management of natural resources and decentralization of land reforms including in pastoralist areas where there is increased attention on communal tenure. Decentralized land reforms have formed the bulk of the changes on land administration (Hesse and Thebaud, 2006). The responsibilities previously held at national level institutions or even centralized state institutions, for instance with regard to governing access to land, are transferred to local institutions. The argument is that land reforms and decentralization will increase communities' influence in land governance. It is often assumed that local authorities and local communities have

a better understanding of their own realities and needs, and therefore will respond better to these (Agrawal and Ribot, 1999).

For pastoralists in Kenya, decentralized land reforms and local land governance entail the use of local community structures and customary institutions to manage their communal land in line with existing formal legal arrangements. However, Wiley (2016) argues that the ideals of decentralized land reforms are not achieved as equitable access and improved land governance have not happened in practice. She attributes this to weak legal frameworks and enforcement mechanisms. Specifically, in 2016, Kenya introduced a community land law, the Community Land Act, which lays a foundation for enhancing communities' land rights. Regarding pastoralists, the law provides for them to manage the use of land using customary provisions where land is owned communally. Furthermore, the law gives formal rights to women to own and access community land (GOK, 2016). The Community Land Act is meant to provide formal security of tenure among the communities who own land communally. This study focuses on the relationship between implementing the land law reforms and pastoralists needs and access to land. The Community Land Act entails provisions that require equal participation of men and women and thereby makes express requirements for women's involvement in the decision-making process (GOK, 2016). These provisions in the law have implications on how the pastoralist communities organise and access land thereby making the implementation process crucial for their resilience. How the law is impacting on communal access to land for pastoralists and emerging relations between and among new institutions is a subject that would contribute to the debate on pastoralists land access amidst climate change and threats on their livelihoods. This is especially important now that some studies show that the promise under the law, practice, and outcome is different. There is also a

need to examine how national, sub-national and local level processes interact with existing community structures and what dynamics emerge from this institutional pluralism.

1.2 Research problem

This study addresses the problem that whereas governments make provisions for law-based rights, the declared aim to enhance tenure security in such processes is not always attained. This is particularly the case among pastoralists in northern Kenya who have occupied most of their land communally and the land reforms have taken the form of legal recognition of these lands. Understanding the implications of land law reforms is important because the processes are also accompanied by institutional arrangements that could enable or hinder pastoralists access to land.

Some studies have pointed to the implications of decentralized land administration systems for land rights and governance. For instance, Byamugisha (2013) shows how the processes of land reforms and decentralizing land administration did not produce the expected result of stronger local institutions. The same challenges have been attributed to the lack of integration of rural services with the rest of the service delivery system. The emphasis on land registries in African countries where customary rights were to be documented faced challenges as the process of coding the customary practices proved difficult. (Sjaastad and Cousins, 2009). Byamugisha (2013) concludes that these systems did not work to improve the institutions at the local level. In the study of a village in Tanzania, Nathan et al., (2009) highlighted the promises local involvement would present for natural resource management. They found in decentralized systems, management of natural resources would require collective effort from both the centralized national functions and the local level, beyond the autonomy promised by decentralization. Thus, these findings allude to the need to reflect on the relationship between the various institutions that are mandated to

undertake land reforms, in the context of the changing nature of livelihoods for pastoralists occasioned by climate change.

Whereas local governance and community involvement have formed the bulk of decentralized land reforms, some studies have shown the problems of decentralizing administration of land based on the argument that the communities have self-interests and sometimes personal interests which could override those of everyone involved (Agrawal and Gibson, 1999). Land laws that devolve powers to local institutions have also been found to enhance the process of empowerment and securing communities' rights to manage their natural resources. This is because decentralization enables communities to handle local level plans and aspirations (Bruce, 2014). In relation to land access, this implies that communities are likely to be at the centre of making decisions over their resources where land structures are decentralized (Durand Lasserre et al., 2015).

The literature and debates on land reforms presented above, and the case of Kenya's decentralized land reforms through the Community Land Act, provide an opportunity to understand the notions of land access in a decentralized system. This is important because there is no consensus on the significance of law-based land rights in relation to ensuring secure land tenure and common resources for all. Some argue that formalization of collective or individual property is crucial for access and sustainable management (Mitchel, 2005). Others see law-based rights as just one of many different aspects of access (Odote, Hassan and Mbarak, 2021). Yet others argue that processes of formalization may just reinforce or change existing patterns of inclusion and exclusion (Ribot and Peluso, 2003). The implementation of the Community Land Act in Kenya could yield knowledge to contribute to this debate because of the focus the law has on formalizing community land. Furthermore, the law has been said to be among the most supportive of community property on the African continent. Yet, there is limited knowledge on how

decentralized institutions affect access to land, given that in practice new forms of power will emerge to regulate or undermine access.

From the above discussion, it is important to understand the implications of land reforms in systems that have decentralized land governance. There are limited studies on how decentralized land laws enhance or constrain pastoralists' adaptation strategies. Studies on land reforms rarely focus on the role of the governance structures set up to manage land (Odote, Hassan and Mbarak, 2021). Further, it is important to investigate the role of gendered access to land especially in light of changes in the land laws. Adding knowledge to these issues is important because pastoralism is a major economic activity in many dry and arid lands, and the changes in land tenure and urbanization continues to affect the nature of production (Rotich, Funder and Marani 2022). There is also reliance on water and pasture whose availability is continuously threatened by climate change (Mwangi, 2009). Drought undermines the livelihoods of pastoral communities. Thus, they are compelled to adapt new approaches to reduce the negative impacts as they exploit beneficial opportunities (Ford et al., 2011; Thornton et al., 2014).

The challenges posed by climate change continue to disrupt pastoralists livelihoods given that they mainly rely on nature to sustain their livelihoods (Akal, 2021; Dupar, 2019; Opiyo, Wasonga and Nyangito, 2014). Furthermore, these challenges are taking place in tandem with decentralization measures including introduction of community focused land laws (Hassan, Nathan and Kanyinga, 2022). However, there is limited understanding of what the enforcement of these community laws and the general decentralization reforms implies for pastoralists' rights. There have been instances where local traditional chiefs and customary institutions have been found necessary especially in areas where government bodies have not been present. This is against the backdrop of countries in sub-Saharan Africa undergoing land law reforms that entail changes in policies and management.

The law reforms can be seen to focus on inclusion, encouraging equity and productivity, and enabling investments (Fitzpatrick, 2005; Bruce and Knox, 2009). With respect to land administration, forms of decentralization like devolution have been proposed to enhance local land governance. The efficacy of devolution itself has been debated (Kanyinga, 2016). Even in progressive constitutional provisions towards decentralized land reforms, challenges posed by the laws and the devolved units have been experienced. This is especially the case for many agrarian communities where local communities are required to take responsibility for land reforms (Moyo, 2013). Overall, natural resources decentralization reforms being promoted globally have been questioned in terms of their efficacy (Larson and Ribot, 2004). This study therefore addresses these emerging gaps in the literature on legal provisions on land and pastoralists' access by drawing on the theoretical notions of access and decentralization of land governance.

1.3 Research Questions and Objectives of the Study

1.3.1 Research Questions

This study seeks to contribute to the theoretical knowledge in understanding what happens to access when community land is formalized, and the process of land management decentralized. Relatedly, the study aims at understanding the formal changes in land rights and institutional set ups introduced in Kenya by the Community Land Act (2016), how this Act is being implemented, and what the gendered implications are for pastoralists' access to land. The main research question of the study was How do land reforms aiming at formalizing community rights affect pastoralist access to land? The specific research questions include:

- (i) How does the implementation of the Community Land Act affect pastoralists' access to land?
- (ii) How do the Community Land Act and the devolved land governance structures affect pastoralists' access to land?

(iii) How do the changing land laws affect pastoralists women's access to land and therefore their resilience?

1.3.2 Research Objectives

The specific objectives of the study are to:

- (i) Investigate the implementation of the Community Land Law and Samburu pastoralists access to land
- (ii) Examine the institutional framework of land governance and how it relates to Samburu pastoralists access to land.
- (iii) Explore the avenues of pastoralist women resilience in the context of changing land laws.

1.4 Justification of the study

This study is based on the idea that pastoralists' community land rights can be facilitated by enabling a responsive legal environment and governance structure to enhance pastoralists' adaptation for sustainable livelihoods (WISP, 2008). Moreover, land reform processes and a general understanding of pastoralists' livelihoods cannot be isolated from the legal frameworks within which they live, and how this affects livelihoods and resilience. This is especially so when the land law reforms incorporate customary rights.

Pastoralists' own customary practices and rights including their unique social memories that enable them to negotiate and engage in flexible access to resources has not been fully acknowledged and perhaps is not seen as a sustainable route to achieving these rights (Benjaminsen et, al. 2009). With the increased establishment of individual property rights on land, shared common goods will continue to diminish, as individuals focus on demarcation of land and in the process, hinder pastoralists' movement, and access to resources like water (Jeppesen and Hassan, 2022). This is especially critical for pastoralists in Kenya given the historical burden they

have faced in the past of forced relocation and land losses (Kameri-Mbote et al.,2013). There is a need to look at how laws address communities' abilities to benefit from land in the case where land reforms have been initiated.

The growing focus on rangeland management and on lands that pastoralists occupy has also meant that external interests affect how local communities access land for grazing and other uses. The changing land use practices and increased urbanization processes, as well as government and private need for large scale land, puts rangelands owned communally by pastoralists at risk. The land needs of pastoralists including the dynamics of access where land is communally owned elicit different questions. Lane (1998) finds that most governments in Africa have persistently failed to understand the needs of pastoralists and their relationship with land. He highlights that land reforms have constrained pastoralists movement through alienation of communities and closure of migratory corridors. These observations thus remain relevant for this study.

1.5 Organization of Thesis

This thesis features eight chapters. The following chapter is a review of literature relevant to the three research questions. It presents an overview of the literature on formal land rights and historical review on land among pastoralists. Before proceeding to the three chapters that built on primary data, the third and fourth chapters explain the theoretical framework and the methodology that guide the empirical part of the study.

Chapter five-seven draw on results from the fieldwork in Samburu. Chapter Five responds to the first research question on formal land rights and the challenges of access highlighting the experiences of the pastoralist communities in the process of the implementation of the Community Land Act. Chapter Six, featuring the second research question, examines the devolved land

governance under the Community Land Act and the role of the different land governance structures in the implementation process. Chapter Seven focuses on the third research question and presents the dynamics of changing land laws and pastoralist women's access to land and their resilience. Access to land and resilience in this section draws attention to the need to focus on land in addressing climate change. Finally, Chapter Eight presents the summary of findings and conclusion of this study.

CHAPTER TWO

LAND REFORMS AND PASTORALISTS ACCESS TO LAND

2.1 Introduction

This chapter presents the literature on land rights and formalization of tenure in the context of pastoralism to provide a background on the debates around legal land reforms where land is communally owned. The chapter further centers the historical perspective on land in Kenya with a focus on how land reforms have affected pastoralist communities in the past. The current legal framework on community land is explored alongside a summary of how land is managed in Samburu County. Finally, this chapter provides a background for the theoretical perspectives used in this study.

2.2 Land rights, formalization of tenure, and pastoralism

Land rights refer to the ability of individuals or even communities to utilize, access, or possess and occupy land (Molen 2000). These rights can be held under formal statutory laws or customary traditions. Molen (2000), in defining land rights, observes that they are a critical aspect in facilitating or ensuring land access. Formal rights are also referred to as statutory in that they are presented in laws and regulations of the countries they serve. The State in this case is viewed as the custodian of these rights and exercises these regulatory roles in different ways. The different formal rights are then protected in the constitutions of countries (Enemark and Molen, 2008). Formal rights then influence the nature of land tenure adopted for individuals or groups.

Cotula et al., (2006) point out that the status of individuals and groups in relation to land constitute land tenure. They identify tenure categories as freehold, leasehold, conditional, collective, and communal land. They saw tenure security of land as a degree of confidence where one cannot be deprived land rights or benefits from the land (Cotula *et al.*, 2006).

Finally, there are user rights, a principle of tenure to recognize the rights that accrue to the actual users of the land. Most times user rights recognize the people who invest labor or rely on the land. In regard to user rights, Enemark and Molen (2000) observe that user rights have been viewed as temporary and have time limits where such rights could cease to exist. Indeed, this principle of rights associated with use is very central in this study of pastoralists access to land. The nature of their livelihood and mobility means that pastoralists are likely to claim such rights (Lengoiboni, 2011). The challenge with user rights, however, shows when there is a dispute on land or during formalization of the rights (Cotula *et al.*, 2008).

Many scholars consider security of tenure, state recognition and rights to land as critical in enabling farmers and pastoralists to draw benefits from land and to manage it in a sustainable manner (Lund, 2022; Milgroom and Ribot, 2020). A main point of view often raised in the debate is that state-recognized private property and individual private property are the best models for ensuring benefits and sustainability (Hardin, 1968; De Soto, 2000). There are many arguments in favor of this point of view. For instance, Mitchel (2005) argues that control over land is provided by individual rights and that the ability to invest and enhance productivity on land is enhanced when rights are individualized. This includes the right to buy and sell land as a commodity. The argument states that private ownership incentivizes individuals to invest in and maximize the value and productivity of land (Mitchell, 2005). This is often contrasted with open access that, following Hardin's (1968) classical work, invites free-riding and the tragedy of the commons. However, the different approaches have animated debates on individual and communal property rights. On the one hand, individual rights are presented as important for sustainable development because they confer sustainable rights of ownership (Mitchell, 2005; Musembi, 2007). On the other hand, communal property rights arguably limit productivity because they do not incentivize individuals

to invest (Kabubo-Mariara, 2005). Because of this, individualization of land rights stands as a salient feature in land reforms (Ostrom, 2009).

These debates have defined the meaning of land in agrarian Africa, the challenges brought about by land loss and misappropriation and allocation of land by the state and the unique internal processes adopted by communities to manage their land. (Yunan, 2020; Borras and Franco, 2013). Studies in the past have indicated that individualization of land rights does not suit the pastoralists' mode of production since it is defined by keeping livestock mostly in vast arid and semi-arid areas. The land areas are characterized by poor rainfall and uncertainties making it hard for communities to access water and pasture for their livestock (Niamir-Fuller, 1999; Conway, 2009). Pastoralists follow routes that vary depending on the changing weather conditions; and they move freely or through processes of negotiation, which does not go well with, for instance, sedentary farming and fenced property (Scoones, 1994; Conway, 2009; Pas, 2019). This makes it difficult for pastoralists to adopt any fixed form of property (Scoones, 2021), as mobility is critical for their survival (Robinson, 2019). Other studies on Kenya indicate that despite individual rights being unfavorable for pastoralists, there is support for private property rights and the subdivision of communal land (Galaty 1992; Mwangi, 2007).

The protection provided by formal rights is sometimes found to be lacking in customary rights (Lotula and Chavenue, 2007). Indeed, Migot- Adholla et al., (1991) highlight the diverse content of customary laws across different communities noting that while formal laws are codified and recognised in statutory documents as law, the assumption has thus been that customary laws are inferior as they cannot be recognised in law. Niamer-Fuller (1998) however argues that it is the communal tenure system that provides a better model of land tenure as communities plan on how

to use what is available and thus decrease the harsh weather realities brought about by droughts or floods and therefore addresses pastoralists' need to cope with the changing climatic conditions.

Most land inhabited by pastoralist communities in Kenya has been held communally (Dyson-Hudson, 1980). While rights in the community vary, those who belong to such a community are entitled to claim the rights mainly attributed to ethnic affiliation (Lesorogol, 2008). In some instances, membership has been found to be flexible and is offered through marital ties (Hassan, Nathan and Kanyinga, 2022). Agreements based on mutual understanding have also been used to confer membership. However, their membership in such a community may not guarantee rights (Boone and Lund, 2013). Overall, the agreements may be included in legal processes to facilitate formal or customary recognition and in this case provide communities with avenues to access their land (Sjaastad and Cousins, 2008).

Studies on the role of customary institutions have indicated the important role played by elders in pastoralist communities in enabling access to land for pasture (Okoth-Ogendo, 2002). Ribot (2003) however argues that customary institutions do not always follow democratic processes and may instead entrench the influence of local elites excluding other groups. For these reasons, it is necessary to pursue the establishment of customary authorities with caution (Bruce and Knox, 2009). The role of traditional elders in land administration has thus raised debates about the inclusive nature of their processes given women have been left out of the decision-making processes (Wangui, 2008).

In Kenya, there are strong emerging pressures on land that increasingly constrain pastoralists' modes of production. Lind, Okenwa and Scoones (2000) find that there is pressure mounting on pastoralists groups due to different large-scale projects that require acquiring large tracts of land

for different infrastructural and agricultural projects. This is compounded by several factors including existing land pressures arising from land losses and sales including land acquired for conservation activities (Galaty, 2013). Then there is privatization of communal resources and an increase in property rights (Peters, 2004). Finally, there are the climate stresses coupled with an increasing population (IPCC, 2015; Opiyo, Wasonga and Nyangito, 2014). The pressures on pastoral lands amidst failed rains and harsh weather conditions have exacerbated the conflicts over land with sedentary farmers (Ensminger, 1996; Thornton *et al.*, 2007). Some argue that the pastoralists' mode of production has therefore become increasingly unsustainable and cannot continue (Coello, 2017), while others argue that the world and specifically agrarian communities can continue to learn from pastoralists' unique ability to cope, which has developed since ancient times (Scoones, 2021). This debate is not settled.

In any event, the need to safeguard pastoralists rights to their land has been driven by the challenges discussed above. Odote *et al.*, (2021) argue that the different land needs that target pastoralists communal land threaten their security of rights in the long term. In the international debate, much attention has been focused on the advantages of securing pastoralists' access to land as communities through legal recognition of communal property rights. Thus, communal property rights appear to be a better fit for the pastoralist mode of production than private property (Fitzpatrick, 2005), whilst at the same time, cognizant of the need to entrench effective community management of land, by transferring management authority to well-defined communities (GOK, 2016).

Challenges of access to land may persist even when the rights are well recognized by the state. In these cases, social mechanisms determine access to natural resources (Ribot and Peluso, 2003). For pastoralists, the social mechanisms of access are important because they draw on social

relations to enable their mobility and flexibility in sharing grazing land (Lesorogol, 2008; Archambault, 2016). Furthermore, access to land and secure tenure depend on effective enforcement, which may often generate unintended consequences. For instance, the application of new land laws may result in opportunities for authority holders to benefit themselves or other influential groups and individuals (Boone and Lund, 2013). Where legislation does not respond to local needs and practices, the application of the law may undermine well-functioning local and customary institutions, and in the end push communities out or recreate avenues of exclusion (Kameri-Mbote, 2006; Hall, Hirsch and Li, 2011). Furthermore, there has been discrimination in the ownership and control of land where vulnerable groups are dispossessed (SID, 2004). Thus, the considerations on land rights in Kenya require understanding the historical context which the next section now turns to.

2.3 Pastoralists and access to land in Kenya: An overview

Throughout Kenya's history, the formalization of land management systems has resulted in the dispossession of pastoralists. Land use patterns in Kenya before colonial rule were organized around ways of making a living. Communities had lands over which they had control (Veit, 2011). The colonial state, established by use of force, land policies that enabled expropriation of land, thereby drastically shifting the pattern of how land was used in Africa. (Kanogo, 1987; Boone, 2012). Kanyinga (2009) and Okoth-Ogendo (2002) argue that this shift involved introduction of individualized rights in many parts of Kenya and expropriation of land in northern Kenya which was land occupied and utilized by pastoralists.

From the state of the colonial situation, the land utilized or accessed by pastoralists was expropriated for settler economy. Kanogo (1987) identifies the declaration by the British colonial government that all land regardless of whether it was occupied or not was now under the Crown

and imperial British power, as one of the major shifts that affected access to land to the communities. Indeed, the colonial government now had rights over all land, and specifically rights to expropriate it for white settlers (Kanyinga, 1998; Okoth Ogendo, 2002). However, much of the land that the colonial administration declared as waste and unoccupied was land that belonged to pastoralist communities who were using it for grazing and building their resilience in times of drought and challenging externalities. The pastoralist Maasai, for instance, were fenced off and evicted from parts of their land (Hughes, 2006). Similarly, the Samburu, Turkana and Kalenjin pastoralist subgroups lost expansive tracts of land to the colonial administration (Shanguhya, 2014).

What was classified as waste and unoccupied was land with a lot of value and meaning for pastoralists in Kenya. Even other land that was seen as waste and unoccupied was what the agro-pastoralists would use for their livelihood at different times. This land was used by communities, but the colonial administration did not acknowledge the meaning of land, territory and the citizenship of communities that used this land. The colonial administration also failed to acknowledge the regulations of customary access and institutions of land governance among communities (Allot, 1984). All these communities had customs, rules and procedures that governed access to what the colonial administration called waste and unoccupied land. Expropriating land and giving it to settlers undermined not only the customary laws of these communities but also the economic well-being of the pastoralists (Rutten, 1992). The establishment of natives through the policy to dispossess and move communities further affected land that would be available for communities to access (Sanford, 1919).

Post-colonial governments did not address these challenges for pastoralists. The government continued to pose more challenges on access. This included distributing land to national elites

based on political considerations (Klopp, 2001; Greiner, 2013). Concerning land occupied by pastoralists, the Land (Group Representatives) Act of 1968 led to establishment of the first 47 group ranches in Kenya (Galaty, 1992; Veit, 2011). The group ranches comprised tracts of land owned by pastoral communities but held legally on their behalf by community representatives who would work closely with the then local authorities (GOK, 1968). The government introduced group ranches to ensure pastoralists had communal ownership of land and retained access to land (Sanford, 1983). However, some scholars have argued that the establishment of group ranches was to aid the government in Kenya to control pastoralists. The aim was to aid in restricting the movement of pastoralists and their animals to avoid animal disease outbreaks as well as to counter recurrence of conflict between herders and farming communities over lands and pasture (Simpson and Waweru, 2022; Fratkin, 2001).

During the ensuing decades, most of the previously established group ranches embarked on subdividing them into plots for each member (Mwangi and Dohrn, 2008). Mwangi (2007) study shows that out of the initial 47 group ranches established in Kajiado, only 12 had not been subdivided two years after they were established. The establishment of group ranches in Samburu followed the same process in the 1990s with subdivision starting in Samburu West. Sanford (1983) attributed this subdivision to communities needing to engage in agriculture where land was found suitable and of high value, thereby meeting the pastoralists own needs besides livestock. Lenaola et al., (1996) and Scott (1998) argued that the governments promoted private ownership in the country, which incentivized pastoralists to subdivide their group ranches (Lenaola *et.al*, 1996; Scott, 1998). Whatever the reason, the result was the same: access to land for different groups of pastoralists was affected. The allocation of the subdivided land did not benefit everyone equally and others were reported to have been rendered landless (Galaty, 2013). The law on group ranches

had other shortcomings, including that it did not integrate community values and customs. The group ranches encouraged parcellation of land thereby restricting the territory from those who did not have membership to the specific group ranch (Rutten, 1992). This further impeded mobility, which was critical for pastoralists in the rangelands (Galaty, 1992; Kibugi, 2009).

Group ranches meant new problems for ordinary community members. It was not uncommon for those who were in positions of power and the local elites to accumulate land that was communally owned. In areas where group ranches were not established, the land was managed by local councils and the Commissioner of Lands representing the Central Government (GOK, 2003). Kloop (2000) notes that the individuals representing both the local council and central government would benefit themselves and other powerful individuals by alienating land for their own purposes. Community land would be parceled out as patronage by the government or the President to people who were rewarded in the then ruling political party (Kanyinga, 1998). In the group ranches, powerful individuals also annexed part of the land and acquired individual titles, leaving lesser land for the community (Kimani and Pickard, 1999). The law on group ranches, therefore, did not serve the purposes of the group ranches, which was to enhance pastoralist livelihoods, secure their rights safeguard land rights and increase livestock production (GOK, 1968). It could not guard against landlessness among pastoralists because of the haphazard allocation of grazing land and the diminishing land that was available for communal access (Graham, 1988; Sperling and Galaty, 1990). Instead, the elite often took advantage of the community land, and group representatives regularly misused trust powers, leading to the loss of land among the pastoralists (Mwangi, 2009).

The challenges facing pastoralist lands were also evident in other parts of the country among other communities, including the fisher folk of Kenya's coastline and agrarian communities in high-potential areas of the country. The opening up of land purchased by the African middle class

brought about further landlessness among the agrarian communities in Kenya (Leys, 1975; Njonjo, 1987).

The haphazard way group ranches were delineated and the absence of a framework to manage the resulting conflicts was also cited as having led to the failure of group ranches (Galaty, 1994). This led to pressure on land and quests to subdivide. The subdivision processes brought an even more drastic change of tenure, moving away from communal land management and introducing private property rights (Mwangi, 2009; Kamari-Mbote, 2002). The group ranches therefore turned out to be an unstable form of tenure. This was driven by pastoralists as they viewed securing their individual portion of land as an assurance of their ownership given the reduced advantages of group ranches at that time (Mwangi, 2007). Moreover, it was a way to relieve external pressure from the government and officials (Homewood *et al.*, 2009). The subdivision processes brought an even more drastic change of tenure, moving away from communal land management, and introducing private property rights (Lesorogol, 2008).

The political change brought about by the Kenya general elections of 2002 and the subsequent new government of 2003 set the stage for demands to correct the challenges of land losses and irregular allocation, including the violent political clashes that had been witnessed over time (GOK, 2009). Subsequently, the government established a Commission of Inquiry in 2003 which was mandated to address all the injustices reported over land through investigating and providing remedies set the stage for land reforms. (GOK, 2003; 2009). This Commission, popularly referred to as the Ndung'u Commission – it was chaired by Mr. Ndungu - identified land that was to be recovered back to the government and the urgent need to review Kenya's land laws as well as establish National Land Commission, as a remedy for excessive power vested in individuals to manage land (GOK, 2003).

These events contributed to the process of developing the National Land Policy of 2009, the commitment of the government to address questions emanating from the Ndung'u Commission. (GOK, 2009). The Policy underlined the need to recognize communal lands and protect communities occupying such lands including pastoralists. Land reforms specifically informed the organization of struggles for a new constitution. The demands continued to intensify throughout the 1990s and were characterized by political violence that would lead to the eviction of communities based on their ethnicity but settled in places where others of different identity would claim territorial ownership (Kimenyi and Njunga, 2005; Boone, 2012). Furthermore, as argued above, there were instances of community land being expropriated and allocated without reference to local communities, even in pastoralist areas. The National Land Policy, therefore, set the stage for the recognition of communal land rights in the 2010 Constitution which also outlines the role of communities in managing their resources and the different needs for land including Women's rights (GOK, 2010; 2016)

Reflecting on how communal land is managed, the National Land Policy refers to customary tenure and provides the objective of establishing community land as securing customary rights to land. The policy further aimed at addressing past injustices brought about by gaps in laws which or legal provisions that allowed abuses of power by those who were entrusted with communal land. With the history of community trustees disposing land without the authority of the community, the shift was thus meant to safeguard communities from further land losses who disposed of land without authority from the community and thereby oversaw land losses and dispossession. The policy reflected the need for local community engagement and participation in the management of their own resources including communal land (GOK 2016; 2010). These developments generally informed the need for protection of communities land through constitutional provisions.

2.4 The Constitution of Kenya, 2010, and Community Land Act

The inclusion of provisions on land in Kenya's 2010 constitution was a major shift in commitment to protect land rights. The previous constitution did not adequately safeguard tenure security and had not established a fundamental foundation of land administration. The growing global demands to democratize land, as well as secure communities' land rights, were also key in Kenya's constitutional review process. The provisions of the Constitution of Kenya recognized the need to empower communities in regulating ownership of and access to their land (Alden Wily, 2018).

The new Constitution in 2010 provided fundamental security of rights of communities: provisions on land and environment constitute Chapter Five. The Chapter provides for institutional arrangements to protect and safeguard various interests, including those of communities. Article 60 and 63, for instance, outlines how land is to be utilized, including avenues of enhancing equitable access, ensuring land is secure and prioritizing sustainability in managing such resources. The same applies to the protection of conservation areas. Specifically, the rights of the community and communal ownership were recognized. The Constitution of Kenya guarantees these community land rights in line with the spirit of the struggles to democratize access to land. Article 260 recognizes pastoralists, individual, households and communities, as marginalized communities who should be supported to address the challenges of development brought about by marginalization and exclusion from the development processes in Kenya (Waweru, 2012). When viewed this way, the Constitution seeks to cure the challenges that weakened community institutions for regulating access to land. It supports the ability of the community to benefit from their land and establishes mechanisms to support sustainable access of resources (GOK, 2010).

Unlike the National Land Policy, the Constitution does not apply the words "customary land rights" or "customary tenure". Instead, the Constitution lists community land categories that could

be included in customary land holding which includes land and territories held by communities as shrines and communal grazing areas. The reference to ethnicity and culture as the bases of identifying communities is also understood as a recognition of customary land rights (Alden Wily, 2018). These provisions were operationalized by the Community Land Act 2016.

2.5 The Community Land Act

The drafting and implementation of the Community Land Law in Kenya as a reform towards recognition of communally owned land was a departure from the old law of the Land (Group Representatives) Act including the repealed law on Trust Lands. The Community Land Act (CLA) further recognizes communal land users as citizens of Kenya sharing, among other things, common interests and cultural heritage. The law also defines the meaning of community land and communal use of land. This law also seeks to provide clarity on communal use of land and community land. The CLA's interpretation of communal use of land emphasizes the holding or use of land in undivided shares by a given community (GOK, 2016).

The CLA aims at giving effect to Article 63 of the Constitution of Kenya 2010. The first one is in Article 4(1) which entrusts community land in communities by clearly identifying and defining communities based on their key elements. This descriptive approach covering ethnicity, culture, and similar interests, thus provides some clarity on the definition of community.

The CLA also identifies the roles of different levels of government (CLA, 2016). For instance, it specifies the roles of county governments and details their responsibilities as trustees over community land prior to the registration of these rights for communities. To prevent similar previous abuses by powerful individuals who would grab land without reference to communities, the law places restrictions on transactions in land designated as community land. It specifically

bestows community land on communities by providing that the registration of such land is based on their traditions and values. It further provides for institutions to govern land administration. This includes the establishment of a Community Assembly which is a meeting of adults who are members of registered community land, and their subsequent representatives who comprise the Community Land Management Committee to manage the land.

The CLA similarly secures community land and protects it from acquisition by national or county governments (CLA, 2016). The procedure of compulsory acquisition with conditions for holding unregistered community land is stated in the CLA. This procedure includes giving community assemblies the power to take responsibility for critical decisions with the community land management committees. The CLA details the process where communities participate and seek permission from the community assembly on all matters of the communally owned land.

The CLA (2016) further provides the procedure for converting community land into public land in instances where the state lawfully acquires land for public use. In this instance, the community assembly is responsible for decisions on their land including safeguarding their customary practices. The law on community land also secures land rights for women by making provisions that they should not only be registered, but also represented in the land management committees. It also protects other groups, including youth, persons with disabilities and marginalized groups against any discrimination when claiming and exercising their community land rights (Alden Wily, 2018)

The Community Land Act thus presents significant gains and the promise of securing land occupied by pastoralists. Specifically, the law provides avenues to secure pastoralists institutions and customary rights as well as safeguard land that has not been registered before (Alden Wily,

2018). For land that was previously held as Group Ranches, the CLA provides for transition clauses and the procedure to convert to community land. (GOK, 2016). The need to formalize their land ownership has attracted numerous actors and multiple interests because benefits from this land will be limited to the registered members of the community land (GOK,2016).

Another key feature of the CLA is that it addresses historical land injustices through provisions that seek to address the question of illegally acquired land which was previously designated as community land. The Act also entrenches benefit sharing for communities by allowing them to negotiate directly with investors and safeguards against unfair exploitation of the resources in community lands. This legal framework allows for wide-ranging policy reforms on land management where communities take charge of managing their resources (GOK, 2010). These provisions of the law are impacting different pastoralist groups differently depending on the status of their land. The discussion below shows the status of land among Pastoralists in Samburu.

2.6 Land and management of land in Samburu

Land in Samburu as elsewhere in the country and under the law is in three categories: public, private, and community land. This is in line with the provisions of the Constitution of Kenya (GOK, 2010). In Samburu, national government facilities including schools and health centres are on public land. The County Government – the sub-national units established under the 2010 Constitution – is also using available public land to place county facilities. Records show that public land in Samburu is approximately 16 percent and includes gazetted forests and installations (Samburu County Government, 2018). In terms of private land, there has been an increase in the number of lands held privately because some of the group ranches have subdivided into individual plots. This land that is in the outskirts of the main towns is held on freehold tenure. The rest which

is in towns is held under leasehold. The size of parcels of private land vary across the county implying that the size is dependent on how much an individual or a household was able to concentrate on basis of history of their claims.

The Communally owned land is either registered under the former group ranches or unregistered and falls under former trust lands, land previously (before 2010) held by the local governments on behalf of communities. At the time of collecting data for this study, there were about 50 group ranches in Samburu which all varied in terms of their size and number of households settled. The number of ranches is likely to change because the group ranches are at different stages of registration or even dissolution for some cases. For unregistered community land, the process of establishing boundaries and identifying the land belonging to different groups has been ongoing (Samburu County Government ,2018). Questions have emerged about the process of registering communities as well as transitioning group ranches (Hassan, Nathan and Kanyinga, 2022). The same challenge applies to the land which has not been adjudicated before (Samburu County Government, 2018).

Records from the Samburu County Government (2018) reveal that around 13,000 households were not part of registered community land and hence, in principle, could be landless especially if their claim to any registered community land is not positively addressed by giving them membership status and land rights. Furthermore, the land registers enlist household heads who are predominantly male with very few, if any, women registered as members

In conclusion, while there exists different types of land rights as discussed above, many of the tenure security remains unresolved. For pastoralist communities the debate on whether state recognition of rights is the best model to secure land is also contested. This is because, most of the land has been manage communally and thus been found best suited for the rangeland environment.

In addition to this land rights quests, challenges of access to land continue to persist despite the various statutory processes put in place at different times. The colonial and post-colonial governments attempt as have been discussed above failed to resolve land tenure among pastoralists and in some cases worsened the situation. The historical context on land discussed above also highlights how land questions in Kenya are linked to the historical legal and institutional processes, some of which are applicable currently like the community land law. The chapter now turns to the theoretical debates around access, decentralization and resilience.

CHAPTER THREE

ACCESS, DECENTRALISATION, AND RESILIENCE: THEORETICAL PERSPECTIVES

3.1 Introduction

The previous discussion has shown that pastoralists land rights are contested and are linked to access to land for their livelihoods. This chapter brings together theoretical perspectives on access, decentralization, and resilience to clarify the conceptual understanding in this study including analyzing the findings to be presented in upcoming chapters. There are three interconnected bodies of literature that are presented in this chapter. First, this thesis draws mainly on theory of access and the meanings and ideas of access to land for pastoralists. This theoretical approach has been used widely in studies on natural resource governance and therefore provides a useful lens for this study on pastoralists access to land. Secondly, and connected to the theory of access, is the decentralization theory which points to ways through which devolved land governance is established and the expectations of such processes. Thirdly, by drawing on the growing field of resilience, this study attempts to understand how pastoralist women draw on different strategies in the context of changing laws. This chapter begins by discussing the theory of access and the linkages to this study, followed by decentralization and resilience. At the end, a conceptual framework that draws together the concepts and interactions is presented.

3.2 A Theory of Access

Ribot and Peluso's contribution in "A Theory of Access" (2003) has been at the center of debate about how formal rights do not adequately define access. They define access to resources as "the ability to derive benefit from things – including material objects, institutions, and symbols" (Ribot and Peluso, 2003: 153). They argue that other social mechanisms enable or constrain access. These

social mechanisms defining access are sometimes instituted in law or customs where it is the role of the state to enforce. This way, access to resources is limited by other factors which could support or hinder access for different groups. The same rights to access have been found to be enabled or limited by other factors. In understanding access to land therefore, there is a need to look at the factors that affect people or communities in their ability to benefit from a resource.

Ribot and Peluso (2003) introduced the concept of ‘a bundle of powers’ to argue that the factors that limit or hinder access are exercised through various mechanisms, including power. By introducing this web of relations and questions of power, the Theory of Access further illustrates that other factors that bring changes that determine access beyond laws and rights as people can control resources through their dominant positions (Ribot and Peluso, 2003). Similarly, in understanding the effect of these changes there is a need to investigate how the different centers of power are formed around resources (Sikor and Lund, 2009; Lund, 2016). Building on this, Milgroom and Peluso (2020) and Ostrom (2009) found that the mechanisms of access do not remain the same and are guided by the resources available as well as seasons. These dynamics present an array of problems as even informal rules are constantly adjusted to specific circumstances (Elmhirst, 2011). Shipton and Goheen (1992) further present other dimensions of access that make the process of access differ. They state that it is a process that involves multiple negotiations and sometimes may differ based on the context.

The Theory of Access has been used in numerous studies. Myers and Hansen (2020) highlight the different ways the theory has been applied including the thinking beyond property and understanding notions of power in access. Koch (2008) identified the shortcomings around access mechanisms, both structural and relational, and argues that they have not been adequately addressed. The concept of power and whether it is something that can be attributed to an individual

or one that has been negotiated has been debated. The concept of power and authority in the Theory of Access further presents the ambiguities brought about by the law-based rights. Law-based rights include access through holding a title (Nelson, 1986). Customary access may also happen through social acceptance and contributes to this ambiguity. However, although concepts are broadly defined in the Theory of Access, this study draws a solid theoretical backing from the Access Theory because it is not just about the rights of people to land or resources, but also about their ability to draw those benefits arising from access.

Myers and Hansen (2020), provide the scope of incorporating questions around power in understanding access. Understanding people's positions of power is suggested as one way to understand the different benefits to resources that could benefit certain groups. This provides an opportunity to study the patterns and make a case on how gender and other aspects like authority affect access.

In providing access to communities, policy reforms on land and natural resource management have provided conducive spaces for communities to pursue their aspirations on land. Decentralization of land reforms is one such avenue which implies that power is taken to the local people for them to govern themselves and make decisions on how they manage their resources. When this happens, some gain while others lose out, and in other cases communities have lost access to common pool resources (Cernea, 1997).

This conceptualization of access is useful in understanding how pastoralists access land, especially given that the mechanisms of access are taking a different direction with the formalization of community land. The Access Theory further presents a lens to study the dynamics in pastoralist

society as it engages sociological theory in understanding different social phenomena. The broad definition of power that Ribot and Peluso (2003) propose, which entails how power is put together, by whom and how it is utilized, enables this study to interrogate the various uses and presentations of power at the national, county, and local levels. Where there exist laws to guarantee rights, it is common to find that the new laws do not clearly indicate the powers associated with certain rights (Sundar, 2001). There have also been other forms of laws that have brought about decentralization or participation with the promise of enabling local people to manage their own resources. These processes have failed to transfer these rights as well (Hagmann, 1997). This is especially important in understanding how rights to access land can be enabled by factors of power, authority, and gender dynamics. This is critical for this study, as there are different levels of authorities involved in managing land and the deep customary institutions involved in making decisions on who accesses land and who does not. Theoretical debates on access therefore link with those of decentralization of natural resources, local institutions determining access, and land governance which the next section now turns to.

3.3 Decentralization and land governance

Decentralization has been at the center of policy experiments in the last two decades in several developing and transitioning economies in Africa and Asia (World Bank, 2000). Constitutional reforms incorporating decentralized systems have also been witnessed as a key institutional framework to successfully spur growth in many countries in the world. This section reviews the concept of decentralization as has been applied and links this to land governance which is the focus of this study and concludes by making some considerations on the promises of decentralization versus the practices and experiences reported in land governance among pastoralist communities.

Decentralization is generally understood as transfer of authority and responsibilities from the central government to lower-level units in government including subnational and administrative units (Bruce and Knox, 2009; Ng'ethe and Kanyinga, 1998). The idea is that lower levels will exercise the power on behalf of the central unit, while increasing efficiency in service delivery (Cohen and Peterson, 1999; Oyugi, 2000). Past studies have stated broad objectives of decentralization, including the provision of services to the people and improved coordination on how this is delivered (Cheema and Rondinelli, 1983). This has implied distribution of power between different levels within an administrative hierarchy (Conyers, 1983). Others such as Litvak (1998) view the main objective of decentralization as the push to overcome the inadequacies of central governments and serve citizens. There is also the increased demand for receptive governments and the need to empower citizens (Wight, 1997). The rationale for decentralization has been cited to bring about improved participation and democratic governance which have been found to be useful in natural resource governance (Silverman, 1992; Borins, 1994; Kotze, 1997).

Literature also identifies four main forms of decentralization. First is de-concentration, which refers to as the transfer to lower-level authorities who are administratively accountable to central government (Ribot 2002; Rondinelli 1991). Second is delegation which entails transfer of administrative responsibility of specific functions to public institutions which are not within central government control, such as state agencies and parastatals (Ozmen, 2014; Crook and Manor 1998). Third, is privatization which is handing over complete control functions to private entities (Dhorn, 2008); and lastly, is devolution, which implies that autonomous layers of government are created at the local level with resources, political authority and decision-making powers (Rondinelli, 1981; Edmunds *et al.*, 2003).

Decentralizing power and authority and ensuring decisions on natural resources are closer to the people promotes participation (Ginter, 1992). Indeed, Biker (1988) observes that if properly implemented, decentralization as a process can provide a channel for local community involvement. Participation can therefore be seen both as a rationale for decentralization and a necessary component for an effective decentralized government. Despite the promises of decentralization in enhancing participation, there has been caution that exclusion of some groups could occur in the process (Brinkerhoff and Cosby, 2002). This caution draws attention to the need for deeper contextual understanding of how participation has been achieved in different decentralized systems in natural resource governance.

There is the promise of increased democratic governance in decentralized systems. One such argument is that decentralizing authority and management of resources like land gives citizens a greater role in making decisions and thus promotes democratic governance (Blunt and Turner, 2007; Cheema, 2005). Decentralization of land reforms thus entails involvement of lower-level structures and the community. Some studies cite engagement on the local level to include engaging existing capacity in the community and understanding the role of local communities to meaningfully participate (Grindle, 2007; Turner, 1999). Additionally, decentralization of natural resources has implied involvement of communities and their ownership of their desired goals (Pretty, 2003). Some such attempts have led communities to oppose the changes and exercise agency in different ways (Chambers, 1997).

In understanding land governance among pastoralist communities in Africa, some researchers have highlighted the benefits of decentralization in improving development goals though efficient

allocation of resources (Cheesman, Lynch and Willis, 2016). Nathan and Boon (2012) highlight the opportunity provided by decentralization to hold actors accountable through justifying and explaining their decisions and actions. On the one hand, decentralization is viewed as a way of enhancing the role played by central governments while ensuring that they are not based centrally. reducing. Whereas the understanding of decentralization is viewed differently, it specifically poses issues of institutional context in developing countries (Bardhan, 2002). The issues range from strength of systems, political accountability, efficiency in service delivery and technical capacity depending on the different capacities of governments (Mamdani,1996).

The assumption that decentralization enhances efficiency has also been questioned. For instance, Bird (1995) found that central bureaucracies attract bigger financial costs in running the offices. Yet even decentralized systems have produced inequitable results despite the push to allocate resources to decentralized institutions (Mamdani, 1996; Conyers, 1983). The nature of how government structures operate and how that affects decentralization outcomes is also important.

For example, Kenya's Constitution 2010 introduced two levels of government, National and County Governments, that share responsibilities in administration of land. Local and national institutions co-exist at the local level, but their operations tend to result in conflicts over mandate as each agency seeks to exert its influence in administration of land at the local level (Bassett, 2010). Institutional pluralism, therefore, is likely to prevent effective implementation of the new law thereby impeding securing land rights for local communities (Ribot, 2007). Specifically, regarding decentralized management of land, Byamugisha (2013) indicates that there is a need for stronger lower-level institutions to facilitate smoother land governance processes.

In Africa, policies and enactment of legislation aiming at land reforms often recognize customary rights and imply decentralization often as a solution to enhance local community involvement (Bruce and Knox, 2009; Place, 2009). Ribot (2004) and Hilhorst (2008) find that inclusion of local land management systems including customary systems have been useful when land is communally owned and used, and the need to ensure natural resource conflicts are managed. Byamugisha (2013) also suggests that recognizing community structures and establishments of committees at the local level tends to create local community committees including customary leadership in the process. Despite the advantages linked to local level committees there have been calls to make considerations around composition of the teams that tend to exclude women (Askale Teklu, 2005; FAO, 2007).

Global calls for enhancing management of community resources have continued to take shape over the years (Berkes, 2010). There are scholars who focus attention on how to safeguard ecosystems and mitigate the effects of climate change (Shariff *et al.*, 2020). Others have focused on challenges brought about by dispossession of communities during expropriation of land for large scale industrial investments in Africa (Borras and Franco, 2013). These interventions are taking place alongside land law reforms and policies for management of land. The law reforms seek to secure land rights for communities by involving communities in making decisions on governance of land. It is hoped that this will encourage equity and productivity and enable investments (Bruce and Knox, 2009; Fitzpatrick, 2005).

On the whole, decentralization is a good policy measure for promoting the pastoralists rights to land especially because it provides for people's participation. At the same it, it provides for local institutions to determine the decisions access and general land governance. The community land law in Kenya, as we see later, embeds some of these aspects to protect community rights in land

but how the law is practised tends to limit how rights are safeguarded or promoted. Further subsequent discussion includes devolution and land administration and the challenges of devolved land governance.

3.4 Resilience, Access to Land and Pastoralists

Multiple disciplines and especially ecology have seen the concept of resilience change and evolve. One of the most common definitions of resilience is by Folke (2016) which identifies resilience as the capacity to persist in different changing environments through adapting and evolving over time. This formulation has been used to describe the ability of people and groups to sustain their lives even in difficult circumstances that surround their existence like disasters and other forms of crises (Tierney, 2014).

Resilience of socio-ecological systems has over time been used to draw attention to the idea of transformation and the ability of systems to recreate themselves pushing back against ecological, social, and economic structures that are dysfunctional (Adger, 2000; Folke *et al.*, 2010). Other anthropological studies have gone further to introduce the need to center local people's ways of life and cultures, thereby looking at resilience as an experience within cultural frameworks whilst challenging ideas around how communities have been understood within systems (Crane, 2010). Drawing on this growing field on resilience thinking, this study settles on the broad definition of pastoral resilience that recognizes the heterogenous nature of pastoralist communities to highlight the different aspects of resilience within different subgroups in the community (McPeak and Little, 2017). That is pastoralists resilience as their ability to endure complex challenges based on their unique lifestyle and networks thus withstanding dynamic and uncertain pressures facing their mode of production.

The fate of pastoralism as a viable mode of production given the harsh climate change effects on pastoralists and their livestock has been questioned for some time (Robinson and Berkes 2010). Meanwhile, more studies have shown evidence of the strength of pastoralists systems by their ability to manage variability as well as live with and benefit from uncertainty (Scoones, 2021). Thus, there is growing evidence that pastoralists are more resilient than what is commonly acknowledged (Fratkin, 2001; Semplici, 2020). Further, the relational approach to resilience entails context specific aspects to understand resilience, with attention to those involved and their environments (Little and McPeak, 2014). Specifically, attention is given to the gendered dimensions of resilience where the dynamics of various relationships in the pastoralist community shift in response to changing land tenure. Featuring the gendered nature of resilience reflects the importance of people's experiences and their lifestyle, the social actors, ecological actors and how communities are organized (Berkes and Ross, 2013; Adger, 2000). The relational approach to resilience fits into the pastoralists' systems and the differentiated roles played by different groups where the mode of production is described as mostly uncertain and unpredictable (Scoones, 2021). The recognition and the importance of actors, positions, roles and where they belong in the community as intimately connected to their daily choices also brings forth the need to look at culture in understanding the gendered nature of resilience (Crane, 2010; Semplici, 2021).

A main aspect of relational approach to resilience is the networks and how they affect resilience rather than focusing on individual or group abilities to withstand shocks (Konaka and Little, 2021). These relations and networks among pastoralist groups are critical in the study of resilience given how central they are for access to land in times of uncertainty and rangeland variability (Scoones, 1995; Krätli, 2020). Resilience among the pastoralists must then be understood based on these

dynamic environments, where the question of access to land is of paramount importance. While the success of pastoralism has traditionally depended on the mechanisms put in place to interface the variability of their environments and the possibilities to access water, grazing land, and other resources (Scoones, 1995; Krätli and Schareika, 2010), threats posed by climate change and changing land reforms have become increasingly important for the understanding pastoralists resilience (Mwangi, 2009). For pastoralist communities the effects of climate change complicate their livelihoods and affect what is available for their livestock.

Under these conditions, land reforms constraining access or altering customary institutions that regulate access, risk having the detrimental impact of endangering pastoral livelihoods, as pastoralists are already fighting for dwindling resources. These challenges, among others, have stimulated local adaptation by focusing on both livestock and pasture management practices, including for example reducing livestock, renting pasture and rotational grazing (Agrawal, 2010). There has also been need for continuous negotiation and reciprocal processes in the access to land for pastoralists (Ensminger, 1996). These adaptation measures have presented new challenges of access particularly because they have presented a need for pastoralists to embrace the new and changing nature of land tenure and rights.

Changes in how land is accessed and governed have impacted on relations of coexistence between private and communal rights of ownership. Land policies in Kenya have included colonial policies aimed at restricting mobility of pastoralists and sedentary practices such as crop farming. Where grazing was permitted the introduction of grazing schemes meant limited stock and movement (Lesorogol, 2008b). Despite the push to limit herding, ownership, and appropriation of land among pastoralist communities has traditionally been based on customary institutions. Customs for

different pastoralist communities have evolved over time, clarifying, and modifying rights for utilizing the land. They also provide explanations for how land may be used during harsh climatic conditions. Even where customary practices are strong, conflicts often arise on usage of land and especially between communal and individual use of land.

As already mentioned, the Community Land Act has provisions that gives power to women, while customary institutions among the pastoralists being studied, do not provide similar avenues for women to hold power in relation to land and other resources. give such powers to women. The customary institutions that manage access do not have women as central actors in land governance. The study is thus paying attention to gendered access because CLA provides for women as members of the community also to access and own land. By focusing on pastoralist women, this study looks at how land tenure changes, customary systems, and resource pressures, influence the ways groups plan for uncertainty as well as changes in access to land (Pollini and Galaty, 2021).

To understand how land access is gendered, land relations need to be viewed as social relations (Mackenzie, 1990). This demands the need to argue for a stronger focus on social relations and power dynamics in society. Questioning these processes would provide answers to the inclusion and exclusion of segments of the community for land access and their resilience. On resilience thinking, looking at land law reforms and the historical nature of these changes is critical in understanding specific aspects of pastoralist communities that anchor their resilience through the changing land laws and tenure. Put together, access, decentralization and resilience highlight the various avenues of access, the institutional framework and how that affects access to land as well as access and resilience of pastoralist communities including the unique approaches adopted by women in the context of changing land laws.

3.5 Conceptual Framework

From the Theory of Access this study merges the concepts of power, authority, and control to illustrate the relationship between the concepts under study and the related theory in literature. The figure below is the conceptual framework of the study (see Figure 3.1).

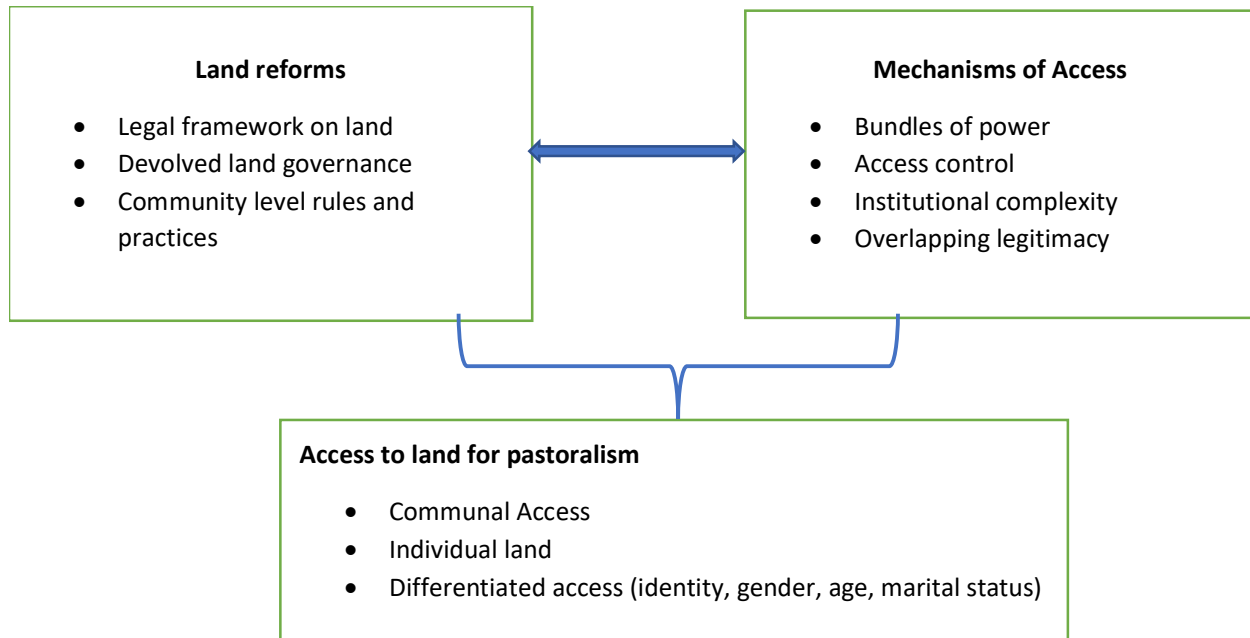


Figure 3.1: The conceptual framework (Source: Authors conceptualization)

From Figure 3.1, land reforms, land governance structures and community level processes are the formal and informal legal and institutional frameworks that provide for the mechanisms of access to land for the pastoralists' communities. In understanding mechanisms of access, this study considers bundles of powers, access control and institutional complexity among the factors mediating access. The focus is on the land access processes and the changing uses of land, reflecting the differentiated needs and experiences of pastoralists based on their identity, gender, age, or marital status. For pastoralists, multiple mechanisms of access are involved.

CHAPTER FOUR

METHODOLOGY

4.1 Introduction

This chapter details the research methodology and design adopted in this study. Drawing on the outline of the research questions and the theoretical considerations presented in the previous chapters, this chapter presents the approach to data collection and the details of the target group. The chapter starts with a brief description of the study area, followed by the research design, data collection methods and analysis. Details of the target population and study respondents are presented.

4.2 Research Design

Methodology in a study draws on the philosophy of science and examines why certain methods are selected including their significance in relation to the study problem (Ruane, 2005). This study draws inspiration from critical realism and engages qualitative research to understand the complexity of social phenomena, drawing on descriptions by research respondents (Holliday, 2007). For Critical realists, the unpredictable ways that we gain knowledge reflect the different domains that exist in the world and among social groups thereby pushing the discussion beyond the causal links sought in many studies (Benton and Craib, 2001; Manicas, 2009). Critical realism thus focuses attention on what needs to be explored and understood and equips the researcher with ways to understand the social world (Maxwell, 2012). It is thus the role of the researchers to search for the different links to understand social realities and to select the appropriate research design.

This study draws on O'Brien's (2006) approach where research design is seen as an ongoing process which allows for the discovery of new ideas. The research design adopted in this study is

exploratory and flexible, thereby being open to unforeseen ideas (Bryman, 2008). The study draws on the dynamic nature of how people engage and the complex relationships that exist in between (Mohajan, 2018). This way different perspectives in the community are sought to understand the different issues under study. The focus on qualitative methods was to ensure that communities' views and local people's perspectives were included throughout the conversations and discussions. Milton (1997) points out that reflecting views of different groups and individuals provides a holistic analysis of different phenomena. In this study multiple actors and individuals are included in the study to provide this holistic overview and analysis.

4.3 Study Area: Culture and Geography

This study was conducted in Samburu County. Samburu county is in the Northwestern part of Kenya and is approximately 21,000 Square Kilometers (KNBS, 2019). The county neighbors include dominated counties of Marsabit, Turkana, Isiolo, Baringo and Laikipia. Samburu county can be roughly divided into the highlands, which include the Leroghi (Lorroki) plateau and the lowland plains which consist of different zones with escarpments and mountain ranges. Administratively, the county consists of three sub counties: Samburu East, Samburu West, and Samburu North (See Figure 4.1 for a Map of Samburu County).

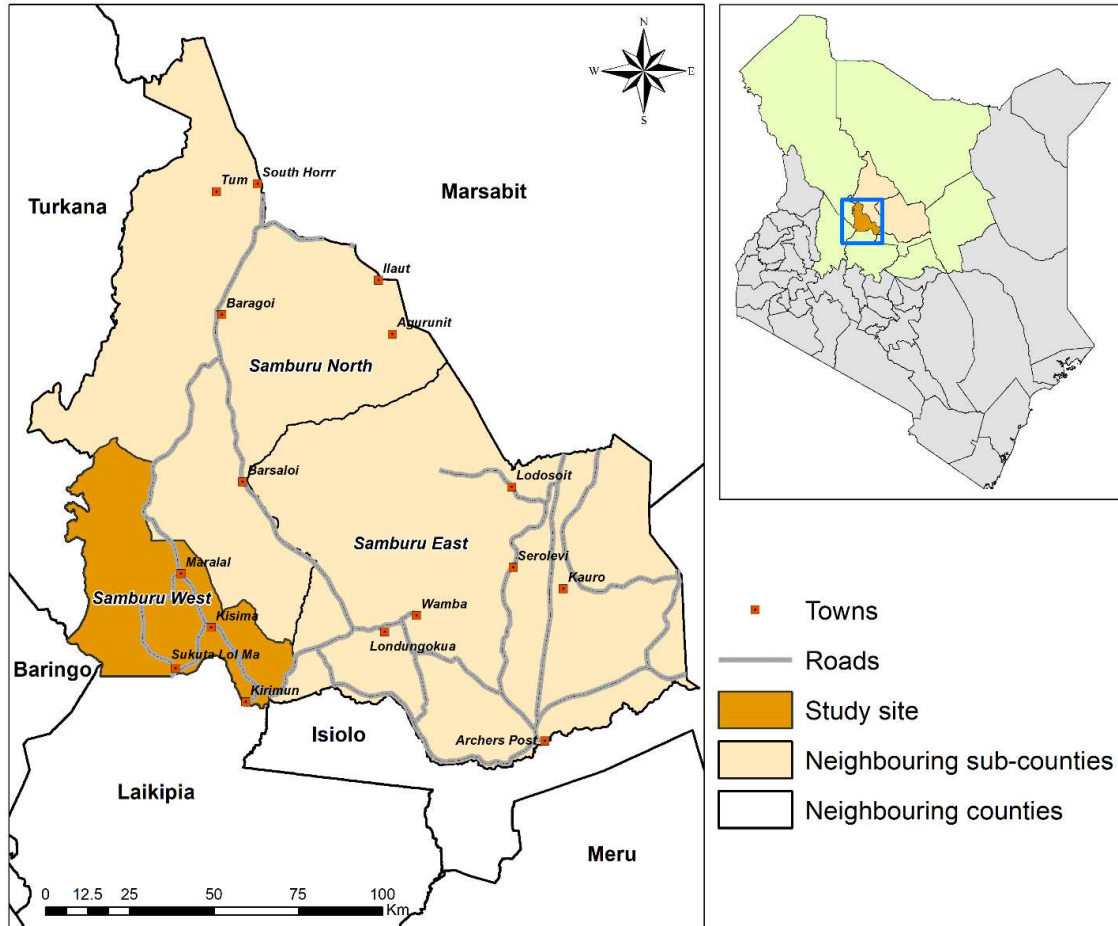


Figure 4.1: Map of Samburu County

Samburu County also features rangelands and gazetted forest cover where nomadic pastoralism is the dominant economic activity, with many households practicing semi-nomadic activities that incorporate crop farming and other forms of wage labour. Data from KNBS (2021) and Samburu County government (2018) indicates pastoralism as the main economic activity for the residents as most families depend on pastoralism. There has also been an increase in diversification into agriculture and small businesses. Common employment includes work in conservancies, police officers, teachers, nurses, and staff of the county government of Samburu. Wildlife conservation areas attract tourism activities in the area (Pas, 2018).

Demographically, the 2019 census in Kenya reported the population of Samburu County as 310,327 with 65,910 households (KNBS, 2019). The population is mainly of the Samburu community, which is organised around clans, kinship, age, and place, with marked differences in the lifestyles of people in the highlands and lowlands (Pas, 2018; Spencer, 1965).

Ecologically, Samburu County Government (2018) classifies the county as low potential rangeland with minimal rainfall annually. Most of the land is used for pastoralism and the remaining medium potential areas used for agricultural production (Samburu County Government, 2018). In the highland areas, the community engages in crop farming with beans, maize and potatoes as the dominant crops.

Land in Samburu County is mainly owned as community land (either registered as group ranches or unregistered). Samburu East is mainly comprised of community land registered as group ranches with some land under conservancy management. Samburu West, where this research was conducted, mainly comprises group ranches where some are already subdivided into individual parcels and others seeking to subdivide due to urbanization and sedentarizing of neighboring communities and move towards crop farming (Lesorogol, 2008a; Hassan, Nathan and Karuti, 2022). Samburu North has most of the communally owned land with group ranches and unregistered land as well.

Communal land ownership has continued to be the land tenure system for many of the communities in Samburu. The main population being the Samburu community which is organized around clans, kinship, and age, as well as place, given the differences in lifestyle of the people in the highlands and lowlands (Spencer, 1965; Pas, 2018). There are also other communities in Samburu, including the Turkana and Pokot.

Despite economic activities varying in the lowlands and highlands a shift to agriculture and trading in local markets has been reported (Lesorogol, 2008a). The changing land laws and tenure arrangements saw a shift towards sedentary forms of lifestyle in pastoral households. Indeed, there is increased attention on chicken rearing and ready market in the nearby towns and upcoming shopping centers, all of which contribute to changing gender roles based on the shift in the community (Wangui, 2008; Archambault, 2016). Pasture and water resources for livestock have been reducing in Samburu, occasioning the need for pastoralists to move further away with livestock (Pas, 2018), yet mobility is not guaranteed given the changes in land already stated.

4.4 Target Population and Respondents

The study was conducted at three levels, the national level, the county level, and the local level. Interviews were conducted both in Nairobi and Samburu Counties at the offices of land officials. In some instances, discussions were held outside the office and in other towns like Nanyuki and Nyahururu where the land officials were based. Table 4.1 indicates the various categories of respondents interviewed and the number of focus group discussions conducted in each category.

At the national level, the national government Ministry of Land and Physical Planning and the National Land Commission were included. The National Drought Management Authority which works closely with the national government on livestock, resilience and drought management were also included. Other non-governmental bodies that have interests on land were targeted based on their work on land programs in the area.

At the county level, the study targeted the office of the Governor of the County, the county assembly and the departments concerned with land and community resources. The Environment and land courts based in counties were also included. At the local level, the study targeted the

administrative offices of the national and county government. Community leaders, traditional elders and female leaders fell under this category. At the community level, the study worked directly with selected communities to gather their lived experiences. The study included older men, older women, younger men, and younger women while ensuring the voices of minority communities were heard.

At the community level the targeted individuals were those who were either members of the selected group ranch or lived there. The two study sites had communities living in group ranches for different lengths of time. These group ranches were undergoing changes with the formalization of community land. The leaders of the group ranches and government officials were helpful in identifying respondents for the initial group discussions, facilitating smooth access to the study site (Saunders, 2006). Subsequent group discussions were organised independent of the leaders of group ranches and government officials. This was to ensure that diverse voices and groups were reached.

The selection of respondents was done across the group ranches, with consideration to feature gender, age, and geographical location to ensure the voices reflected were as inclusive as possible. Information about the study was also shared with different leaders in the selected group ranches to identify different respondents and to ensure the criteria to participate was inclusive. Indeed, some studies have pointed to the negative impacts of relying on community contacts and gatekeepers because of the power and control they have over the selection of respondents (Grey, 2013). In this study, relying on multiple avenues of mobilizing respondents was used to counter the biases that could occur in the process. Bryman (2008) suggests that researchers can adopt reflexivity to ensure that those in different positions do not influence the data collection process or sway group

discussions. A total of interviews 89 interviews and 22 focus group discussions were conducted as shown in table 4. 1 below.

Table 4.1: Respondents and number of interviews and focus group discussion.

Level of the target group	Description	Number (Interviews/Focus Group Discussions)
Community level	Community elders	10 interviews
		8 focus group discussions
	Youth	7 focus group discussions
	Women	10 interviews
		10 focus group discussions
	Community leaders	10 interviews
	Community land management committees	5 interviews
	Chiefs	2 interviews
	Sub county administrators	2 interviews
	Village administrators	2 interviews
County levels	County executive	5 interviews
	County legislature	5 interviews
National level		2 focus group discussions
	County Land officials	5 interviews
	NGO officials	5 interviews
	County leaders	3 interviews
	Ministry of land officials	5 interviews
	National land Commission officials	2 interviews
	NGO officials	5 interviews
	Land court officials	3 interviews
	Researchers working on land	5 interviews
	Researchers working on pastoralism	5 interviews

In this study ‘community member’ refers to men and women (both young and old) who were interviewed in Samburu and belonged to the group ranches selected. ‘Community elder’ refers to the older males identified as elders in the selected group ranch. ‘Community leaders’ include group

ranch leaders, and men and women who hold different community leadership roles. ‘Land official’ refers to both national and county government employees in Samburu or Nairobi who work directly in the Ministry of Land or the county department of land. ‘Government official’ refers to other government employees in both national and county government who do not directly work on land. ‘NGO official refers’ to respondents who work for non-governmental organizations.

4.5 Data Collection Methods

Data collection addressed the three sub research questions:

1. How does the implementation of the Community Land Act affect pastoralists’ access to land?
2. How do the Community Land Act and the devolved land governance structures affect pastoralists’ access to land?
3. How do the changing land laws affect pastoralists women’s access to land and therefore their resilience?

For the first question, a systematic analysis of the Community Land Act and its provisions was conducted. Interviews were also carried out with identified respondents to understand the implementation of the Community Land Act and how it affects the different groups of people in the community in relation to accessing land. Additionally, the study included focus group discussions with community members.

In studying the land governance structures in relation to pastoralists’ land use, the study identified the drivers that have aided pastoralist land use and access, as well as barriers to the existing structures. Thus, to answer the second research question, interviews were conducted with people who work with the pastoral community, including government officials working on land issues in the area, non-governmental organizations, and other relevant community resource persons. The

interviews were at the national, county, and local level. The role of the devolved structures at the county level and the extent to which they support pastoralism formed part of the review of the land governance structures in this study.

For the third question, pastoralist women were targeted as the main respondents as well as their spouses or family members, members of the community working on women's rights and the local leadership. This was mainly to situate the extent of participation and the place of women in the implementation of community land law, their ability to access community land and their resilience and adaptation strategies. These methods were found ideal to capture the experiences of the pastoralist communities individually and in groups. This study further relied on an extensive literature review on the land rights and legal frameworks as well as adaptation and resilience strategies in pastoralist communities. Targeting women in this phase was useful in ensuring that their experiences and voices were included. While some of the Samburu women interviewed could only speak their local language the use of local research assistants and translators bridged this gap.

The main method of data collection was focus group discussions and key informant interviews. Focus group discussions enabled insights into local knowledge. Communities were selected in each of the two group ranches which were the main study sites and thus their experiences in the group ranches as members or residents of the area were similar. Bryman (2008) found that focus groups are a useful method in obtaining perceptions on areas of interest as well as bringing out insights that would otherwise not be possible outside a group setting.

Some community members knew more about the history of the group ranches, the processes of registering the land and the challenges different groups were experiencing. While this may have

implied that those who knew more responded to the questions, the process ensured all the respondents were included in the discussions. The group discussions provided an environment where respondents could share their experiences with others, whilst supporting each other to recall some events in the community that involved their group ranch registration and membership.

The focus group discussions were separated by gender and age. Gendered discussions enabled each group to be comfortable in sharing their collective and individual views and experiences of the land reforms process. Additionally, women were comfortable to speak and share without fear, given most of the concerns on land were based on their gender. By having younger and older respondents separated in the study, there were peer discussions and thus more engagements with respondents in similar age groups. Local guides in the community as well as research assistants from Samburu assisted us to make these decisions in group allocation.

Key informant interviews in this study were useful in reaching individuals involved at the policy level and in community leadership to provide ideas and insights on the study subject based on their role and engagement with the topic. Key informant interviews have been found useful because they allow time for contemplation by respondents and thus provide further in depth details needed to understand the questions (Lokot,2021; Luloff,1999). This way the data gathered promises to bring out the rich context information usually presented by local persons in their words and own expressions (Creswell and Miller 2000). In this study, questions about the law and policies were asked to key informants which yielded details about the blockages to the implementation of the community land law as well as insights into what community members have reported to different offices held by the key informants.

While key informants are seen as gate keepers and sometimes the connotation of their knowledge on the subject debated as questionable (Lokot,2021), this study relied on key informant interviews

to complement the data from the community members as well as engage in holistic analysis of the processes where policy makers and community members were involved.

The ethical clearance for the study and data collection was sought and approved by National Commission for Science, Technology, and Innovation in Kenya. Ethical questions and considerations including informed consent, removal of participant identifying data was complied with in this study.

4.6 Data Analysis

Data from this study was collated and aligned with emerging themes. Aronson (1994) identifies the process of aligning data to different themes as useful in collating findings in qualitative research. In line with this process, the interview and focus group notes captured the discussion of each question. The researcher then reviewed the responses from each interview and focus group. All the discussions and responses were collated in a document. Group discussion facilitators worked closely with the notetakers to ensure the discussions were captured. Most of the discussions were held in Kiswahili in the community and where Samburu language was used, translation was done during the interview and capturing of the notes. The researcher spoke Kiswahili which was useful in facilitating the discussions.

Data from the focus groups and interviews was thematically analyzed alongside each research question area and sorted into themes during analysis. Where new ideas came about, data collected from the review of laws and frameworks was analyzed using systematic analysis and combined with the interview and focus group discussion data. Triangulation is useful in qualitative research as it relies on multiple sources and methods to support a comprehensive understanding of the phenomena (Carter *et al.*, 2014).

From the analysis of the data this study brings out the meaning and experiences of people in ways that better grasp the situation, presenting it as close to reality as possible (Miles and Huberman, 1994). Methodologically, the researcher drew on the strengths of the adopted qualitative methods to bring out the interpersonal conversation about the themes in the study thereby allowing knowledge on the topic to emerge through the dialogue (Kvale, 1996). Table 4.2 below provides the summary of the research questions, sub questions, the conceptualization of the knowledge needed, data collection and analysis.

The research questions draw on the conceptual framework by centering the variables that determine access, mechanisms of access, avenues of exclusion and inclusion as discussed in Chapter three on theoretical framework.

Table 4.2: Data needs, data collection and analysis methods

1. How does the implementation of the Community Land Act affect pastoralists’ access to land?			
Sub research questions	Knowledge needed	Data collection method	Data analysis methods and outputs
1.1 What is the existing legal and institutional framework?	<ul style="list-style-type: none"> • Relevant laws, regulations, policies, and frameworks • Relevant institutions set up at national, county, and local level on land • The role of each institution and the linkages • Structures, functions, and governance processes of the government institutions • Community level organization in land management and access 	<ul style="list-style-type: none"> • Desk reviews of laws and regulations • Key informant interviews at national, county, and local level 	Systematic analysis <ul style="list-style-type: none"> • Structure and institutional framework on land processes • Roles of the offices and relationship
Background of the community land framework & the extent it ensures pastoralists land rights and adaptation interests?	<ul style="list-style-type: none"> • What was happening around the development and enactment of the land laws (focus on community land)? • How was the process managed? • Who were the main interested parties and were they all involved? What were the interests? • What are the historical issues around land in What are the different stakeholders’ points of view on the laws on land (community land) 	<ul style="list-style-type: none"> • Research on land issues in Samburu over time • Debates on the enactment of the land laws (local and international) • Key informant interviews 	Thematic analysis & document analysis <ul style="list-style-type: none"> • Information on how the legal framework on land has evolved. • Inclusion and exclusion in the process

<p>1.2 Which part of the legal framework provided opportunities for pastoralists' adaptation and which ones are likely to constrain, and why?</p>	<ul style="list-style-type: none"> Data from the document's reviews and interviews 	<ul style="list-style-type: none"> Document reviews Interviews from questions above 	<p>Existing legal framework address pastoralists' access to community land</p>
<p>2. How do the Community Land Act and the devolved land governance structures affect pastoralists' access to land?</p>			
<p>Sub-research questions</p>	<p>Knowledge needed</p>	<p>Data collection method</p>	<p>Data analysis methods and outputs</p>
<p>2.1 To what extent do the new land governance structures open or constrain pastoralists' access to community land?</p>	<ul style="list-style-type: none"> Levels of institutions involved in the land governance and processes. Local community involvement Current trends on challenges and opportunities in the land processes (formalization, registration, titling, and subdivision) 	<ul style="list-style-type: none"> interviews with government officials Pastoralists' lived experiences 	<p>Systematic analysis Thematic analysis</p> <ul style="list-style-type: none"> Information on the extent to which land governance structures open up or constrain access to land for pastoralists
<p>2.2 What processes are going on at both levels?</p>	<ul style="list-style-type: none"> Understand the land processes going on in the national, county, and local levels. Situate the transition of different group ranches into community land 	<ul style="list-style-type: none"> interviews with government officials Pastoralists' lived experiences 	<p>Thematic analysis</p>

2.3 What avenues have the land governance structures created for pastoralists access to their rights on land?	<ul style="list-style-type: none"> • National and county level processes working on community land processes • Identify avenues present pastoralists to engage in the process if any 	<ul style="list-style-type: none"> • interviews with government officials • Pastoralists' lived experiences 	Thematic analysis
2.4 What about devolution? What problems has this solved, or challenges has it brought?	<ul style="list-style-type: none"> • The role of county governments in the process visa vis the law on their role as custodians of community land • What opportunities does the county structures provide the pastoralists, who are interested in the process, and why? 	<ul style="list-style-type: none"> • interviews with government officials • Pastoralists' lived experiences 	Thematic analysis
3. How do the changing land laws affect pastoralists women's access to land and therefore their resilience?			
3.1 How are the different groups of pastoralists represented in access to community land?	<ul style="list-style-type: none"> • The segments of pastoralists' community and their different roles • Local leadership structure at the community land level • Decision making process during community meetings on community land • Community land registers and their effectiveness 	<ul style="list-style-type: none"> • Interviews with community members • Survey data • Participant observation • Analysis of the minutes of the community meetings 	Analysis of descriptive data Thematic analysis
3.2 How do pastoralist women engage in land processes?	<ul style="list-style-type: none"> • Women and community land access 	<ul style="list-style-type: none"> • Interviews of the women • Access and resilience of pastoralist women 	Thematic analysis

<p>3.3 How is their inclusion or exclusion affecting pastoralists access to community land and adaptation?</p>	<ul style="list-style-type: none"> • Representation of women in the leadership structure • Avenues of women's voices and ideas 	<ul style="list-style-type: none"> • Analysis of group ranch meeting minutes • Interviews on avenues of women's voices 	<p>Thematic analysis</p>
<p>3.4 What activities are the women involved in the community?</p>	<ul style="list-style-type: none"> • Adaptation strategies adopted by women • Resilience strategies • Land access strategies • Understanding access to land from the women's perspective 	<ul style="list-style-type: none"> • Focus group discussions on the strategies women have adopted in accessing land and adaptation 	<p>Thematic analysis</p>

CHAPTER FIVE

THE COMMUNITY LAND LAW AND THE CHALLENGES OF PASTORALISTS

ACCESS TO LAND

5.1 Introduction

The preceding discussion has underlined the significance of theoretical debates around access, decentralization, and resilience in shaping conditions of access to land by pastoralists. The discussion also showed the context of land law reforms and how these reforms aim at protecting and promoting rights of pastoralists. Regarding access to land, the theoretical discussion has shown how different social mechanisms are at play and define whether individuals or groups benefit from resources like land. Where such mechanisms are instituted in laws then the state is involved in enforcing the different ways groups or individuals access land. In some cases, communities rely on customs to define the different mechanisms of access.

This chapter then focuses on the experiences the implementation of the Community Land Law in Samburu and implications for pastoralists access to land. The implementation which was spearheaded by the national government ministry in charge of land also involved county governments, the national land commission, and non-governmental organisations.

This chapter discusses how the implementation of community land law affects pastoralists access to land. The discussion outlines six interrelated ways in which pastoralists are affected by the implementation of the community land law. These includes limited awareness of the law and implementation, community participation in management of land, unintended consequence of subdivision, Subdivision and exclusion, customary practices versus community land law, and community land law and security of rights.

5.2 Limited awareness of the law and implementation

Community members expressed the difficulty they were facing in understanding the implementation process of the new community land law. They indicated that there is a general lack of awareness of the requirements of community land law. Many in the community do not have an understanding and full knowledge of what is required to transition their group ranches to community land. One of those interviewed stated that “...we are now not sure about the next steps with this new law, we keep hearing that our officials will report to us about the fate of our group ranch”¹. Many were also not sure about the status of their group ranches in relation to transition to community land. They had no information on the process, and those who had some information, tended to have contradicted each other on the status of the group ranches.

In some cases, the confusion was based on what they assumed would be the outcome of the process, including fear of losing land. First, this study found that some community members are suspicious of the motive of the government officials who are involved in the process of land administration. Some argued that they cannot trust the national land officials because they do not know what the role of these officers is besides the fact that many of them are from outside the county. Other community members felt that this suspicion of the community members on the motive of the land officials is likely to further slow down the process. In one of the group ranch meetings attended by land officials, the community elders had not agreed on whether to initiate the process to comply with the law or not. This lack of clarity has meant that there is a lot of speculation on the process as shared by a community member during an interview:

¹ Interview, Community Member, Male, November 2019

*“we have not yet understood the new law on community land, some people think we should subdivide our land, others think we should collectively own the land. But none of us knows what the law says or what the process entails”.*²

Secondly, community members indicated that the number of land officers responsible for implementation of the law in the county was not enough for the implementation exercise. Because of limited number of officers, community members had to travel to neighboring counties to resolve any land disputes, seek administrative assistance such as help of community land registrar, the officer who is responsible for all matters concerning community land. Community members would also complain that they incurred huge travel costs to seek the advice of land officers. One of the respondents explained, *“We have to travel for many kilometers each time we need to follow up our land records, we have never had a central place in Samburu where we can be assisted”*³ An FGD discussion echoed these views too with one participant pointing out that the law is alien to pastoralist communities:

*“You are asking if am aware of a new law, no I am not. That law is not ours. It belongs to the people of the city who live in Nairobi. We have our own rules here and we will not follow your laws”*⁴

The description of the CLA as the ‘law of the Nairobi people’ indicated the disconnect between the law and community expectations. Indeed, some of the local residents argued that they have been marginalized in terms of development from the colonial period and that this was the reason

² Interview, Community Member, Male, December 2019

³ Interview, Community Member, Male, November 2019

⁴ FGD, Community Elder, Male, November 2019

why there were no enough public officers responsible for land. The implementation of the community law therefore did not have adequate support among the pastoralists. This again added to the challenges of implementation.

Thirdly, the role of the national and county governments in the community was questioned with respondents indicating that “*the county government is not involved at all in the process of implementing the CLA they are not educating us on what to expect*”⁵ . Respondents sought to get protection from the national government to “*ensure people are not pushed out of the land and consider resettling those who will find themselves landless*”⁶

The various levels of regulating access to land have multiple processes supporting the implementation of CLA. These multiple institutional processes will be discussed in the chapter six. In terms of processes and how the implementation was proceeding respondents often pointed out that the formal institutions began their activities without “*adequate integration of community contexts and attendant institutional arrangements for land governance*”⁷ . Sometimes, the land officers may ask the local administration to consult the community elders on certain disputes, but this is not a usual procedure or a requirement and therefore working with elders is left to individual officers. Some end up not consulting with them. This disconnect between formal rules and those that have guided the community over time thus created avenues for further suspicions and mistrust that is slowing down the process of formalizing community land rights. This has in turn

⁵ Interview, Community Member, Female, July 2019

⁶ Interview, Community Member, Female, November 2019

⁷ FGD, Community Member, Male, November 2019

constrained enjoyment of the rights of access for some of the community members including the different avenues of their engagement which the next section now turns to.

5.3 Community participation in management of land

One of the changes brought about by the CLA is in the management of communal land and specifically the requirement that decision making should be through participation of all community members gathered in a community assembly (GOK, 2016). Previously elders oversaw access and negotiated for pasture in neighboring communities. The law, however, introduces institution of a committee which requires elections of members by the community. Community decisions are taken through a participatory process in an annual general meeting of members too. This new arrangement presented challenges for pastoralist communities. These include the requirement for community members to assemble and make decisions in an annual general meeting. Community members stated that it was increasingly becoming difficult to attend the meetings because they live far away from the meeting venue.

Additionally, under the new land law, community members are at the centre of decision making and therefore their involvement is key (GOK,2016). Their participation, however, is predicated on local citizenship. Those who participate must be recognized as members of the communally owned land. In this case then members of a particular community will be related through familial ties and mostly belong to the same clans. How to recognize one as a member has, however, become problematic over time given that the more people who are enlisted as members to benefit from community land, but there is less land available for all. The challenge has resulted in members sometimes drafting membership rules in a manner that excludes others. For instance, some family members may have migrated away from the area several decades ago. The remaining members

have knowledge of this, but today “*those who migrated are not recognized as members of the community*”⁸. They share the same clan or familial identity, but other members do not recognize them as members. Whilst some of them have returned to their former communal lands to be part of implementing the new Community Land Law, other members would wish to exclude them from membership of the community “*as we know that the amount of land we own as a community is still the same and we cannot include more members because this will mean that we each get less land when we finally subdivide our group ranch*”⁹. This then further complicates their participation in community decisions.

The institutions created by law to enhance decision-making are facing the same bottlenecks that have hindered the equal participation of all community members. On the face of it, the mechanisms put in place by the law look elaborate and geared towards democratizing land governance. Women and youth have in the past lacked a voice in deciding on land governance (Musembi, 2007). As noted above, the new land law gives them a voice. Articulating this voice, however, is not without its challenges. Unmarried and widowed women lack space for their voice, “*and their rights are neglected including facing challenges of access*”¹⁰. The representation which is mainly male dominated fails to incorporate different groups in the community. For women who are married, it is assumed their husbands represent them and, therefore, those whose husbands have passed away or are single are left out.

Moreover, the venues of the community assemblies exclude some people in the community:

⁸ Interview, Community Member, Male, December 2019

⁹ Interview, Community Elder, Male, November 2019

¹⁰ Interview, Community Member, Female, December 2019

“I do not recall the last time I heard of a meeting in our group ranch. It is as if only few selected individuals are informed or maybe there is nothing to discuss in those meetings”¹¹.

Those with voice and influence in decision-making are not the ordinary poor people. The process has also not addressed the obstacles inherent in traditional norms of pastoralist communities that will continue to exclude women and youth from community decision making processes (Kipuri, 1983). This is because educated and wealthy pastoralists continue to dominate the meetings that determine community decisions. This is because the new ways of participation also favour their ability to participate especially where meetings are held in town centres. One such discussion that is happening in the group ranches is whether to subdivide the land or not.

5.4 The unintended consequence; subdivision of community land

The question on whether the Community Land Law was intended to consolidate community land or cause subdivision leading to individualization and privatization was also raised during the discussions with community members. The application of the law in the county has aroused interest in people having their own individual parcels of land rather than owning it communally. Overall, this subdivision of community land is an unintended consequence of the Community Land Law and is heightened by internal factors in the community. First, there is increased changing land use pattern especially in areas near urban areas and where land is arable. This has prompted most of the group ranches to prefer subdivision so that they can engage farming in their group ranches. Other community members begin to subdivide their pieces into smaller commercial pieces

¹¹ FGD, Community Member, Female, December 2019

of land for urban activities. For this reason, the movement of livestock is generally hindered, and practice of pastoralism is impeded as noted by one participant:

“...most of the land in Samburu west is arable and many people are slowly adopting farming as an additional means of livelihood. These farms have restricted the movement of animals”¹².

Overall, the increase in agricultural practices was cited as a reason for the calls for subdividing communal land. Indeed, the growing interest in individual or private land, there are instances where different group ranches started subdivision even where farming was previously not practiced. This again has fenced off land to protect the crops and by that prevented mobility of livestock.

There are group ranches that have already dissolved the group ranches and subdivided their land into individual parcels. Whereas some communities have held meetings and agreed to subdivide, most of the group ranches in this study were still in discussions on their future after subdivision. Samburu West where there is more arable land, most members of group ranches were inclined to subdivision because of the influence of their neighbors whom they thought were drawing more benefits from individual parcels. Community elder, for instance, noted that:

“What can we do if everybody around us has decided to subdivide their land? Will you remain as community land and find nowhere to move with the animals? We have no choice but to go the route of the subdivision because our neighbors have

¹² Interview, Community Member, Male, November 2019

*shown us the way. Having communal land in this group ranch alone will not help us*¹³ .

The influence from the neighboring group ranches, with most of them already subdivided, was cited as another reason for the calls to subdivide the group ranches. Connected to this was the disruption of the communal grazing land where the neighboring group ranches continued to access the available communal lands. This was found by some respondents to be exploitative, as those who had already subdivided their land were now turning to their community land to graze their livestock, yet they had no land to reciprocate in return as had been the practice.

*“Those who subdivided their land many years ago are still moving around with livestock and using the rest of the available land. If we do not subdivide, people will be coming here to graze and expect us not to deny them grazing land when we cannot graze in their lands in return”*¹⁴ .

The disruption of previous rules of access and grazing was indicated as another cause for the increased calls for subdividing land. These sentiments were also shared during focus group discussions. Respondents in the group ranches felt that their livestock had significantly reduced over the years, yet those who are rich have continued to increase their livestock numbers. This, they said, meant that most of the pastoralists required less land to feed their livestock and that the community land was disproportionately benefitting the rich who have more animals:

¹³ FGD, Community Member, Male, December 2019

¹⁴ Interview, Community Member, Male, July 2019

“I want to have my piece of land and grow grass and sell to the rich who are still keeping a lot of animals, as it is now, we are losing and they are benefiting by using all the grass for free as we suffer”¹⁵

This implies that some members of the group ranches felt that subdivision of the communal land would act as an ‘equalizer’, as those with more animals will have to pay to access grazing land from the pastoralists who have fewer livestock.

For some, the process of implementing the CLA brought renewed zeal and consideration of subdividing communally owned land. To some of the respondents, they have adopted subdivision because others have done so:

“We started this discussion (of subdivision) a long time ago; we saw that it was easier to use the land individually. We called an AGM, and the first-time people did not support the idea of the subdivision. The meetings were held three times. Recently when we heard about the law that requires us to convert to community land or dissolve the group ranches and that our neighboring group ranches are subdividing, we decided to pursue subdivision. We have no choice but to subdivide because if all our neighbors have done it, they will disturb us with their animals if we remain as community land”¹⁶.

Despite these findings indicating overwhelming support for subdivision, the study also found voices that were apprehensive of the decision to subdivide. Most of these respondents referred to the negative effects of subdivision for the pastoralists’ livelihoods. They argue that subdivision

¹⁵ Interview, Community Member, Male, July 2019

¹⁶ FGD, Community Member, Male, December 2019

was undermining pastoralism because it would constrain migration from one area to another. One respondent noted that:

“I foresee a lot of problems with the current set up. First, the previous challenges of land access have not been resolved. Now we have the new law that we must comply with. This area is too dry and even if the communities decide to subdivide, they will still need to migrate in search of pasture and water. If each part of the land belongs to someone, where will people migrate to? It is not possible to move with your land”¹⁷.

Reports of fear on how pastoralists will continue to exist if all the communal land is subdivided was raised by most of the respondents. For example, a land officer in Samburu expressed concerns that despite the enactment of the Community Land Act, there has been a lot of discussions on subdivision in the group ranches that meant the grazing land has been reduced and the communities no longer communally managed the grazing land from depletion.

Respondents also linked the call for subdivision to the fear of dispossession of land once the register of members was updated. Some of the respondents felt that the desire to subdivide was based on the increasing numbers of people who are in the group ranch and the requirement by the law to update the group register to include the new members. This they felt would mean that they would lose land to the additional members of the group.

“.... most of the group ranch members are not open to additional members in the group register because it means that the more the members the lesser the portion

¹⁷ Interview, Community Member, Male, November 2019

of land that will go to each member, so we want to subdivide using the original register and let families subdivide among themselves afterwards”¹⁸.

Other respondents said that there were people who had lived in the group ranches, but were not members, and this was creating anxiety on whether they would claim the land they have been using:

“Some people have even built houses in the group ranch, but they are not members of the group ranch, what happens if they insist on being included in the register”¹⁹

5.5 Subdivision of land, inclusion and exclusion of members

The question of subdivision of collectively owned land at least in the group ranches also raises concerns about exclusion and inclusion of community members. This process involves inclusion in the group ranch registers. Some community members were concerned that there were more people moving back to their group ranches hoping to be included in the register as members, as is required by Community Land Law. The fear of losing land even to the land officials was also a concern during focus group discussion with group ranch members. In some cases, respondents expressed mistrust in the process of the implementation fearing that government officials were interested in taking away land in the process,

“We have been told that when we subdivide, we must leave land for the government facilities, we think they want to steal land from us. The government already took

¹⁸ Interview, Community Member, Male, January 2020

¹⁹ Interview, Community Member, Male, December 2019

land from us calling it forest area and other public facilities, what more land do they want”²⁰.

One of the land officials later explained that the requirements for the public land after subdivision was in accordance with the law. The process of subdivision has also created challenges and divisions at the family level as it is leaving many adult members without any land for themselves. Most such dispossessed adults are going back to further subdivide what their family, through the household head, has been allocated. The process is leading to the exclusion of some groups and members of the community from access to land. First, those who are excluded are community members who migrated to other parts inside and outside Samburu in search of pasture. This is creating tensions between those who were left behind and those who migrated, especially because there are grievances on how they were excluded from the updated group ranch register. This tension is caused by the fear that including more people in the group ranch register to become beneficiaries of access will lead to an increase in the number of members in the group ranch and thus reduce the land each person gets in case it is subdivided.

Exclusion inside the group ranches also is occurring in cases where older males in families are registered on behalf of the family in a group ranch, but not the adult children in the family. This has posed a challenge because adult members of a family are excluded from equal access rights because the registered head of household is the only recognized member of the group. Families that had grown over time were likely to have less land as each member of the group ranch would in turn be required to share their land with all their children. This is further complicated for heads of households who are polygamous with children in each family. In such a scenario, community members indicated that women were excluded, and land was instead shared among the male

²⁰ FGD, Community Elder, Male, December 2019

children in the families. This situation “*disadvantaged unmarried women and those who had children but lived on their fathers’ land*”²¹.

Ethnic minorities in Samburu have also been excluded from the process of implementing the CLA because membership to the group ranches disregards new members or those who have used the land in previous years. A land official indicated that minority clans in the group ranches were likely to be disadvantaged in the process and would be forced to find a neighboring group ranch where they had familial or clan relations. Many respondents tended to observe that the process of the implementation of the CLA was excluding some people from being members of the group ranches, from accessing community land, and from the process of making decisions concerning land. The community land membership question was linked to the group ranch register and some members indicated that they had been left out of the registration process. One of the respondents narrated his story:

“My father moved from Samburu to Oldonyiro in 1975 when we were young, and we lived there for a long time. After 2010 and the new constitution of Kenya which came with the creation of counties, Oldonyiro became part of Isiolo county and the Samburu people who had lived here became a minority in the group ranches. We also heard about the recognition of community land and my father went back to Samburu to his family to ensure he is included during the registration process in the group ranches. When he got to Samburu, he found that the registration process had happened, and he was missing in the list. On the other side, the community in Oldonyiro had updated the group ranch register and my father was not included in

²¹ Interview, Community Member, Female

this list. We moved back to Samburu and settled on a section of a group ranch. We know we will eventually not be allowed to live here because our group ranch is getting subdivided. We are waiting for the process of subdivision to be complete so that we can buy land from those who would like to sell. I know so many other people who are faced with problems like ours”²².

This group of members reported that they were now not recognized as members of the group ranch. Apart from those who were sure that they had been excluded, another group were apprehensive and were not sure that they were members of their group ranch. This is especially the case for group ranches that had not completed updating their registers before 2016 when CLA was enacted:

“The group ranch register is being used to determine whether we are members of this community land or not. We are not sure if we have been included. The name of our grandfather should be in the register, but we keep hearing that they are correcting the register. So, we hope we are not removed from the register. Other people have applied to be included in the register and the process is taking long”²³

The original list of members included the older males in a household. Thus, many respondents argued that they were claiming land that belonged to their grandfathers. They also tended to believe that their land would be taken over by the rich and the elite once the subdivision process began. The question of the group ranch registers also meant that members would be excluded as the register had not been update for long. This, they said, would happen as the rich would bribe group ranch officials to get more land allocated to them and circumvent the law to be included in the group ranch register. This was not an option for the poorer pastoralists, as they had no power or

²² Interview, Community Member, Male, November 2019

²³ Interview, Community Member, Male, December 2020

resources to influence their inclusion in the process. The process of inclusion also raised questions on the role of customary institutions.

5.6 Customary practices versus community land law

Pastoralists' lands have been managed through customary tenure systems and the land laws introduced which safeguard community land. These have directly impacted on the nature of how pastoralists arranged their land access. In this study we found the problematic aspects of applying formal law to community-based land rights. First, the role of managing communal land including negotiating for access was held by community elders over time. The elders followed customary practices in making decisions of access and resolving conflicts.

The Community Land Law requires that new leaders are elected to manage community land (GOK, 2016). The roles of the elected officials, which include taking minutes during community meetings and keeping records of the community land register, present new dynamics quite different from the existing customary practices. The requirement for the community assembly entailing most community members to attend the annual general meeting was also cited as a new way of decision making which is new to the community. Some community members felt that the process left out the elders and as such was not inclusive and useful for them.

“...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”²⁴ .

²⁴ Interview, Community Member, Male, December 2019

Some community members also felt that the elders who had been left out were the decision makers and the custodians of the community rules around access to land. These sentiments were also expressed by elders who felt that the process of managing community land would not be fair and inclusive,

“...we know the history of our land and the names of the members of this group ranch off our heads. You (referring to the community) are going to have a lot of problems starting to introduce new rules and electing officials who have no idea about the way we handle our problems as a clan in this area”²⁵.

Most of those interviewed felt that the elected officials would not adopt the previous fair and inclusive practices perceived to be followed by the elders. Secondly, the requirement by the community land law to have members of the community land participate in an annual general meeting to make decisions on how they would use their land was seen as *“new and not good for pastoralists”²⁶*. Respondents in one of the focus group discussions expressed similar dissatisfaction with the formal requirements in the management of community land, which disregards the existing customary systems.

The findings show tensions which present challenges in land access because there is discontent in the arrangements set up to propel the formalization process. The tensions presented by the formal requirements have not gelled with the existing systems in the communities. And this is because of the new dynamics emerging from the implementation of the law. For instance, one of the salient features of the nature of the community annual general meeting is the inclusion of young people and women both in the community meetings and the decision-making committees. This was not

²⁵ FGD, Community Elder, Male, November 2019

²⁶ Interview, Community Member, Male, December 2019

and is not a practice under customary law and traditions of regulating access to land and therefore causes internal tensions along gender and generation lines. A similar concern was shared by one of the land officials. He noted that the most common complaints by elders was around opening decision making to all community members:

“The elders are not comfortable with the new laws that considers all members of the group ranches as equal and provides spaces for youth and women to be part of decision making because they do not trust them to safeguard community interests”²⁷.

The elders felt that they had been ignored, and that as older members of the community they had the best interest of their community. This dissatisfaction on the role of the elders was expressed by our respondents as indicative of the new rules brought about by the Community Land Law, which a community elder referred to as *“books and pens”²⁸*.

The operationalization of the Community Land Law in Samburu has proceeded in a manner that erodes customary institutions that have for generations regulated pastoralists’ access to land (Lengoiboni *et al.*, 2011). By providing for customary processes without a clear legal framework, tension on the legitimacy of customary institutions managing land has emerged.

It bears emphasizing that among pastoralist communities, customary institutions are custodians of community rules and practices. These institutions have a responsibility to enforce rules and to make new rules to adapt to circumstances and to secure community land in a sustainable manner, ensuring resource availability for future use. It is these customary values, guarded by the elders, that play an important role in creating stability in the governance of land among pastoralist

²⁷ Interview, Land Official, Male, January 2020

²⁸ Interview, Community Member, Male, December 2019

communities (Okoth-Ogendo, 1989; Cousins, 2007). The elders in pastoralist communities have overseen managing grazing patterns, migration routes, including managing uncertainty by negotiating access and migration corridors with neighbors, and resolving conflicts in the community (Scoones, 2021). Elders in the community complain that land officials rarely come to them or seek their opinion on community land matters. The elders in interviews noted that sometimes they had to rely on their elected leaders to provide them with information on the status of their land. Nonetheless, it is also difficult to determine from this study which land officials should engage the elders, given the confusion on the roles of the institutions established to implement the Community Land Act.

The land law nonetheless does not adequately provide for integrating the role of elders in the new land governance arrangements. Instead, the law now requires that community members elect new officials in a community assembly (GOK, 2016). This means that the law introduces a mechanism to include everyone in land governance, not just the traditional assemblies of elders. This arguably introduces a parallel decision-making process in the management of community land, especially because the elders remain in place. The problem was that elders used to make binding decisions concerning community land problems, but the new community land management committee, which comprises of elected members, suffered a social deficit in this respect. The elected officers can make decisions at the community assembly, but these decisions are not binding and can be challenged by members through the Kenyan court system. In the end, sidelining elders has brought many unresolved disputes and created other challenges, as the courts of law are not based in Samburu. Pastoralists who have taken their cases to court have had to travel far distances to the neighboring towns to have their matters heard. Additionally, the community members incurred costs in hiring lawyers, which they cited as expensive and unaffordable.

The implementation of the Community Land Law is causing tension not only between the formal and customary law, but it is also causing conflicts within the community. Group members often disagree on how they want to formalize their community land and the disagreements end up in the courts. There is also suspicion about the new leaders and elites in the community owing to past experiences when some local elites used their influence and the advantage of their education to amass land at the expense of other community members. This suspicion stems from past experiences where land belonging to communities was annexed and titled under names of powerful individuals. Local communities continue to face these unresolved conflicts of private land situated inside communally owned land; a situation that has not been resolved yet.

The process of ensuring all community members equally participate in the decision-making process is aimed at democratizing decision-making processes (Lund, 2002). The community assembly thus comprises all adults, both men and women. In the past, only men participated in community assemblies. Women would not participate, and neither would the youth. Yet, this new structure of land governance is also raising tensions in relations among community members. Some of the respondents argued that there was discontent in the arrangements set up to facilitate the formalization of land rights under the Community Land Law. In their view, the inclusion of young people and women both in the community meetings and the decision-making committees overlooks the role of elders in the community.

5.7 The Community land law and security of rights

Some respondents expressed fear that the community has, in the process of implementation of the CLA, included the suspicion that the pastoralist land would be taken away from them:

“The land and fence you see across is government land. We estimate that that land is three times the size of our group ranch. There are many areas even inside the

group ranches that are marked as land belonging to the government and some of the recent cases include the forests which border our group ranches that are making us feel like we will lose land in the process of registering our group ranch”²⁹.

Similar views were expressed in the focus group discussions where respondents reflected on previous loss of land in the community:

“We fear that our land will be taken back by the government, they have taken a lot of our land before. We are also not sure that if we remain as a community our land will lose its value and many people will come and claim that they are members. The law will be against us because people are running to court to seek justice yet in some cases, they are not legitimate members of the group ranches. The role of the elders and our customs has been eroded and the only thing left is for us to get our pieces of land so that we are sure of our rights and security. Now we do not want to live like birds, we want to know what belongs to us”³⁰.

The question of security of rights over the collective rights of the community was raised by other respondents, with most of them indicating their lack of confidence in the ongoing implementation of the CLA. These speculations on how the community could lose their land rights were explained by several respondents.

“Communities live in fear as they are not certain what portion of their land will eventually be registered as community land. Besides, they also expressed concerns over land that is considered public land despite communities having settled on such

²⁹ Interview, Community Member, Male, November 2019

³⁰ Interview, Community Elder, Male, December 2019

land. There has been pressure to subdivide and privatize some community land. The move is seen as a safer way of safeguarding the land rights instead of waiting for adjudication of the unregistered land only to hear that it does not belong to us. Other people think that the process of registration is slow because some government officers are interested in the land. We also hear that the Kenya army wants to acquire more land here”³¹.

This study found that there was distrust in the implementation of the CLA by the community mainly linked to their security of land rights. Ethnic minorities were among the groups whose security of rights was in question. One of the land officials said that because most of the community members were from the Samburu community, the minority communities’ rights to land were at stake:

“I know of cases of people from minority communities who have lived in these group ranches but now they are being asked to go back where they came from or where they were born. I do not find the process fair. Some of the community members have been saying that customary systems would have accommodated such cases, but I do not understand what stops them from making the same provisions even with the requirement of the new law”³².

This study further found that the rights of minorities in the pastoralist communities were not addressed as in some cases they had no rights over land.

The different interconnected findings presented above reflected the different challenges that pastoralists are facing in the implementation of the community land law. The findings reveal the

³¹ Interview, Community Member, Male, January 2020

³² Interview, Land Official, Male, November 2019

tensions both in the understanding of the process but also in different pastoralists interests which include membership to group ranches, identity of the community members and avenues of inclusion and exclusion in the unintended subdivision processes all which affect access to land.

5.8 Conclusion

This study finds that Kenya's Community Land Act may have provided critical foundations for the community land security, but the processes of implementing the law including inclusion of pastoralist community practices and norms may not happen in practice. In other instances, tenure security has been faced by the ambiguity caused by conceptualizing 'community' as an ethnic group, without figuring out how to safeguard the rights of minorities often left out in instances where there are ethnic differences and conflicts over land, as has been the case in Samburu. The avenues of participation and community involvement could point to the solutions to the challenges presented. This includes the role of elders in embedding customary tenure, which has been emphasized in studies including their negotiating role in times of drought for community pasture in neighboring communities (Okoth Ogendo, 2002).

The unintended process of land subdivision has potential to create avenues of unequal allocation of land. This inequality is also reported in previous studies of group ranches where those who were incharge of the process allocated themselves larger parcels of land including the allocation of land to persons who were not members of the group ranch (Mwangi, 2007; Galaty 1992). These reasons are among the reasons different community members had different opinions around subdivision. Previous studies also indicate a similar trend where group ranches responded differently to this agitation for subdivision. Galaty (1992) for instance presents four categories of group ranches and their reaction to subdivision: those who subdivided the land equally, those who subdivided a portion of the land to members for who were agitating for subdivision and left the rest as a group

ranch for rest of the members, those who distributed the land but did so unequally, and the group ranches that did not attempt to subdivide. According to Veit (2011) most pastoral communities were against land subdivisions and subsequent sale of land because such a move would erode the cultural practices of the community. In this study community member apprehension around the likely increase in the number of people who would be eligible for a share in the communal land as the main drive towards subdivision.

The fears of dispossession and exclusion of different groups is also linked to mistrust of the community in the process of formalizing community land. Where there is exclusion, there are winners and losers (Campbell, *et al.*, 2000). Ethnic minorities have also been found to suffer exclusion and in some instances, their recognition is often ignored. Customary laws have established rules on how to govern user rights, including the rights of minorities. However, challenges occur in instances where land use is disputed, and in some cases, conflicting on whether rights to use can be claimed or users can transfer rights to their heirs (Galaty, 2016). The fears of dispossession and exclusion linked to the status of the group ranch register were significant because they alluded to the avenues of exclusion in the process of the implementation of the CLA. Kimani and Pickard (1999) for example, found that group ranches rarely updated their registers. In the present day, the requirement for communities to reconstruct and update their registers to facilitate the process of registration still faces challenges (Hassan, Nathan and Kanyinga, 2022; GOK, 2016). In this study, we found that the group ranch registers had names of members who were present more than four decades ago. Different hurdles were reported by those who sought to be included in the register as there was no criteria that was clear to everyone in the process. The process of replacing is harder for polygamous families who claim membership through a single member originally registered in the group ranch.

In understanding the implications of the CLA in the security of rights, this study found that power and decision-making are avenues that hinder or facilitate access. The social processes and power dynamics created in the process of formalizing community land is playing a critical role in determining the different levels of abilities for people trying to access the resource (Berry, 1993). The different levels of authorities involved may find the claims too many, and thus lessen the chances of the community members seeking inclusion. In some instances, this study found that the new avenues of exclusion are because of the overlapping systems of legitimacy given the traditional system of elders is not fully integrated into the structures mandated to oversee the transition to community land. This was found to be overly critical, as the different communities navigate the formal processes in a deeply rooted customary system of accessing land. Devolution of land governance aims at improving some of the decision-making processes and increasing legitimacy of the process. We now turn to look at how the community land law and the devolved land governance address pastoralists access to land in the next chapter.

CHAPTER SIX

THE COMMUNITY LAND ACT, DEVOLVED LAND GOVERNANCE, AND PASTORALISTS ACCESS TO LAND

6.1 Introduction

The previous chapter has focused on the process of the implementation of the community land law and the challenges of access to land for pastoralists. First the process of implementation reveals that many community members have limited awareness of the process and the requirements of the law. Secondly, the lack of awareness hinders community participation in the different meetings where decisions on communal land are to be made. Third is the unintended consequence of subdivision of land which has meant that many group ranches will get dissolved and land shared among group ranch members. This as has been shown earlier presents challenges as not all members of the community are included in the process of subdivision. The membership of the group ranches is contested, the inclusion criteria remain unresolved and as such there are members who are excluded and could remain landless with no rights to the land at all.

This chapter now turns to the institutions and the different roles they play in a community land governance structure. This community land governance structure refers to the different institutions and the structures established under them to support the implementation of the community land law. The institutions include those at the national government, county government and local community level institutions.

The chapter starts by a background on devolved land governance and then outlines the structure of community land governance as applied in this study. This is followed by findings which reflect the experiences of pastoralist communities and land officials in Samburu. This includes the

institutional complexity of the devolved land governance, administrative bottlenecks and avenues of participation and the diminishing role of pastoralist institutions. This brings us to this chapter's conclusion on the implications of devolved land governance for pastoralists' access to land.

6.2 Devolved land governance: A brief overview

As already highlighted in Chapter 3 on decentralization theory, one of the central features of devolution that distinguishes it from other forms of decentralization is the transfer of administrative and political roles and responsibilities to those who the people elect, thereby entailing a form of democratization (Bruce and Knox, 2009; Nyanjom, 2011). As such, the institutions established in the devolved system of government are required to collaborate across the local and national levels, thereby bringing together elected and government officials to serve the citizens on all matters, including access to land (Lind, Okenwa and Scoones, 2020). In devolving land governance, it is expected that resources are made available to provide services to the citizens at the local level, as well as to ensure that land policies address the challenges of access to land and resources, including questions of leadership at different levels (Toulmin, 2009).

In principle devolution on its own provides opportunities for participation in decision-making; it provides for the inclusion of local people's voices in making policy choices, and there is a greater chance of reforms or of development programs being successful when communities are involved (Rondinelli, 1981; Oyugi, 2000). Some studies have also underscored the significance of devolution in local matters (Kanyinga, 2016; Gargule and Lengoiboni, 2020). Such approaches have been termed participatory and inclusive and provide opportunities to bring out the best in communities (Chambers, 1996). The constitutional and legal framework on land in Kenya thus entails provisions for devolved land governance.

In practice however, previous studies assessing devolution promises have pointed to governance questions and administrative bottlenecks. For instance, Boone (2012) finds that devolved governance structures have added to the institutional complexity making the implementation difficult, while Bassett (2020) noted that the lack of clarity among the institutions established under the devolved governments sometimes leads to disputes and stalling of services for citizens. Other governance challenges have been linked to the emergence of a web of powerful networks in the devolved system of governance that seeks 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). Other studies in Kenya have cited the transfer of political power and resources to democratically elected local units away from the central government as having the potential to secure rights for communities (Gargule and Lengoiboni, 2020).

This chapter thus draws on some of the broad objectives of devolution, which include effective service delivery and increased avenues of participation for all groups in the community to highlight the pitfalls of devolved land governance for pastoralists access to land (Nyandiko, 2020). A central feature of the process is the establishment of land governance system by Constitution of Kenya (2010) with distinct power and fiscal aspects. Chapter Eleven of the Constitution of Kenya outlines the structure of the devolved system, its principles, and objectives. The County Government Act (2012) further offers policy guidelines and an action plan for the operationalization of the devolved governments. The Act provides for the full and further decentralization of counties, which are the units of devolution in the constitution. Service delivery, equitable distribution of national resources, and citizen participation are at the core of these processes.

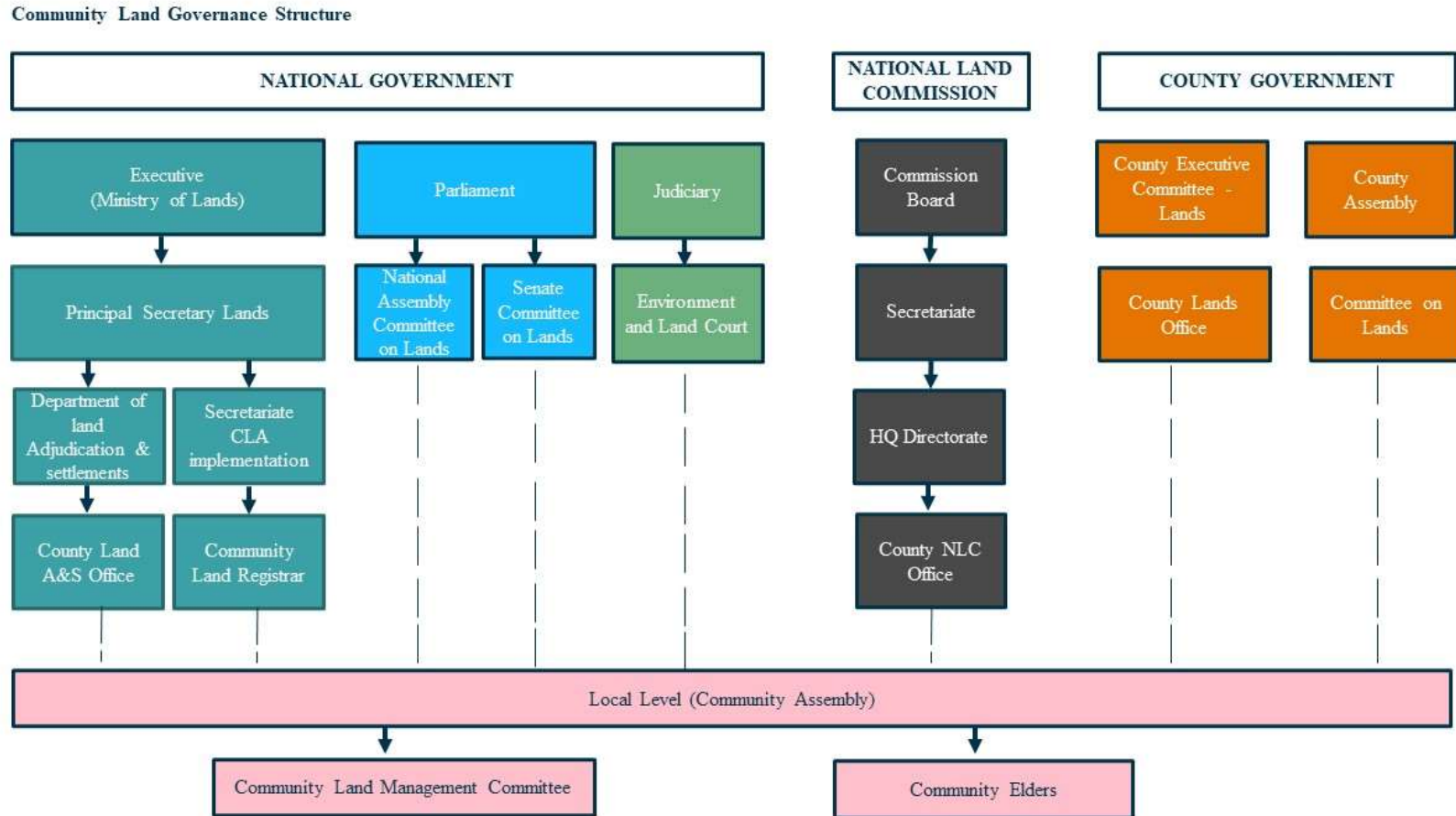
The different functions of each level of government have been indicated, including the roles and responsibilities of county governments as provided for by the Community Land Act. The ideals of

devolution and the promise of improving land governance then need to be understood. The Community Land Act (CLA) also espouses these ideals of devolution as it establishes Community Land Management Committees (CLMCs) as part of enhancing democratic land governance. The Community Land Act implementation envisages the election of these CLMC officials, including the requirement of equitable participation for men and women in the decision-making processes (GOK, 2016). The next section now presents to the structure of the community land governance.

6.3 The Structure of community land governance

Figure 5.1 represents a summary of the community land governance structure, which includes the national, county, and local level structures as provided for the constitution and the institutions established under the Community Land Act. This figure has been developed for this research and does not represent an exhaustive list of all institutions involved in community land governance. The institutions included in the figure below reflect the different spaces that pastoralist communities engage with. As such both the legally established offices and the existing community institutions like the council of elders have been incorporated.

Figure 5.1: Community Land Governance Structure



Source: Author (Adopted from the Constitution of Kenya and the Community Land Act).

Figure 5.1 also shows the various levels of government, independent offices and devolved land structures established by the community land law. As earlier noted, the Constitution of Kenya 2010 establishes two levels of government, national and 47 county governments which are interdependent and carrying out specific functions. Regarding land, the national government is responsible for policy making as provided for in Schedule four of the constitution (GOK 2010). The Community Land Act and the community land regulations further establish roles for both the national and county governments to support communities to transition from group ranches into community land (GOK, 2018).

At the national government Ministry of Land, the Cabinet Secretary and the Principal Secretary oversee land matters with the Department of Land Adjudication and Settlement, which also has offices in the counties to perform all responsibilities of the national government at all levels. Further, a Secretariate on the implementation of the Community Land Act operates at the Ministry of Lands headquarters. The secretariate is expected to deploy Community Land Registrars to each county. Another office established under the national government structure in counties is the county land boards (formerly the district land boards) (GOK, 2012). The mandate of these boards is to assess, consent and approve the subdivision of parcels of land when community land is subdivided.

Further, at the legislative level, both the national assembly and the senate in Kenya have elected representatives from constituencies and counties and operate through committees on land. The judiciary, through the courts and especially the high courts on land and environment, equally plays a role in resolving land disputes filed in different courts. All these institutions operate under the

national level roles but have operations in counties where the 47 counties under devolved governments are established (GOK, 2010).

Then there is an independent constitutional body, the National Land Commission (NLC). This Commission is established to ensure the separation of powers between the executive and the independent commission on land towards enhancing independence in the handling of land matters in the country (Manji, 2020). The role of NLC is to safeguard land categorized as public as well as ensure that such land is set aside when there is subdivision of land (GOK, 2010). Thirdly, there are institutions dealing with land at the county level.

At the county level, the devolved governments have both the executive and the legislature. The executive arm of the county consists of the Governor and the county executive committee member in-charge of lands, who work with the county lands office to support the communities on their land matters. The County assembly, which is comprised of elected members, forms the committee on lands which is mandated to address community issues on land (GOK, 2012). The county assemblies, the legislative arm of the county government, are mandated to make by-laws to ensure a smooth transition of group ranches to community land at the community level, including representing and addressing issues like disputes on land affecting the community.

Through the Community Assembly, community members are equally provided the space which brings out the collective voice for the communities including their registration of land (GOK, 2016). Further, all members of the community land elect the Community Land Management Committee, which manages the community land on their behalf. The next section considers how these different institutions interact and the experiences of community members in Samburu. Figure 5.1 and the description of the different roles of the various offices presented reflect the context of the institutional challenges within devolved land governance structures.

Additionally, apart from the formal structures established by the law, there are community customary institutions that have been involved in land governance for generations (GOK, 2009; Lengoiboni *et al.*, 2011). First and foremost, are the elders. For generations, the elders' guidance on access to land and protection of the environment bound everyone. They provide directions on the do's and do nots on grazing during droughts and other challenges (Galaty, 2013). They also negotiated access to grazing zones with the elders of other clans. Second, are values and rules of access, which bind everyone. Those who fail to abide by these rules or even the elders' edict, face sanctions that are *'far worse than punishment in formal courts and by the government in general'* (Community member, Male, FGD).

The institutional arrangement on land administration therefore comprises formal institutions and the customary institutions. The customary institutions have existed for generations and are guided by community values and customs. The formal institutions, however, have more and better recognition by government officials at both the national and the county government level. Furthermore, the customary institutions, by practice tend to limit participation of women and youth. The formal institutions as envisaged in the community land law sought to correct this limitation of unequal participation by providing for inclusion of men and youth in the assemblies and management committees.

From the foregoing, there are multiple institutions involved in managing community land in Kenya. Significantly, the roles of different institutions are handled at the national and county level. The national government roles are handled at the county and local levels through different structures, and the devolved governments have both the executive and the legislature. At the county level, the county land board (formerly the district land board) are mandated to assess consent and approve the subdivision of parcels of land when community land is subdivided (GOK,

2012). 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 (GOK, 2016). Government officials and community members in Samburu find the multiple layers of responsibilities challenging for local communities who need services closer to them, as promised by devolution (Hassan, Nathan and Kanyinga, 2022).

This chapter highlights three ways in which the devolved land governance affects pastoralists access to land through the complexity of the institutions established, administrative bottlenecks and the overlap between pastoralists institutions and those established by the law.

6.4 Community land management and institutional complexity

Some community members indicated that there is confusion in the community on which offices is responsible for what or to which office they should refer to, to comply with the requirements of the law. Community members generally lacked clarity on the processes to be followed in complying with the law. The unclear institutional roles aroused anxiety in the group ranches as explained by one of our respondents.

“Currently, we are in the dark, we do not know which office should receive our papers and which one is supposed to help us register. We also fear that we may give our documents to the wrong people given that there are so many officers involved in the process. When we go asking them at their offices we are always sent to different offices and at the end of the day we are left with no answer to our questions”³³.

³³ FGD, Community Member, Male, December 2019

The ambiguity of roles was also cited by the land officials as a barrier to creating awareness in the communities. The land officials also mentioned the lack of clarity on the different roles of the institutions involved, meant that communities' access to services towards converting their land to community land has been hampered. This is despite the time limit given for communities to comply with the Community Land Law. Some respondents indicated that it had become difficult for them to identify offices to present their questions or discuss what needed to be done. The different offices are at the county level both of national government officers, county government officers and national land commission officers. The challenge is compounded by the proximity of these offices to each other.

Based on where government offices are located, at the time of study, these offices were still located at the same premises, thus further blurring their different roles. One respondent said that *"we are not interested in selecting the offices to serve us, we just need to know when the surveyor is coming to our group ranch"*³⁴. The concerns around land surveys were raised in several discussions, all pointing to the need for this important service. While the role of surveying and registering land is the mandate of the national government (GOK, 2010), there were instances where county government officers indicated that they had intervened due to pressure from the community members. One land official indicated that *"the people come to us looking for services, and we are their government here in Samburu we cannot keep telling them that it is not our role, we have to find solutions"*³⁵. The issues raised by community members and land officials further pointed to the lack of clarity on the roles played by different offices that has been discussed earlier.

³⁴ FGD, Community Member, Male, January 2020

³⁵ Interview, Land Official, Male, January 2020

Land officials from the national government explained that they were working on educating the community on the Community Land Act and the different steps they needed to take to register their land. Land officials also cited challenges in performing their task to serve pastoralist communities in different group ranches. Given the large geographical area that pastoralist communities occupy in Samburu, the land officials said that:

“it is hard to attend all the meetings in the group ranches as is required, there are many group ranches across Samburu, and sometimes we do not have resources to attend most of the annual general meetings”³⁶ .

The annual general meeting of the group ranch is important because national government land officials oversee the decisions of the group ranch members as well as use the opportunity to share information with the community on government policies and laws, like the community land law (GOK, 2016). The lack of funding to support these activities was cited as slowing down the process of implementing the Community Land Act.

Despite these challenges, land officials in Samburu shared how they had started to work together and access funds from the county government to support joint activities in different areas. The problem of the multiple institutions, lack of funding and lack of coordination also meant that most of the pastoralist communities had not accessed the land registration services they needed. In some cases, they were delayed over time, given the long distances they needed to travel to access the service.

³⁶ Interview, Land Official, Male, November 2019

The lack of coordination among the different offices was also cited as problematic by non-governmental organisation officials who work in Samburu. They said that some of the funding they provide to the communities to sensitize them on their rights and the process of registering their land under the Community Land Act has been utilized in supporting the national and county government land officials in carrying out their different tasks. Despite the efforts to work together, community members in Samburu pointed to the complexity brought about by the different offices and the slow processing of their requests, especially with group ranches working to comply with the Community Land Act provisions.

For pastoralists, these institutions create confusion in service delivery. They have not been devolved in practice: most offices are based in the county headquarters, which is only accessible by the few who live near these centres. For most pastoralists in far-flung areas, accessing these services is problematic, given how the area occupied by pastoralists is marginalised including challenges of road accessibility (Simpson and Wawer, 2021). Even when pastoralists accessed these offices to seek services concerning their land, there has not been a clear outcome. Indeed, when asked about what support the national and county government land offices could offer them, they cited the inaccessibility given that most of the offices were situated in centres and town areas far away from most communities. These challenges further point to the administrative burden of devolved land governance, which the next section considers in further detail.

6.5 Administrative bottlenecks and pastoralists participation

Data from Samburu shows that the devolved system of government has resulted in a parallel system of government alongside the national structure of government. Community members indicated that the previous structure of provincial administration comprised of provinces, below which were districts, divisions, locations, and sub-locations, with the sub-location as the lowest

administrative unit remaining in place. However, the county government has its own distinct county government administrative structure whose boundaries are aligned with the boundaries of 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. One community member said that "*public transport from where we live to Maralal or other sub county offices is getting expensive and most of the time the vehicles are not available*"³⁷. The offices are in different areas, and therefore the transaction costs increase due to time spent and expenses incurred visiting these offices.

Some respondents also pointed to the challenges they face given the arrangement of the administrative units. One community member said that '*government services require that pastoralists belong and reside in a particular place for them to access services*' (Community member, Male, Interview). The reflection from this community member implies that devolution has reinforced the need for one to be a resident of a particular place, and in the case of Samburu, a resident of a particular group ranch. Membership in a group ranch located in a specific territory has become a central identity marker. Yet, this push for communities to claim territories is contrary to pastoralists' needs for mobility and reliance on social ties to access communally owned land (Gargule and Lengoiboni, 2020).

³⁷ Interview, Community Member, Male, December 2020

Bounded territories in pastoral areas and the requirement for registration and demarcation of community land are inadvertently creating new pressures around the privatisation of land and the need to formalise community land claims even in places where land was accessed communally for grazing. The formalisation of community land and the focus on boundaries through laws and government policy create more interest in privatising land, which will impede pastoralism in Samburu. The administrative pressures and involvement of multiple actors further complicates the decision-making process for pastoralist communities.

One of the objectives of devolved land governance entails ensuring community voices are included at all levels. Findings from this study point to a challenge in the process of community inclusion with skewed involvement of different groups in group ranch decisions. One such group is pastoralist women, who pointed to a lack of information on what was happening in the group ranches:

“We have no way of knowing whether our group ranch still exists or not, we hear that the committee will call meeting, but we are not invited to those meetings”³⁸.

The lack of information on important events and decisions of group ranches was also linked to an absence of community education forums and low education levels in the community. One respondent stated that most of the meetings are attended by men *“this leaves out majority of the community members who are women and youth”³⁹.*

Findings also show that community land reforms among the Samburu are therefore happening amid bias among some national and county government officials on pastoralism and their ideas

³⁸ FGD, Community Member, Male, November 2019

³⁹ Interview, NGO Official, Female, January 2022

towards ensuring people have individual holdings on which they can settle or adopt sedentary economic activities. 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 pastoralists' aspirations and key aspects of their livelihood, like mobility (Semplici, 2020). 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' livelihoods.

6.6 Pastoralists institutions versus formal structures of land governance

As discussed in the earlier chapter, the establishment of the elected committees, an attempt towards democratisation of the land governance processes was made through the establishment of a parallel committee. However, this has created confusion in the community. Ironically, the new institutions provided by law were supposed to improve land governance but are instead weakening the customary institutions for land governance among the pastoralists. The community's views reflect how land access becomes complicated, especially when changes are introduced in communities where negotiation and flexible tenure arrangements are common (Lesorogol, 2008a). Without these flexible community rules, pastoralists' mobility is hindered.

Land officials also indicated that there had been a push to replace customary institutions because they are patriarchal and less inclusive:

“while older male pastoralists are seen as the custodians of the community norms and customs, the same customs exclude women and youth community decision-

making processes, so this has been discussed as a good opportunity to introduce change”⁴⁰.

This change mentioned by the land official refers to the requirement to include men and women as officials of community land and in decision-making. The Community Land Act has introduced an election of officials and the requirement that women and youth be included in making key decisions (GOK, 2016). Some community members indicated that the Community Land Act has created new power centred in the community. Some respondents indicated that the election of the community management committee required people who had some level of education to read and write and keep records of the community meetings. This meant that the elite in the community, like teachers and government officials (who are also members of those group ranches) took the management positions, leaving out the community elders. They argued that this has weakened or excluded the role of older male pastoralists and the elders, in matters of land:

“most of the people who will be considered for these positions in the community land management committee will be those who are educated like teachers and other public officers”⁴¹.

One of the roles of the elected officials in the community hold meetings and record the proceedings and decisions made during annual general meetings. The requirements which are different from the customary practices of decision-making included onboarding new faces into the decision-making process among pastoralist communities. One of the respondents described the changes,

⁴⁰ Interview, Land Official, Male, November 2019

⁴¹ Interview, Community Elder, Male, December 2019

“We have seen changes over time and the role of elders is not as it used to be. The new structures of leadership have brought in young people to take up leadership positions. This has meant more problems because elders were more honest and had the communities’ interest first, the young people are likely to have self-interests and do not understand what our culture and customs require of leaders. They have forgotten that the neck cannot surpass the head. The elders are the head and if they just allowed us, the elders should continue managing our community land so that we can be sure the community interests are secure”⁴².

This study found that the reason these groups of community members would be seen as an obvious choice to join the community land committee was because of the formal nature of the process and they would be considered to have good knowledge of what the law requires. However, these individuals also tend to have physically settled, and they are people leading a sedentary life and do not represent those in pastoralism. They have permanent home structures and are employed and operate from a physical facility, for example, teachers in schools.

The law has inadvertently made settled groups of people as more preferred or even a condition for appointment to these positions. The narrow focus on implementing land policies and side-lining pastoralists’ customary institutions is reflected in recent evidence from Kenya, which shows the failure of formal institutions in managing community land and entrenching local accountability (Boone *et al.*, 2019; Gargule and Lengoiboni, 2020). This study found that the establishment of community land management structures has also meant that existing customary institutions among the pastoralists have been side-lined.

⁴² Interview, Community Member, Male, November 2019

The fears within the community reflect the difficulty presented by the law that proposes new structures which are to function parallel to existing ones. Respondents shared that the community did not fully trust the new land officials:

“Adjudication process is highly corrupt as local elites are involved and there is increased rent seeking process. The current system that has modernized leadership is to blame for all the problems. Many people still believe that traditional elders focused on the common good”⁴³

These sentiments by the community, the government and the non-state actors imply that the customary practices have not been incorporated in the implementation of the CLA, thus hindering communities from following the process of meeting requirements and register their land as community land.

At the center of the tensions between the customary practices and the Community Land Law is the perceived diminishing role of community elders in managing communal land in Samburu. For instance, the elders felt that their power and respect was not fully acknowledged in the process towards formalization of community land as one of the community elders explained,

“Previously the local elders had a lot of power and no one in the community would bypass them in making decisions about anything in the community. Community members sought permission to graze land. We had arrangements that have worked over the years but now we seem to have been replaced by books and pens. Now we are watching meetings happening and we hear that there are new rules”⁴⁴

⁴³ Interview, Community Member, Female, January 2022

⁴⁴ FGD, Community Elder, Male, December 2019

This finding alludes to the supplanting of decision-making power of elders by the younger generation and is also indicative of the powerful role that the elders continue to play in determining access to land in pastoralist communities. However, the study points out that not all community members were content with the elders, citing inability to access them and the costs involved in seeking their help:

“The elders say they are protecting our rights and they make us believe that they can help resolve cases especially of people who were left out in the group register, but it is very expensive to get them to meet and it takes long to resolve an issue”⁴⁵.

The complexity brought about by creation on new committees and the exclusion of pastoralist elders implies that elders are sidelined and as such their roles are not clear in the formal process established by the community land law. The exclusion of community structures in the process further alienates certain groups of pastoralists and further hinders community processes around access to land that have been applied over time. These tensions as described by the community are in turn affecting the implementation of the land law and pastoralists access to land.

6.7 Conclusion

Drawing from these findings, the onset of implementing the CLA has been marred by multiple challenges and therefore slowing down the process. The process has raised different forms of contests on the future of the community land. With the democratization of the land processes requiring elections of local officials, the different institutional roles in government and in the community are changing. The literature on the state and traditional authority has often focused on

⁴⁵ Interview, Community Member, Female, November 2019

the regularized systems of land management (Lund, 2002), which further indicates that the centers of power on communal land have been shifted in the process. In terms of state power, the excesses experienced before on land allocation have been curbed, as the consent of the community is needed on what they want to do with their land (GOK, 2016). Whereas these modifications are meant to effect positive change, the role of customary practices has not been fully acknowledged in the implementation process.

Drawing from the findings of this study, the operational challenges presented by the establishment of different institutions in implementing devolution in Kenya have continued to persist. In principle, the devolution of land governance and the implementation of the Community Land Act held the promise to facilitate inclusion and incorporate the voices of local communities. In practice, what has been found is that the pastoralist communities' voices have been left out of the community land management process. In this study, supplanting the role of pastoralists' customary institutions and side-lining local systems fails to recognise these rules and unique land access processes that have enabled pastoralists' mode of production.

The exclusion of pastoralists in different development projects has been linked to the persistent misunderstanding of policy in pastoralists' mode of production (Markais, 2004). Some studies suggest that pastoralists have been left out of development in Kenya, and the attempts to include them yield similar results of further excluding them (Semplici, 2020). The establishment of devolved land governance and the lack of consideration of what would work best for pastoralists further impedes access to land for different groups. The nature of the process imagined a settled community, and service delivery is centralized with the effect of immobilizing pastoralists (Hassan, Kanyinga and Nathan, 2023)

In sum, these implications influence pastoralists' livelihoods and their resilience. In some cases, the challenges affect pastoralist women differently, prompting them to draw on their existing networks. The next chapter embarks on understanding pastoralist women's resilience in the context of changing land laws and the complexities already described in this chapter.

CHAPTER SEVEN

CHANGING LAND LAWS, PASTORALIST WOMEN'S ACCESS TO LAND AND RESILIENCE IN SAMBURU

7.1 Introduction

The preceding chapters have shown how the implementation of the Community Land law is happening in contractions among pastoralists in Samburu. Most importantly the discussion has highlighted how the law provides for creation of new institutions of land governance. The new institutions have in turn made land governance complex for community members who are not certain about which institution is responsible for what or which institution they should refer to if they have a problem. Indeed, the new institutions do not consider the role of elders in governing land and yet the elders' role is well institutionalized in customs, practice and has existed over time. Instead, new land management committees are being established as provided for by law. The committees comprise individuals who are literate. Community members identify them to represent them because they know how to read and write and therefore can interact with the new government and within the new institutional arrangements. All this has resulted in side-lining the elders.

The discussion has shown how formal laws inadvertently arouse demands private ownership of land even where it is communally owned or is collectively registered group ranches. Implementation of the law has resulted in subdividing communally owned land, but the subdivision is also creating new disputes over land. Many community members question the process of division and attendant enlisting of members. The subdivision is causing inequalities in access to land and undermining pastoralism.

An important question that this study has not yet addressed is the place of pastoralist women in the wake of changing land laws for communal land ownership. The community land law now seeks

to democratise land governance and recognises women and youth as equal members in ownership of community land (GOK, 2016). Despite these provisions and although formal institutions have not integrated the role of elders, the regulation of access is still dominated by elderly male members in the community. This implies that women are now subjected to informal rules of access even though the law provides them with new opportunities for land governance. This chapter therefore focuses on the place of women in the wake of the proposed changes in access to land. This study looks at access to land by pastoralists women through the lens of resilience. Specifically, the discussion centres on how pastoralists women draw on different aspects to access land in Samburu.

This chapter builds on arguments around socio-ecological resilience, which focus on the need to connect ecological and social systems including relational approaches to resilience. In doing so, this chapter centres the questions of land rights in the debates on resilience among pastoralists. This includes the avenues of accessing land by women in a new complex space where most of the land is owned by men and decision making has traditionally excluded women. The new and complex institutional arrangement has altered land governance and therefore how pastoralists women access land in the new context is an important issue. The discussion generally highlights how land tenure changes, customary systems and resource pressures influences how groups take uncertainty into account (Pollini and Galaty, 2021) and how women can navigate the new context.

The chapter starts by discussing women's resilience, community land law and implications of the new law for pastoralists women access to land. This is followed by the findings on the different ways through which women access land: access through their sons who become members of the collectively owned land, negotiation through clan ties and kinship; and through 'land market' or buying land by those with finances to purchase or lease land. Finally, a discussion on reduced mobility and the changing household labour in the context of pastoralists women roles takes us to

the conclusion. Discusses reduced mobility, changing household labor, and resilience and a conclusion of the chapter.

7.2 Pastoralist women, resilience, and access to land

As discussed in the chapter three on the theoretical notions of resilience and drawing on the changing meaning of resilience, this study takes a broad definition of pastoral resilience that recognizes the heterogenous nature of pastoralist communities. This way, the resilience of different aspects of within different subgroups in the community (McPeak and Little, 2017). That is, focusing on the social ecological aspects of resilience as their ability to endure complex challenges based on their unique lifestyle and networks thus withstanding dynamic and uncertain pressures facing their mode of production.

In other words, it is about ability of people to adapt and co-exist within the physical environment where they utilize the natural resources in flexible and adaptable manner (Berkes et al., 2003; Folke, 2016). It is about adaptive modes of governance and attention to cross-scale interactions (Gunderson and Holling, 2002; Walker et al., 2009). For example, some of the unique pastoralist institutions of land management and customary land rights have been found to safeguard communities in times of drought. These institutions facilitate migration and access to land across distant territories as well (Bruce and Migot-Adholla, 1994). These Social arrangements and customary plans are flexible and provide a buffer for the community.

Broader definitions of pastoral resilience that recognize the relational approach and the heterogenous nature of pastoralist communities also have emerged. These definitions pay attention

to the differences between groups and the unique categories within communities that shape their livelihood strategies (McPeak and Little, 2017). This includes gendered dimensions of resilience. Specifically, in this study attention is given to the gendered dimensions of resilience where the dynamics of various relationships in the pastoralist community shift in response to changing land tenure. Featuring the gendered nature of resilience reflects the importance of people's experiences and their lifestyle, the social actors, ecological actors and how communities are organized (Berkes and Ross, 2013; Adger, 2000). The relational approach to resilience fits into the pastoralists' systems and the differentiated roles played by different groups where the mode of production is described as mostly uncertain and unpredictable (Scoones, 2021). The recognition and the importance of actors, positions, roles and where they belong in the community as intimately connected to their daily choices also brings forth the need to look at culture in understanding the gendered nature of resilience (Crane, 2010; Semplici, 2021).

In view of these definitions, pastoralists' women resilience means the ability of pastoralists women to persist and access land in a sustainable manner in spite of changes attending the implementation of the community land law, and changes emerging from climate change and other environmental changes. Pastoralists women adapt and co-exist with these broader changes by evolving new mechanisms of accessing land.

As shown in chapter three, the gendered nature of access to land hinders access by pastoralists women because customary practices recognize men as custodians of land and livestock (Wangui, 2008). Embedded in processes of access to land are social and power relations in which men determine and control access to land by all including women (Mackenzie, 1990; Berry, 1993). Understanding how pastoralists women gain access or even the challenges they experience require

paying attention to social and power relations around access to land and how these relations are shaped by formal institutions. In the case of pastoralists, implementation of the community land laws has added new institutions of land governance thereby making the space for negotiating access rather complex for pastoralists women. How they gain access to land under this complex array of institutions and changing contexts of access is the focus of this chapter.

Resilience of pastoralists women relates to their ability to adapt to changing frameworks of access to land without losing the access they have had before. The socio-ecological resilience thinking provides a useful perspective to this discussion on differentiated access to land. As noted above, drawing questions of land rights to understand resilience enables an understanding of the social processes of land access, the obtaining and evolving arrangements of access to land and how women access land amidst this array of institutions and changing context. It gives insights on alternative strategies that Samburu pastoralist women apply to cope and even thrive despite the shocks in the environments they live in (Konaka and Little, 2021). For pastoralists, access to land and mobility is a key feature that continues to define their mode of production (Turner, 2011). Movement is seen as the most effective strategy to sustain pastoralists' production because of the variability of the environment (Galaty, 2013). Indeed, pastoral mobility determines the capacity to reach dispersed and patched resources across vast land at the right time when their nutritive value is best (Krätli and Schareika, 2010).

In the physical environment of grazing, pastoral mobility crucially relies on social pacts and agreements on access to land for grazing (Sullivan and Homewood, 2003). These arrangements guide access to land and are critical for pastoralists given the variability that characterizes the rangelands they operate within, which in turn affects pastoralists' modes of production (Scoones, 1999). In light of this and as observed above, social arrangements and customary plans are flexible

means of access and are an important source for pastoralists' resilience. They allow pastoralists to persist under even difficult weather conditions, or even complex dynamics in the environment in which they carry out their pastoralists activities. Some of the unique pastoralists' institutions of land management and customary land rights have been found to safeguard their communities in times of drought, organizing migration across distant territories as well as when accessing resources (Bruce and Migot-Adholla, 1994). Access to land for pasture is thus a critical feature of pastoralists' livelihoods and their resilience.

Studies on the role of pastoralist women in different context reveal the dominating role of men in ownership and control of livestock including dominating as heads of households and in clan leadership (Fratkin and Smith 1994). Women's secondary and supportive role has been described as limited to household roles. These findings are an oversimplification of the gendered relations in pastoralist communities (Wangui, 2004). Women provide labor for different activities as they support the pastoralist mode of production (Sperling, 1987). These activities include household and care giving roles for all members of the pastoralist home as well as herding small animals especially those which are left behind (Sperling, 1987). Other studies highlight pastoralist women's agency and involvement in the pastoralist production system and engagement in other economic activities like poultry and milk production (Gueye, 2000), and a strong moral economy to support their households (Simula *et.al*, 2020). Taken together, the significant role of women in pastoralist communities continues to shed more insights on both the prospects and challenges they face.

Despite the important roles undertaken by pastoralist women, their control and access to land has remained minimal over the years. Older males in the community have dominated the decision-making processes around land, including where community land became privatized (Lesorogol,

2010). Women have been less able to participate in important decision-making that affects their livelihood and lives (Wangui, 2008).

The resilience of pastoralist women is a concern given the context of pastoralist land tenure, land use, and regime of regulating access to and control over resources as well as the new land law and attendant institutions. Further, differing categories of rights over resources coexist, ranging from rights that are private in nature, to those that are more communal, such as access to dry season forests or grazing around a water point (Ensminger, 1996). At the same time, pastoralists women are left to grapple with the pasture and watering of animals when male members move away with the livestock. While most of the land occupied by pastoralists remains communally held, recent changes in land laws in Kenya and the recognition of community land has presented new dynamics of access that, perhaps paradoxically, potentially disrupts how land is accessed, and provides unprecedented roles of women in land governance.

Preceding discussions have pointed out that the community land law provides for communities to utilize their land in accordance with customary norms (GOK, 2016; Alden Wily, 2018). Most significantly, this law also gives women, including pastoralist women, unprecedented rights to own and access community land, as well as the right of representation in local level land governance institutions (GOK 2016, Boone *et al.*, 2019). The law provides for women's engagement in decision-making and for equal membership in community land. This reform measure changes the way land is owned and accessed among pastoralist communities. This is equally important in understanding adaptation strategies and resilience in the community as pastoralists depend on resources such as land and the different rights of access determine their adaptation strategies (Kameri- Mbote,2013)

Land reforms also have a strong impact on the way pastoralists access resources, secure livelihood, and build ability to withstand climatic shocks. The changes in land law requires continuous negotiations for accessing resources and alters the ability of different groups to draw benefits from the land resources (Ribot and Peluso, 2013). The reforms, often accompanied by land laws changes, take place in a context of continuously changing political, social, and economic processes, and therefore make it necessary to adapt to these dynamics in society (Berry, 1993). This is the context within which pastoralists' livelihoods and resilience must be understood.

The impacts of climate change make it difficult for pastoralists to sustain their livelihood. Pastoralists seek to ensure access to different grazing areas at different times of the year, depending on the weather patterns (Niamir-Fuller, 1998). For pastoralist women, the challenges of climate change affect their ability to manage their household needs as well as herds that are grazed near the homesteads. These different considerations and arrangements mean that pastoralist women equally need to participate in the process of determining how to access and use community land. There is also the question of encroachment of the community land by outsiders for uses other than pastoralism, such as large-scale investments in transport corridors, conservation, and energy production (Lind, Okenwa and Scoones, 2020). In instances where pasture access is negotiated, community members seek to benefit from these large-scale projects based on their identity and place (Drew, 2020). These dynamics have led to pastoral land tenure systems and institutions being modified to suit these emerging needs. The land needs of pastoralist women however remain unaddressed and, in most cases, benefits from large scale projects have the potential to alienate the women further.

The efforts to alter how individuals and groups access land has implications for people's ability to relate to that land. On the one hand, if the law individualizes community land and enables

privatization and fencing off the land, then the women are excluded from benefiting from this land as land is traditionally mainly individually owned by the men. On the other hand, if the law provides for communal ownership and shared equal access, then the dynamics of access for women will differ as negotiations for accessing such land are established and new rules come into play. For pastoralists in general, heightened privatization of land and the trend towards sedentism has been found to pose threats to the much-needed land for mobility and pastoral viability (Rutten, 1992), with others highlighting the economic benefits of shifting from communal land (Lesorogol, 2008a). Despite the different conclusions on the effects of privatization, these changes in land law affect women pastoralists' resilience. We now turn to how pastoralists women relate and persist to access land in the context of this array of changes and institutional arrangements. The subsequent discussion focuses on how women are able manage variability of a complex context – and attendant uncertainty - without suffering exclusion.

7.3 Understanding the resilience of pastoralists women.

The fate of pastoralism as a viable mode of production given the harsh climate change effects on pastoralists and their livestock has been questioned for some time (Robinson and Berkes, 2010). Studies also have shown evidence of the strength of pastoralist systems, resilience, by their ability to manage variability as well as live with and even benefit from uncertainty (Scoones, 2021). There is, in other words, growing evidence that pastoralists are more resilient than what is commonly acknowledged (Fratkin, 2001; Semplici, 2020).

An important dimension of resilience concerns community networks and how they relate to individuals and groups' ability to withstand shocks (Konaka and Little, 2021). These relations and networks are central for access to land in times of uncertainty and rangeland variability (Scoones, 1995; Krätli, 2020). Resilience among the pastoralist women then should be understood based on

the dynamic environment, and in particular variabilities and uncertainties brought about by climate change conditions and new institutions governing access. Indeed, the success of pastoralism has traditionally depended on the mechanisms put in place to mitigate the variability of their environments and enable possibilities to access water, grazing land, and other resources (Scoones, 1995; Krätli and Schareika, 2010). But threats posed by climate change and changing land reforms have become increasingly important for understanding pastoralists' resilience (Mwangi, 2009). Women have been found to interact more directly with nature among pastoralist communities because of their household roles such as gathering firewood, fetching water and nursing herds. Thus, pastoralist women encounter the challenges posed by climate change firsthand (Norgaad & York, 2005). Researchers also maintain that women's roles subject them to greater crises in times of drought (Fang and Luo, 2009). Reduced pasture and water have thus complicated access to land for pastoralist women and occasions changes in how they use land and support their livelihoods.

Under these conditions, land reforms constraining access or altering customary institutions, risk having the detrimental impact of endangering pastoralists' livelihoods, who are already struggling to access available dwindling resources. For pastoralist women, the challenges of accessing land combined with the climate change effects have stimulated local adaptation that supports both livestock and pasture management practices, including reducing livestock, renting pasture and rotational grazing (Agrawal, 2010). There has also been a need for continuous negotiation and reciprocal processes in the access to land for pastoralists (Ensminger, 1996). These adaptation measures have aroused new challenges of access, especially because they have presented a need for pastoralists to embrace the new and changing nature of land tenure and rights.

Changes on how land is accessed and governed have impacted on relations of coexistence between private and communal rights of ownership. This has had implications for women because, whereas

land policies in Kenya, including the colonial policies aimed at restricting mobility of pastoralists, the decision-making powers were vested in the male members of the community (Wangui 2008; Lesorogol 2008). However, as the land policies continued to support privatization and sedentary practices that included crop farming, the nature of women participation has changed. The increase in sedentary practices have also meant that women who are mostly left behind in the households engage in economic activities to sustain their households including chicken rearing and small-scale farming. The introduction of grazing restrictions specifically limits movement of animals from the household which in turn means more labor is needed around and near the pastoralist homestead (Lesorogol, 2008b). This increased labour needs near the households has implications for women access to land because, more activities that involve female, members are required to sustain the pastoralists households. The next section now turns to the dynamics of community land rights and pastoralist women's resilience.

7.4 Dynamics of community land rights and pastoralist women's resilience

While mobility and access to land have been found to be critical in supporting pastoralists and their livelihoods, the changing land laws present new dynamics of how land is used by different groups (Kirui et.al,2022; Turner and Schlecht, 2019). This is especially the case in group ranches, where discussions about subdivision of the land into private plots was taking place. The implementation of the community land law provides new rules that define membership which communities are required to comply with (GOK,2016). For instance, whereas previous members of the group ranches were mostly men who were household heads, the CLA requires that all adult male and females in the community are recognized and registered as members of the community land. For women in pastoralist communities, this major shift towards securing their land rights and equal access to land. However, the process of transitioning group ranches is facing numerous

challenges, including resistance to include women and young men as community members and therefore group ranch members. Some of the reasons for these challenges have been linked to the questions of access to land and membership, which is not completely understood by some of the group ranches (Hassan, Nathan and Kanyinga, 2022).

The subdivision of land in the group ranches also terminates community collective ownership of the group ranches implying new challenges for women because they are not listed as members of the group to benefit through subdivision. Subdivision is therefore perceived and experienced differently by Samburu women based on who they are in the community and the prospects they have in owning land, if at all. The experiences of Samburu women and the strategies they apply in the changing land law processes provide insights on pastoral women's resilience. They faced exclusion from ownership and access when customary mechanisms of land governance apply. With the changing land law, they gain formal recognition but still face resistance from age old institutions of regulating access to land. And they also have to contend with climatic shocks. At home and as men move with large stocks in search of pasture, it is women who are left to herd small stock, sheep and goats amidst these constraints. Women thus need land around the homestead to both graze the small animals and engage in agricultural activities where possible.

Samburu women have a place in the debates on whether to transit to community land or subdivide into individualized parcels of land for the members. The main contention is questions around the group ranch register or bona fide members and how that affects Samburu women's livelihood strategies. The group ranch register is the formal document that enlists members of the group ranch as a registered entity as established by the Land (Group Representative Act of 1968). In many instances, those registered are the male heads of households. They are registered as members of the group ranches, but their registration does not recognize whether they are married to one or

more wives. Many male registered members have more than one wife, but their wives are not registered. Some of the respondents said they were not sure about the outcome of registering their land.

“...women are divided in opinion about subdivision because some of their husbands have many wives and that complicates how land is shared among such households, I want us to use the new group ranch register and subdivide the land so that so that my children can get their share of the land, and I can also use that land. We have heard that the elders say they will use the old register, younger age sets like Geshami are demanding to be included and we are supporting them on this as their mothers”⁴⁶.

Older male members of households were the only registered persons in Samburu when the group ranches were established. However, the requirements to update the group ranch register would favor the inclusion of women in instances where the head of the household had died. This practice differed across the group ranches, but this is one avenue that women in Samburu are pursuing to be included as members. They now recognize that the register is confirmation of local citizenship and access to land and therefore women make efforts to be registered. However, some of women generally lacked information on the processes of registration. Those who are widowed faced further challenges because they did not know what to do to be included in the place of their late husbands. One respondent indeed pointed out that:

“I live with my children, my husband died last year. I do small businesses in the centre, and I also engage in community work. I have heard about the new community land law and I have been trying to ensure am included in the register or even be allowed to replace my

⁴⁶ FGD, Community Member, Female, January 2022

late husband's name in the register. I am worried because I do not even know if my husband is in the register in the first place. I have heard that there is going to be subdivision of land and we are never part of these discussions. We hear from other men about these plans, Subdivision is not a bad idea but there are people, who will miss land as they are not registered''⁴⁷ (Community member, Female, FGD)

On the whole, women are developing abilities to persist and to adapt in the context of variations in how land is accessed. We now turn to the main strategies on which their resilience in access to land revolves. These includes use of their sons, use of kinship and clan ties, and through use of money for those able to buy land through the existing land market.

7.4.1 Women's access to land resilience through sons

At the outset, the discussion noted that resilience is the capacity to persist in different changing environments through adapting and evolving over time (Folke (2016). It is also about how individuals and groups sustain their lives under difficult circumstances such as natural disasters, severe weather conditions, and other forms of crises (Tierney, 2014). Regarding pastoralists women, the findings show that the women increasingly turning to their sons as a means for accessing land. Their sons are giving some of them the ability to persist in using land because the women are not registered as group ranch members; it is their sons who end up in the register. Therefore, the women are using their sons to sustain their use of land without hinderances.

This new dimension of use of sons to access land by women is important because the question of who is eligible to be a member of a group ranch arouses debates among members. This is more so following the new Community Land Law where women are recognized as members and as such

⁴⁷ FGD, Community Member, Female, January 2022

should be included in the group ranch register (GOK, 2016). Women navigate these arrangements both formally and informally. One such avenue is accessing land through their male children.

Some of the women however, lacked sufficient knowledge regarding the major changes impacting on their access to land. They also did not have sufficient knowledge on the new law itself. The law provides for participation of all, but the customary practice does not envision women speak in the presence of elders. Also, formal institutions have allowed for women to have a place in making decisions. But the traditional institutions have not adapted to the new law and therefore women continue to struggle for their voice in decision on matters land to be heard. For instance, women do not take part in community meetings because they rarely get information about the meetings. When they do, they are occupied at home with household chores. This hinders their participation. In some instances, when women can attend the meetings, they face barriers as they are still not allowed to speak in front of elders. One respondent pointed out that:

“The community meetings are not communicated in time, and we are always busy at home taking care of our children. I remember one time we attended a meeting and two women stood up to speak some men were not happy with their participation ...the group ranch officials said it was a requirement for them to be involved. As Samburu older women we have grown up knowing that we are not expected to speak in front of elders, so we have been left out of public meetings, and some of us have avoided attending the meeting. Many of the elders do not want to hear the voice of women so this is also a problem for us”⁴⁸

Under the new law, there are several fora for participation. One critical meeting is the annual general meeting of group ranch members where national government officials attend to ensure that

⁴⁸ FGD, Community Member, Female, January 2022

the group ranch members make resolutions on key land issues in the community. It is in such meetings where requests of replacement of names in the register (in cases of deceased members), as well as the decision to subdivide group ranches, are made. But the women get to know what is happening through their other community members and through their families. Most of the women said that they depend on the presence of their sons in the meetings to get information. It is through the sons that they know about the processes of decision-making about group ranches and also depend on their male children to access land or gain rights in use of land in the new complex context where male members remain dominant actors.

Another group of women highlighted the need to ensure equitable inclusion and sharing of the collectively owned group ranch land. To achieve this, they said that they have subtly been nudging their sons to demand the sons inclusion in the group ranch register. The process of updating the register to include male members of the group ranch has been different but there have been calls to consider the older age sets among the Samburu and include those while updating the register.

“We are not sure if our husbands will give us land or it will go to the other wives, we want our sons to get land, this way our family and clan land will increase, and we are then assured of land to cultivate or graze our goats and sheep”⁴⁹

These women see the inclusion of their sons in the register as a strategy to have more land for their families where they are assured of access. This land can be accessed by women even after the group ranch is subdivided. They indicate that including their sons in the register enhances the security of their land as it makes more males in the family in charge of the land. However, there were also fear of land sales. There are fears that subdivisions would lead to selling of land which

⁴⁹ FGD, Community Member, Female, January 2022

have been reported in neighboring group ranches, where land has been subdivided and sold, leaving households with little or no land. By focusing on their adult male children to be included in the register, they are assured of access land. This also enables women to have access to land in instances where their husbands may want to sell. Because their male children have land, the women will certainly not be landless in case the husband sells his own share of the subdivided ranch.

One of the key features of pastoralist communities' resilience is generational inheritance of land, and as such safeguarding land owned by the community is a resilience feature which is expressed by the Samburu women to manage and secure land for future generations. According to the Samburu women, inclusion of sons in the group register also assures their land access, as more males will share the decision-making role and thus safeguard the entire household. Again, pastoralist women actively draw on their sons' to access land and thereby their resilience.

The changes brought about by community land law present different avenues through which women can access land and build their resilience. By drawing on their adult male children to access land, the women are assured of access and secure rights as well. They can persist in a new environment full of variability and uncertainties brought about by new institutions and the community land law.

7.4.2 Women's access, and resilience through kinship and clan ties

Apart from their own sons, pastoralist women also depend on their kinship and clan ties to build their abilities to adapt to the new contexts and cope with uncertainties of access which impacts on which more than men. Relational aspects of resilience are based on the connections in a community and the value of place. Who people identify with and who are their relations are key to resilience (Semplici, 2021; Berkes and Ross, 2013). These enable them to adapt and cope with uncertainties. As such, belonging to families and clans are important for resilience because the close connections

that ties groups and communities together provide avenues for benefits that would include access to land. This is important for pastoralist women because as earlier mentioned, most of the land ownership and decisions about access have excluded women over time. One of the ways adopted is to negotiate inclusion by soliciting support from the elders, who are the custodians of the norms and values in the community. In doing so, the women show respect of the existing authority, and in turn depend on influence of these elders to be included in the group ranch registers. Specifically, negotiating access through clan ties and kinship is a tool employed by women to access land and livestock for their resilience. At the time of carrying out fieldwork in Samburu in the beginning of 2022, some of the group ranches were grappling with the challenges they would face after subdividing their collectively owned land and the consequences of the process where only some members will own land. There were already speculations within different households about raising the alarm about whether the process of registering new members would benefit women and youth. The speculations also involved whether those who were not previously registered members of the group ranches would be included.

Despite the different challenges and the anticipated outcomes of the subdivision process, Samburu women have employed different strategies, given the changes taking place on land in group ranches. They also shared the prospects and challenges presented by the implementation of the community land law. The close social ties and the many years these families have continued to access land, is a basis of strong belief that their family ties and close relations enables them to access land. There is conviction that the changes taking place as a result of implementation of the law cannot lead to exclusion of some because of connection through family ties, clan relations, and above all, being Samburu. One respondent noted that the formal processes of law implementation is taking place but:

“Samburu’s will remain Samburu’s even if we live on trees or in towns, we will keep together and share what we have just like we share milk during dry seasons”⁵⁰

The belief in these deep connections reflects the communities’ resilience to withstand formal processes and land use changes. The identity and relationships built on clan ties have meant that customary institutions of regulating access to land remain important. In this regard, the role of the community elders to resolve concerns of landlessness, even when they are not directly involved as formal committees to handle group ranch land matters, is still important.

With the changes in the land tenure and the requirement for group ranches to transit to community land, there has been tension regarding the fate of the families that migrated to these areas but have not been recognized as members in the register. Samburu women who could be affected by these situations however noted that whereas it seems as if they will soon be landless, they know that their clan elders will not allow them to be moved out of the land they have previously occupied. The deep trust in the familial and clan ties-based support they have received in times of crisis reflects the role of solidarity and identity (being part of a group) in resilience among pastoralist communities.

Women’s resilience through drawing on kinship and clan ties access to land applies to livestock too. The challenge of this is that the formal process will rely on the group ranch register, which leaves out other users of land who have lived in the community for decades. All the same, identity and belonging begin to play an important role in ensuring access for women who are not in the register:

⁵⁰ FGD, Community Member, Male, November 2019

*“We migrated here because there was a tough drought in Turkana... there were no problems coming here, we could just settle as we wanted. First, we build a small house. Gradually we decided to build more permanent houses, and nobody bothered. Recently we heard that this land will be subdivided, we were at first worried because we are not in the register. I have talked to the chairman of our group ranch and he sent me to the elders. The elders considered that my husband has no other relatives around, and they assured us that we would not be left landless. Now we are hopeful”*⁵¹

After enumerating the possible difficulties that families who will have no land in Samburu would face, some women named their brothers as people they would go back to and get some livestock from to start life elsewhere, or to get a piece of land from their families after subdivision. Group ranch officials also mentioned this as a consideration for those who will be left landless, those who migrated and those were not part of the register.

*“We are aware of some women who live here who do not have husbands, but they came from a homestead and a clan. Their brothers will ensure they are not left landless, they will offer them land and space to settle”*⁵²

These strategies are not without their challenges. The process of inclusion as members of a group ranch for widows is still difficult and has several layers of authority. They must go through the group ranch committee and the chairman of the group ranch. Responding to the question about their plans in case they are excluded, most women them said they know what to do next, they have always had ideas on how to deal with what comes because we know *‘our words are our keys and*

⁵¹ FGD, Community Member, Female, January 2022

⁵² Interview, Community Leader, Male, January 2022

*will talk to our elders and they will hear us*⁵³. This phrase reflects how pastoralists women draw on identity and connections to their families and clans to access land. It clearly shows that variabilities of the context of access to land requires new approaches by women to access land. They have to tap on connection to kins as well as respect of elders. These combine then to contribute to the ability of women to gain access to land in rapidly changing context of access.

7.4.3 Women, access and buying of land.

Another group of Samburu women excluded from the group ranch register include those with formal education and salaried and therefore able to buy land on their own. These use their salaries as security for loans with banks. They then use the funds to purchase land from those who own individual parcels after the subdivision processes.

Three things define their strategies and resilience: creating local women-only groups, investing in education, and engaging in income generating activities. The ideas around forming women-only groups and contributing money which members can access and invest in small businesses or buying livestock has become part of the women's lives. These groups do not solely include educated women, but they are those who formed the groups and assist in the record keeping. The close solidarity and connection felt through these groups was deemed useful in supporting their households and feeding their children. Apart from wage earnings, other women used the proceeds from milk sale and sale of small animals like chickens to sustain their membership in the group.

Access to education for their children was mentioned as one of the strategies by most of the women interviewed. The views around why education was important for them as a pastoralist community were linked to the challenges of accessing pasture and changing land tenure. For some, there is no more land for children to graze animals. The livestock are also diminishing. Sending them to

⁵³ Interview, Community Member, Female, January 2022

school would therefore safeguard the community both as a source of extra income, but also to restock and sustain pastoralism through subsequent jobs.

“We have seen the benefits of sending our children to school. I want my children to all get jobs so that they can also take care of their children and help me as well. There is no grass or land left for them to move with animals. We have been suffering going to the forest with our children so let them go to”⁵⁴.

The challenges of accessing pasture due to the individualization of land has also meant that younger Samburu male children who would traditionally take care of the animals are no longer involved in moving the animals and thus have a chance to go to school. In terms of the heightened calls for subdivision of land, those who have access to some income also expressed taking children to school as a form of assurance to buy land and secure their livestock and households. The views of the female respondents was mixed on whether they would prefer their group ranches to be subdivided or not. Some thought it would not make any difference as they would not be allocated land as women and as such, they had no interest.

“The men in our community will share the land, so let us wait and see what happens. Even of the law says we should be given land, it will not happen because they will say our share is with our fathers or husbands”⁵⁵

Those who had prospects of accessing finances to purchase land, saw this as a window to buy land for themselves. In their view, a title deed to a privately owned plot is better than a community land register where their inclusion is not guaranteed.

⁵⁴ FGD, Community Member, Female, January 2022

⁵⁵ FGD, Community Member, Female, January 2022

“When land is subdivided, we can finally own land as women because we can buy. I am thinking this is a good opportunity for women to access and own land for the first time in our community”⁵⁶

Many of the women interviewed also indicated that they were engaged in income generating activities which included keeping small animals. Chicken rearing was mentioned most as it is also a business which husbands were not involved in, and thus gave women full authority to sell the chickens. The women have a ready market and demand by town dwellers who are mostly from other neighboring communities.

“We are keeping chicken and sell eggs to the many people who live in small towns in our area, our husbands do not bother with chicken, but they would never allow us to sell goat, sheep or cows”⁵⁷.

This study then asked the women what they use the money from the sales for. One of the major uses was purchasing pasture in the market and grass for the livestock in the evening. This unique move also reflects some of the factors that are less highlighted that support the resilience of the pastoralist system. The sale of hay is increasingly a feature of the local markets in Samburu. On market days, men and women approach the lorries that are loaded with hay to negotiate the process for each bunch of hay for their livestock at home. Pastoralist women thus use finance to participate and benefit in the different production systems. All these changes have also meant changes in household labor to be looked at in the next section.

On the whole, women are turning to cash economy – salaries and engaging in small businesses such as retail – to raise funds to buy land or invest in their own livestock. Their salaries or income

⁵⁶ Interview, NGO Official, Female, January 2022

⁵⁷ FGD, Community Member, Female, January 2022

from other sources is building their ability to withstand the challenges emanating from the new context of access, complex institutions, and the dominance of men in the processes of access. Those turning to cash to buy land do so because negotiating inclusion in the register, they argue, is a tedious and involves many layers. They are also the ones who are pessimistic of pastoralism especially because they are taking their children to school and therefore withdrawing labour from pastoralism.

7.4.4 Reduced mobility, changing household labor, and resilience.

The discussion above on women's access to land and resilience through sons, kinship and clan ties and buying also points to the different land needs for pastoralist women. As discussed earlier, pastoralists in Samburu have relied on mobility to access grazing areas at different places during different times of the year, as well as to deal with recurring droughts (Scoones, 1995). Access to land and movement corridors remain critical to support this. But the changes in land over time have placed constraints on this movement and disrupted previously established systems of access to land.

Changing land tenure and subdivided rangelands have blocked livestock movement in parts of Samburu. There is also large-scale land acquisition that is ongoing in pastoral areas that has hindered access to grazing land. Some of the neighboring communities have adopted agriculture and fenced off land, leaving only road reserves. This is amidst growing towns in pastoralist areas due to devolved governments including the tarmac road that, for the first time since independence, runs into Maralal town which has attracted a population increase.

Access to land and pasture have thus influenced how labor is organized among the Samburu. Despite some studies indicating reduced access to pasture soon after Kenya's independence, based on fenced off lands in Samburu, the Samburu pastoralists have enjoyed rangeland mobility and

thus herding labor to the access such resources (Spencer, 1965). Over the years, labor has thus been organized through clans who also dominated certain areas of pasture and settlements. The two main aspects of labor are herding and domestic roles, which remain interdependent among the Samburu (Sperling, 1985). Division of labor in the clan was further differentiated by age and sex, with women and men taking different roles (Spencer, 1965; Sperling, 1987).

Age was seen as a critical requirement of organizing labor, as Samburu age sets were used to define roles for the males. On the one hand, male members of the community were introduced to different roles as children to look after cows and later take up herding roles outside the homestead, with many cases in grazing camps. These roles would remain until the younger males were older upon which time, they significantly reduced herding, as their role changed to engage in tasks of planning and strategizing on areas for pasture and water, including negotiating access (Sperling, 1985).

On the other hand, the female's place was determined by their relationships with the males and their position in the age set. Domestic roles which were elaborate were mainly performed by females, with female children introduced to minding goats and graduating to homecare roles, including milking and collecting firewood and acacia pods for the animals. Significant transitioning of roles would also happen for the older women as their daughters took over their roles in the homestead, with older women supporting with the herd outside the homestead.

The above summary of how labor was generally organized among the Samburu does not give a complete picture of the entire processes involved, but it reflects the reported limited role of women in herding outside the settlement areas and the critical role of the younger Moran (male youth) who would be mainly in charge of livestock (Sperling, 1987). This also involved when the Samburu would split their herd during drought according to the forage required and the patterns of migration set out for them (Pas, 2018).

The significant shift in the different roles played have been attributed to the reduced mobility in the community as a necessary component for livestock production as well as changing land laws and tenure. This also included the changing socio-economic demographics in the community. This has attracted more sedentary lifestyles for the youth, leaving the older men and women with the responsibility over the livestock.

Samburu pastoralists have thus had to adjust their mobility strategies, with impacts also on the organization of household labor. Women have found themselves at the center of both managing livestock at home, as previously mentioned, and substituting income for the households.

“Most of the grazing is now happening near our homesteads and involves the women and younger Samburu males (their children). We also buy pasture and ensure our livestock at home are fed and that they have water. We can use the money from selling chicken and eggs to buy grass”⁵⁸.

Seen here are the efforts the women are making to secure pasture from outside, like buying grass and hay from the market centers. Secondly, the shifting of some of the household labor to the urban centers and the need to earn additional income to support the household has left many women at home taking care of the livestock. Young women are also getting involved in small businesses from the growing town populations around Maralal, where the county headquarters are based, while younger men are engaging in manual labor as well as motorcycle transport roles, which are different from their usual livestock herding and search for water and pasture.

To adapt to the changes, Samburu women are now moving with livestock and relocating temporarily to those areas. The movement of the entire households and settling closer to grazing

⁵⁸ FGD, Community Member, Female, January 2022

areas means women set up temporary grazing camps and feed their families as they take care of animals. This is unlike before where they would mostly be left behind and wait for the animals to return home to milk and take care of them. The involvement of women in the arrangement of accessing pasture is not new, but their central role is now critical. The strategies they employ reflect some of the reasons pastoralist systems continue to feature as most resilient in the rangelands.

There is also a shift in how labor is organized, where male Samburu members would mostly get employed by wealthier herders (Sperling, 1987). Indeed, women who have no livestock are also volunteering to herd their neighbors' livestock, as well as to fetch water for livestock and household use. The money earned is mainly used to buy food for the family and hay for the livestock at home. Thus, income is a key aspect of resilience for pastoralist women:

“If you have money, you are okay, you can buy food and you can feed your livestock until the time when the fields are wet, and the grass is back”⁵⁹

As mobility and labor patterns shift in the community, the role of the elders is changing, creating generational tensions between the youth and elders. Traditionally known for their role as custodians of community values and advisors of younger men on migration routes in search for pasture, the change in land uses and the challenges of accessing individual land has made it difficult for elders to coordinate grazing and access to pasture. The younger *Morans* were said to ‘move as they wish’ and they did not take advice from anyone or follow the agreed route in group herding. Whereas the elders reported feeling helpless about these changes and mobility that was not coordinated, some of the women said that they had decided to accompany the *Morans* and

⁵⁹ FGD, Community Member, Female, January 2022

guide them in the search for pasture. One such way is the use of forest resources where women in Samburu are relying on branches of *Rhus natalensis*, a tree locally known as *Imisigiyyo*, that have leaves for their animals to feed on. Later they use the dry branches as firewood for their households. Women identified this as a welcome relief for their children who herd the animals.

“We are going to the forests with our children and cutting the Imisigiyyo branches to feed our livestock. Now they can rest a bit before they start moving with the animals again. They can move once we have nothing left for us in the forest”⁶⁰.

The women’s role in providing alternative forms of livelihood and engagement in labor inside and outside the Samburu household in the wake of heightened subdivision of land places their role at the center of pastoralism. Their roles have become increasingly important in less resilient situations where their involvement fills in the gaps occasioned by changes in land and labor.

7.5 Conclusion

This discussion has highlighted the changing land tenure and the unintended consequence of land law - subdivision of group ranches. The discussion has shown that the context of accessing is changing because of new land law and new array of institutions. These have meant uncertainties and variabilities in accessing land. Pastoralist women thus encounter this new context; they have to develop abilities to access land especially because customary practices do not provide for their direct access and control of land. Only male members have this responsibility. The discussion has highlighted that women are the most excluded from the membership of group ranch. The lists include head of households and in some instances sons in a household are also included as members. The widows and those from outside but married into the group ranch have to use different approaches to gain access to land. They use different options to access land and to adapt

⁶⁰ FGD, Community Member, Female, January 2022

the new complex context of accessing land. Women here also use different approaches adjust to the disruptions brought by the land law.

First, women develop ability to persist in access to land by using their adult male children, the sons, to access land, and in other instances own it when it is subdivided. Their sons enable the women pastoralist to claim membership, even in places they would not directly benefit. Secondly, pastoralist women's negotiate access through connect to kinship and clan ties. This is done through their male relations and clans. Thirdly, the salaries and those with income from other sources can buy land. The ability to buy is itself and important means of enabling the women to cope with challenges of access especially in the context of changing pastoral modes of production. There is growing land market which they exploit to buy land and become landowners. And when they buy, some turn to new economic activities away from pastoralism or even to complement pastoralism by their relatives. They begin engaging in poultry farming among other activities.

These options adopted by pastoralist women apply to different groups of pastoralists and households. Significantly, female resilience through their sons would fit the group of pastoralist women who are widowed and whose clan members are in the group ranch register, whilst their sons could also benefit from the subdivision of land. The same applies to married women whose husbands are not eligible for land once the group ranch is subdivided. Additionally, women who are unmarried and those who migrated to the group ranches but cannot claim the land in the group ranches, will negotiate access of land and livestock. Educated women and those who earn wages from employment will take the finance route as they can participate in women-only groups, engage in trading, as well as earn money to buy land where possible. Women from poor households also seek alternative wage labor to take care of their few livestock and seek new ways to engage the

customary systems to their advantage, even where formal structures of land management have been installed.

Critical to pastoralists' resilience is their identity, which mainly relies on the closely knit community and ideas around belonging, which are reflected in the tensions around land ownership and access to land. These forms of internal socio-cultural resources push back the formalization of land and the demands from outside that threaten the social existence of pastoralists' systems. Pastoralist women in this study, draw on their close networks and social capital to diversify their incomes to feed their families and livestock. Identity thus, might play an important role in the inclusion of landless women in the community.

Land governance and access to land continue to be important in the arid and semi-arid areas as a resource that is critical for pastoralists. This is even more so with the increased attention of the rangelands and big infrastructural projects which are accompanied by large scale land acquisitions. Devolved governments, as is the case in Kenya, is opening previously inaccessible areas, meaning land occupied by pastoralists faces more external threats that are different from those of climate change. Understanding the dynamics that these land changes place on pastoralists' livelihoods and resilience is complex but is an important concern particularly regarding the role of land tenure and the processes of land law implementation. Reflecting on the resilience of the pastoralist women is critical especially given the changing household labour.

This chapter shows how land law reforms poses challenges for women's access, but women have built abilities to maintain access. Further, the gendered nature of resilience reflects how various relationships among pastoralists fluctuate, responding to shifts in the community and land tenure. In this way, resilience is recreated and reconceptualized based on the experiences of pastoralists and the contexts they live in.

CHAPTER EIGHT

SUMMARY OF FINDINGS AND CONCLUSION

8.1 Introduction

This study addresses the question of how community land law affects pastoralists' land access. Overall, the study seeks to contribute to the understanding of what happens to pastoralists' access to land when community land is formalized, and the process of land management is decentralized. Relatedly, the study seeks find out what the gendered implications are for pastoralists' access to land when land reforms and new institutions impact on local land governance and customary approaches to land governance.

The discussion of this issues is based on the argument that pastoralists' community land rights can be facilitated by enabling a responsive legal environment and governance structure to enhance pastoralists' adaptation for sustainable livelihoods (WISP, 2008). Moreover, land reform processes and a general understanding of pastoralists' livelihoods cannot be isolated from the legal frameworks within which they live, and how this affects livelihoods and resilience. This is especially so when the land law reforms impact on customary rights to land and customary institutions that regulate access to land.

The study focuses on Kenya's Community Land law which was introduced with the declared aim of securing communities land rights – including pastoralists - and to ensure communities influence making of decisions on governance of land. Through a devolved system of government, communities have the power of self-governance. They elect their representatives to new institutions established under constitutional devolution of power. They also elect representatives to the new local committees established under the community law to improve land governance.

How these processes unfold and how they impact on pastoralists access to land in practice is a central focus of this study.

The study draws on growing literature that points to the indispensable right for pastoralists to access their land as well as the significance of land for their livelihoods (Behnke,2018; Musembi and Kameri-Mbote, 2013). This study builds on the understanding that land is critical for pastoralists livelihoods, and long-term resilience towards external stresses associated with climate change (Thornton *et al.*, 2014). Expansive land enables their mobility as they seek access to pasture in the context of variability and other climate change challenges they encounter (Behnke et al., 1993, McCabe 2004). In terms of rights of access to these communal lands, pastoralists have over time used identities based on clans and more recently group ranch members.

The study recognizes that there is emerging trend across Sub-Saharan Africa, where land held communally is given formal legal status to protect and safeguard community interests. This has had different consequences for communities including exposing communities to vulnerabilities and loss of rights. In Kenya, following a new constitution in 2010, the government enacted legislation to recognize, protect and register community land rights. How this has impacted on the rights of access among pastoralists as individuals and communities is of concern because formalization of community rights either reinforces or alters existing forms of access.

This thesis takes its theoretical departure in *Theory of Access*, drawing on the different mechanisms of access that enable or hinder the ability of community members to benefit from access to their resources, in this case communal land. This study further draws on decentralization theory to examine the prospects of devolved land governance; and resilience theory to examine experiences of local communities in the context of changing land laws.

Data for the study was collected using interviews with Samburu pastoralists in the County of Samburu, and interviews with public officials at national and subnational levels of government in Kenya. Data was also collected through discussions with community members in different areas of Samburu County. These discussions and interviews focused on the implementation of the Community Land Act of 2016 and implications for pastoralists access to land. Specifically, all the interviews and discussions sought to find out how the implementation of community land law affects pastoralists access to land, how the devolved land governance structures interact with pastoral communities own systems and thereby their access to land; and how the pastoralist women navigate the changing land laws to access land and therefore build their resilience.

8.2 Summary of findings

This study reveals the challenges and prospects of the implementation of the community land law through the processes, institutional relationships, and prospects for women's access to land and their resilience. In terms of the process of implementing the community land law, the findings reveal that many community members have limited awareness of the process and the requirements under the law. This lack of awareness hinders many community members from effectively participating in the different meetings where decisions on communal land are made. Indeed, the community members find themselves under pressure to finalize a process whose purpose many are not aware of and whose end is unclear.

At the same time, the processes of implementing the land law have brought about the unintended consequence of subdivision of land. Many group ranches will get dissolved, and land shared among group ranch members. This presents a challenge of access to land because not all members of the community are included in the list of group ranch members and therefore some of them

cannot benefit from the process of subdivision of group ranches or community land. Relatedly, the membership of group ranches is contested. The inclusion criteria remain unresolved and as such there are members who are excluded and could remain landless with no rights to community land at all.

The process of implementing the land law arouses tension between the formal law and customary rules of access. This is also evolving new challenges of access to community land. Customary institutions and those established by law co-exist to facilitate access, but their operations result in conflicts, thereby constraining access. In other instances, they conflict over mandate as each institution exerts its influence in the administration of land at the local level. The process of formalization thus produces multiple actors (Ribot, 2007). The findings suggest that the operationalization of the Community Land Law in Samburu has proceeded in a manner that erodes customary institutions that have for generations regulated pastoralists' access to land (Lengoiboni *et al.*, 2011).

Regarding the institutions and devolved land governance, the findings show that the operational challenges presented by the establishment of different institutions in implementing devolution in Kenya have continued to persist. The parallel structures that have been established by the law appear to create administrative bottlenecks and in some cases conflict with the existing customary practices. This is weakening the mechanisms of land governance that provide access, and the community members remain in the dark about the role of the different institutions in managing land.

The devolution of land governance and the implementation of the Community Land Act held the promise to facilitate inclusion and incorporate the voices of local communities. In practice, the pastoralist communities' voices have been left out of the community land management process. In

this study, supplanting the role of pastoralists' customary institutions and side-lining local systems fails to recognise these community rules and the unique land access processes that have enabled pastoralists' mode of production.

This study draws attention to pastoralists' women and the different mechanisms that facilitate or hinder their access to land. By highlighting the precarious situation pastoralist women have traditionally found themselves in and the limitations they face in safeguarding their land rights, this study shows the different resilience strategies they adopt. By drawing on their sons, negotiating access through familial and kinship ties and through finance, the differentiated needs of women are explored, and their different options presented.

Overall, regarding debates on land reforms and decentralization through the devolved structures in Kenya, this thesis argues that the new laws lead to subdivision of communally owned land, thereby creating bounded territories that constrain pastoralist mobility. Moreover, public officials at national and sub-national levels tend to sideline traditional pastoralist practices in the implementation process. This, together with incoherent institutional structures that *de facto* undermine pastoralists' influence on land governance, contributes to undermining their traditional lifestyle, and pushes towards trends of sedentarism and dispossession.

The findings generally show that the land law reforms are not adequate to secure these rights. The implementation process has different consequences for different groups including those who lose their land rights. Indeed, this thesis finds that the law did not anticipate or pay attention to this challenge of exclusion and did not thus provide for ways to protect all members of the community.

8.3 Conclusion

The study shows that the implementation of the Community Land Act, alongside a devolved system of government, is faced by institutional complexity and administrative bottlenecks that hinder how the different offices relate with each other. Furthermore, the devolved structures of governance have yielded new barriers of access to land for pastoralists. The formalization of community land is based on policies fit for settled communities and immobilizes pastoralists and their livelihoods. The requirements in the implementation of the Community Land Act also assume a static nature of pastoral systems and not their fluidity and unique reciprocal arrangements. These processes are driving more attention to subdivision of communally owned lands and contests on territories.

The process of securing communal land rights has therefore not been successful given that pastoralist communities' lifestyles and customary practices have not been adequately included in the implementation process. The lack of consideration of customary institutions is problematic because the process of formalization fails to recognize the place of community's own institutions in the governance of their land.

Regarding pastoralist women, the findings suggest that land reforms and changing land laws in Samburu have provided opportunities for women to find strategies to be more resilient. Indeed, this study reiterates that land reforms are central to resilience because the avenues of accessing land hinder or enable access for different groups. By focusing on the gendered nature of resilience this thesis suggests that the agency of women in responding to shifts within the land access systems is crucial for their resilience. This way resilience is understood in the context of the lived experiences of groups and how the laws curtail or support their options.

The thesis concludes that, as currently implemented among Samburu pastoralists, the new legal framework contributes to undermining pastoralists' traditional lifestyles and livelihoods more than it supports pastoralism. First, the implementation process and related land registration has created inter-communal conflicts and urged many communities to subdivide community land, thus pushing to existing trends of individualization and privatization of land rights. This has consequences for pastoralism. The private parcels of land and fencing parcels constrain pastoralist mobility and reduce their access to rangelands. Second, the legal framework creates new institutions for managing community lands that conflicts with and undermines pastoralists' own traditional institutions. Third, devolution rests on territorial thinking that does not harmonize with pastoralists' flexible and fluid lifestyle and mode of production and complicates the institutional set-up for pastoralists at the local level. Regarding the gendered impact of the Community Land law, the thesis concludes that it prompts pastoralist women to adopt new resilience strategies as shared above.

In sum, the thesis highlights that successful land law reforms depend on the active inclusion of local communities' own institutions and value systems. The arguments presented in this study provide some insights into pastoralists' own perspectives on legal reforms, and new perspectives on how contemporary pastoralism unfold in Kenya in a context of changing climate and land policies. The case of Samburu County indeed provides some examples of how to study implementation processes, and sheds light into how the implementation of land laws can result in outcomes opposite their declared intentions.

Overall, while growing evidence suggests that the changing landscape and land use in agrarian societies demand legal and policy frameworks to enhance sustainable livelihoods, the process of formalizing of community land does not guarantee the security of rights individuals and

communities. This then implies that there is need to consider different factors emanating both from past unresolved land questions to new avenues that undermine tenure security. Indeed, this study has shown the multiple avenues of exclusion in the intricate web of community ownership and the unresolved issues which point to exclusion.

As has already been discussed some critical areas of focus emerge on why contests and claims for community land are still unresolved and complex. First, is the role of law-based rights and the need to consider customary rules in the formalization process. This way, formal constraints to secure property rights can only be effective to the extent that they utilize informal institutions – community rules - to address context-specific mechanisms of access. Secondly, is the heightened push and calls for subdivision of communally owned land and the place of individual rights in communal ownership. Whereas this thesis has highlighted the increased interests among pastoralists in subdividing community land, there is a lack of clarity on how the movement of animals will be catered for. This is especially the case with the growing need for differentiation of land use claims. Thirdly, this study points to how some members of the community will suffer exclusion in the process of formalization. This is despite the assurances in the formal laws that formalized community land to safeguard the rights of all. The study has shown that the case for minority clans is still not addressed even when it has been legally provided for. However, the rights of minorities are not realized in practice because new forms of exclusion in access emerge with implementation of the law. This continues to deepen their exclusion.

What then is the future of pastoralism? This thesis points to the growing concern and threats posed to pastoralism in the formalization of community land. Whereas communities are working towards diversifying their livelihoods, pastoralism is still a major economic activity in the arid and semi-arid lands, and as such the formalization of the communal land could threaten the future of

pastoralism. This problem is the result of inability of the government to understand pastoralism and laws that do not address the reality of pastoralists' livelihoods; policy makers tend to approach pastoralism with a sedentary policy thinking and solutions.

While the Community Land Law's objectives were focused on safeguarding community rights, different challenges have emerged in the implementation process. The law did not anticipate this challenge of exclusion; the law did not provide for ways to protect all members of the community. In highlighting the significance of law-based land rights and titling in securing access to land, this study argues that the formalization of community land may not be the silver bullet that will enhance sustainable livelihoods for pastoralists. Rather, it poses more threats and endangers the livelihoods of people who are excluded and marginalized in the process. There is a need to embed customary practices in the formalization process to ensure the legal and institutional processes accommodate this plurality of norms and recognizes the legitimacy of customary rules in the formalization of land tenure. Addressing the challenges of access for pastoralists requires increased inclusion of community values in this process. Indeed, while climate change effects continue to place burden for pastoralists, the effects of changing land laws and the avenues of accessing land prohibit the success of pastoralists mode of production.

8.4 Policy considerations

While the Community Land Act presents hope for the protection of communally owned land and enhancement of security of rights for different groups, the law does not contain any clear directions for the implementation and registration processes. Despite policy and legislative improvements, approaches to practical implementation of the CLA remain ambiguous.

With the ongoing debate about the future of rangeland pastoralism in East Africa, the processes of land reforms and specifically formalization of community land and resilience are crucial in centering the global conversations around climate change and the effects on the most marginalised in the world. For this reason, there is a need for increasing involvement of communities in the process of law making and taking into consideration their daily experiences which can be used to improve in the process. Indeed, this thesis outlines the ambiguous nature of the implementation of the Community Land Act and the voices from the pastoralists communities decry the lack of clarity of the process and the fears of losing land. This study recommends that careful consideration is made by policy makers around participation of local communities in law making and implementation.

Regarding devolution, while the promises of the devolved structures were to get closer to the people, this study reveals that the process is slow and has not been implemented in practice in Samburu County. One of the administrative bottlenecks identified is linked to the inaccessibility of services for far flung areas. Most of the services are based in central areas and thus require pastoralist groups to travel to get the services. Another bottleneck is how participation is imagined for pastoral communities who are members of community land. The requirement that they form a community assembly make decisions with a two third majority envisages a community that is settled and can operationalize such a process through convening its members. These provisions are not feasible for pastoral communities and need to be restructured around the various villages and homesteads and not central places that are hard to reach.

Rethinking and understanding pastoralism as a way of life and mode of production is crucial for policy makers. While this study has presented evidence from elsewhere about how pastoralism in East Africa has been misunderstood and policies that have marginalised them, rethinking the policies is timely. The current global call arising from COP 27 identifies the need to safeguard those most affected by climate change and institutes loss and damage measures of compensation. These measures can only be made feasible if governments in communities where land rights are not secured work towards enabling the process and ensuring that the process is fair and inclusive. This study has highlighted groups within pastoral communities who could be rendered landless when the process of formalization is completed. This is because while the CLA presents hope for the protection of communally owned land and enhancement of security of rights for different groups, the law does not contain any clear directions for the implementation and registration processes. Despite policy and legislative improvements, approaches to practical implementation of the CLA remain ambiguous.

8.5 Areas for Further Research

Finally, there is a need for more studies to improve understanding of the complex nature of how pastoralists have accessed resources over time, the changes happening in the communities, and the different pathways that they could take towards a resilient future. This is significant because pastoralists need for land has changed over time and the support systems that enabled this mode of production have changed. Research on the new forms of pastoralism with reduced mobility and changing household labour will inform the same policies to better serve pastoral communities.

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ANNEXES

ANNEX I: Interview guides

Interview guide I

1. Community land Act

- a. What is the state of implementation (group ranches registration etc.)?
- b. What challenges experienced
- c. Who are leading in implementation if at all?
 - i. Are there people opposed to registration of community land? If so, what are they opposed about? Is everyone supportive

2. Government and institutions

- a. What role is the National government playing in land administration
 - i. What challenges? Is there anyone opposed to national government and how it is carrying out its work on land?
 - ii. Role of County Commissioner? Chiefs?

- b. Role of National Land Commission
 - i. Office in Samburu – what does the office do, challenges.
 - c. County Government
 - i. Role of the Governor
 - ii. MCAs
 - iii. County Assembly Committee
 - iv. Other elected officials – what concerns do they have if any?
3. Informal institutions
- a. Looking into the past – who had powers in administration of land (where does power over land matters lie in the customary practice?)
 - i. Elders or traditional leaders
 - ii. Who regulated land before the CLA came into effect?
 - iii. Who had authority to do what?
 - iv. What challenges did people facing in accessing land?
 - v. Were there clan differences in how land was accessed?
 - b. How has this changed now?
 - c. How is devolution changing this?
 - i. Is devolution affecting land administration in any way?
 - d. What challenges are people facing today in accessing land?
4. Titling, adjudication process
- a. When did this process begin?
 - i. State of implementation
 - ii. Challenges faced

- iii. Court cases
- iv. Winners and losers?

5. People's participation

- a. Are people organized in any way to articulate their concerns about land administration? Are there CBOs or NGOs articulating land issues? What challenges do they face?
- b. Do people participate in any forum to present their views on land matters
- c. Participation in county and national government.

Interview guide II

1. Status of the implementation of the CLA

- What has been happening since 2019.
- How many group ranches have conducted elections and applied to transit, what is the status?
- What are some of the issues arising out of this process?
- Follow up from previous interviews and contacts in the group ranches and at the land offices

2. Existing legal and institutional framework and pastoralists access to land

- Have the relevant offices been set up? (Community land registrar)
- The role of each institution and the linkages
- Structures, functions, governance processes of the government institutions
- Community level organization in land management and access

- Who were the main interested parties and were they all involved? What were the interests?

- What about pastoralists voices?

3. Land governance structures and devolution addressing pastoralists access to community land

- Levels of institutions involved in the land governance and processes
- Local community involvement
- Current trends on challenges and opportunities in the land processes (formalization, registration, titling, subdivision)
- Understand the land processes going on in the national, county, and local levels
- Situate the transition of different group ranches into community land
- National and county level processes working on community land processes
- Identify avenues present pastoralists to engage in the process if any
- The role of county governments in the process visa vis the law on their role as custodians of community land
- What opportunities does the county structures provide the pastoralists, who are interested in the process and why?

4. Pastoralist women and the Community land law implementation

- The groups of pastoralists community and their different roles and interests
- Local leadership structure at the community land level
- Decision making process during community meetings on community land
- Community land registers and inclusion of women? and their effectiveness

- Women’s engagement in the new legal framework...some of the challenges and prospects for opportunities
- Samburu women and their role in access to land and safeguarding community/ individual rights
- The role played by women in the process of acquiring, accessing community land
- Representation of women in the leadership structure
- Avenues of women’s voices and ideas

ANNEX II: Focus Group Discussion Guide

Understanding the community

1	Could you tell me about the community you live in
2	How long have you been a member of the community?
3	What can you tell me about the history of the community?
4	How do you feel about the community?
5.	Now lets us talk about this group ranch. How long has it existed (historical perspectives)

6. Land in the community

1	Could you share your daily schedule starting from morning
2	You have mentioned grazing. Please tell me where you mostly graze the animals
3	What about the other group ranch members where do they graze?
4	Who gives permission for people to graze in the group ranch
5.	What about other community members from different group ranches, do they get to graze here too
6.	How is the group ranch managed? (Leaders)
7.	Have you attended a community meeting to discuss community land matters?
8.	What are the common matters discussed at the meetings of the community
9.	What about the government? Does anyone from the government attend the meetings
10.	What issues have you seen or faced in using community land
11.	If you were to speak about how the land in this community has changed, what would that be
12.	Are you a member of the community in the group register?
13.	What about your wife/wives/children?
14.	Do you know about the community land act

7. Community land act

1	Have you heard about the law on community land?
2	What do you know about the law?
3.	What are some of the customary ways people own and use land?
	Are these customary ways part of the new law
4.	What opportunities does the new law on community land present
5.	What challenges have you experienced/do you foresee with the new law
6.	Who do you think will be affected most by the new law ...in what ways

8. County Governments role

1	
2	To what extent do the formal institutional structures open up for/constrain representation, participation, and influence for different groups of pastoralists and other stakeholders?
3	To what extent are different groups of pastoralists represented in participatory institutions of relevance to land rights and adaptation

4	How do different groups of pastoralists (seek to) influence participatory and executive institutions and specific processes relevant to land rights and with what result?
5.	What specific processes are going on that are relevant to pastoralists' land rights and land access in the two counties (e.g., titling processes, licensing, court cases, mediation, transfers,
6.	To what extent do (different groups of) pastoralists gain or lose from specific land right related processes?
7.	How does the county government engage with the community in this area on land access

Types of Rights (Community Land)

1	Who are the people in the community who use the land.do they all own the land? (Types of land)
2	How are these rights and how have they historically been negotiated?
3	What actors are currently interested in getting access to what types of land in the two counties

4	<p>What strategies do different groups of pastoralists apply in their struggle for land rights and land access, why, and what is the role of formal laws and institutions in this struggle?</p> <p>What processes have they been involved in?</p>
5	<p>What problems have the laws and institutions solved,</p> <p>What new problems have they created for pastoralists and their access to land?</p>
6	<p>What are the attitudes and perceptions of different groups of pastoralists and other stakeholders with regard to a) Pastoralists and their land rights; b) the new land laws c) whether the new laws will serve pastoralists' land rights and adaptation interests?</p>
7.	<p>What are the future perspectives for pastoralists' land rights and adaptation interests?</p>

