



# COMMUNITY LAND REGISTRATION IN KENYA'S RANGELANDS

Prospects and Dilemmas for Pastoral  
Mobility and Resource-Sharing



**CRDD**  
Center for Research and  
Development in Drylands







**Author:** Porter Nenon

**Contributors:** Dr. Hussein Tadicha, Mohamed Dida, Mohamed Golompo, Elijah Lempaira, James Matunge, Lmatarin Leiyopoko, Bernard Lelukumani, Mohamed Wario, Gabriel Kasha, Said Jarso, Jumale Galma, Hassan Yussuf, Rahma Hassan, David Arach, Ruth Okara, and Derrick Makhandia.



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## Summary

**Across Kenya's drylands and rangelands,** hundreds of pastoralist communities are engaged in land registration processes that, once completed, will give communities title deeds to the lands that they have owned, used, and managed collectively for generations. These lands span hundreds of thousands of kilometers and provide the basis for the livelihoods, cultures, and identities of some nine million Kenyans. The registration of community land is a welcome reflection of the academic and policy consensus that formalizing common property systems through laws like the Community Land Act, rather than attempting to replace collective tenure systems with private property, will lead to better use and management of natural resources.<sup>1</sup>

Beyond this clear preference for collective rather than individual tenure over Kenya's rangelands, however, there is considerably less agreement about the specific types of common property systems that will—or should—take shape under the Community Land Act. Community land is a novel category in Kenyan law, and registration has proceeded at an exceedingly slow pace since the Act came into force in 2018. The effects of land titling on pastoral production systems remain inadequately understood, whether academically or on the ground in affected communities. The structure and role of institutions like Community Land Management Committees are emergent questions with which communities, civil society organizations, and the Kenyan government are actively experimenting.

Herders in many parts of Kenya have questions about how community land registration will affect their access to and management of important natural resources, like water points and prime grazing areas. Some initial studies of implementation of the Community Land Act and

its Regulations have also expressed skepticism about the Act's implications for pastoral production systems and livelihoods.<sup>2</sup> Evidence from other country contexts, as discussed in the International standards section below, suggests that such concerns are justified, at least in part: registration processes tend to concentrate certain rights, like the right to exclude outsiders, in particular groups, generating gains for some and losses for others.

**This study, which brought together land rights practitioners from Namati and four pastoralist-led organizations in northern Kenya, set out to engage these questions through a case-study-based look at communities' diverse experiences with registration and mobility.** Between August and October 2024, researchers conducted interviews and focus-group discussions with 364 people in four clusters of neighboring communities—Nkaroni, Lpus, and Ltirimin in Samburu county; Shulmai, Moropusi, and Maiyannat in Laikipia county; Chari, Cherab, and Kinna in Isiolo county; and Ambalo, Rawana, Walda, and Turbi in Marsabit county—that have historically shared access to critical water points or prime grazing areas in northern Kenya, like the Walda borehole, the Barsilinga plateau, or the floodplains of the Ewaso Nyiro river. In Laikipia and Samburu, the study included six communities which had previously registered and titled their land under the Land (Group Representative) Act, Cap 287 and, over the past several years, transitioned from group ranches to registered community lands. The study also included eight unregistered communities in Marsabit and Isiolo whose lands were held in trust, at the time of the study, by county governments.

To assess whether and how the registration and titling of land under the Community Land Act

<sup>1</sup> See generally Liz Alden Wily, "Collective Land Ownership in the 21st Century: Overview of Global Trends," *Land*, vol. 7 (2018). This is considered especially true in dryland and rangeland ecosystems, where pastoralists use strategic mobility across large land areas to manage uncertainty and maximize returns on variable, unevenly distributed resources. See generally Ian Scoones (ed.), *Pastoralism, Uncertainty, and Development* (2023).

<sup>2</sup> See, e.g., Rahma Hassan, Karuti Kanyinga, & Iben Nathan, "No Option but to Settle! The Community Land Act, Devolution and Pastoralism in Samburu County, Kenya," *Nomadic Peoples*, vol. 1 (Sept. 2023).



and its Regulations might affect pastoralists' access to and sharing of resources, especially water and pasture, that are important to pastoral production systems, the study asked questions about: the natural resources that are important to community members' livelihoods and household uses; the governance of those resources and the effects, if any, that registration has had on resource use and management; and the implications, or anticipated implications, of changes in resource governance for pastoralists' access to and use of resources.

Based on interviews and focus-group discussions with members of pastoralist communities in Marsabit, Laikipia, Isiolo, and Samburu counties, the study found that:

**1. Most members of pastoralist communities in northern Kenya support community land registration but disagree about whether and how registration will affect their mobility.**

Almost all of the participants in the study were aware and supportive of community land registration. Many participants, especially in trust land areas, associate registration with a presumed loss of mobility, though, or access to certain resources. Many participants, especially in the former group ranches, also expect that if registration strengthens the community's capacity to manage its land and to exclude non-members who do not follow established rules, herders' need for mobility will be reduced by greater resource availability at home.

**2. Registration seems, at this early stage, to place too much emphasis on communities' power to regulate or exclude non-members.**

Participants in this study generally view registration as licensing communities to surveil and regulate non-members and to exclude rule breakers. In Laikipia and Samburu, for example, herders' mobility practices have already been affected by a new requirement for non-members to stay in a community member's compound rather than in temporary settlements (*laleta*). Many study participants also expressed hope that registration will strengthen the community's control of disputed areas, like Kom or Yamicha, by resolving border disputes in the community's favor.

**3. Registration has yet to formalize any access or user rights that pastoralists establish based on negotiation, seasonality, or reciprocity.**

None of the assessed communities have registered any non-member's customary rights to access or use resources within their lands, whether via Form CLA 9, the community bylaws, a claim during adjudication, or otherwise. No individual or community in the study area has applied to register seasonal or use rights to resources found in other community lands. Additionally, none of the assessed communities have enacted identifiable measures, as required under the Community Land Act, that facilitate access, use, and co-management of resources with other communities who have recognized customary claims to those resources.

**4. Mapping processes are overreliant on administrative borders and ground-based surveys, without enough regard for community-defined boundaries.**

In the former group ranches, communities described the transition to community land as a technical conversion of the community's preexisting map and name, rather than an open and participatory adjudication process that registered a full bundle of rights and interests or resolved ongoing boundary disputes. In trust land areas, the assessed communities have significant intra- and inter-community disagreements—about the appropriate unit of registration, for example, or the correct border markers—that will require careful management during and after adjudication.

**5. Registration has been an elite-driven process and, as a result, many affected resource users—especially women, young people, and people who herd livestock—have not been adequately involved in rule- or decision-making.**

Community land registration has, to date, relied heavily on in-person meetings with designated community leaders or representatives, most often male elders. Communities and duty bearers have yet to make effective use of digital technologies, vernacular radios, drama or audiovisual content, or other modes of public sensitization. None of the relevant laws or bylaws have been translated into Kiswahili or local languages. The people



most affected by registration—those who depend directly on the land as they engage in pastoral production—reported a near-total lack of knowledge of the details of registration and repeatedly called for more participatory processes and clear, accessible public education.



The Kenyan government should allocate more resources to continuous public education about the CLA and its Regulations.

**6. The rules and institutions formed by communities under the CLA are still new and have not yet created strong checks on the decision-making powers of elites.**

Community Land Management Committees are fledgling institutions that occupy uncertain positions in the already-diverse institutional landscape of each community land. Participants in this study disagree over whether and how new institutions are affecting (or should affect) the involvement of women, young people, and minorities in land governance. Community Assemblies, which convene all adult members of a registered community, are practically difficult for communities to operationalize and, in most cases, play little to no substantive role in land governance.

The findings of this study indicate that, despite the requirements of Kenyan constitutional and land law discussed in the *Legal Analysis* section below, community land registration is not being implemented in ways that would be most protective of pastoralists' rights and livelihood systems. Duty bearers and communities must do more to secure the full range of property rights recognized by pastoral systems, instead of focusing narrowly on ownership and exclusion rights. In other contexts, including Guinea, Senegal, and Mongolia, tenure formalization programs have registered more diverse bundles of rights, including user and access rights, and have placed a heavier emphasis on livestock-corridor mapping, information-sharing, and dispute-resolution processes.

Duty bearers and other stakeholders must also address the fact that significant numbers of study participants, especially women and people directly engaged in herding livestock, reported inadequate knowledge of and participation in the process of registering their community land. The Kenyan government should allocate more resources to continuous public education about the CLA and its Regulations. Implementation of the Act should also be adjusted to better engage communities' existing decision-making processes: relevant laws should be translated into Kiswahili, Maa, Afaan Oromo, and other local languages, for example, and physical meetings with recognized community leaders should be complemented by mobile engagements, radio programs, and the diffusion of audiovisual information via digital technologies.

Ongoing and rigorous study of the effects of community land registration on pastoralists' land and resource rights is crucial, given the broader implications for rangeland ecosystems and pastoral livelihoods across the Horn of Africa and the rest of the globe. Moreover, land titling under the Community Land Act will require some unique, under-studied types of property-regime transitions—from private property to commons, for example, or from commons to open-access systems—with significance for legal scholars and others working on academic theories of commons governance.

Kenya's registration of community land is a welcome, rights-affirming step that, if sufficiently resourced and implemented, will protect some of Kenya's most biodiverse landscapes and sophisticated livelihoods systems. This study is meant to help diverse stakeholders understand and improve implementation of the Community Land Act, in hopes of maximizing benefits to millions of affected Kenyans and generating insights for pastoralists and other holders of community land rights around the world.



## Methodology

This learning initiative was a joint undertaking between Namati and four pastoralist-led organizations in northern Kenya: the Center for Research and Development in Drylands (CRDD), Indigenous Strategy and Institutions for Development (ISID), Pastoralist Women for Health and Education (PWHE), and the Indigenous Movement for Peace Advancement and Conflict Transformation (IMPACT). The learning questions grew out of the involved organizations' work on community land registration and pastoral livelihoods in four counties: Isiolo, Marsabit, Laikipia, and Samburu.

The goal of the research was to assess whether and how the registration and titling of land under Kenya's Community Land Act might affect pastoralists' access to and sharing of resources that are important to pastoral production systems. The research team designed the study around four clusters of neighboring communities—Nkaroni, Lpus, and Ltirimin in Samburu county; Shulmai, Moropusi, and Maiyanat in Laikipia county; Chari, Cherab, and Kinna in Isiolo county; and Ambalo, Rawana, Walda, and Turbi in Marsabit county—that have historically shared access to critical water points or prime grazing areas, like the Walda borehole or the Barsilinga plateau.<sup>3</sup>

Another key criterion for inclusion in the study was a community's registration of, or significant progress towards registering, their land under the Community Land Act. At the time of the study, all of the assessed communities in Laikipia and Samburu had registered their community land and received a title deed. In Marsabit and Isiolo, five of the study communities—Walda, Rawana, Turbi, Chari, and Cherab—had submitted a registration application, including a register of members, a sketch map, and agreed-upon rules and regulations, to the community land registrar in Isiolo. Two communities—Ambalo and Kinna—which had not yet taken significant steps towards registration were included as comparison points to other unregistered communities.

The research team also considered the tenure arrangements that governed each community's lands prior to community land registration. The Laikipia and Samburu clusters include communities which had previously registered their lands as a group ranch under the Land (Group Representatives) Act, 1968. The clusters in Marsabit and Isiolo, on the other hand, include communities whose unregistered lands have historically been held in trust by provincial or county governments under the Trust Land Act, 1939 and, currently, the Community Land Act.

Data collection took place between August and October 2024 and included 364 participants. Most participants in Samburu and Laikipia were from the Samburu and Maasai ethnic groups; in Isiolo and Marsabit, most participants were Borana or Gabra. The study also included some Yiaku, Sakuye, Turkana, Rendille, and Somali participants.

In each assessed community, the research team conducted one focus group with knowledgeable leaders—including elders, water and grazing committee members, Community Land Management Committee (CLMC) members, and conservancy board members—and one or two focus-group discussions with women ranging in age from 18 to 60+ years. Participants in both focus-group categories were purposively sampled, often in collaboration with the area chief, based on participants' knowledge of community land registration. Separately, researchers randomly sampled and interviewed herders, either in focus groups or individually, by traveling to grazing areas, boreholes, dams, rivers, forests, or *forr* settlements. In total, the research team conducted 44 focus-group discussions and 24 individual interviews. Interviews were conducted in Maa or Afaan Borana.

<sup>3</sup> Due to time and resource constraints, the research was not able to assess some of the longer-distance sharing arrangements affecting pastoral livelihoods in the study area (e.g., herders traveling from Ethiopia to Walda, from Samburu to Kom, or from Isiolo to Mukogodo Forest).

Research team also conducted nine key-informant interviews with duty-bearers in county and national government. Interviews included staff from the county governments of Samburu, Isiolo, and Marsabit, as well as the two principal national-government bodies mandated to register community land: the Ministry of Lands, Public Works, Housing, and Urban Development (Ministry of Lands) and the National Land Commission (NLC).

This learning initiative was conceptualized as a case-study-based survey of communities' diverse

perspectives on registration and mobility. The research team did not seek to reach statistically significant sample sizes or establish causal relationships between community land titling, resource governance, and mobility in the assessed areas. Rather, the goals of the research were to understand implementation of the Community Land Act in more detail, gather community perspectives on how registration might affect mobility and pastoral production, and identify priority areas for further study.



## 1. Background on Use and Governance of Shared Resources in the Study Areas

This section describes the lands and resources that sustain pastoral livelihoods in the surveyed communities and explains, in general terms, how those lands, resources, and livelihood systems are governed, both traditionally and today. These baseline descriptions are meant to make any changes that have resulted, or may result, from community land registration more clearly comparable to the status quo before registration, as well as to historical trends.

The study area includes communities in four counties in northern Kenya: Laikipia, Samburu, Isiolo, and Marsabit. These four counties cover approximately 127,000 square kilometers<sup>4</sup> and, collectively, are home to some 1.5 million people, according to the 2019 Census.<sup>5</sup> The Kenyan government has classified all four counties as arid and semi-arid lands (ASALs), based on the low and variable amount of rainfall received annually and comparatively high rates of evapotranspiration.<sup>6</sup> In these arid and semi-arid environments, where most of the land area is covered by drylands and rangelands, a large majority of people engage in pastoralism as a source of food, income, and identity.

Pastoralism is defined, for the purposes of this study, in line with the overarching framework used by the United Nations: *"Pastoralism is a wide family of livestock-based, livelihood and food production systems that ... share a specialization in improving animals' diets and welfare by managing their grazing itineraries at a variety of scales in time and space."*<sup>7</sup>

Globally, pastoralism takes many forms. In Kenya, two defining components of pastoral systems are: i) herders' strategic movement and selective feeding of livestock, and ii) communities' collective rights to own and manage land and resources.

First, since rangelands are highly dynamic environments where many resources are only available temporarily, pastoralists in northern Kenya have developed specialized mobility practices to convert the variability of the rangelands into an asset, rather than a constraint. For example, by monitoring conditions across a wide rangeland area and moving livestock to specific places where they can consume desirable combinations of plant species, herders are able to raise their livestock on higher-quality diets than would be possible if livestock stayed in one place or moved in unplanned ways.



<sup>4</sup> According to the Kenya National Bureau of Statistics, the land sizes of each county are: Marsabit - 70,961.2 sq km; Samburu - 21,000 sq km; Isiolo - 25,700 sq km; and Laikipia - 9,532 sq km.

<sup>5</sup> Kenya National Bureau of Statistics, *2019 Kenya Population and Housing Census: Volume I: Population by County and Sub-County*, p. 7 (Nov. 2019).

<sup>6</sup> Ministry of Devolution and ASALs' State Department for Development of the Arid and Semi-Arid Lands, *Strategic Plan (2018-2022): Unlocking the Potential of ASALs for Accelerated National Development*, pp. ii, vi (2018). Evapotranspiration refers to the loss of water from a land surface through the combination of evaporation and transpiration. See generally Food and Agriculture Organization of the United Nations, *Introduction to evapotranspiration*, <https://www.fao.org/4/x0490e/x0490e04.htm>.

<sup>7</sup> Food and Agriculture Organization of the United Nations, *Pastoralism: Making Variability Work*, p. 3 (2021). See also African Union, *Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities*, p. i (Oct. 2010) ("African pastoralism is defined by a high reliance on livestock as a source of economic and social wellbeing, and [pastoralists' use of] various types of strategic mobility to access water and grazing resources in areas of high rainfall variability.")

**Another central feature of pastoral systems in Kenya is the communal management of land and natural resources.** The mobility practices described above depend, in significant part, on communities' collective tenure over large land areas and recognition of other pastoralists' rights to access grazing resources within those lands.

Pastoral property rights are rarely exclusive: customary systems provide recognized processes, discussed in the sub-sections below, for how user rights should be negotiated and managed. These flexible, reciprocal, and non-exclusive common property regimes are both a response to the typical variability of resource distributions across rangeland environments and a way to manage more severe, periodic shocks, like conflict, disease, or drought.

For much of Kenya's recent history, pastoralists' collective land tenure systems have been undermined by laws that failed to recognize common property and, instead, favored the private property rights of individuals. Pastoral systems have endured, however, often through a combination of resistance and adaptation to changing political conditions. Today, according to county government estimates, around 80 percent of the land in Samburu, Isiolo, and Marsabit is currently classified as community land.<sup>8</sup> In Laikipia, where significant land areas were seized by European settlers and converted into private ranches or wildlife conservancies, just 7.45 percent of the county is community land.<sup>9</sup>

Since the enactment of the Community Land Act and its Regulations, all of the community land in Laikipia has been registered and titled, as has much of the community land in Samburu.

In both Laikipia and Samburu, many communities had previously registered as group ranches under the Land (Group Representatives) Act (Cap. 287) and received title deeds to their lands.<sup>10</sup> In places where communities decided not to form group ranches—including in Marsabit, Isiolo, and parts of Samburu—community land titling is proceeding more slowly.<sup>11</sup> Under the Community Land Act, these unregistered community lands are currently held in trust by county governments on the community's behalf.<sup>12</sup>

This study was designed to: i) explore whether and how land titling under the Community Land Act has affected, or will affect, the land tenure and property regimes of pastoralist communities, and ii) to identify potential implications of those changes for pastoral mobility, resource-sharing, and production. The study focused specifically on pastoralists' rights to access, use, and manage critical water points and grazing resources that directly sustain livestock production systems in the rangelands.<sup>13</sup>

<sup>8</sup> Rahma Hassan, Iben Nathan, & Karuti Kanyinga, "Will community rights secure pastoralists' access to land? The Community Land Act in Kenya and its implications for Samburu pastoralists," *The Journal of Peasant Studies* (2022), p. 9; Izzy Birch, *Nawiri Desk Study: Natural Resource Management and Nutrition on Isiolo and Marsabit Counties, Kenya* (Jul. 2021), p. 8.

<sup>9</sup> County Government of Laikipia, *Laikipia County Spatial Plan (2023-2033): Final Draft Plan*, p. 141 (Aug. 2023).

<sup>10</sup> The legal definition of group ranches in Kenya involved registering land that was communally owned under recognized customary law by "a tribe, clan, section, family or other group of persons"—most often Indigenous and rural communities who practised pastoralism. Land Adjudication Act, 1968, at art. 2; Land Group Representatives Act, at art. 2. See also Namati & the National Land Commission, *Monitoring the Transition of Group Ranches to Community Land in Kenya: A Case Study of Laikipia, Kajiado, West Pokot, and Samburu Counties* (2023).

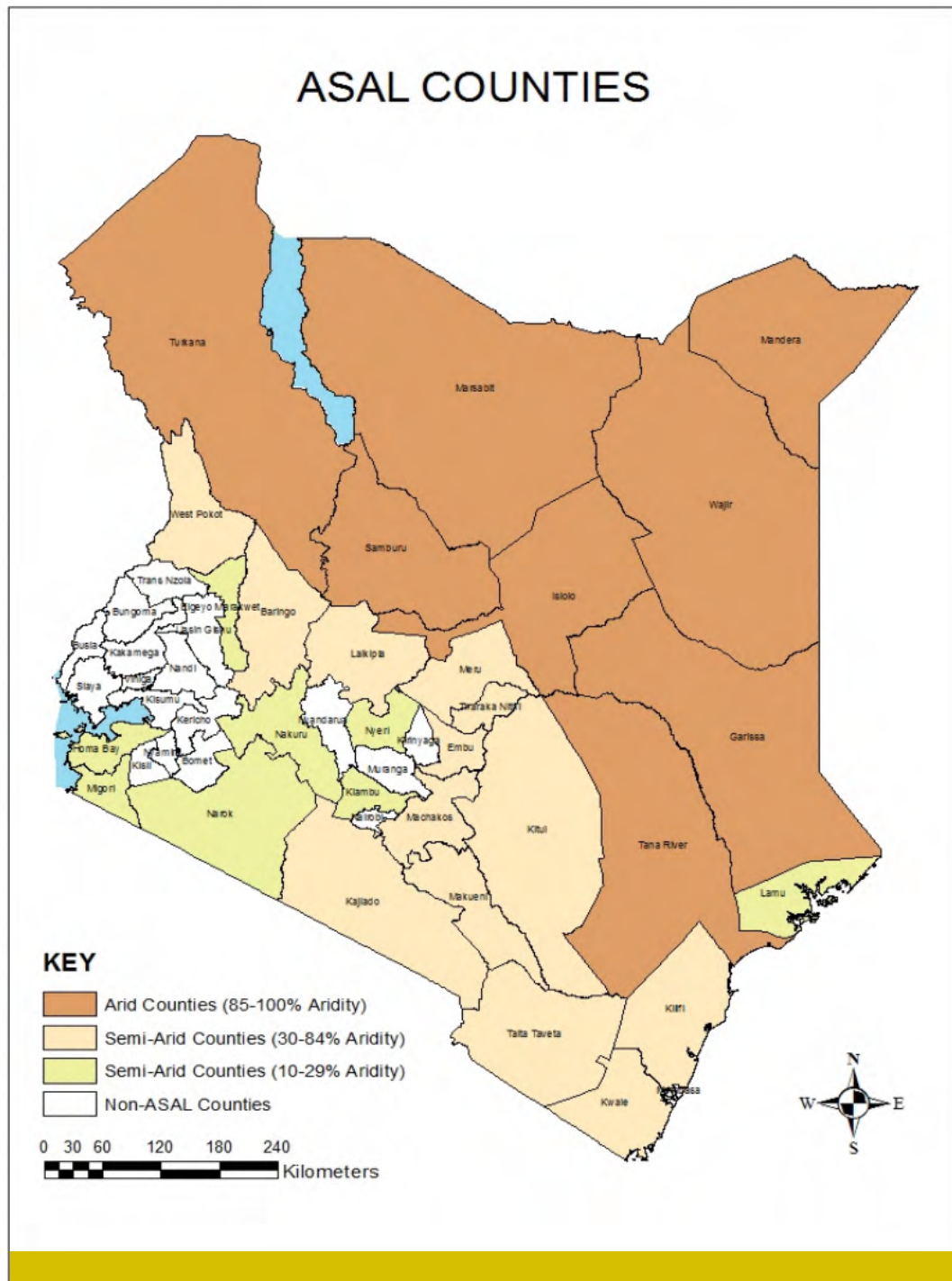
<sup>11</sup> At the time of writing, 59 communities in Kenya had been fully registered and titled: fifty former group ranches and nine former trust lands (one in Garissa, two in Samburu, and six in Turkana).

<sup>12</sup> Community Land Act, s. 6 (1).

<sup>13</sup> The key water resources identified by participants include boreholes, deep and shallow wells, dams, rivers, water pans, and natural ponds. Important grazing resources identified by participants include pasture, hay, acacia trees and pods, and salt licks. Other types of resources—construction materials, wildlife, minerals, human capital, or public infrastructure, for example—were sometimes mentioned by communities during focus group discussions, but do not constitute the focus of this analysis.



### Map of Kenya Showing Varying Aridity of ASAL Counties



The study also assessed access to resources used at the household level—including firewood, home construction materials, potable water, hay, and medicinal herbs—or for cultural or spiritual reasons.

With those general features of the study in mind, the subsections below provide additional information on each of the four clusters of communities in the study area, including: i) the location, demographics, and registration status of the communities; ii) the agroecology of the area and the livelihoods supported by those environments; and, iii) the existing laws and

institutions that govern those communities' lands and resources.

These introductions are meant to familiarize readers with the study area and to help readers understand and interpret the perspectives from community members that are quoted later in the report. The profiles also highlight the complexity and diversity of the communities involved in this research and underscore the need for implementers of the Community Land Act to make detailed, place-specific analyses of how the Act should be applied to a particular community.





## 1.1 Samburu county: Nkaroni, Lpus, & Ltirimin

### 1.1.1 Geography, demographics, and registration status

Nkaroni, Lpus, and Ltirimin are registered community lands located in Wamba West ward of Samburu East sub-county in Samburu county. Nkaroni community lands covers around 69,000 acres (28,000 hectares) and is home to an estimated 3,000 people.<sup>14</sup> Lpus community land extends over 71,500 acres (29,000 hectares) with a population of approximately 5,000 people.<sup>15</sup> Ltirimin community land covers 37,065 acres (15,000 hectares) and has around 1,000 members.<sup>16</sup> All three community lands are populated by the Samburu ethnic group.<sup>17</sup>

Together with another neighboring community, Sessia, these communities form the Lodung'okwe adjudication section.<sup>18</sup> In Kenyan law, adjudication sections are administrative units, defined by the national government, within which the rights and interests of persons in land have been ascertained and registered.<sup>19</sup> In Lodung'okwe, according to community elders' recollections, the adjudication area was registered as a group ranch in 1976<sup>20</sup> and, later, subdivided into four separate group ranches: Nkaroni, Lpus, Ltirimin, and Sessia.<sup>21</sup>

In 2021, the group ranches of the Lodung'okwe area began the transition process from group ranches to community land. Nkaroni, Lpus, and Ltirimin elected Community Land Management Committees (CLMCs) in 2021 and received title deeds in 2022.



<sup>14</sup> Interview with area chief, Nkaroni, August 2024.

<sup>15</sup> Interview with area chief, Lpus, August 2024.

<sup>16</sup> Focus group discussion with leaders, Ltirimin, August 2024.

<sup>17</sup> In Nkaroni, most members are from the Lorokosho clan; the Lukumae, Lmasula, and Longeli clans are also present. In Lpus, Lukumae and Longeli are the majority clans; Ltoijo, Nyaparai, and Lorokushu are minority clans. Clans living in Ltirimin include the Lpsikishu (majority), Longeli, Lukumai, and Ltoijo.

<sup>18</sup> Focus group discussion with leaders, Ltirimin, August 2024.

<sup>19</sup> Land Adjudication Act (Cap. 284), Sections 3(1) and 5.

<sup>20</sup> group discussion with leaders, Ltirimin, August 2024. ("A group ranch was formed here in 1976; I was among those living here in 1976. The group ranch was a foreign concept — a foreign ideology. The notion seemed like people were coming to take our land. A few clever people were able to convince some members secretly, though. They registered 126 members in Ltirimin. There were so many other members living here that time, but they didn't want to be in the register. They were very suspicious and there was no awareness. After 1976, we stayed like that for 20 years. Then, in 1996, we registered 397 more people, in addition to the 126 from before. I was chief of the area at that time. We never had a title deed, though. We had four blocks within the Lodungokwe administration section — Ltirimin, Nkaroni, Lpus, Sesia — and one map for the adjudication section.")

<sup>21</sup> Focus group discussion with leaders, Ltirimin, August 2024. See also Interview with area chief, Nkaroni, August 2024.

### 1.1.2 Agro-ecology and resource use

Land in Samburu county is generally categorized as either lowlands (*lpurkel*), ranging from 900 to 1,200 meters above sea level, or highlands (*ldonyo*), at altitudes of 1,500 meters or more. Nkaroni, Lpus, and Ltirimini are found in the red-soil lowlands (*lpurkel onyiekie*) southwest of Wamba.<sup>22</sup> These hot, arid areas typically receive between 250 and 450 millimeters (mm) of precipitation per year.<sup>23</sup>

Pastoralism is the main economic activity for the overwhelming majority of people in Lpus, Nkaroni, and Ltirimini. Pastoralists in this area prefer to keep cattle and goats, as well as smaller numbers of camels, sheep, and donkeys.<sup>24</sup> Other economic activities include charcoal production, firewood collection and sale, construction, brewing, honey production, trade, livestock marketing, and tourism.<sup>25</sup>

The most important grazing resources in this section of the study area are found along the Barsilinga river, where prime grazing fields, far from human settlements, receive the lorikine short rains in July and August.<sup>26</sup> Lpus, Nkaroni, and Ltirimini community lands each registered claims to portions of the Barsilinga area, which serves as the primary dry-season reserve area for the three communities. Prime grazing areas are also available on the Nkaroni plains, if the area receives rainfall.<sup>27</sup> Pastoralists in this area

generally move outside of their community lands once or twice per year—between March and October, usually—to access other grazing areas, usually around Marti, Losesia, Sarara, Ngilai, Ndonyo Wasin, Baragoi, Kom, or Laikipia.

Samburu county forms part of the northern catchment of the Ewaso Ng'iro river basin. In Nkaroni, Lpus, and Ltirimini, various seasonal rivers (*lagas*)—including Nagorowuoro, Barsalinga, Resim, Seiya, Ladasawuo, Lesimiti, Lchoroi, and Milgis—flow into the Ewaso Ng'iro river, which forms most of the southern border of Samburu East sub-county. For most of the year, community members and livestock can access water in these rivers or at the Namunyak, Nongowarak, or Ltinga dams.

Participants in this study also indicated that the Nagorowuoro, Lkisin, Ladasawuo, and Seiya rivers are reliable sources of salt licks.

### 1.1.3 Governance

Land and resource use by pastoralists in Nkaroni, Lpus, and Ltirimini is traditionally governed by councils of elders who develop and enforce the *enata enkop* (lit. “bind the land”) system of rangeland management.<sup>28</sup> Under *enata enkop*, elders prohibit or restrict grazing in certain areas until a designated time, in order to prevent overgrazing or preserve those areas as dry-season reserves. Elders who are members of the

<sup>22</sup> Annemiek Pas, “Governing Grazing and Mobility in the Samburu Lowlands, Kenya,” *Land* (2018), p. 6.

<sup>23</sup> County Government of Samburu, *Samburu County: Participatory Climate Risk Assessment Report* (May 2023), p.

<sup>12</sup> Rainfall amounts in Samburu, like the rest of the study area, are both spatially and seasonally variable, resulting in ecologically complex micro-climates. Highland areas traditionally receive long rains (*Ing'erng'erwa*) between April and May, as well as short rains in July and August (*lorikine*) and October and December (*Itumurin*). Lowland areas do not typically receive lorikine rains. Pas, “Governing Grazing,” see above note 28, p. 7.

<sup>24</sup> USAID Nawiri Consortium, *Household Economy Analysis Baseline for Four Livelihood Zones in Samburu County, Kenya*, p. 5 (Oct. 2021)

<sup>25</sup> *Id.*

<sup>26</sup> Pas, “Governing Grazing,” see above note 28, p. 7.

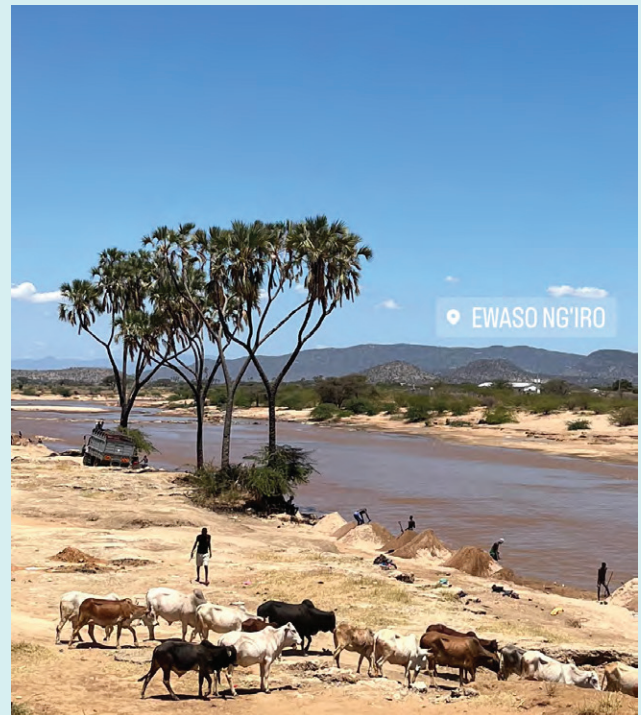
<sup>27</sup> Focus group discussion with leaders, Nkaroni, August 2024.

<sup>28</sup> Pas, “Governing Grazing,” see above note 28, p. 8. *Enata enkop* has been used by Maa-speaking communities in eastern Africa for more than a century. *Id.* The system may also be spelled *enata e nkop*.



*loip* (lit. "shade") alternative justice system<sup>29</sup> enforce the grazing plan and may impose penalties, like fines or curses, on any rule-breakers.<sup>30</sup>

In addition to the councils of elders, the communities in Nkaroni, Lpus, and Ltirimin have formed committees, with varying degrees of formality, to manage resources, including wildlife, water, and pasture. The main resource-governance committees in Nkaroni, Lpus, and Ltirimin, in addition to the CLMC, include: Meibae community conservancy, a wildlife conservancy established by the Northern Rangelands Trust;<sup>31</sup> Water Resource User Associations (WRUA), which is a voluntary water-management structure registered under the Kenya's national Water Resources Authority;<sup>32</sup> and community policing committees under the *Nyumba Kumi* (lit. "ten houses") initiative, composed of village elders and, at higher levels, law enforcement agencies and other stakeholders.<sup>33</sup>



Participants in this research indicated a considerable degree of overlap among the different committees, in terms of both mandate and membership. For example, all four of the Meibae conservancy board members from Nkaroni are also members of the Nkaroni CLMC,<sup>34</sup> and six of the ten male members of the Nkaroni CLMC are also members of the local council of elders.<sup>35</sup> In Nkaroni, the council of elders and the Meibae conservancy grazing committee work together on designing and enforcing *enata nkop*; the CLMC does not play an active role, in and of itself, in grazing management.<sup>36</sup>

<sup>29</sup> This system is also called *loipi lolpayiani*, lit. "shade of men." In Nkaroni, approximately fifty men from the Lkishami, Lmooli, Lkimaniki, and Lkishili age sets are currently members of *loip*. *Loip* meetings are convened and moderated by influential persons recognized as *laigwanak* (pl. *laigwanani*), translated as "one who speaks most often during assemblies." The word is derived from the verb *aigwan*, meaning "to give one's opinion." See Giordano Marmone, "Le pouvoir des jeunesses: Pratique musicale et construction de l'autorité chez les Samburu (Kenya)," *Ateliers d'Anthropologie* vol. 47, para. 45 (2020). *Laigwanani* may also be described as clan or age-set leaders. See Hannelore Van Bavel, "The 'Loita Rite of Passage': An alternative to the alternative rite of passage?," *SSM: Qualitative Research in Health*, vol. 1 (Dec. 2021).

<sup>30</sup> See *generally* Judiciary of Kenya, "CJ Koome on quest to expand access to justice," (Aug. 25, 2023), <https://judiciary.go.ke/cj-koome-on-quest-to-expand-access-to-justice/>. See also Bogonko Bosire, "Kenya: Learning in the Shade," (Oct. 18, 2006), <https://allafrica.com/stories/200610180024.html> ("Samburu men make community decisions in the shade of a tree specifically designated as the site of the council.")

<sup>31</sup> Meibae is governed by a conservancy board with members elected by each of the constituent community lands: Nkaroni, Lpus, Ltirimin, and Sessia.

<sup>32</sup> See *generally* Water Resources Authority, County & Community Engagement Division, <https://wra.go.ke/county-community-engagement-division/>. The Water Resources Authority is "a state corporation ... mandated ... to safeguard the right to clean water." *Id.*, at homepage.

<sup>33</sup> See *generally* Walter Otieno Andhoga & Johnson Mavole, "Influence of Nyumba Kumi Community Policing Initiative on Social Cohesion among Cosmopolitan Sub Locations in Nakuru County," *International Journal of Social and Development Concerns*, vol. 1, no. 6 (Oct. 2017).

<sup>34</sup> Interview with area chief, Nkaroni, August 2024.

<sup>35</sup> *Id.* Other men of the requisite age may be considered to hold other roles, like professionals.

<sup>36</sup> Focus group discussion with leaders, Nkaroni, August 2024. Focus group discussion with herders, Ndikir, August 2024.

## 1.2 Laikipia county: Shulmai, Moropusi, & Maiyanat

### 1.2.1 Geography, demographics, and registration status

Shulmai, Moropusi, and Maiyanat are registered community lands in Mukogodo East and West wards, Laikipia North sub-county, Laikipia county. Shulmai community land covers approximately 6,200 acres (2,500 hectares); some 5,000 people live in Shulmai, including 1,211 registered members.<sup>37</sup> Moropusi community land spans an estimated 26,806 acres (10,848 hectares) with 6,800 members aged 18 years or older.<sup>38</sup> Maiyanat community land includes 16,400 acres (6,640 hectares), around 3,000 members, and a total population of approximately 6,000 people.<sup>39</sup> The communities are chiefly populated by subgroups of the Laikipia Maasai, including the Momonyot, Yiaku, Il Ngwesi, and Ldikiri.<sup>40</sup>

Previously, the community lands had been adjudicated and titled as Kuri Kuri, Moropusi, and Makurian group ranches, respectively.<sup>41</sup> In 2020 and 2021, the communities elected CLMCs, filed registration applications with the community land registrar in Nanyuki, and received title deeds for

Shulmai, Moropusi, and Maiyanat community lands.

### 1.2.2 Agro-ecology and resource use

Shulmai, Moropusi, and Maiyanat are located in some of the most arid parts of Laikipia county, receiving between 400 and 700 mm of rainfall each year.<sup>42</sup> The Mukogodo area is classified by the Laikipia county government as an "upper midlands" agro-ecological zone suitable for livestock production and sisal farming.<sup>43</sup> The predominant livestock kept in this area are cattle, sheep, and goats.<sup>44</sup>

Shulmai and Maiyanat community lands border Mukogodo Forest, a gazetted forest reserve that spans 30,189 hectares of hilly terrain in northeastern Laikipia at altitudes between 1,600 and 2,200 meters above sea level.<sup>45</sup> The forest contains open and closed forest areas, valleys, ranges, swamps, and various types of flat lands and plains.<sup>46</sup> These diverse zones support bee-keeping, pastoralism, and, traditionally, hunting and gathering.<sup>47</sup>

<sup>37</sup> Focus group discussion with leaders, Shulmai, September 2024.

<sup>38</sup> Focus group discussion with leaders, Moropusi, September 2024.

<sup>39</sup> Focus group discussion with leaders, Maiyanat, September 2024.

<sup>40</sup> The Yiaku or Yaaku are also known as the Mukogodo or the Mukogodo Maasai. See Matthias Brenzinger, "Lexical retention in language shift: Yaaku/Mukogodo-Maasai and Elmolo/Elmolo-Samburu," in *Language Death: Factual and Theoretical Explorations with Special Reference to East Africa* (1992).

<sup>41</sup> Makurian was reportedly registered in 1976 and titled in 1980. Kuri Kuri was registered in 1976 and titled in 1997.

<sup>42</sup> County Government of Laikipia, *Laikipia County Spatial Plan*, see above note 12, p. 35. See also County Government of Laikipia, *Laikipia County Integrated Development Plan (2023-2027)*, p. 5 (2023).

<sup>43</sup> County Government of Laikipia, *Laikipia County Statistical Abstract 2020*, pp. 34-35 (2020). Mukogodo Forest is considered a "lower highland" zone, receiving rainfall of 700 to 1000mm annually, while part of Shulmai community land, around Seek, is considered a "lower midland" zone, with rainfall of 400 to 500 mm per year. *Id.*

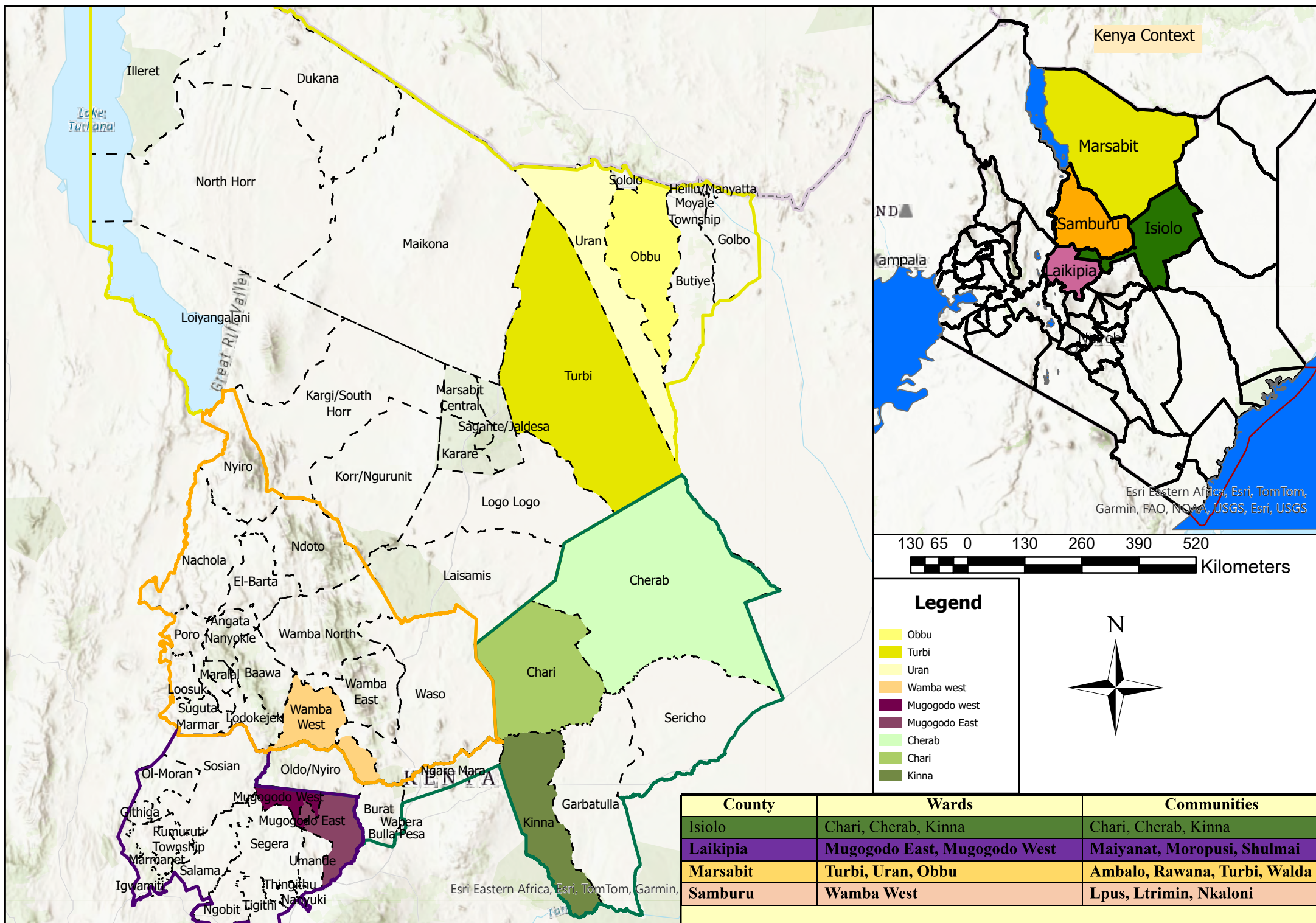
<sup>44</sup> *Id.*, p. 61.

<sup>45</sup> Kenya Forestry Research Institute, *Forest and Landscape Restoration Opportunities Assessment (ROAM) for Mukogodo Landscapes in Kenya* (Jun. 2021); see also County Government of Laikipia, *Laikipia County Integrated Development Plan*, see above note 48, p. v.

<sup>46</sup> Yaaku Laikipia Trust, *Yaaku Community Biocultural Protocol* (2024), [https://yakulaikipiaktrust.org/wp-content/uploads/2024/08/yaaku-bcp-draft-edited-aug-04\\_small.pdf](https://yakulaikipiaktrust.org/wp-content/uploads/2024/08/yaaku-bcp-draft-edited-aug-04_small.pdf).

<sup>47</sup> *Id.*, p. 11.







The forest is also a biodiversity hotspot and a critical corridor for elephant movement between Samburu lowlands, the Laikipia plateau, and the Mt. Kenya Forest Reserve.<sup>48</sup>

Mukogodo Forest is an important water catchment and one of Kenya's key water towers.<sup>49</sup> Aquifers in the Mukogodo area rest at a higher level (around 30 meters) than elsewhere in Laikipia, supporting fairly shallow boreholes with relatively high yields (4.1m<sup>3</sup>/hour).<sup>50</sup> The forest is an important dry season and drought reserve for the surrounding communities and some more distant neighbors, most often from Samburu and Isiolo.

### 1.2.3 Governance

Traditionally, the communities in Shulmai, Moropusi, and Maiyanat were organized under Maasai sociopolitical and land tenure systems, where, within the Laikipia political section (*olosh*) of the Maasai,<sup>51</sup> groups of individuals and families lived and managed resources together in localities called *inkutot* (s. *enikutoto*).<sup>52</sup> Each *enikutoto* had its own age-set leader and council of elders,

who settled disputes, governed resources, and enforced the law.<sup>53</sup> Individuals or families could acquire rights to access pasture and water in a particular *enikutoto* by residing there over time and participating in the appropriate age-set activities.<sup>54</sup> To manage limited water and pasture resources, communities focused on preserving highland pasture reserves for use during the dry seasons, as well as protecting pasture near settlement areas for access by immature and old livestock.<sup>55</sup>

Traditional governance of Mukogodo Forest, the ancestral home of the Yiaku people, differed somewhat from the community lands surrounding the forest.<sup>56</sup> For several centuries, the Yiaku lived in Mukogodo Forest as hunters and gatherers, organized within four clans and under traditional laws regulating movement and resource use.<sup>57</sup> The colonial government of Kenya converted Mukogodo into a forest reserve in 1932, partially evicting the Yiaku. In the decades that followed, the Yiaku acculturated with neighboring Maasai and Samburu communities and began livestock herding and small-scale farming.

<sup>48</sup> County Government of Laikipia, *Laikipia County Integrated Development Plan*, see above note 48, p. 20. Mukogodo Forest and the surrounding community lands are core components of the broader Laikipia-Samburu ecosystem, which hosts the second-highest density of wildlife in Kenya, after the Maasai Mara ecosystem. Many of the communities around Mukogodo Forest engage in wildlife conservation and ecotourism.

<sup>49</sup> Kenya Forestry Research Institute, *Forest and Landscape Restoration Opportunities Assessment*, see above note <sup>51</sup>, p. 16.

<sup>50</sup> County Government of Laikipia, *Laikipia County Spatial Plan*, see above note 12, pp. 66-67.

<sup>51</sup> Esther Mwangi, *Socioeconomic Change and Land Use in Africa*, p. 35 (2007). "Pastoral producers defined their rights to resources in the context of their membership in *olosh* [(pl. *iloshon*)]. ... Individual male heads of polygynous families secure rights to common grazing and water within their sectional boundaries by initiation into a specific age set. Each section is associated with recognized boundaries that are defended against unauthorized intrusion by the warrior age set (*ilmurran*); access by nonmembers has to be negotiated. In periods of drought or famine[,] there was institutionalized sharing of each others' resources." *Id.*, p. 35.

<sup>52</sup> *Id.* *Inkutot* were, according to scholars of Maasai law and socio-political organization, the most important units in Maasai society. *Id.*, p. 37 (drawing on the work of Spencer (1997, 1993, 1988); Mol (1996); Galaty (1989, 1981); Ingule (1980); Berntsen (1979a); Baxter and Almagor (1978); Jacobs (1965); Bernadi (1952), and other archival sources from Kajiado)

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*, p. 36. Mwangi describes the *inkutot* as "the basis of the Maasai transhumant herding system" and implies, but does not say directly, that each *enikutoto* has at least one "permanent, high potential, dry season pasture reserves based on permanent river, well, or spring water supplies," as well as associated "temporary, outlying, low potential, wet season grazing areas based on rain ponds and other temporary surface water supplies." *Id.*, p. 36.

<sup>55</sup> *Id.*, pp. 35-36. Additional controls on grazing also existed at the settlement or "neighborhood" level (*elatia*), where dry season reserves were further subdivided into two categories: one for use in the early to middle dry season, and another for the late dry season. *Id.*, p. 37. For more information on aspects of Maasai rotational grazing, termed *olopoleli* or *alalili*, see Edwin Ambani Ameso et al., "Pastoral Resilience among the Maasai Pastoralists of Laikipia County, Kenya," *Land*, vol. 17, no. 2 (2018), p. 8.

<sup>56</sup> Benard Mouk et al., "The politics of forest governance in a changing climate: Political reforms, conflict and socio-environmental changes in Laikipia," *Forest Policy and Economics* vol. 132, no. 5 (2021).

<sup>57</sup> Yaaku Laikipia Trust, *Yaaku BCP*, see above note 49, pp. 8-10.

Between the 1970s and the 1990s, the communities in the Mukogodo area of Laikipia, as in many other parts of Kenya, registered their lands as group ranches. The group ranches largely formalized the existing *inkutot* units<sup>58</sup> and created hybrid institutions which adapted traditional resource-governance rules into the group ranch constitutions.<sup>59</sup> Group ranch boards in this area were reportedly not very active or authoritative, though, until the late 1990s, when the communities received title deeds.<sup>60</sup>

Today, resource governance in Shulmai, Maiyanat, and Moropusi is still characterized by institutional pluralism. Like their neighbors in Samburu, communities in Laikipia have adopted various government- and NGO-backed structures since the 1990s, including *Nyumba Kumi*, WRUAs, and wildlife conservancies under the Northern Rangelands Trust.<sup>61</sup> After registration, each of the communities incorporated these various structures as sub-committees of the CLMC.

Additionally, inside the Mukogodo Forest reserve, resource use is governed by the ILMAMUSI Community Forest Association (CFA), which was formed in 2003 and registered in 2008 under the Forests Act, 2005 (Cap. 385).<sup>62</sup> The CFA divides the forest into four areas, corresponding to the neighboring community lands,<sup>63</sup> and grants user rights to members of each community. The CFA's managing committee is composed of

the CLMC Chairpersons of the four community lands, the chief of each of the four communities, representatives of recognized user groups, and some seats for other stakeholders.<sup>64</sup> Board decisions are made through consensus and emphasize the use of traditional and Indigenous knowledge systems to manage resources and resolve disputes.<sup>65</sup>



<sup>58</sup> Patricia Kameri-Mbote, *Land Tenure, Land Use and Sustainability in Kenya: Towards Innovative Use of Property Rights in Wildlife Management*, p. 5 (2005) ("The composition of group ranches was an attempt at formalising traditional community structures. The principle [sic] idea behind them was to create a land unit smaller than the traditional section but larger than the individual.") See also Lance W. Robinson et al., "Transcending Landscapes: Working Across Scales and Levels in Pastoralist Rangeland Governance," *Environmental Management*, vol. 60 (May 2017).

<sup>59</sup> Edwin Ambani Ameso et al., "Pastoral Resilience among the Maasai Pastoralists of Laikipia County, Kenya," *Land* (Jun. 2018), p. 12.

<sup>60</sup> Eva Kaye-Zwiebel & Elizabeth King, "Kenyan pastoralist societies in transition: varying perceptions of the value of ecosystem services," *Ecology and Society*, vol. 19, no. 3 (Sep. 2014), p. 17.

<sup>61</sup> See generally Kantuuru Caroline Karwitha, *Dynamics of Institutional Arrangements and their Adaptation to Socio-Economic and Ecological Challenges in Pastoral Areas of Northern Kenya* (Jul. 2015).

<sup>62</sup> See Il Mamusi Community Forest Association, Homepage, <https://ilmamusicfa.org/>. ILMAMUSI did not become fully operational until 2016.

<sup>63</sup> The acronym ILMAMUSI is derived from the names of the former group ranches that surrounded the forest: Il Ngwesi, Makurian, Mukogodo, and Sieku (also called Lekurruki).

<sup>64</sup> Interview with CFA member, September 2024. See also <https://ilmamusicfa.org/>

<sup>65</sup> Interview with CFA member, September 2024.



## 1.3 Isiolo county: Chari, Cherab, & Kinna

### 1.3.1 Geography, demographics, and registration status

Chari and Cherab *dedha* community lands<sup>66</sup> are unregistered community lands in Chari and Cherab wards, Merti sub-county, Isiolo county. Jointly, Chari and Cherab cover 12,612 square kilometers (3.1 million acres)<sup>67</sup> and a total population of 47,206 people, according to data from the 2019 census.<sup>68</sup> The communities' proposed membership registers included, as of 2022, some 11,215 people: 2,467 in Chari and 8,748 in Cherab.<sup>69</sup> Kinna-Kula Mawe-Gotu *dedha* community land (Kinna community land) is an unregistered community land in Kinna ward, Garbatulla sub-county, Isiolo county.

Kinna community land comprises 2,181 sq km (538,936 acres) and an estimated 27,800 people.

Chari, Cherab, and Kinna are predominantly populated by the Borana, as well as other semi-nomadic pastoralists such as the Gabra and Sakuye.

Chari and Cherab first began the process of registering their community lands in 2020. Progress has been slow, in part because of disputes between community members and the Isiolo county government over the name of the community lands and the unit of registration.<sup>70</sup>



<sup>66</sup> The term "*dedha*," discussed below, refers to a traditional Borana system of rangeland management and, in the names of these communities, to a rangeland unit that matches the proposed borders of Chari, Cherab, and Kinna community lands.

<sup>67</sup> County Government of Isiolo, *Isiolo County Integrated Development Plan, CIDP 2018-2022* (Mar. 2018), p. 4.

<sup>68</sup> Kenya National Bureau of Statistics, *2019 Kenya Population and Housing Census*, see above Note 10, at p. 13.

<sup>69</sup> Pastoralist Women for Health and Education, Merti Community Land Registration Process: March 2022 Report (2022), p. 13.

nairobi/property-law/evidence-law-ii/52801535 p8



The community made a submission to the registrar in 2021 to register Merti sub-county as Waso Borana community land<sup>71</sup> and, after the initial application was unsuccessful, again in 2023 as Chari and Cherab *dedha* community lands.<sup>72</sup> Interim CLMCs were elected in 2020 and again in 2023.<sup>73</sup>

In July 2024, the Cabinet Secretary for Lands, Public Works, Housing and Urban Development, in consultation with the County Government of Isiolo, gazetted Chari, Cherab, and Kinna community lands, among others, for adjudication.<sup>74</sup> At the time of this study, Chari and Cherab had recently held official CLMC elections<sup>75</sup> but had not yet completed the survey, demarcation, or adjudication processes. In Kinna, at the time of writing, the community was beginning the process of preparing a registration application.<sup>76</sup>

### 1.3.2 Agro-ecology and resource use

Chari and Cherab are very arid areas, with annual rainfall averaging 150 to 250 mm.<sup>77</sup> The communities are predominantly pastoralist,<sup>78</sup> with those in Chari mainly keeping sheep and goats while households in Cherab raise cattle, sheep, goats, and, in some cases, camels.<sup>79</sup>

In Kinna, the northern part of the land area is arid (300 and 350 mm of precipitation/year), while Kinna South is a semi-arid area (400 to 650 mm of precipitation/year) that supports some crop production.<sup>80</sup> Most pastoralists in Kinna raise cattle, sheep, and goats; around one-fifth of people also keep camels.<sup>81</sup> Crops grown in Kinna South include maize, beans, cowpeas, green grams, onions, tomatoes, mango, and papaya.<sup>82</sup>

The most important water source in Chari and Cherab is the Ewaso Ng'iro river, which forms the southern boundary of the two community lands. The floodplains (*chaafa*) are a critical dry season or drought reserve area for pastoralists from surrounding areas and from as far north as Moyale. There are also mechanized boreholes in Marara, Dima Adho, Biliqo, Bulesa, and Awarsitu.<sup>83</sup> In Kinna, the main water sources are seasonal rivers, Kachoradi springs, boreholes, shallow wells, and water pans.<sup>84</sup>

<sup>71</sup> Pastoralist Women for Health and Education, *Merti Community Land Registration Process: March 2022 Report* (2022), p. 13 ("Ten (10) interim land committee [members] from Charri and Cherab presented the CLA Form 1 to the Adjudication Officer at Ardhi House on 6th July 2021, for Charri and Cherab ward.")

<sup>72</sup> Background interview with area chief, Cherab, September 2024.

<sup>73</sup> *Id.*

<sup>74</sup> Gazette Notice No. 10357, *The Community Land Act (Cap. 287): Adjudication Programme for Isiolo County*, Kenya Gazette, Vol. 131 (2024).

<sup>75</sup> JG Wanjohi, *Notice of a Meeting: To all members of Chari dedha and Cherab dedha communities* (18 Nov. 2024) ("In exercise of the powers conferred to me by section 7(2) of the Community Land Act, Cap 287, NOTICE is hereby given that there shall be public meetings [on 3 December 2024 in Bulesa and 5 December 2024 in Korbesa] of ALL members of the CHARI DEDHA and CHERAB DEDHA COMMUNITIES for purposes of electing the Community Land Management Committee members in accordance with the Act.")

<sup>76</sup> Focus group discussion with women, Kinna, September 2024.

<sup>77</sup> County Government of Isiolo, *County Integrated Development Plan 2023-2027* (2023), pp. 17-18.

<sup>78</sup> Kenya National Bureau of Statistics, *Population Census Data 2019*, see above Note 10, at p. 44.

<sup>79</sup> R. Masake et al., *Baseline Report: Building Drought Resilience in Isiolo County Through Sustainable Livelihoods (DRIC)* (Sept. 30, 2020), p. 23. See also Catholic Relief Service (CRS), *USAID Nawiri Participatory Analysis and Co-Design of The Adapted Milk Matters Interventions* (2021), p. 15.

<sup>80</sup> County Government of Isiolo, *County Integrated Development Plan 2023-2027*, see above Note 83, at p. 18.

<sup>81</sup> R. Masake et al., *Baseline Report*, see above note 85, at p. 24.

<sup>82</sup> County Government of Isiolo, *County Integrated Development Plan 2023-2027*, see above Note 83, at p. 18.

<sup>83</sup> Northern Rangelands Trust, *Biliqo Bulesa Community Management and Community Development Plan (2017-2021)*, p. 5. Shallow wells and springs are seasonally available in Kuro Bisaan Owo, Kitiyo, Dhilo, Burquqe, Sabarwawa, Komu Ghala, Komuree, Dhima Adho, Gabmeti, and Kachorabiru. *Id.*

<sup>84</sup> See Zamconsult Consulting Engineers Ltd, *Environmental and Social Impact Assessment (ESIA) Project Report for Proposed Kinna Water Supply Project Under Northern Water Services Board* (Dec. 2017), p. 21.



### 1.3.3 Governance

Land and resource use in Chari, Cherab, and Kinna is traditionally governed by Borana law (*seera Borana* or *aada seera*), especially as applied under the *dedha* and *herega* systems of rangeland and water management, respectively. Generally, in the *dedha* system, communities have divided the entire Borana rangeland area, stretching from Ethiopia down to Waso (Isiolo), into grazing areas called *dedha*.<sup>85</sup> The system gives authority to elders (*jarsa dedha*) to manage resource use within each *dedha*, chiefly by sorting the available pasture into wet season grazing, dry season grazing, or drought-reserve areas. At the same time, communities and households also separate herds of mature, more mobile animals (*gues*) from milk-producing or young animals (*hawich*).<sup>86</sup> These two practices—rotational grazing and herd-splitting — are attempts to efficiently manage highly variable resources

In the *herega* system, elders (called *abba herega*) manage water points and set the order of priority for watering animals, including both livestock and wildlife.<sup>87</sup> The precise rules and regulations that govern management of water depend on the water point in question.<sup>88</sup> A herder's access rights to a particular water source may be based on ownership rights (*konfi*), clan association, inter-clan relationships and agreements (*sunsuma*), or, for outsiders, a request to the appropriate authorities.<sup>89</sup> Access to wells and boreholes also depends on the availability or absence of other, temporary water sources.<sup>90</sup> Like the *dedha* system, these rules are intended to optimize use of scarce and variable water resources.

<sup>85</sup> Within each *dedha*, lands are further subdivided into localities (*ardha*), settlements (*olla*), and individual households (*maan*). In Chari, Cherab, and Kinna, the *dedha* borders align with the ward level of the Kenyan government's administrative boundaries.

<sup>86</sup> The movement of *gues* herds to satellite pastures—often tens or even hundreds of kilometers away—is used to take advantage of temporary clusters of highly productive resources, as described above, as well as to protect pastures close to homesteads (*maara qaa*, lit. "nearby grass") for access by *hawich* animals, which remain nearby to provide milk for people in settlement areas. During dry seasons or droughts, as *maara qaa* resources are depleted, women are traditionally responsible for gathering hay for *hawich* animals.

<sup>87</sup> All herders at a particular source must also collect water in a designated chronological order, based on the priority rights of the herds present.

<sup>88</sup> Deep wells and boreholes—which are the most labor-intensive but reliable sources of water in the rangelands—are traditionally clan-owned, with title (*konfi*) vested with a certain family within the clan. Shallow wells are governed by the person, family, or clan who dug the well (*abba ell*) and, secondarily, by the *abba herega*. Dams or flowing rivers are managed by the *abba herega*, in consultation with the *jarsa dedha*, and temporary water sources, like small ponds formed by rains, are unregulated.

<sup>89</sup> See generally Boku Tache & Ben Irwin, *Traditional institutions, multiple stakeholders and modern perspectives in common property: Accompanying change within Borana pastoral systems* (Apr. 2003).

<sup>90</sup> Water found in streams or ponds, for example, must be used before permanent sources. *Id.* See also Daoud Tari & James Pattison, *Evolving Customary Institutions in the Drylands: An opportunity for devolved natural resource governance in Kenya?* (Apr. 2014), pp. 10-11.

Traditionally, movements of livestock from one *dedha* to another—and access to water and settlement areas within that *dedha*—must be pre-arranged with the appropriate decision-makers, including the *jarsa dedha* and *abba herega*. Individuals or groups of herders also rely on traditional scouting practices (*aburu*) to assess the availability and quality of pasture and water before moving herds or settlements from one place to another.

In practice, elders' authority to enforce the *dedha* and *herega* systems has been considerably weakened over time. Today, many other factors or institutions influence herders' compliance, or not, with the *dedha* rules. For example, in addition to the *jarsa dedha* and *abba herega*, each community now has separate environmental (*mazingira*) and water committees, including the Merti WRUA.<sup>91</sup> These institutions are rooted in national law but overlap, to varying degrees, with traditional structures.<sup>92</sup> Members of Chari community, for example, decided to shift management of a borehole in Bulesa away from

an *abba herega*, who was mismanaging finances, to a seven-member water committee where a combination of male elders, women, and youth serve for three-year terms.<sup>93</sup>

There are three wildlife conservancies formed under the Northern Rangelands Trust in this section of the study area: Biliqo-Bulesa community conservancy in Chari; Cherab community conservancy in Cherab; and Kinna community conservancy in Kinna. The legal status of these organisations is disputed.<sup>94</sup> Study participants reported some overlap in the membership of the conservancy boards, councils of elders, and CLMCs.<sup>95</sup> The communities in Chari and Kinna have also reportedly formed Community Forest Associations to govern forest resources within the community lands; information about the structure and functions of the CFAs was not publicly available at the time of this study.



<sup>91</sup> Lance Robinson et al., *Mapping and analysis of existing rangeland and grazing plans, and livestock value chains, in Isiolo, Laikipia and Samburu* (2021), p. 9.

<sup>92</sup> *Id.*

<sup>93</sup> Focus group discussion with women, Bulesa, September 2024. The committee secretary is always a youth and the treasurer must be a woman. *Id.*

<sup>94</sup> See, e.g., Zeynab Wandati & Sam Kiplagat, *Northern Rangelands Trust loses conservancies in landmark ruling*, *Nation* (Jan. 29, 2025), <https://nation.africa/kenya/health/northern-rangelands-trust-loses-conservancies-in-landmark-ruling--4905386>.

<sup>95</sup> Focus group discussion with leaders, Korbasa, Cherab, September 2024; Focus group discussion with leaders, Biliqo, Chari, September 2024 ("Between the elders, the CLMC, and the conservancy, the people who have most power on grazing are the community elders, especially the ones who are on the CLMC.")



## 1.4 Marsabit county: Walda, Rawana, Ambalo, & Turbi

### 1.4.1 Geography, demographics, and land tenure

In Marsabit county, the study area included four unregistered community lands: Walda and Rawana community lands in Uran ward, Sololo sub-county; Ambalo community land in Obbu ward, Sololo sub-county; and Turbi community land in Turbi ward, North Horr sub-county. Walda community land has an area of approximately 582 sq km (140,000 acres) and a population of around 6,000 people; Rawana covers around 1,500 sq km (370,000 acres) and some 4,000 people; Ambalo community land has an estimated area of 850 sq km (210,000 acres) and a population of approximately 1,800 people; Turbi community land covers 10,821 sq km (2.6 million acres) with an estimated population of 13,600 people.

Walda, Rawana, and Ambalo community lands are chiefly populated by the Borana.<sup>96</sup> In Turbi community land, most residents are Gabra.

<sup>97</sup> Members of the Borana and Gabra ethnic groups speak the same dialect of Afaan Oromo.

Walda community held interim CLMC elections in 2020 and submitted an application to the registrar in 2022. Rawana began the registration process in 2021, elected an interim CLMC in September 2023, and made a submission to the registrar in July 2023. Turbi community held interim CLMC elections in early 2024 and submitted a registration application to the registrar in Isiolo in October 2024. In Ambalo, the community has yet to take significant steps towards applying for community land registration.



<sup>96</sup> Elders in Ambalo, Walda, and Rawana indicated that representation of different Borana clans in the communities was mixed, without predominance by any one clan.

<sup>97</sup> Elders in Turbi reported mixed and co-equal representation of all five Gabra clans.

### 1.4.2 Agro-ecology and resource use

The community lands in Ambalo, Walda, Rawana, and Turbi are principally made up of low-lying plains at altitudes between 300 and 900 meters above sea level.<sup>98</sup> These arid zones receive low and erratic amounts of rainfall, typically ranging from 200 to 400mm annually.<sup>99</sup> Rainfall patterns are generally bimodal, with two dry and two wet seasons of roughly three months each.<sup>100</sup> Most people in these areas engage in livestock production,<sup>101</sup> with an emphasis on camels and donkeys in Turbi<sup>102</sup> and cattle, sheep, goats, and donkeys in Walda, Rawana, and Ambalo.<sup>103</sup>

There are no permanent rivers in this part of the study area; instead, deep wells or boreholes provide the only year-round water supplies for the assessed communities.<sup>104</sup> Walda and Rawana sit atop a strategically important aquifer and include several deep boreholes that provide high-quality water for pastoralists from the surrounding areas in both Kenya and Ethiopia. The Walda borehole is the deepest and most productive in Marsabit county.<sup>105</sup> There are also

important boreholes with good-quality water in Turbi and Bubisa.<sup>106</sup>

### 1.4.3 Governance

Traditionally, pasture and water resources in Walda, Rawana, and Ambalo are governed by Borana law under the *dedha* and *herega* systems, described in the Isiolo sub-section above. Study participants reported no significant differences in how these systems are implemented in Marsabit as compared to Isiolo. In Turbi, land, resources, and sociopolitical life are all governed by the Yaa, a Gabra institution described as a "council of elected clan representatives' elders that form the center of religious and political activities in the Gabra society."<sup>107</sup> One traditional function of the Yaa is the coordination of collective decision-making about resource use across all Gabra territory, including Turbi.<sup>108</sup> For local-level governance, certain recognized elders serving as judges (*jalaab*) represent the Yaa in each community and adjudicate cases of wrongdoing.<sup>109</sup>

Day-to-day decisions about whether and when

<sup>98</sup> County Government of Marsabit, *First County Integrated Development Plan 2013-2017* (2012), pp. 14-15.

<sup>99</sup> Acacia Water, *Marsabit County Water Resources Factsheet: A 3R and MUS Analysis* (undated).

<sup>100</sup> See generally GO Haro et al., "Linkages between community, environment and conflict management: experiences from Northern Kenya," in *Decentralization and the social economics of development* (2007). Long rains typically occur in April and May, while short rains occur in October and November.

<sup>101</sup> County Government of Marsabit, *Participatory Climate Risk Assessment Report* (Oct. 6, 2023). In parts of Rawana and Walda, there have been limited trials of irrigated crop production using borehole water.

<sup>102</sup> Focus group discussion with leaders, Turbi, October 2024.

<sup>103</sup> Focus group discussion with leaders, Walda, September 2024; focus group discussion with leaders, Ambalo, September 2024.

<sup>104</sup> Joseph Nzomo & Stephen Mokaya, *Hydrogeological Survey Report for Uran Badanota Area* (Oct. 2021), p. ii. Boreholes are generally overstretched by high demand; Sololo sub-county has the county's highest rates of livestock water demand. Acacia Water, *Marsabit County Water Resources Factsheet*, see above Note 104, at p. 4.

<sup>105</sup> Background interview with civil society organization, Walda, October 2024.

<sup>106</sup> See Michael N. Mugo, Hydro-geological assessment report for The Pastoralist Community Initiative and Development Assistance (PACIDA) (Aug. 8, 2020), p. 12.

<sup>107</sup> See generally Aneesa Kassam, "The People of the Five 'Drums': Gabra Ethnohistorical Origins," *Ethnohistory*, vol. 53, no. 1 (2006), pp. 173-193.

<sup>108</sup> G. O. Haro, G. J. Doyo, J. G. McPeak, "Linkages between community, environment and conflict management: experiences from Northern Kenya," in *Decentralization and the social economics of development: lessons from Kenya* (2007), p. 100. See also Robinson et al., "Pastoralist decision-making," see below note 115, p. 11 ("[W]hen the Yaa has called such meetings, they don't order people to relocate. It doesn't decide for the people. The people decide together.")

<sup>109</sup> Lance Robinson et al., "Traditional pastoralist decision-making processes: Lessons for reforms to water resources management in Kenya," *Journal of Environmental Planning and Management*, Vol. 53, No. 7 (2010), p. 11.

to move,<sup>110</sup> as well as how to split herds,<sup>111</sup> are often made collectively in community meetings called *korra*,<sup>112</sup> which occur at various levels of social organization: among households living together in one settlement (*olla*), for example, or among a cluster (*rera*) of *olla* working collectively.<sup>113</sup> Researchers have characterized decision-making at *korra* meetings as democratic, consensus-based, egalitarian, and inclusive.<sup>114</sup> However, many non-male or non-Gabra groups—especially women, young people, and ethnic minorities—are structurally marginalised or excluded.<sup>115</sup>

Governance of water resources among the Gabra closely mirrors the water-management (*herega*) laws and systems of the Borana,<sup>116</sup> with very strict regulation of deep or shallow wells, and more flexible rule-making for dams, rivers, water pans, and other available rainwater sources. For deep wells, as in Borana law, the person who digs a well is considered its owner

(*abba konfi*), but, in Gabra law, other members of the *abba konfi*'s clan appoint a committee who then select a well manager (*abba herega*).<sup>117</sup> Traditionally, the *abba herega* comes from the same family as the *abba konfi*. In day-to-day management of the well, the *abba herega* enforces livestock rotational orders which are decided by the community—meaning, in most cases, by other Gabra men—during *korra* meetings.<sup>118</sup>

In addition to these traditional structures, natural resources in Turbi are also governed by some statutory or semi-formal institutions: Water Resource User Associations, for one, and Environmental Management Committees (EMCs). These structures have overlapping mandates and, in many cases, weak or nonexistent organizational capacity.<sup>119</sup> Participants in this study did not cite these institutions by name when asked about natural resource governance in the study area.

<sup>110</sup> Traditional Gabra grazing patterns are, in terms of seasonal movement, the inverse of many of their neighbors, who graze in lowland areas after the rains and reserve higher-elevation areas for the dry seasons. Since the permanent water sources in Gabra territories are all found in lowland areas, Gabra herders have traditionally grazed up in the Hurri Hills during the rainy season and returned to the lowlands for the dry season. Haro et al., "Linkages," see above note 114, p. 99.

<sup>111</sup> Daniel Stiles, "The Gabbra: Traditional Social Factors in Aspects of Land-use Management," *Nomadic Peoples* No. 30 (1992), p. 46 ("In the dry season, only the camels with milk and some pack animals are kept at the ola. The dry camels, cattle, and much of the small stock will each be sent out to different satellite camps called fora, though the small-stock camp is more commonly called an arjalla by the Gabbra.")

<sup>112</sup> This term may also be spelled *korr*.

<sup>113</sup> Robinson et al., "Pastoralist decision-making," see above note 115, p. 12.

<sup>114</sup> *Id.*, at p. 14 ("It must also be noted that the ideals of Gabra decision-making are ideals—not all people live up to ideals, and the above discussion is not meant to suggest that power, prestige, and politics are completely absent from traditional Gabra decision-making. Nevertheless, ... from our observations[,] these ideals prevail in most korra meetings.")

<sup>115</sup> See, e.g., Sarah Yerian, Monique Hennink, Leslie E Greene, Daniel Kiptugen, Jared Buri, & Matthew C Freeman, "The Role of Women in Water Management and Conflict Resolution in Marsabit, Kenya," *Environmental Management* vol. 54 (2014), pp. 1320-1330.

<sup>116</sup> F. N. M'Mbogori, M. G. Kinyua, A. G. Ibrae, & P. J. Lane, "Changes to water management and declining pastoral resilience in Marsabit County, northern Kenya: The example of Gabra wells," *WIREs Water* vol. 9, no. 6 (2022), e1609.

<sup>117</sup> *Id.*

<sup>118</sup> Robinson et al., "Pastoralist decision-making," see above note 115, p. 14. Traditionally the *abba herega* would give priority to livestock owned by the *abba konfi*'s family and clan, but would not refuse others if water resources are still available. *Id.*

<sup>119</sup> See Adan Bulle, Irene Nganga, Jason Sircely, & Malit Wako, *The initial status of rangeland institutions in HEAL project sites – Marsabit, Kenya* (2023), p. 6; Lance W. Robinson, *Mt. Marsabit, Kenya: An Assessment of the Governance System* (Oct. 2013), pp. 3-7.



## 2. Components of Community Land Registration and their Potential Implications for Pastoral Resource-Sharing

This section outlines the key findings of the study. It discusses seven core components of the community land registration process—the definition of the community as a legal entity, the mapping and adjudication of the community's land, and the formation of new governance institutions, among others—and shares community perspectives on how, if at all, these requirements affect pastoralists' rights to own, manage, access, and use shared resources. It also looks at possible implications of these changes for pastoral resource-sharing and, ultimately, for livestock production systems in Kenya's rangelands.

These findings are prospective. In each place visited by the research team, communities stressed the novelty and unfamiliarity of the Community Land Act and its Regulations and asked for more support from duty bearers and civil society organizations, including funding, public education, and legal and technical advice. Moreover, in the complex institutional and ecological environments analyzed in this study, establishing causal relationships is difficult work that exceeds the aims and resources of this study.<sup>120</sup> Instead, these findings are meant to draw attention to issues or trends that communities have identified as priority areas for closer monitoring and further research.



<sup>120</sup> See, e.g., Focus group discussion with community leaders, Ltirimin, August 2024 ("Registration might affect shared resources as different communities are coming with grazing plans and buffer zones. This will make communities restrict grazing rights to members only. Though all this has been caused largely by climate change.")

## 2.1 Defining the community as a legal entity

The first step in the registration process is the definition and recognition of a community as a legal entity. The Community Land Act defines the term “community” as “a consciously distinct and organized group of users of community land” who share any one of a given set of attributes.<sup>121</sup> Communities self-identifying under that broad definition must use two documents, Forms CLA 1 and 3, to apply to the registrar for recognition of a claim on community land and registration as a body corporate.<sup>122</sup> The registrar will then evaluate the community's application—including its chosen name, register of members, bylaws, and sketch map—and, if satisfied with the community's submissions, will issue a certificate naming the community as a body corporate.<sup>123</sup>

The ways that communities choose to define themselves and receive legal recognition effect resource use and governance among pastoralists in multiple ways. Most immediately, registered members are given ownership rights, in undivided shares, to the community's land.<sup>124</sup> Moreover, communities often interpret land ownership as granting members priority access rights to water and pasture sources within the community land. Outsiders can still claim access or use rights to those resources, but, as discussed in the *Bylaws* section below, only temporarily and subject to the community's approval.<sup>125</sup> As explained by leaders in Maiyanat, for example, “Nowadays, you only have the right to demand land where you are. If you belong to Shulmai or Maiyanat, you just live there and stay there; you don't make any mark in other community lands. If you want to go to another place, you must approach the owner accordingly.”<sup>126</sup>

Some observers of community land registration say that, in this context, pastoralists are chiefly engaged in the registration process as a way to strengthen their ethnic group's claims to control and preferential use of certain resources.<sup>127</sup> Other commentators fear that the titling process will fragment large pastoral communities into smaller, less cohesive subgroups who will not share resources as freely.<sup>128</sup> Some minority or Indigenous peoples are wary of how their land and resource rights, both individual and collective, will be affected if land-titling processes are driven by the interests of larger groups.

<sup>121</sup> Community Land Act, Part I(2) (“a consciously distinct and organized group of users of community land who are citizens [of Kenya] and who share any of the following attributes: common ancestry; similar culture or unique mode of livelihood; socio-economic of other similar common interest; geographical space; ecological space; or ethnicity.”)

<sup>122</sup> Community Land Regulations, Legal Notice No. 279 of 2017, s. 8(3)(a-e) [Regulations].

<sup>123</sup> Regulations, s. 8(4 & 5). The community's land claims remain provisional until, as discussed in the Mapping sub-section below, the land area is surveyed, demarcated, and adjudicated.

<sup>124</sup> Constitution of Kenya, 2010, Art. 63(1); Regulations, Third Schedule, 5.2 (setting out a recommended, rather than binding, format which all of the assessed communities have adopted).

<sup>125</sup> See generally Günther Schlee & Abdullahi A. Shongolo, *Pastoralism and Politics in Northern Kenya and Southern Ethiopia* (2012); Caroline S Archambault, “Re-creating the commons and re-configuring Maasai women's roles on the rangelands in the face of fragmentation,” *International Journal of the Commons* vol. 10, no. 2 (2016).

<sup>126</sup> Focus group discussion with community leaders, Maiyanat, September 2024. See also Focus group discussion with women, Nkaroni, August 2024 (“I know that on that side of Wamba, there were group ranches, but I do not think they chased away anyone or refused anyone to graze there or live there because the group ranch was registered. Nowadays because of new rules, grazing is allowed but permanent settlement is not allowed.”)

<sup>127</sup> See, e.g., Michael Bollig & Carolyn Lesorogol, “The ‘new pastoral commons’ of Eastern and Southern Africa,” *International Journal of the Commons*, vol. 10, no. 2 (2016). See also Carolyn K. Lesorogol, *Contesting the Commons: Privatizing Pastoral Lands in Kenya* (2008).

<sup>128</sup> See generally Trinity S. Senda, Lance W. Robinson, Charles K.K. Gachene, & Geoffrey Kironchi, “Formalization of communal land tenure and expectations for pastoralist livelihoods Author links open overlay panel,” *Land Use Policy*, vol. 114 (Mar. 2022); Rahma Hassan, Karuti Kanyinga, & Iben Nathan, “No Option but to Settle! The Community Land Act, Devolution and Pastoralism in Samburu County, Kenya,” *Nomadic Peoples* vol. 27, no. 2 (Sept. 2023), pp. 292–314.



To engage with these questions, this study asked participants about how their community defined itself and its members, both prior to and since beginning the registration process.<sup>129</sup> The research team collected information about how each community decided on its name, its membership, and its land area. The study also asked duty bearers about how county- and national-level actors influence or evaluate communities' choice of name, membership, or land area.

The study found that, among the former group ranches, communities decided to use the name and map of the preexisting group ranch as

the basis for defining their community land. Communities and duty bearers described registration as a technical process of transition from one form of registration to another, rather than a deep shift in identity or legal status. However, the inclusion of women and young people in the register of members has been a significant and welcome change from the group-ranch era, when official community membership was limited to adult men. In trust lands, the study found that disagreements over communities' chosen names, land areas, and membership are significant and ongoing.



<sup>129</sup> The assessed communities in Laikipia and Samburu—Lpus, Ltirimini, Nkaroni, Shulmai, Maiyanat, and Moropusi—are officially registered corporate bodies. In Isiolo and Marsabit, most of the assessed communities have submitted the requisite forms but have not been officially recognized as legal entities.



Every community assessed in this study reported multi-level debates involving community members, neighbors, and duty bearers over the size of the land area or, in Merti, the community's name. While the resolution and effects of these disputes remain unclear, this research indicates that the registration process is prioritizing government interests, especially at the county level, over communities' claims.

First, among the former group ranches in the assessed areas of Laikipia and Samburu, communities reported few difficulties in naming their community or deciding the size of the land area to register. The formation of these communities as distinct social units associated with legal claims to a particular territory had already taken place between the 1970s to 1990s, during their registration and titling as group ranches.<sup>130</sup> At that time, in Samburu, adjudicators mapped seasonal rivers and graded roads as the borders of the four Lodung'okwe group ranches.<sup>131</sup> In Laikipia, as explained in the *Background* section, group ranches were formed based on existing Maasai territorial units (*inkutot*) used by the sub-clans in the area; specific borders were demarcated in 1976 using rivers, roads, and other natural landmarks.<sup>132</sup>

Communities and government officials interviewed for this study described the conversion of these pre-existing units into registered communities as a technical process, rather than a real shift in self-identification or official composition.<sup>133</sup> Communities used existing group ranch maps as the basis for indicating the land areas they intended to register<sup>134</sup> and, in four of the six cases, also used the group ranch names. In Samburu, the names of Lpus, Nkaroni, and Ltirimini community lands are identical to the names chosen for the group ranches during adjudication of the Lodung'okwe area in the 1970s. Continuing with these names, which reference distinctive ecological features of each area, was uncontroversial.<sup>135</sup> Leaders in Nkaroni, for example, stated, "*The name Nkaroni has existed since the beginning. It was not difficult, in any way, to agree on that as the name of the community.*"<sup>136</sup>

In Laikipia, the names of two of the assessed communities changed—from Makurian to Maiyanat and from Kuri Kuri to Shulmai—and involved some debate among leaders and community members.<sup>137</sup> In Shulmai, study participants cited a variety of reasons for renaming the community.

<sup>130</sup> Focus group discussion with community leaders, Ltirimini, August 2024 ("I was among those living here in 1976. The group ranch was a foreign concept, a foreign ideology. The notion seemed like people were coming to take our land. A few clever people were able to convince some members, secretly. They registered just 126 members in Ltirimini. There were so many other members living here that time, but they didn't want to be in the register. They had that suspicion. People were very suspicious and there was no awareness. After 1976, we stayed like that for 20 years, until 1996. In 1996, we brought awareness; people registered that time. In 1996, we registered 397 people, in addition to the 126."). See also Background interview with area chief, Shulmai, September 2024 ("You know, demarcation of group ranches occurred in a time where people were not learned. There were many issues and we are not on good terms with other communities because of some places. One such place is Olariakorok, on the border with Maiyanat and Shulmai. After Maiyanat realized they had been given more of that land, down to the river, they went and got a title deed in 1980, while Kuri Kuri title deed was only from 1997.")

<sup>131</sup> Focus group discussion with community leaders, Lpus, August 2024.

<sup>132</sup> Background interview with area chief, Shulmai, September 2024; Focus group discussion with community leaders, Maiyanat, September 2024.

<sup>133</sup> See, e.g., Focus group discussion with community leaders, Ltirimini, August 2024 ("Yes, we participated in community land registration. We already had our maps and registers. The process was only a transition [from group ranch to community land]."); Background interview with elders, Shulmai, September 2024 ("We got awareness from the chief, who told us to learn about it [the Act] until we get it. And we did a sketch map, from the oldest one – we had a previous map from the group ranches and we just used that for transitioning. Adjudication had already been done.")

<sup>134</sup> *Id.*

<sup>135</sup> Nkaroni, meaning "a place without water," was named for its water scarcity; Lpus is named for a distinctive white mountain; and Ltirimini means "a forest of shrubs." The fourth Lodung'okwe group ranch, Sesia, was named for a certain type of river water.

<sup>136</sup> Focus group discussion with community leaders, Nkaroni, August 2024.

<sup>137</sup> Focus group discussion with women, Maiyanat, September 2024; Focus group discussion with leaders, Shulmai, September 2024.

Leaders reported that, because Kuri Kuri is the name of one zone within the community land, some thought it was a misleading name for the community as a whole. Others felt Kuri Kuri, which is a Maa term for puppies and small animals, was an unserious or diminutive name.<sup>138</sup> One participant said that the new name, Shulmai, references a border point between Laikipia and Isiolo and, in the context of resource-related conflicts with neighboring communities, emphasizes Yiaku people's claims to the area.<sup>139</sup> In Maiyanat, which, according to elders, means a "place for grazing" or grazing land, the community reportedly attempted to register as "Maiyanat and Makurian administration," but, due to a decision of the county, were named Maiyanat, only.<sup>140</sup> In Moropusi, the name of the group ranch—which had previously replaced the colonial name for the administrative area, Momonyot, referring to the majority sub-clan in the area<sup>141</sup>—remained the same. The study did not find evidence to suggest that changes to communities' official names in Laikipia have had noticeable effects on individual or collective identities or on resource use. As leaders in Moropusi, for instance, explained, *"We have*

*never changed our name, really. We are normally called Momonyot or Moropusi and we just changed from one to the other [during the group ranch era]. Our neighbors have also registered the names we have always used. So, we don't see any effect on the community.*"<sup>142</sup> In the focus group discussions, the research team noted that most respondents used former names—Mukogodo, Makurian, or Momonyot—more often than the newly registered ones.<sup>143</sup>

For the former group ranches, the most significant effect of registration, by far, on communities' self-definition was the inclusion of women and young people in the register of members. Under the previous system, only adult men were considered members of a group ranch; today, due to the non-discrimination protections found in the Section 30 of the Community Land Act, the registers of members of community land must be inclusive of all people in the community, including women and young people.<sup>144</sup> As women in Moropusi explained: *"We have recognized the benefits of registration because, in previous years, we only registered men. Now, women and children are also registered as members of the community. ... The Act has made*

<sup>138</sup> Focus group discussion with community leaders, Shulmai, September 2024 ("We decided to change the name because Kuri Kuri is a zone, so, people were saying, the name would mean that Kuri Kuri zone was the whole community land. Also, Kuri Kuri means 'puppy' [laughs]; it is a name in Maa for all small things and small animals. So, we decided as board members to change the name. We went back to the community to approve it- the board alone cannot change it. Some wanted it to stay the same, others accepted to change it. We discussed until we eventually accepted the name Shulmai. You know, people can't easily accept things right away- you must discuss and agree.")

<sup>139</sup> Background interview with area chief, Shulmai, September 2024 ("For the name, people prefer the word 'Shulmai' because it's a border between them and Samburu, so it's to tell the people that the place is not for Samburu community, it's for Yiaku. So, Shulmai means 'a place where Yiakus live'- Shulmai is a cave and a hill where people keep their cattles. Everybody was accepting that name since they know that our land is ending there. All of them prefer the name.")

<sup>140</sup> Focus group discussion with community leaders, Maiyanat, September 2024 ("The name Maiyanat means a place for grazing, a grazing land. We had a lot of challenges with that name. Some of the members were refusing the name; they wanted to remain with Makurian. Others were creating their own names. We went to the county to register Maiyanat and Makurian administration, but the county refused, and we remained with Maiyanat only.")

<sup>141</sup> Focus group discussion with community leaders, Moropusi, September 2024 ("This community, some years back, was called Momonyot. That name was used for the people, not for the land. The colonizers gave the name Momonyot land for this administrative unit. Our people, Momonyot, were close to the Mukogodo people nearby, and we mixed with them. So, as the place grew, the government decided to divide us into two; the communities were separated to be Momonyot 1 and Momonyot 2 as we mixed with Mukogodo. When we got inside the group ranch, Momonyot were divided into two group ranches- Nkiloriti group ranch was the first, and Moropusi is the second. We have many Momonyot members. We have some Momonyot in Kuri Kuri group ranch, too.")

<sup>142</sup> *Id.*

<sup>143</sup> See, e.g., Focus group discussion with women, Maiyanat, September 2024 ("We sometimes go to Momonyot community land [Moropusi], since we share a border. Sometimes some of us go to Kantana in Mukogodo [Shulmai].")

<sup>144</sup> CLA, ss. 10(1)(c) & 30; Regulations, s. 8(3)(b).

us to be equal, men and women."<sup>145</sup> Leaders in Shulmai agreed, noting: *"Women were not counted in the [Kuri Kuri] group ranch register, but we now count all of them: men, women, youth, and elders. Everybody, every family, is registered."*

Many women said in focus-group discussions that resource governance and sharing were significantly more inclusive because of the new registers. In Maiyanat, for instance, women said: *"We are now in the register, where previously it was only men. Because we are members, on any issue of resource sharing, we have that right to benefit. If you are sharing anything within the community, women must be there, too."*<sup>146</sup> In Samburu, women in Nkaroni similarly felt that registration helped ensure that certain community resources, like bursaries for school-aged children, were shared equally among all members.<sup>147</sup>

The registers raise a number of complex issues, though, with potential implications for resource-sharing that merit further investigation. First, some participants' comments about women who are not married or children considered

*"illegitimate"* by the community suggest, in the opinion of the research team, that some people in the study areas have been unjustly excluded from their community's register and, as a result, from ownership and management rights.<sup>148</sup> The study recommends further investigations of the processes communities use to prepare the register, the grounds on which communities exclude potential members, how such exclusions affect the concerned person's rights and resource-use patterns, and how disputes or complaints are handled. It is also unclear whether the expanded registers will influence whether or not communities choose to subdivide their community land and grant each member the value of their individual shares. Some prior studies of community land registration in Kenya found that the registration process causes—or significantly exacerbates pressure for—communities to subdivide their lands.<sup>149</sup>

In this study, none of the participants expressed an interest in subdividing community land or spoke negatively about registration as causing or encouraging subdivision. Herders in Shulmai, however, discussed women's inclusion in the register partly through the lens of possible subdivision, saying: *"We prefer this new register with both husband and wife, because, the day the land will be divided, the wife will get one part and the husband another. So, you should both be there."*<sup>150</sup> Participants in the focus group also expressed a belief that, as the registered population of Shulmai grows, the government



*"We are now in the register, where previously it was only men. Because we are members, on any issue of resource sharing, we have that right to benefit. If you are sharing anything within the community, women must be there, too."*

<sup>145</sup> Focus group discussion with women, Moropusi, September 2024. See also Focus group with women, Nkaroni, August 2024 ("Before, on the issue of group ranches, I don't know much. We were not included in that. But now, for all those who have been living here when registration was done, they are now members.")

<sup>146</sup> Focus group discussion with women, Maiyanat, September 2024.

<sup>147</sup> Focus group discussion with women, Nkaroni, August 2024.

<sup>148</sup> Background interview with a civil society organization, Laikipia, January 2025.

<sup>149</sup> See, e.g., Iben Nathan, Karuti Kanyinga, & Rahma Hassan, *The Community Land Act (CLA) 2016 and Pastoralists' Access to Land for Adaptation* (2024).

<sup>150</sup> Focus group discussion with herders, Shulmai, September 2024..



will increase the community's land area.<sup>151</sup>

Relatedly, the study also surfaced ongoing debates in Shulmai and Moropusi about whether registered members who own private plots within a community land are entitled to share benefits, like bursaries, from community resources.<sup>152</sup> It remains to be seen whether previously privatized areas of community lands will be effectively "re-commoned", as in Moropusi, or whether individual claims by elites will fragment community land governance, as herders said might happen in Shulmai.

In trust lands, the study found significantly more disagreements about the names and land-area claims of communities than were observed among the former group ranches. These debates involve a range of stakeholders—communities, civil society actors, government officials, and others—and are ongoing. For example, in Isiolo, communities in Chari and Cherab initially applied to register all of Merti sub-county under the name "Waso Borana community land," as discussed in the *Background* section above. Minority groups in the



area, however, contested the name as ethnically exclusionary and discriminatory,<sup>153</sup> and the registrar rejected the community's submission. The county's decision was also based, in part, on its preference for registering community land by ward, rather than sub-county.<sup>154</sup>

Many people in Chari and Cherab now have significant reservations about registering the two areas separately from one another.<sup>155</sup>

<sup>151</sup> *Id.* ("There is not any problem with adding women to the register; we like that one. We prefer to have them added because, as we get many members in Shulmai, we will be added land. The community will prefer to have more land and Kenya Forest will add new land, from other parts.") For a contrasting opinion, see Focus group discussion with community leaders, Maiyanat, September 2024 ("Population growth threatens group ranches more than trust lands. Those people have no boundaries – when the population grows, so does the land. Group ranches remain small because they have borders.")

<sup>152</sup> Focus group discussion with community leaders, Moropusi, September 2024 ("We have not seen any difference in shifting from group ranches to community land. The only difference we have seen is that most of the people with private plots, in those [group ranch] years, we would never get in their places without permission. But now, those individuals are part of the community land and we share everything with them."); Focus group discussion with herders, Shulmai, September 2024 ("We have seen that in the coming years, some issues with private plots will have a big effect. For now, there is no issue, but the effect we see for later is that some of the benefits that people are getting as Shulmai community, they don't give to the individuals. And if individuals are getting benefits, they don't give it to Shulmai. That's the issue that will bring a lot of conflict later.")

<sup>153</sup> Focus group discussion with community leaders, Biliqo, Chari, September 2024 ("The name we disagreed on was the name 'Borana.' That ethnic name ignored Gabra and Sakuye living within. On the name of Chari community, we unanimously agreed. We had no issue on that. Chari is inclusive of all the communities living in Chari."); Focus group discussion with community leaders, Bulesa, Chari, September 2024 ("We have agreed on the name; the name is Chari dedha community land. That is the name. Cherab is a separate one. Before, we tried, together with Cherab, but the name really disturbed us and so we had to separate. There were so many issues with that name. There are so many communities here and they were complaining because of the Waso Borana name.")

<sup>154</sup> Interview with surveyor, County Government of Isiolo, November 2024. The county government's thinking has changed over time; the county's initially preferred registration by sub-county-level administrative units. See Jarso Guyo Mokku, *POLICY BRIEF: Developing the inventories for registration of Community Lands in Kenya* (Jul. 2020), pp. 8-9.

<sup>155</sup> Focus group discussion with women, Saleti, Cherab, September 2024 ("Our land is very big. We have no problem registering it separately as Chari and Cherab, but one side should not limit the movement of the other. They are always coming to our side, and we are going to theirs. That bylaw (sheria) should not restrict our movement."); Focus group discussion with herders, Mulandanur, Cherab, September 2024 ("The only thing that might disturb us is any separation of Chari and Cherab. When it rains on one side, we may go to the very far end of Chari, or to Yamich at the end of Cherab. Registration might give us some limitation in terms of movement, and that would be a problem for our livelihoods.")

A herder in Biliqo, for example, remarked, *"Chari and Cherab are both Borana lands. I have a right to graze in any part of Chari and Cherab. I am shocked to be told that those two parts will be registered as separate. We are one people! I recently went to Saleti to graze – now, you want to say that since Saleti is in Cherab, I can't go there without asking permission from them? That one will be a lot of trouble! We just want to mix and go freely."* Similarly, a group of herders in Chari explained: *"We don't want Chari and Cherab to be registered separately. We don't want to be cut apart – we don't even know where Chari ends and Cherab begins, really. Most of the time, it rains on one side but not the other. For now, normally, we don't ask any permission to go. We just wake up and we go where it has rained. Some of our cattle are in Cherab now, as we speak. But if they register the land, it might limit how we move".*<sup>156</sup>

The interim Community Land Management Committees in Chari and Cherab recognize and share these concerns. An interim CLMC member in Cherab, for instance, said: *"We just separated for the sake of registration, but the community is one. Although we formed two committees, we have agreed as the committees that this land is ours, jointly. We will have to share – we will never refuse each other."* The committee in Chari has also agreed, according to an interim CLMC member in Bulesa, not to restrict movement from one area to another.<sup>157</sup>

In Kinna, the community also considered registration according to various types of administrative units—as Garbatulla sub-county, for instance, or as Isiolo South constituency, an electoral unit defined by the Independent Electoral and Boundaries Commission (IEBC)—but ultimately decided, after interactions with civil society organizations and the county government, to register as a ward.<sup>158</sup>

As in Chari and Cherab, participants in Kinna emphasized their interconnectedness with communities in other administrative areas of Isiolo. Women in Kinna North said, for example: *"For Chari or Garbatulla, that's our place. We don't pay to access resources there. We don't even ask permission – we just move. The rule is just that once you get there, before you take water at boreholes or water points, you go and inform the appropriate elder (abba herega)."*<sup>159</sup>

Participants in Kinna expressed contrasting views about how registration via separate units would affect their movements and resource-use patterns. In Moliti, for example, herders said: *"Registration, if it is within Boranas, will cause no problem. We always move to that side and they come to this side. There are no issues."* Elders and other leaders in Kinna acknowledged potential restrictions as a *"real fear,"* however, and said that, *"after registration, there will be no free movement as it is today. After we*

<sup>156</sup> Focus group discussion with herders, Merti North, Chari, September 2024; see also Focus group discussion with community leaders, Biliqo, September 2024 ("[Registering land] from here to here as Borana community land- it might disadvantage the community by bringing division and discouraging that open grazing. For example, someone from Cherab may not come and freely graze openly in Chari- they will have to pass the CLMC. We, as Borana, like to intermingle freely within our own people, and registration might restrict open grazing, which would be disadvantageous to us, since we are one people.")

<sup>157</sup> Interview with interim CLMC member, Bulesa, Chari, September 2024 ("As a committee, we even said, 'We are one community – we can figure out these differences of asking permission. Let's go separate, in order to register.' We said, 'Tusiharibu kitu- if you spoil something in this community, you will pay for it.'")

<sup>158</sup> Focus group discussion with community leaders, Kinna, September 2024 ("We had a challenge choosing the level of registration. We went through different ideas, such as registration as a sub-county, constituency, ward, etc. We finally settled on the ward."); see also *Id.* ("On the naming, there were other opinions, like naming as per the sub-county or constituency. But, due to the vastness of the area and the law that requires 2/3 of the community assembly, it would have been difficult. So, we agreed to do it as a ward. Also, we agreed to adopt the names of the locations: Kinna South, Kinna North, Kula Mawe, Duse, Rapsu, and Barambate.")

<sup>159</sup> Focus group discussion with women, Kinna, September 2024. See also Focus group discussion with herders, Moliti, Kinna, September 2024 ("For grazing and water we come here, to Moliti; we go to Garbatulla, and even to Kuro, in Chari. During dry season, we go to Kuro, in Chari, or to Garbatulla.")

*make the laws, we will require Borana from other communities to request access."*<sup>160</sup>

In Marsabit, the communities in Ambalo, Rawana, and Walda have chosen, after several inter-communal meetings, to apply for location-level, rather than ward-level, registration units.<sup>161</sup> This reflects a strongly held preference by residents of Walda for location-level registration which, after Walda's early application to the registrar, influenced their neighbors' choices.<sup>162</sup> The community in Turbi, in contrast, chose to apply for ward-level registration, though members of the community considered some other options, including North Horr sub-county or IEBC constituency, or a clan-based system.<sup>163</sup> The decision to register as Turbi ward was chiefly based on leaders' belief that North Horr would be an impractically large registration unit.<sup>164</sup>

The Marsabit county government plans for community land registration to be done by ward,<sup>165</sup> meaning Walda, Rawana, and Ambalo would be registered together, alongside other neighbors, under Obbu ward. The county government is aware that ward-level registration would contravene communities' preferences but plans to "work out" disagreements with communities at some point during adjudication.<sup>166</sup> The county government's stance also contravenes a court order, issued after communities in South Horr contested the county's inventory, to respect communities' self-determination and proceed with registration based on community self-definition, rather than the registration units gazetted in the inventory.<sup>167</sup> The Ministry of Lands intends to follow the court order and register land according to the units chosen by communities.<sup>168</sup>

Communities in Isiolo and Marsabit did not discuss women's inclusion in the register of members, most likely because they never formed group ranches and thus had no prior experiences with male-only registers. Rather, in this part of the study area, registers were considered an uncontroversial but logistically difficult requirement of registration. For example, women in Korbessa said, *"We registered every person that is here – everyone above 18 years of age. Even outsiders can be included in the register if they live here for 10 years."* In Turbi, leaders recalled: *"We had issues with registering all of the members. Our land is vast; we had problems paying the transportation costs to go from one end to the other. Also, there are people who married long ago and moved away—to Nairobi, for example—but then came back recently to stay here. They complained that their name wasn't in the register."*<sup>169</sup>

<sup>160</sup> Focus group discussion with community leaders, Kinna, September 2024.

<sup>161</sup> Focus group discussion with community leaders, Dadach Elele, Walda, September 2024 ("We did registration as per location, this village being part of it. And yes, we participated, as Walda community. We consulted with the other locations but when we found that the others were dragging their feet, we decided to go it alone."); Focus group discussion with community leaders, Ambalo, September 2024 ("There's a slight difference between the legal definition and the traditional one. We are seeing ourselves as Ambalo community land – the larger unit that was proposed was Obbitu, but we are thinking of doing it as Ambalo location.")

<sup>162</sup> Focus group discussion with community leaders, Rawana, September 2024 ("For the naming and the mapping, it was done in a participatory manner. The initial discussion also mentioned sub-county or ward. In our case, in Uran ward, after Walda applied on their own, we decided we can go the Walda way by applying as Rawana. We made our own committee and our own chair and agreed to use the location name, Rawana.")

<sup>163</sup> Focus group discussion with community leaders, Bubisa, Turbi community, October 2024 ("We had debates about whether to use ward, constituency, or to use clans, but we settled on Turbi ward and mentioning all of the locations: Shurr, Bubisa, Burgabo, and Turbi.")

<sup>164</sup> Focus group discussion with community leaders, Turbi, October 2024; Focus group discussion with community leaders, Bubisa, Turbi, October 2024.

<sup>165</sup> Interview with Director of Lands, County Government of Marsabit, November 2024.

<sup>166</sup> *Id.*

<sup>167</sup> *Sebastian Louyei Lekupe and Others v. County Government of Marsabit and Others, Environment and Land Court of Kenya at Isiolo*, ELCL No.E003 of 2024, Consent Order (Dec. 16, 2024).

<sup>168</sup> Interview with representative of the Ministry of Lands, February 2025.

<sup>169</sup> Focus group discussion with community leaders, Turbi, October 2024.



This study thus identified diverse ways that communities' official recognition will or might affect pastoralists' access to and use of shared resources in the future. Participants tended to view some factors, like the inclusion of women and young people in the register of members, as promoting more inclusive, equitable access to and governance of shared resources. Other choices—like the division of the communities in Merti into separate registration units: Chari and Cherab—have the potential to disrupt the flexible, reciprocal rules and relationships that currently allow for very high levels of mobility within and between Chari, Cherab, and their neighbors. All such effects require detailed, continuous monitoring and study by communities, academics, and duty bearers.

## 2.2 Mapping and adjudicating the community's land

Once communities have submitted sketch maps claiming rights to a particular land area, the national government must map the boundaries of the community's land and adjudicate all the rights and interests in that land. The Ministry of Lands is responsible for creating the necessary registration units, based on the inventories of community land prepared by county governments,<sup>170</sup> and appointing adjudication officers to demarcate each community land and its boundaries.<sup>171</sup>

For a given unit of community land, the process starts when the adjudication officer issues a public notice of intention to survey, demarcate, and register that land, at which point “any person with a claim on the land” is required to present the adjudication team, in person, with a written copy of their claim.<sup>172</sup> The adjudication team then surveys the land, demarcates its boundaries, answers all claims in writing, and produces a cadastral map—meaning a detailed, geo-referenced map showing boundary lines marked by a qualified surveyor—to present to the registrar.<sup>173</sup> The registrar can then issue a title deed to the community.<sup>174</sup>

To assess how these government-led boundary-making processes compare to communities' existing sense of place, the study asked community members how they define their borders, both generally and in the sketch map that they submitted to the registrar. It asked community members about their knowledge of borders and boundaries. It also asked duty bearers about how adjudication has played out or will play out in practice, including how boundaries are marked, which community members are involved, and how disputes are resolved.

This study found substantial differences between how participants in the study conceive of the borders of their community land—often in general or zonal terms, rather than linear ones, or via historical arguments which overlap with neighbors' claims—and the fixed, ground-survey-based boundaries that government officials have used, or intend to use, in official cadastral maps. The study also found that community lands are being registered based on administrative units (either locations or wards) that differ, sometimes significantly, from the resource needs and use patterns of pastoralists living within the communities.

<sup>170</sup> Regulations, s. 12(1).

<sup>171</sup> Regulations, s. 11. See also CLA, s. 8(1-2).

<sup>172</sup> Regulations, s. 12(6).

<sup>173</sup> CLA, s. 8(4-7).

<sup>174</sup> CLA, s. 11(3).

The evidence for and implications of both findings are discussed in the two subsections below.

### 2.2.1 Community maps versus government boundaries

Pastoralists' mental maps of their community lands are complex, often blending topographical features, historical claims, and different types of administrative borders.<sup>175</sup> In many cases, neighboring communities' claims overlap one another. Some people in Rawana, for example, consider Forolle, northeast of Turbi in Maikona ward, and Dosawachu, south of Turbi town, as border points of Rawana community land.<sup>176</sup> One respondent in Turbi, on the other hand, cited Elle Bor, a settlement in Rawana location, and Elle Dimtu, in Walda, as within Turbi community land.<sup>177</sup> Similarly, in Laikipia, participants in Moropusi and Shulmai emphasized that in the group ranch era, borders between different communities were generally fuzzy and often conflicting, since "people claimed boundaries here, there, and everywhere."<sup>178</sup>



<sup>175</sup> See, e.g., Focus group discussion with women, Kinna North, September 2024 ("There's a place called Katwe – during the colonial period the Meru called it Katwe. It's a big rock slab, a border point. The colonial authorities marked it as a border. They even wrote something: Kinnanduba police post. Soldiers were posted there and it was supposed to separate Meru and Isiolo, but Merus passed that place long ago, and now they're claiming land even very close up to here. There's an elder who came to live here and he asked for land, he had a lot of children and he was learned and clever, so he went to request for security. They made Kinnanduba police post and now it's under Meru county and they're claiming it as theirs. We had a recent fight with the Meru about that place – we sat with the DO, DCs, the chiefs, and elders."); Focus group discussion with herders, Mulandanur, Cherab, September 2024 ("We have an important border dispute in Barrii Gode. Somalis have built schools there but it is our land, historically."); Focus group discussion with community leaders, Korbasa, Cherab, September 2024 ("We are having struggles with the government. We know our colonial border – those colonial people were fair, compared to the Africans. There are people who claim that part of our land is theirs; they take our land using unjust means. We're not happy with this at all. We just want to use the colonial border; we don't want the current/modern border.")

<sup>176</sup> Focus group discussion with community leaders, Funan Qumbi, Rawana, September 2024; Focus group discussion with community leaders, Rawana, September 2024.

<sup>177</sup> Focus group discussion with women, Turbi, October 2024 ("Our land is big; even Elle Bor and Elle Dimtu are our place, but there are other people staying there. The Rawana borehole has a Gabra name, and my birthplace was in Uran.") This comment most likely represents a claim about Turbi's historical land area, rather than its contemporary borders, and is not a universally shared view. A different member of the same focus group referred to Rawana as a Borana area and discussed asking permission before fetching firewood in Elle Bor. Similarly, herders in Bubisa referred to people from Elle Bor when asked about "outsiders." Focus group discussion with herders, Bubisa, Turbi, October 2024 ("We have no problem with our neighbors from the sides of Sololo, Elle Bor. We have no issue.")

<sup>178</sup> Focus group discussion with community leaders, Moropusi, September 2024; see also Focus group discussion with herders, Shulmai, September 2024 ("In the group ranch period, we never knew where the boundary was. Anyone can go anywhere and say, 'this is my boundary', but you never know. Now, with Shulmai, we know the boundary, so we can tell someone 'shift from here'.")

In this context, the mapping and adjudication processes required by the Community Land Act are difficult and often contentious. In Moropusi, for example, leaders explained: *"When we did the sketch mapping around the villages, we had a lot of challenges, because no one had a clear consensus on where the boundaries are."*<sup>179</sup> In Dadach Elele, leaders stated: *"Our main fear is about conflict over how boundaries are set. Apart from that, we have no issues with registration. But, after mapping, we anticipate disputes about the borders."*<sup>180</sup> In Lpus and Nkaroni, where the community's claims are affected by unresolved historical land injustices, leaders explained: *"Now, after mapping, there are disputes between both Nkaroni and Lpus community lands against an individual, a former Member of Parliament, who used land along Barsilinga river as collateral for a bank loan, and defaulted. The bank now owns the land. There are also issues on Nkaroni's other border, towards Wamba, with a private investor whose claims were never adjudicated but are indicated on the map."*<sup>181</sup>

Most of the assessed communities reported that the sketch mapping processes did not deal in great detail with the complexity of their land boundaries. In Samburu, for example, the study found that most community and CLMC members are unsure whether registration involved cadastral mapping of Lpus, Nkaroni, Ltirimini, and Sessia, and remain unfamiliar with the officially registered boundaries.<sup>182</sup> In Chari, leaders noted: *"It has been difficult establishing the common border between Samburu and Borana or Somali and Borana. The mapping that has been done has not clearly put a boundary. It is difficult to even access the actual boundary map. We think that, due to the vastness of our land, neighbors are taking advantage and putting our land on their side. We don't know what the outcome will be."*<sup>183</sup> Similarly, in Cherab, leaders described themselves as ill-equipped and insufficiently resourced to conclusively map the borders of their community land.<sup>184</sup>

Instead, the study found that communities and duty bearers have defaulted to using pre-existing administrative boundaries as the basis for identifying the borders of community lands. In Moropusi, for instance, after describing the sketch-mapping issues noted above, leaders said: *"We ended up using the group ranch map from the previous years for registration, because we knew the ones we did ourselves were not very accurate."*<sup>185</sup> In Lpus and Ltirimini, the communities also submitted

<sup>179</sup> Focus group discussion with leaders, Moropusi, September 2024. See also Focus group discussion with community leaders, Biliqo, Chari, September 2024 ("On the mapping, there was disagreement. There are some people who know the boundaries, and others who do not. When community land registration came about, there were some people who knew this thing was just being planned by NGOs – even the county government was not helping us. So, some opportunists (*wakora*) took advantage. He knows there is money involved, and so he goes around with you and gives you the wrong mapping. He misleads you, and disadvantages the community, in a way that might even involve going into the territory of Samburu or losing some territory of Borana.")

<sup>180</sup> Focus group discussion with community leaders, Dadach Elele, Walda, September 2024.

<sup>181</sup> Focus group discussion with community leaders, Lpus, August 2024. See also Background interview with area chief, Nkaroni, August 2024.

<sup>182</sup> Focus group discussion with community leaders, Ltirimini, August 2024 ("For the mapping, it was there since the beginning [1976] so we used that map to know the boundaries of Lpus, Nkaroni, etc. Demarcation (cadastral mapping) was done, but people don't know about it on the ground."); see also Focus group discussion with community leaders, Nkaroni, August 2024. ("We also did sketch mapping of resources, supported by IMPACT. But we do not know the borders demarcated by the county. We have not done cadastral mapping."); Focus group discussion with women, Loruko, Nkaroni, August 2024 ("We need some assistance from IMPACT in helping us to mark our boundaries in order to avoid any disputes that might arise.")

<sup>183</sup> Focus group discussion with community leaders, Biliqo, Chari, September 2024.

<sup>184</sup> Focus group discussion with community leaders, Merti South, Cherab, September 2024 ("We have no capacity in mapping – those who were traditionally involved in maintaining the borders, they are not alive, some might have lost their mind. So, we don't have experts who will get involved in sketch-mapping, to have the technicalities we need. Those of us who are not involved in mapping, we are not aware of when or how it will be drawn, because we don't have the capacity and funds to get our mapping done.")

<sup>185</sup> Focus group discussion with community leaders, Moropusi, September 2024.



the existing group ranch map, drawn in 1976, for registration.<sup>186</sup> In trust land areas, communities and county governments plan to define community lands according to district boundaries, drawn in 1992, or IEBC electoral units, delimited in 2012.<sup>187</sup> In Walda, for example, leaders summarized, *"In making the sketch map, there was no major conflict or complaint."*<sup>188</sup>



*We used the location boundaries."*<sup>188</sup> In Kinna, as discussed in the section above, the community chose its name and map simply by deciding between sub-county, IEBC, ward, and location boundaries.

There are multiple explanations for stakeholders' heavy reliance on administrative boundaries. First, many participants in the study expressed their belief that loosely defined, overlapping border regimes are a source of mismanagement and conflict.<sup>189</sup> Women in Dadach Elele, for example, said, *"The problem with outsiders who are accessing our resources is, they believe that their land is theirs, only – but that our resources are also theirs! Everybody is always claiming, 'This is mine, and that is mine, too.' We hope such ownership wrangles will be less after registration."*<sup>190</sup> In Shulmai and Maiyanat, participants felt that clearer boundary demarcation had improved management of sand harvesting in Kantana, a river on the border of the two communities, which had previously caused conflict *"because both Mukogodo [Shulmai] and Maiyanat were*

<sup>186</sup> Focus group discussion with community leaders, Lpus, August 2024. ("We used the existing group ranch map, which showed coordinates. We used a map from the adjudication section (1976). Rivers and roads were used to divide land for mapping."); Focus group discussion with community leaders, Ltirimin, August 2024 ("For the mapping, it was there since the beginning [1976] so we use that map to know the boundaries of Lpus, Nkaroni, and Ltirimin. Demarcation (cadastral mapping) was done, but people don't know about it on the ground.")

<sup>187</sup> Kenya National Commission on Human Rights, *Advisory on the Delimitation and Boundary Review Process in Kenya* (2024), <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1183/Advisory-on-the-Delimitation-and-Boundary-Review-Process-in-Kenya>.

<sup>188</sup> Focus group discussion with community leaders, Walda, September 2024. But, participants in the same focus group also said: "For mapping, there is no complaint but there's some few places where the border is disputed- like in Karbururi. We've heard they are taking some of our place- we aren't sure but we've heard rumors. People are coming to our place from that side. It's more or less a consultation about a very small, minor border dispute on the Uran side. Even those people of Uran, they say that one side of Walda is Uran." Id. See also Focus group discussion with community leaders, Dadach Elele, Walda, September 2024 ("Our borders are the administrative borders of Walda. The border points are Yashat, Diri Meti, Korobo Inyata, Buta, Gawale, Orboro, Banale, Bata Safa, Budan Chabi, up to Nyuki. We are bordered by Uran, Rawana South, Sololo, and Banale locations. The locations were divided a long time ago – in 1992, maybe, or 1984.")

<sup>189</sup> See, e.g., Focus group discussion with women, Turbi, October 2024 ("Before, when we had peace, we didn't have to ask permission to go into each other's territory. Now, we have to ask permission, because of that conflict. Even for land registration, there's still some issues- the fight is because of historically unclear boundaries, so we are both claiming the same land."); Focus group discussion with herders, Shulmai, September 2024 ("We prefer to have Shulmai or Maiyanat title deed because now we know our boundaries, the boundaries between us, and we know our lands and where it extends to. The previous years, we normally stayed together -- we never know where yours is, where is from your neighbor's ending. We would just shift from one place to another, since we are friends. In the group ranch period, we never knew where the boundary was. Anyone can go and say, 'this is my boundary', but you never know.") Focus group discussion with leaders, Maiyanat, September 2024 ("Our forefathers were clever, they were wise to form group ranches. In trust land, you just grab land where you want to grab – it's not yours. I think they [trust land communities] have lost a lot of land. ... Without well-defined borders, you have more conflicts over land and livestock. Ile ardhi kubwa inaleta shida.")

<sup>190</sup> Focus group discussion with women, Dadach Elele, Walda, October 2024.

*claiming the area as their land.*"<sup>191</sup> Resolution of the conflict required intervention of community elders, the interested companies, and the county government.<sup>192</sup>

Many community members, especially in trust land areas, hope that community land titling will clarify inter-community boundaries and resolve border disputes.<sup>193</sup> In Ambalo, herders expressed confidence that, "*when land is registered, we will know our borders.*" A herder in

Chari similarly stressed: "*Everybody should be given their place. After registration, everyone will have a border (seera jirrani) and everyone will have their own part where they can graze.*"



<sup>191</sup> Focus group discussion with women, Maiyanat, September 2024.

<sup>192</sup> Key informant interview with sand harvesters in Kantana, Shulmai, September 2024.

<sup>193</sup> See, e.g., Focus group discussion with leaders, Biliqo, Chari, September 2024 ("Zamani, we were just told, 'this all is your land', but there was no written thing. It just has our name but there is no legal thing. But when our land is registered, it's better. It demarcates our land, which is good.")



In Biliqo, some of Chari's leaders agreed: *"It will be advantageous for us if the community knows the border points with Samburu and Somalis. They will know how far the land stretches. This information is important. When it is put into writing, legalized, and given a certificate, it will have advantages for us."*<sup>194</sup>

Duty bearers in the Kenyan government—including members of the National Land Commission, Ministry of Lands, the Environment and Land Court, and some of the county governments of the study area—made similar arguments in interviews for this study.<sup>195</sup> A member of the National Land Commission, for example, noted that, because general boundaries are "subjective" and are based on natural features, like rocks or roads, "which

might move," conflicts over community land boundaries are common.<sup>196</sup> County and national government actors aim to replace general boundaries with fixed lines during the adjudication process<sup>197</sup> and, in cases of disputes, will be "guided by" existing administrative or IEBC boundaries.<sup>198</sup>

Administrative boundaries are also seen as more actionable in vast land areas where financial resources are limited. Staff at the Ministry of Lands said, for example, that, in former group ranch areas, adjudication involved a "simple conversion" of pre-existing maps into community land because "we cannot do a cadastral map with only three million Kenya shillings."<sup>199</sup>



<sup>194</sup> *Id.*

<sup>195</sup> Interview with representative of the National Land Commission, November 2024; Interviews with representatives of the County Governments of Samburu and Marsabit, November 2024.

<sup>196</sup> Interview with representative of the National Land Commission, November 2024 ("With a general boundary—e.g., using a natural feature—you are not very certain. It's subjective, in many cases- the rock might move. These disputes are so common in community land. So, what we are advising the Ministry to do now is use fixed boundaries, which use GPS coordinates and are very specific. So, regardless of what happens, you have clear, immovable data.")

<sup>197</sup> *Id.*

<sup>198</sup> Interview with representative of the Ministry of Lands, February 2025.

<sup>199</sup> *Id.*





The current emphasis on administrative borders is unlikely, in the opinion of the research team, to resolve conflicts in the way that many stakeholders hope, in large part because administrative borders in northern Kenya have historically been formed through top-down moves by political elites<sup>200</sup> and, as a result, are contested by residents of the areas in question<sup>201</sup> or are disputed in court.<sup>202</sup> Also, although all of the assessed communities based their applications on administrative borders, several submitted expansive applications that are larger than their established borders and are simply waiting to see whether conflicts or disputes with their neighbors will arise.<sup>203</sup>

Another shortcoming of the sketch-mapping processes, as currently implemented under the Act and Regulations, is the absence or insufficient involvement of neighboring communities, who would otherwise raise counter-claims.

Leaders in Funan Qumbi, in Rawana, explained: *"Our mapping was done in a participatory way within the community and it was the consensus of all persons here. But, we don't know how other applications, done by our neighbors, are going to affect us. We did not work together."*<sup>204</sup> In some places, communities have reportedly taken neighbors' claims into consideration<sup>205</sup> or made plans to conduct mapping jointly with neighbors.<sup>206</sup> Those plans were prospective, however, and unconfirmed at the time of the study.

<sup>200</sup> See generally Boru Mollmolla Galgallo, *Factors Influencing Conflicts Among Pastoralists [sic] Communities: A Case Study of the Borana and Gabra Communities of Marsabit County, Northern Kenya* (2016).

<sup>201</sup> See, e.g., Focus group with leaders, Merti South, September 2024 (about disputes over county borders around Yamicha and Hurura); Focus group with herders, Ambalo, October 2024 (about disputes over administrative borders in Basir, Arbajahan, and Shurr).

<sup>202</sup> Focus group discussion with leaders, Korbasa, Cherab, September 2024 ("It is not clear whether Shura is in Marsabit or Isiolo, for example. Gabra and Borana had disputes over this land. Shura area is in Marsabit county, but it should be in Isiolo. There were disputes in that area over a borehole. There is a boundary dispute in court to determine whether the contested area is in Marsabit or Isiolo."); Id. ("When a borehole was installed at Hawaye by the Gabras, we went there for a very big meeting that lasted for very long and we told them that this is our place -- do not dig. They said that they just wanted to use it for a temporary period. We said, 'No! It will bring chaos. We will have problems later.' But they went ahead with drilling the borehole. It was during Doyo's time. Nobody even followed up that issue, but, to us, even that borehole is ours. To them, it is theirs. We still have issues with Hawaye; we see it as part of our land. There are several other parts of our land that have disputes, like the place that borders Isiolo and Wajir. That issue is still in court. We asked if the registrations of the rest of the places can go on without this in dispute. We were told yes, but, for the land in disputes, we should wait for the court to decide.")

<sup>203</sup> See, e.g., Focus group discussion in Kinna, September 2024 ("We had no issues on the mapping, although we anticipate challenges because we did not involve our neighbors. The elders helped us draw using landmarks. We expected someone to challenge it after gazettelement but so far, not yet. If we do mapping without involving our neighbors, it is challenging. There will be obvious issues.")

<sup>204</sup> Focus group discussion with leaders, Funan Qumbi, Rawana, October 2024.

<sup>205</sup> Focus group discussion with herders, Bubisa, October 2024 ("Our member of parliament said, 'every person should register land.' ... Community wanakaa chini, wanaandika map, then they say, tutakaa namna gani na majirani yetu?")

<sup>206</sup> Focus group discussion with leaders, Bulesa, Chari, September 2024 ("About the borders, we have already written the sketch map; we are waiting for the land adjudicator to come, and then we will take Rendille, Samburu, and Boran elders to go and put some beacons to mark the borders.")



Longer-term experiences in group ranch areas also suggest that adjudication does little, on its own, to clarify boundaries at the ground level or to resolve disputes. In Nkaroni, for example, where the community used a combination of community-generated and administrative maps in their application, leaders still do not know how the community land, as registered, compares to their self-defined resource maps.<sup>207</sup> In Lpus and Ltirimin, where adjudication incorporated roads and rivers as boundaries between the community lands, participants in this study reported that the road in question has since

moved by more than one kilometer, but has not been re-adjudicated.<sup>208</sup>

Across all assessed communities, community members' self-reported knowledge of their land's registered border points is low.<sup>209</sup> This is especially true in the case of groups that are historically marginalised from land governance, like women and herders.<sup>210</sup> In Turbi, for example, women said: *"We just call our land Turbi. It is very vast. There are some border posts here near Ethiopia that we didn't use to consider at all – we just graze freely. This thing of separating the land is new to us."*<sup>211</sup> In Saleti, a group of herders explained that: *"Our land is very big and we don't live along its borders. It's the elders who know the borders. Even on the sides of Wajir or Samburu, elders always know the borders there. The elders know, but me, personally, I don't know. I heard that our border is in Yamicha – is that right? I don't even remember the names of those border points."*<sup>212</sup>

<sup>207</sup> Focus group discussion with leaders, Nkaroni, August 2024 ("We already had our maps and registers- the community was just transitioning [from group ranch to community land]. We also did sketch mapping of resources, supported by IMPACT, and IMPACT digitized our group ranch maps and registers. But we do not know the borders demarcated by the county - we have not done cadastral mapping.") See also Focus group discussion with women, Nkaroni, August 2024 ("We had an issue of boundaries of the river around Barsilinga. Between Lpus community land and our community land, which is Nkaroni, we don't know at what point the river divides those two community lands.")

<sup>208</sup> Focus group discussion with leaders, Lpus, August 2024.

<sup>209</sup> See, e.g., Focus group discussion with leaders, Merti South, Cherab, September 2024 ("In regards to mapping, we are not sure. We only know our [administrative] boundary, but we never went to check where our boundaries reach. Yes, we have boundaries on the side of Wajir, Marsabit, and Samburu. Kinna is south of us, but the Somali graze on that land, so we are not sure about the boundaries on that side. Those living and grazing in Kinna, they are not Borans – the Somalis took over."); see also Focus group discussion with leaders, Biliqo, Chari, September 2024 ("There was difficulty in accessing the actual boundary map. Those elders who have that knowledge of boundaries were not even alive, so it was very difficult to do the sketch mapping. And there was even dishonesty in telling the actual boundaries, because, some people, when they see that a vehicle is going for boundary mapping, they just go into the vehicle! Even without any knowledge, just because they want to be paid something.")

<sup>210</sup> Focus group discussion with women, Saleti, Cherab, September 2024 ("Even before, we had borders. We know our land is from there to there. The Somalis and the Samburu, they know their sides and they stay there. But, our land is very big and we don't live along the borders. It's the elders who know the borders. The elders know – but me, personally, I don't know. I heard that our border is in Yamicha – is that right? I don't even remember the names of those border points."); Focus group discussion with leaders, Biliqo, Chari, September 2024 ("The challenges we had in the sketch mapping are that people have no clear knowledge of where the boundaries are, where the beacons are. There is disagreement and dispute between the people. There was difficulty in accessing the actual boundary map.")

<sup>211</sup> Focus group discussion with women, Turbi, October 2024.

<sup>212</sup> Focus group discussion with herders, Saleti, Cherab, September 2024.

### 2.2.2 Administrative boundaries versus resource needs

The study also investigated how each community's registered land area—or, in Marsabit and Isiolo, the land area that communities have applied to register—compares to the resource-use patterns of that community's members. The research team asked participants i) to identify and generally map the important, shared resources that sustain pastoral livelihoods for members of these communities, and ii) to compare each community's reported resource needs and use patterns to the land areas they registered or applied to register.<sup>213</sup>

The study found that, in most cases, registered community lands do not encompass all of the resources that sustain livestock production by pastoralists in those areas. None of the location-level community lands in Laikipia, Samburu, or Marsabit encompass all of the wet- and dry-season grazing areas, for example, that herders typically access in a given year.<sup>214</sup> Only Turbi, Chari, or Cherab could be described as ecologically self-contained community lands where herders have consistent access to a range of wet- and dry-season resources.<sup>215</sup>

Even in these expansive units, most herders surveyed by study had left the community at least once during the past two years because of drought, conflict, or disease.<sup>216</sup>

Community members, duty bearers, CSOs, and other stakeholders have differing opinions about whether and how these differences will affect pastoral livelihoods. Many study participants described their community as resource-rich and perceived themselves as mostly self-sufficient within their community land.<sup>217</sup> They expressed little fear of losing access to important resources outside of their community lands.<sup>218</sup>



<sup>213</sup> These are longstanding questions. As far back as 1972, "Halderman's work in the Kaputiei region of northeastern Kajiado, where the first group ranches in Kajiado district were established, began to confirm the ecological challenge to group ranch viability. Because each group ranch did not include the complement of wet and dry season grazing, residents continued with their semi-nomadic practices. Group ranch boundaries were rapidly losing relevance, particularly in times of stress. This undermines the primary intent of creating group ranches – to be able to exclude nonmembers as a way of creating incentives for members to manage their resources more carefully." Mwangi, see above note 54.

<sup>214</sup> See generally Focus group discussion with leaders, Shulmai, September 2024; Focus group discussion with leaders, Walda, September 2024; Focus group discussion with leaders, Ltirimin, August 2024.

<sup>215</sup> See generally Focus group discussion with leaders, Biliqo, Chari, September 2024; Focus group discussion with leaders, Turbi, October 2024.

<sup>216</sup> See, e.g., Focus group discussion with herders, Turbi, October 2024 ("We usually move up to Isiolo, even Ethiopia – there's a place called Ileret in Ethiopia, we can even go there during extreme emergencies and drought. Other places are Buluqh, Arbajan in Wajir. And we've gone to Kinna, Kulamawe, and Garbatulla. I come from Garbatulla but I live here."); Focus group discussion with herders, Bubisa, October 2024 ("Chafa, Chachane, Lalesa and Awaye all have water but no settlements, so we go there during emergencies. It takes three days to reach there. In the past two years we have gone to Waso [Isiolo] and to Ethiopia.")

<sup>217</sup> See below notes 222 to 224.

<sup>218</sup> Focus group discussion with herders, Bubisa, Turbi, October 2024 ("Registration by others doesn't affect in any way. Even the Rendille won't refuse us. You will just say, 'I'm just looking for pastures and water, later I'll go back to my place.' That's how it will work. It won't affect us. But, their problem is the warani who don't follow the orders of elders.")



A herder in a forr settlement in Biliqo, Chari, for example, said: *"How would registration by others disturb me? What do I need from them? It's not our area; we are not even there. It won't affect me. The only people going there [to Samburu or Wajir] are going with bad intentions (kwa kufanya ukora)."*<sup>219</sup> A group of cattle herders in Shulmai felt similarly: *"There is no effect even from our neighbors in Maiyanat shifting [to registered community land] because, in the rainy season, everything, everywhere is green. There is no reason to shift from here to there. If you go there, it seems you have some hidden reason – that you are doing something against them. So, you just stay at your home. Only during the dry season, maybe, you might request to shift."*<sup>220</sup>

Many community members and duty bearers also argue that clearly defined community lands will allow communities to employ better management practices, discussed in detail in the Bylaws section below, and, as a result, reduce the need for mobility. In Laikipia, for example, women in Moropusi said: *In the past, we had a lot of migration from one place to another to look for grass and water for our cattle. But now, since we have new bylaws, we do not utilize that migration so much, because some places here have been reserved for us to use during the dry season. We also plant grass and put manure anywhere we see there are bare lands, and we*

*do projects to reduce soil erosion. As a result, we have a lot of grass growing all over, and we have reduced the number of cattle we keep. So, we have what we need and we do not need to move very far, as we did in the past.*<sup>221</sup>

In Samburu, too, members of the assessed communities almost always discussed registration as a tradeoff between mobility and conservation. In Nkaroni, women said: *"Registration has affected access to community resources as outsiders are not permitted to live in our community permanently. They graze for a short period, then they leave. This affects our migration since we now have to follow strict rules set, and we have to go through the CLMCs from other communities for permission, unlike before. We used to share resources without having to go through CLMCs."*<sup>222</sup> In Lpus, leaders explained: *"Outsiders have rights to access resources such as water and pasture, but not construction materials or settlement. The new rules essentially say, 'If you are not among the community, you are not supposed to come and use resources so freely, because you are not among those who conserve the environment.' This is because of climate changes and prevalence of droughts – we want to conserve our land well so that we minimize drought effects."*<sup>223</sup>

<sup>219</sup> Interview with herder, Biliqo, Chari, September 2024 ("Certainly, though, our bylaws will affect others; outsiders love our place, they always come. They love our place."). See also Focus group discussion with herders, Merti North, Chari, September 2024 ("If this land process is happening, it will be very nice for us as Boranas, because that is our land, and we have most of the land that we are very sure it is ours. Up to Ambalo, even Moyale. The others, they don't even have land. They just come to our land. Registration would be very good. The Boranas have a very huge piece of land. The outsiders [nyap] are disturbing us because they don't have land for grazing.")

<sup>220</sup> Focus group discussion with herders, Shulmai, September 2024.

<sup>221</sup> Focus group discussion with women, Moropusi, September 2024.

<sup>222</sup> Focus group discussion with women, Nkaroni, August 2024. With regard to household resources, focus group participants added: "It [registration] does not affect us as women. We can still go to collect firewoods and all the things we need. If anything, it has strengthened our rights, because conservation is now better." Id.

<sup>223</sup> Focus group discussion with leaders, Lpus, August 2024.

In trust land communities, some participants, like women in Dadach Elele settlement in Walda, agreed that, *"Registration is going to affect sharing positively because we will have better control over resources. It is going to affect migration, since better management of resources will reduce the need for migration."*<sup>224</sup>

In Biliqo, a herder hypothesized: *"When land is registered, everyone will have their place. It's a very good thing if it happens, because everyone will know their area. If you cross to our side, you will be known as the one causing conflict. When we want to access resources, you have to ask permission from other communities instead of just going. Maybe, if the committee that is formed will help, those people coming even from Sololo can come and negotiate with the committee."*<sup>225</sup>

These views of community lands as self-contained and self-sufficient are, to some extent, out of step with academic understandings of the importance of strategic mobility in highly variable environments.<sup>226</sup> Many community members in trust land areas expressed similar concern about how registration, as a restriction on mobility, would affect their livelihoods. Most herders in Chari and Cherab, for example, strongly felt that their livelihoods depend on rights to access and use both ecosystems.<sup>227</sup> In Funan Qumbi, close to Rawana's border with Turbi, women highlighted the delicate balance between management and exclusion: *"Registration by our neighbors in Turbi won't affect us, if we still have peace with them,*

*because they are also coming to our side to graze. If their land is registered, it will obviously have rules – and it's good to have rules. But, our fear is that they might say, 'Don't come to our side because we have registered our land.' Maybe they will tell us not to go collect firewood without permission, or not to go at all."*



The main question for implementers of the Community Land Act was quite effectively summarized by leaders in Dadach Elele, Walda, who asked: *"Now, this registration is going to zone areas as belonging to specific people. But the rains can decide to fall in one area and not another. Did you, as people facilitating this, anticipate that problem and what that would mean for the bigger area and for people who didn't get that rain?"*<sup>228</sup>

This study indicates that, although the Act, the Regulations, and duty bearers all acknowledge the need for supporting interconnectedness,

<sup>224</sup> Focus group discussion with women, Dadach Elele, Walda, September 2024.

<sup>225</sup> Interview with herder, Biliqo, Chari, September 2024.

<sup>226</sup> See, e.g., Gufu Oba, "Harnessing pastoralists' indigenous knowledge for rangeland management: three African case studies," *Pastoralism: Research, Policy and Practice* (2012); Günther Schlee, "Territorializing ethnicity: the imposition of a model of statehood on pastoralists in northern Kenya and southern Ethiopia," *Ethnic and Racial Studies*, vol. 36, no. 5 (2013).

<sup>227</sup> See above notes 174-7. See also Focus group discussion with herders, Mulandanur, Cherab, September 2024 ("For us as Boranas, we are one people. From Chari, up to Ethiopia, everywhere where Boranas are, we are one. We only accept for us to be separated from Safar [Somali] and Korree [Samburu]. We don't want Boranas to be cut into two. It won't disturb us if we are told not to cross into others' lands – we don't go there. All the problems are with outsiders coming here. The only thing that might disturb us is any separation of Chari and Cherab. When it rains on one side, we may go to the very far end of Chari, or to Yamich at the end of Cherab. Registration might give us some limitation in terms of movement, and that would be a problem for our livelihoods.")

<sup>228</sup> Focus group discussion with leaders, Dadach Elele, Walda, September 2024.



the implementation process has not adequately responsive to concerns about mobility. This study suggests that, so far, the mapping and registration of community land has not been paired, in enough depth or consistency, with the recognition and protection of pastoral livelihoods or the shared, unevenly distributed resources that sustain them. The near- and long-term implications of the mismatches between registered community land areas and the resource needs of pastoralists are not yet clear and will require detailed monitoring and study in the future. The debates about whether and to what extent communities should view their ownership rights as legitimate grounds for making rules that restrict or deny resource-use by non-members, discussed in the Bylaws section below, are particularly important.

## 2.3 Safeguarding customary rights

The registration process set out under the CLA and its Regulations requires duty bearers and communities to protect customary rights of use and access that underpin pastoral mobility. For example, the CLA requires adjudication officers to “invite all interested persons” with “any” claims, including customary, seasonal, or negotiated rights of use or access, to participate in the adjudication process and have their claims evaluated by the adjudication team.<sup>229</sup> The Regulations provide two documents—Forms CLA 9 and 10—that allow adjudication officers, CLMCs, and registrars to record applications for and registration of customary rights of occupancy and, potentially, use and access.<sup>230</sup>

The Community Land Act also requires registered communities to take steps to protect non-members’ customary rights to use and access resources within the community land. Section 20 of the Act provides that, after registration, communities must enact “measures to facilitate the access, use and comanagement of forests, water and other resources by communities who have customary rights to these resources.”<sup>231</sup> Section 28 further states that for grazing rights, in particular, the “customs and practices of pastoral communities relating to land shall be taken into consideration by a registered community,” though the community may set conditions on access or withdraw non-members’ grazing rights.<sup>232</sup>

<sup>229</sup> CLA, s. 8(5) and 5(2) (“Customary land rights shall be recognized, adjudicated for and documented for purposes of registration in accordance with this Act and any other written law.”)

<sup>230</sup> These two forms are rooted in Art 40(2) of Kenya’s constitution, which protects against the arbitrary deprivation of “any interest in, or right over, any property of any description”. Neither form has ever been used. The NLC and the Ministry of Lands have focused their interpretation of the Forms, to date, on occupancy rights, rather than use or access. Interview with a representative of the Ministry of Lands, February 2025.

<sup>231</sup> CLA, s. 20(2)(c).

<sup>232</sup> CLA, s. 28.



**This study found that registration processes in the study areas have, so far, under-utilized provisions safeguarding customary property rights and, as a result, have under-protected the rights pastoralists hold to resources outside of their own community lands.** None of the assessed communities have registered any non-member's customary rights to access or use resources within their lands; no individual or community in the study area has applied, via Form CLA 9 or otherwise, to register seasonal or use rights to resources found in other community lands.<sup>233</sup> Additionally, none of the assessed communities have enacted measures identifiable to the research team that facilitate access, use and co-management of resources with other communities who have recognized customary claims to those resources.

There are multiple explanations for the failure to register a more complete bundle of pastoral property rights, rather than ownership and management rights alone. One factor is time; the forms created by the Regulations are meant to be used sequentially, and it may simply be the case that communities have not gotten to Forms CLA 9 or 10 because they have not finished the process. At the time of the study, though, none of the duty bearers, communities, or civil society actors included in the research had any concrete plans to register user or access rights.

Another significant factor is the structure of the adjudication process, which involves a ground-based survey by a team of licensed surveyors and members of government. Seasonal users and outsiders who are not physically present in that area at the appropriate time are unlikely to be included.<sup>234</sup> In the assessed areas of Samburu and Laikipia where demarcation and adjudication had been completed in the 1970s or 1990s, elders' recollections indicate that

government officers did not take sufficient steps to involve seasonal or customary resource-users in surveying, demarcation, or adjudication.



The community in Chari were the only participants to mention neighbors' participation in any part of mapping or adjudication processes, and, because Chari is still unregistered, those plans were prospective and subject to change.<sup>235</sup>

The study also identified a lack of demand by communities for the registration of seasonal, use, or access rights. Many participants in this study expressed confidence that registration by their close neighbors would not negatively impact resource use or sharing,<sup>236</sup> and, as a result, they did not worry about or plan to pursue registration of customary rights.

<sup>233</sup> Form CLA 9 had also not been used, at the time of this study, by members of any of the community lands in the study area to formally register an individual or family's customary rights of occupancy to particular land or resources within the community land.

<sup>234</sup> See generally Monica Lengoiboni et al., "Initial Insights on Land Adjudication in a Fit-for-Purpose Land Administration," *Land*, vol. 10, no. 4 (2021).

<sup>235</sup> See, e.g., Focus group discussion with leaders, Biliqo, Chari, September 2024.

<sup>236</sup> See, e.g., Focus group discussion with leaders, Ambalo, October 2024 ("According to us, registration will not affect, in any way, our sharing or access to outside resources or migration, because the procedure of doing it is the same and the people we are borrowing from are the same people, and we've always had relationships with them.")



In Walda, for instance, women said: *"If our neighbors in Uran register their land, we have no problem with them. It won't affect us. We are from the same communities and, if we ask them for pasture and water, they will not deny us access. We will just have to ask them for permission. This land is enough for all of us."*<sup>237</sup> In Kinna, women agreed, *"We have no problem with the other side; it's mostly people from Chari coming here. It doesn't make sense to us to say, 'You are our people but you can't access our land or water because of registration.' We share everything: marriages, funerals, everything. Registration can't separate us from them."*<sup>238</sup> In Samburu, women in Ltirimmin said: *"Registration by others has not affected us, since our neighbors are very welcoming. And, for now, we have enough pastures and water for our livestock. We are not going to their communities."*<sup>239</sup>

Instead, most participants expressed a focus, with varying degrees of strictness, on surveilling and controlling non-members and excluding those who do not comply with the community's rules.<sup>240</sup> The women's focus group in Ltirimmin remarked, for example, that, *"even children have a right to ask outsiders why they are here in their community."*<sup>241</sup> They discussed, with reference to their neighbors in Lpus and more distant neighbors from Marsabit, some of the competing considerations at play:

<sup>237</sup> Focus group discussion with women, Walda, September 2024. See also Focus group discussion with herders, Nkaroni, August 2024 ("Registration of land has only brought some very slight changes on where to graze or not. For people from Lpus, they are allowed to graze in our land [Nkaroni], but not to make permanent settlements. This is not affecting resource sharing within our community."); Focus group discussion with leaders, Merti South, Cherab, September 2024 ("We have no issue having this land registered. As before, as long as we collaborate with them, the Chari people will come and graze in our land freely without seeking permission. Even if the land is registered, we will have no issue there in future, because we have plenty of pasture and water in our community [Cherab]."); Focus group discussion with herders, Ambalo, October 2024 ("No way – our neighbors wouldn't deny us access to their land just because it is registered. I don't think it is going to happen."); Focus group discussion with herders, Galgallo Dhiqo, Rawana, September 2024 ("Our resource sharing is based on unity of the people and peace, so I don't think registration will have any effect.")

<sup>238</sup> Focus group discussion with women, Kinna, October 2024.

<sup>239</sup> Focus group discussion with women, Ltirimmin, August 2024.

<sup>240</sup> See, e.g., Focus group discussion with herders, Ndikir, Nkaroni, August 2024 ("We have no issues sharing resources with our close neighbours, like Lpus. We have issues with Borana, Somali, Turkana accessing our land because they don't follow the right procedures and may exploit our resources."); Focus group discussion with herders, Shulmai, September 2024 ("Bylaws help us with those who are coming into our community- if outsiders come, they are following the instructions from the owners from here or the elders. We control and manage them the way we want- they don't follow their own decisions.")

<sup>241</sup> Focus group discussion with women, Ltirimmin, August 2024.



Registration has not affected our neighbors badly; people from Lpus are welcomed, but they have to follow rules. We can't prevent neighbors from accessing water for their livestock, but they have to control themselves – they can't overgraze and exploit our land. For the Rendilles, too, they are welcomed but they have to live within a settlement. Before, when they would come for *Idupa*, a tree used for thatching houses, they would cut the trees completely and then just leave! But now, rules are in place so they can't access the trees so freely anymore. We can't chase them away entirely, though, because we might also need to go to their community next time in search of pasture and water.<sup>242</sup>

In all parts of the study area, then, the research found that communities and duty bearers have focused more heavily on strengthening ownership, management, and exclusion rights than access or use rights, to varying extents and for a variety of reasons.<sup>243</sup>

The effects of these decisions require further

investigation. Experiences in the former group ranches suggest, for example, that leaving seasonal use and access arrangements as informal and unregistered might not undermine widespread respect for those rights. In Samburu, women in Lpus, Ltirimin, and Nkaroni reported significant freedom of movement among the neighboring communities under the customary rules, both before and after the transition to community land.<sup>244</sup> Herders in those communities similarly felt, as summarized by a herder in Nkaroni, that *"land registration has only brought some slight changes on where not to graze. Those from Lpus are still allowed to graze in our land but not to make permanent settlements. It [registration] is not affecting resource-sharing within our communities."*<sup>245</sup>

Yet the study also identified clear reasons to believe that, in the long term, conflicts over how resources should be shared inter-communally will endure, or perhaps worsen. In Marsabit, for example, herders who do not live in Walda but who depend on the Walda borehole expressed dissatisfaction with the Walda community's past management of that strategic resource and concern that registration would further weaken outsiders' position in negotiating for access

<sup>242</sup> *Id.*

<sup>243</sup> See, e.g., Focus group discussion with leaders, Turbi, October 2024 ("In the traditional way, land is open to everyone. For this new legal way now, only members have the right to live in Turbi, within the land that we've registered."); Focus group discussion with leaders, Kinna, September 2024 ("Written bylaws may present some challenges. For example, after registration, there will be no free movement as it is today. After we make the laws, we will allow Borana from other communities to request access.")

<sup>244</sup> Focus group discussion with women, Narokie, Nkaroni, August 2024 ("We normally don't inquire permission to access any resources from our community neighbours- we have a lot of grass and resources nearby home. Generally, our boundaries are not so clear to us- we just go. As far as we know, there is no rule that says, 'You should not reach here.'"); Focus group discussion with women, Loruko, Nkaroni, August 2024 ("Sometimes the resources we need are restricted by planned grazing systems. The restrictions apply to everyone, members of that community and non-members. These rules are not a big problem. Especially in times of emergency, for grazing, there is no clan discrimination- all clans become one, everyone becomes one people and you can move into any area you need."); Focus group discussion with women, Ltirimin, August 2024 ("We don't borrow permission for accessing resources outside of the community. We have good relationships with neighbors. As for temporary settlements, you need to go to your respective clans. Like Lpisikishu, they come and stay and then they leave as soon as they are done with their grazing.")

<sup>245</sup> Interview with herder, Nkaroni, August 2024. The long-term effects of bans or increased restrictions on permanent settlements outside of a pastoralist's 'home' community are unclear, though. The most disadvantaged groups will be more mobile pastoralists or people who lack clan or familial ties to important resource areas.



rights.<sup>246</sup> The Walda community “have denied people access to their borehole during past rainy seasons,” a herder in Galgallo Dhiqo said. “They have already created problems. When they get a title deed, it will bring even more problems.”<sup>247</sup> In response, a herder in Arradhi, a *forr* settlement in Walda, argued that: *“We might benefit [from registration], because, from what I hear, outsiders may start having to pay taxes and that money will be used to help us as Walda community. Instead of outsiders coming from far away and depleting our grass and leaving, they will pay to be here, and it will benefit us. For that, I accept registration; I think it's a good thing. You can't go somewhere without asking for permission. To us, it's okay to make such rules.”*<sup>248</sup> Leaders in Ambalo agreed that a community's commercialization of shared resources, like sand or water, was not a new trend or an objectionable feature of registration.<sup>249</sup>

In Laikipia, according to leaders in Moropusi, potential restrictions or taxes on herders' movements to access private ranches would be inequitable: *“We feel that Shulmai and Moropusi are disadvantaged with regard to private ranches since we don't have any ranches bordering us. So, for us, you have to cross another community land, following their rules, and, in future, maybe paying their fees, and then you pay again to get into the ranch.”*<sup>250</sup>



Many participants discussed registration as a tradeoff between harms from lost access to outside resources and benefits from excluding outsiders. In Isiolo, women in Cherab said: *“Registration will create a lot of problems for us because, when it doesn't rain on our side, we need to go to areas like Kulamawe [in Kinna] for grazing. When we are told only to graze in our area, it will be a challenge to us. Our cattle will die. But, land registration is also beneficial to us because, during the recent drought, people from Marsabit county were all here with their cattle. Once we register, it will restrict them; they won't*

<sup>246</sup> See, e.g., Interview with camel owner from Arero in Walda, September 2024 (“[Walda's registration] will really affect us because we already had a lot of negotiations before we were even allowed to access this water point, because there are people among the community who didn't want to share with us. We as people from Anona, we are on the [Kenya-Ethiopia] border. We don't have grazing area, we only have plots. If we register our land, it won't affect them because we are the ones who usually come to their sides, not them coming to ours. I am even considering moving here [to Walda] because of these issues.”).

<sup>247</sup> Focus group discussion with herders, Galgallo Dhiqo, Rawana, September 2024 (“There was even a time that people from Walda denied people access to their borehole during the past rainy seasons. They forced people to go for water at Waye Godha. They have already created problems; when they get a title deed, it will bring even more problems.”).

<sup>248</sup> He continued: “If other communities have such laws (katiba) and it says we are supposed to pay – like, if we go in a group as the 100 households from this *forr* and some money is paid to the community and they can use it to pay bursaries – then it's going to be helpful. If they pass such a law, I am going to pay them, if there's a need for me to graze in their place.” Interview with herder, Arradhi, Walda, October 2024. See also Focus group discussion with women, Kinna, October 2024.

<sup>249</sup> Focus group discussion with leaders, Ambalo, October 2024. See also Focus group discussion with women, Kinna, October 2024.

<sup>250</sup> Focus group discussion with leaders, Moropusi, September 2024.



*access our resources freely.”<sup>251</sup> In Saleti, a group of herders argued: “Registration is a good thing. It will give us security for our land. It may affect free movement, but, in the end, we will have fewer intrusions and more security of our land.”<sup>252</sup>*

Such conflicts over resource imbalances, whether real and perceived, are widely prevalent and seem likely to be exacerbated, rather than improved, if registration processes do not proactively address the recognition and protection of customary use or access rights. Duty bearers should allocate significantly more financial and technical resources to understanding, documenting, and generating public awareness of pastoralists’ use and access rights to land and resources affected by registration.

<sup>251</sup> Focus group discussion with women, Cherab, September 2024. See also Focus group discussion with herders, Walda, September 2024 (“If other communities establish mazingira committees, these may affect the way we access natural resources. But not so much – our migration for pastures is limited because we have more resources. And we prefer to have limited numbers of livestock accessing our pastures, we have experienced loss of livestock due to overgrazing.”)

<sup>252</sup> Focus group discussion with herders, Saleti, Cherab, September 2024.

## 2.4 Adopting written bylaws

The Community Land Act and its Regulations require communities to develop and ratify rules and regulations, commonly called bylaws, to govern the operations of the community and to determine the management and administration of the community's land.<sup>253</sup> This requirement of the Act means communities must develop written rules that regulate, among other things, the control and use of water and pasture sources on the community's land.<sup>254</sup> The Regulations provide model bylaws which communities are encouraged to use as an example; the model rules suggest, for example, that community bylaws should make user rights for water and land resources "subject to such conditions as may from time to time be imposed in accordance with these rules and regulations."<sup>255</sup>

This study investigated what, if anything, the assessed communities' bylaws say about resource-sharing among community members and with neighbors, and how those provisions relate to traditional laws. It also explored what community members know about their bylaws,

how rules are enforced, and how disputes are resolved. In other words, it sought to gauge whether and to what extent bylaws have become operational, living documents that affect day-to-day decisions by community members or outsiders.

The study found that many community members, especially elders, view written bylaws positively and hope that adopting formal bylaws will strengthen their traditional resource-governance systems. The research suggests, though, that, in practice, communities' written bylaws do not discuss land and resource governance in significant detail. The assessed bylaws are largely silent on communities' resource-sharing arrangements with their neighbors, for example; they contain few to no protections for outsiders' rights to use or access the community's land or resources; and they do not regulate community members' use of resources outside of their community land. The assessed communities all based their bylaws heavily—or, in many cases, almost entirely—on the model rules provided in the Regulations, which bear little resemblance to the traditional systems communities hope to protect.

<sup>253</sup> CLA 7(6) and 15(4)(e); Regulations 8(3)(d); CLA 37. The Regulations also oblige CLMCs to "assist and encourage" the community in observing constitutionally recognized principles of land use and range management. Regulations Section 21. See also CLA 3; Constitution Art. 60; Model Rules 16.1 ("The committee shall assist and encourage members to manage the land or graze their stock in accordance with sound principles of land use, range management, animal husbandry and commercial practice.")

<sup>254</sup> The Regulations require that the rules and regulations address, among other things, the persons responsible for the custody and investment of the community's property, the purposes for which that property may be used, and the processes used to resolve disputes. Regulations Section 8. Also Second Schedule, 9, 10 and 15

<sup>255</sup> Model Regulations 5.5. The model rules also suggest communities give CLMCs the power to make binding decisions regarding "the rights and obligations of any person in matters relating to the use of the community land and other assets." Model Regulations 6(d)



The study also indicates that, in most communities, written bylaws have not been operationalized and, in many cases, mainly exist on paper. The study found little to no knowledge of the bylaws among most community members and, in some cases, members of CLMCs. All of the assessed bylaws are written in technical, jargon-heavy English; none of the communities have translated official versions of their bylaws into local languages, whether in writing or otherwise. The direct impact of written bylaws on pastoralists' movements are, so far, very minimal; the long-term effects, whether intended or not, are still being debated.

Most people interviewed for this study who had knowledge of their community's bylaws expressed positive opinions about the new rules and regulations. For example, members of registered communities, especially in Laikipia, feel that resource management has improved due to the transition from group ranch to community land.<sup>256</sup> Many feel that registration has made resource governance more participatory, inclusive, and fair.<sup>257</sup> Members of some unregistered communities hope similar trends will unfold in their communities. *"It would really be a good thing," said a herder in Ambalo, for example, "to have people follow each others'*

*bylaws wherever we go for grazing"* <sup>258</sup>



Elders and community leaders commonly describe the bylaws as a written codification of traditional rules, with few to no divergences from accepted systems like *enata nkop* or *dedha*. Walda's leaders, for example, reported, *"There is no big difference between dedha and bylaws. We just used dedha; the bylaws are administrative strengthening, in written form, of dedha."* <sup>259</sup>

However, this study found that written bylaws usually do not explicitly mention traditional governance systems, though, and do not regulate land or resources as comprehensively as the traditional laws that communities are ostensibly aiming to codify and protect. Of the eight communities with written bylaws that

<sup>256</sup> See generally Focus group discussion with leaders, Moropusi, September 2024; Focus group discussion with herders, Shulmai, September 2024.

<sup>257</sup> Focus group discussion with women, Maiyanat, September 2024 ("We value the bylaws we have now, because, if we have a bursary within the community, it gets shared with every member, even those who live far away. Everyone has a role in the decision in sharing things and working with other communities."); Focus group discussion with herders, Ndikir, Nkaroni, August 2024 ("The written laws have brought about inclusivity like for one to access resources like water, no one has power over the other."); Ltirimin women ("We have set morans to oversee the locked lands and sand soils to safeguard our resources. Rules for members should be inclusive and women should be involved.")

<sup>258</sup> Focus group discussion with herders, Ambalo, October 2024. See also Interview with herder, Dadach Elele, Walda, September 2024 ("It is good, these laws are good -- even aside from violence, without rules, the water points become dirty. Even now, I am in the queue; I am waiting for my animals to arrive -- it's first come, first serve but controlled by the aada, by the law. Such rules are helpful.")

<sup>259</sup> Focus group discussion with leaders, Walda, September 2024. See also Focus group discussion with leaders, Lpus, August 2024 ("Bylaws have come to strengthen the existing traditional rules. We just wrote the traditional laws in paper and added more in consultation and with support from IMPACT and input from all community members."); Focus group discussion with leaders, Bulesa, Chari, September 2024 ("The bylaws and aada Borana are similar. We just took the Borana traditional laws the way that dedha was before, and we adopted it as bylaws. We used that one for the registration. ... We don't have any problem between bylaws and dedha. In fact, it has a positive effect, now that we have that registration process, it will strengthen our laws.")

were shared with the research team,<sup>260</sup> only two—Chari and Cherab—say explicitly that their bylaws are a codification of a traditional legal system: *dedha*. Others, like Rawana, provide generally that, in making resource-governance rules, “the Management Committee shall take into account the customary practices of the community.”<sup>261</sup>



Most bylaws are almost entirely silent on the intercommunal access and user rights that are recognized by traditional laws and safeguard pastoral mobility. Of the assessed bylaws, five—Shulmai, Ltirimin, Nkaroni, Chari, and Cherab—contain a single provision recognizing the customary rights of neighbors. Section 11(d) of the Shulmai Community Land Constitution, for example, requires the CLMC “ensure that the rights of any person under recognized

customary law are safeguarded in so far as that is compatible with the operations of the community.”<sup>262</sup> This clause is identical to a provision of the model regulations and was also adopted, verbatim, by Nkaroni and Ltirimin. Two communities in Marsabit—Walda and Rawana—adopted the same section of the model regulations, but excluded the provision protecting nonmembers’ recognized customary rights.<sup>263</sup>

Aside from the clause above, the research team did not identify any provisions of the assessed bylaws that are designed to protect or enhance a community’s interconnectedness with neighbors, whether in terms of neighbors’ seasonal rights to the community’s resources or members’ rights to access resources in other communities. The thin recognition of customary rights is also undercut, throughout all of the assessed bylaws, by other, much more numerous references to the rights of “members” or “registered members.”<sup>264</sup> Ltirimin’s bylaws, for example, state, “The natural resources found in the Community Land belongs [sic] exclusively to member’s [sic] ... and members have a right to exploit them.”<sup>265</sup>

In balancing the customary rights of others against members’ rights to regulate the community’s land and resources, then, all of the assessed bylaws tend to heavily or exclusively favor the latter.

The Second Schedule of the Regulations also suggest that bylaws should contain a description of the land where communities

<sup>260</sup> The research team reviewed the bylaws that Shulmai, Chari, Cherab, Nkaroni, Lpus, Ltirimin, Walda, and Rawana communities submitted to the registrar. Kinna and Ambalo had not reached the bylaws-drafting stage of the registration process at the time of the study. Members of the CLMCs in Turbi, Moropusi, and Maiyanat declined to share their bylaws with the research team.

<sup>261</sup> Rawana Community Bylaws, 25(b).

<sup>262</sup> Model Rules, 15(c). See also Waso Borana Bylaws, s. 26(d)(4) (“Non-residents may have access to water sources for their use and for the use of their livestock with the authority of the [Community Land Management] Council and subject to such conditions as the Council may impose.”)

<sup>263</sup> Walda Community Land Management Rules, s. 17 (mandating the CLMC to “[e]nsure that the rights of all registered members are respected, protected and fulfilled.”)

<sup>264</sup> See, e.g., Nkaroni Community Land Constitution, Rule 5(c) (“The natural resources found in the Community Land belongs exclusively to member’s subject to such conditions, exceptions and and members have a right to exploit them.”); Ltirimin Community Land By-laws, 4.1(a) (“All resources found in the community land shall be accessed, enjoyed, exploited and utilized equitably by all members ...”).

<sup>265</sup> Ltirimin Community Land By-laws, 2.4(b).

"have exercised rights of use and occupation."<sup>266</sup> None of the assessed bylaws acknowledge that community members hold and have exercised user rights to resources outside of the registered community land. None of the assessed CLMCs or communities expressed an understanding that the CLA or Regulations could be used to register user or access rights. None of the participants in this study said that the community land registrars—who must, under the Regulations, evaluate whether "the rules and regulations of the community are satisfactory in substance and in form"<sup>267</sup>—had asked the community to revise its bylaws, whether to better protect the recognized customary rights of outsiders or for any other reason.<sup>268</sup>



The study also indicates that other possible sources of technical support for communities, like the model rules and regulations or the advice provided by civil society organizations, have also not succeeded in ensuring communities' bylaws comprehensively recognize and protect pastoralists' customary rights.<sup>269</sup>

Regardless of the bylaws' strengths or shortcomings on paper, the study indicated that, in practice, community members' knowledge of their bylaws is extremely low.<sup>270</sup> "As elders in Shulmai summarized: *People still rely on the traditional laws. These bylaws are new. The bylaws are only a few years old – we started preparing them in 2021, while our other rules have been here for generations (tangu zamani). Only the learned people here would prefer the written bylaws. Maybe only thirty percent of community members understand them, or less. The traditional rules have more legitimacy; something inherited is very different from something that was taught. Also, people weren't involved in making these bylaws. Young people, especially, weren't involved.*"<sup>271</sup>

Even in the former group ranches, where bylaws were adopted by Community Assemblies, the bylaws remain unknown to most community members.<sup>272</sup> Instead, herders and other resource users receive information about resource-use rules from elders via pre-existing, oral

<sup>266</sup> Regulations, Second Schedule, No. 2.

<sup>267</sup> Regulations, s. 8(4)(c).

<sup>268</sup> Interviews with leaders, all assessed communities, August to October 2024.

<sup>269</sup> One exception is the work of Indigenous Strategy and Institutions for Development (ISID) to develop a set of integrated rangeland-management bylaws across communities in Moyale sub-county. Members of ISID also advised communities in Walda, Rawana, and Uran to pursue ward-level registration, rather than location-level, although the communities ultimately chose location-level units.

<sup>270</sup> Focus group discussion with women, Saleti, Cherab, September 2024 ("We have never been told about the bylaws. We don't even know that there are rules. We just go for harvesting, for grazing. Laws that govern this land? We don't know about that! [Another participant adds] I didn't even know that this land has rules (sheria).")

<sup>271</sup> Focus group discussion with leaders, Shulmai, September 2024.

<sup>272</sup> Focus group discussion with herders, Ndikir, Nkaroni, August 2024 ("We don't know anything about the by-laws. As for the CLMCs, they have only conducted one meeting since they were elected, so they never informed us on the written laws."); Shulmai herders FGD ("We don't believe we have bylaws here. The only thing we know is that during the rainy season, some of the grazing areas are closed [under enata nkop]. Others stay open. We know the traditional rules only.); Focus group discussion with women, Ndikir, Nkaroni, August 2024 ("We need the CLMCs to visit our communities and read through those by-laws to the community members. We don't know anything about that.")



systems.<sup>273</sup> Elders indicated that the written bylaws factor into such exchanges infrequently, if at all.<sup>274</sup> Bylaws are also not regularly referenced or updated; some of the most widely known “new” rules that participants attributed to the registration process—like the ban on temporary settlements (*laleta*) among the Maa-speaking communities in Laikipia and Samburu<sup>275</sup>—are not actually reflected in the bylaws of the communities who now enforce that rule.

The study also indicated that rule-making in the assessed communities has not been sufficiently inclusive of the full range of stakeholders who have rights to water and pasture in these community lands. In most communities, bylaws were drafted by relatively small groups of people—usually led by male elders, with technical support from civil society

organizations—and then taken to assembly, zonal, or village meetings for ratification.<sup>276</sup>

In Lpus, for example, leaders stated: *“We know of the written bylaws. We drafted the bylaws ourselves and went to read the bylaws to the community members for review and adoption.”*<sup>277</sup> Many women, young people, and others generally view themselves as excluded from, or only shallowly involved in, bylaws drafting.<sup>278</sup>

As a result, although community leaders’ describe the bylaws as a codification of existing rules, most participants in this study see the bylaws as a novel, foreign set of rules that they do not know about or understand. In Nkaroni, for example, women said: *“There was a task force from the community that made the bylaws. But the larger group, we have not been taught what the laws are. We know the new rules are*

<sup>273</sup> See, e.g., Interview with herder, Moropusi, September 2024 (“I don’t know about the bylaws. I don’t know about the sheria ya community land. I have never been to one of those grazing meetings where the rules are made. The community elders come to tell us [morans] the instructions they have decided. It’s the same as the traditional way.”)

<sup>274</sup> Focus group discussion with leaders, Moropusi, September 2024; Focus group discussion with leaders, Kinna, September 2024; Focus group discussion with leaders, Rawana, October 2024.

<sup>275</sup> Focus group discussion with leaders, Maiyanat, September 2024 (“Some years back, the law was not working, according to us, but nowadays we follow deeply according to our and our neighbors’ *laleta* rule. That rule came from the transition process. It wasn’t implemented overnight, but it started as we transitioned. It came out of community discussions. At that time of drought, a lot of people were losing their cows and goats to theft. If your goats got lost in the bush, you would never find them again. People were moving at night with stolen goats, and we didn’t know who they were or where they had gone. Also, outsiders from distant places were intruding on the private ranches, and the settlers would blame Maiyanat, saying ‘You are our neighbors – you are the ones doing this.’ We would be punished for the bad actions of others. So, we decided that, in order to have more security and control, we would require outsiders to stay in homesteads, so our community can know them and hold them accountable.”)

<sup>276</sup> See, e.g., Focus group discussion with leaders, Maiyanat, September 2024 (“To write the bylaws, we took the bylaws to some of the villages to teach people how to use it, to see what they decide to do, and what to have within the bylaws. Some people have seen the effects of the bylaws within the community. They complain.”); Focus group discussion with leaders, Bubisa, Turbi, October 2024.

<sup>277</sup> Focus group discussion with leaders, Turbi, October 2024 (“There are bylaws (*katiba*) that we prepared as the mazingira committee of Turbi ward. We mobilized so that each ward has that.”); Focus group discussion with leaders, Shulmai, September 2024 (“People weren’t involved in making these bylaws. Young people weren’t involved. Only the learned people prefer written bylaws. Maybe only 30% of people here understand them.”); Focus group discussion with women, Ndikir, August 2024 (“We know a little bit about bylaws. There was a task force from the community that made the bylaws. But the larger community, we have not been taught what the laws are. We know the rules are there but we don’t know much about what they say.”); Focus group discussion with women, Maiyanat, September 2024 (“We know we have bylaws. We were not involved when it was written; we were not there. We don’t know any of the details, but we know that the laws are there.”)

<sup>278</sup> Key informant interview with herder, Arradhi, Walda, October 2024 (“I’ve just heard people discussing such issues. Personally, I didn’t attend any of the meetings but I know someone ... who was very involved and is on the committee. But I think youth and ladies are not aware; no one is involving them much.”); Focus group discussion with women, Loruko, Nkaroni, August 2024 (“No, we don’t know about the by-laws. We know there are some rules but we don’t know much about that. We know about the customary laws– no cutting of trees, etc. Those are obvious things.”); Key informant interview with herder, Biliqo, Chari, September 2024 (“Yes, I’ve heard about registration, but so far I don’t know what has happened. I’ve never heard anything about bylaws [*aada laafa*]. Personally, I’ve never been involved, but I have heard that the elders, I think, have spoken for us. If the elders are talking about that, I don’t know. It’s the elders who make the laws, obviously. I am not invited to such things; I don’t even know they exist.”)

there but we don't know much about what they say."<sup>279</sup> In Shulmai, herders said: *"We don't know anything about that – we don't know if there is a bylaw, anything written. We have laws that we normally follow from the elders, but we don't know if there is anything else that is written inside an office."*<sup>280</sup> None of the surveyed communities reported much, if any, involvement of neighboring communities or other non-members in the bylaws-drafting process.<sup>281</sup> Even within their own communities, none of the assessed communities reported identifiable efforts to ensure that bylaws drafting involved mobile people; the study indicates that herders and other mobile resource-users were probably the most excluded group from bylaws-drafting processes. In Turbi, for instance, herders said: *"We know something like the bylaws exist but we were not involved in making it. We selected the committees; they are the ones who do those things. None of us were involved in drafting the bylaws."*<sup>282</sup> In many cases, herders expressed less positivity about the bylaws than the elites who drafted a community's rules and

regulations.<sup>283</sup>

One explanation for these trends is that communities face some practical difficulties in convening meetings to draft, update, or operationalize the bylaws. As explained by community leaders in Lpus, for example: *"One key issue during drafting was impassable roads, preventing us from accessing other communities. Another was wild animals, as people can fear coming to meetings if wildlife might attack them along the way. Also, another challenge was that the dry seasons really forced us as people to go to far places to access resources, so we weren't even around."*<sup>284</sup>

Leaders in Kinna agreed: *"We had insufficient resources to conduct community-wide public participation. Even NGOs have limits."*<sup>285</sup>

In trust land areas, where communities are waiting for duty bearers to take action in response to their registration applications, bylaws have been written but not operationalized.<sup>286</sup>

<sup>279</sup> Focus group discussion with women, Nkaroni, August 2024. This perception of bylaws as a novel tool is not universally shared, though. See, e.g., Focus group discussion with leaders, Korbasa, Cherab, September 2024 ("Bylaws and dedha? It's just the same thing. There are very minimal differences, if any. We have written every resources – wells, rivers, boreholes, everything – and the rules that apply.")

<sup>280</sup> Focus group discussion with herders, Shulmai, September 2024; see also Key informant interview with herder from Anona, Walda, September 2024 ("I have never heard about registration or bylaws. I don't know if Walda has made new rules. But, I know that among the Borana community, even if you don't know the person, they can't deny people water.")

<sup>281</sup> But, many communities do this traditionally. Focus group discussion with leaders, Ltirimin, August 2024 ("Yes, we were involved in discussions about resource sharing. When we set aside grazing areas [yenata e nkop], we normally meet with elders from adjacent communities and discuss how shared grazing pasture fields can be managed well.")

<sup>282</sup> Focus group discussion with herders, Turbi, October 2024. See also Focus group discussion with herders, Bubisa, October 2024 ("We don't know about the bylaws but we selected a committee; those are the ones who know. We are aware of that registration process and committee. But, we are not the members, so we don't know the details.")

<sup>283</sup> See, e.g., Focus group discussion with leaders, Biliqo, Chari, September 2024 ("These dedha bylaws are good for us, we ask even the county and other stakeholders to help launch it and to educate others on the aada seera. The community needs to have the know-how to understand how these things work."); Focus group discussion with herders, Merti North, Chari, September 2024 ("We have heard of something to do with bylaws, but we don't know anything about it. We don't know whether it is good or bad. You know, as herders, we spend our time just walking around in the bushes, so we are not aware of that. Maybe those in towns know a bit about this, but, for those of us who are walking around with our cattle, we don't know.")

<sup>284</sup> Focus group discussion with leaders, Lpus, August 2024.

<sup>285</sup> Focus group discussion with leaders, Kinna, September 2024.

<sup>286</sup> Focus group discussion with women, Merti South, Cherab, September 2024 ("The bylaws have not been implemented. So, there are no changes to our previous routine. We have just heard about the bylaws, but we didn't see any changes we have been living our normal lives before and after the bylaws."); Focus group discussion with women, Korbasa, Cherab, September 2024 ("Now, the bylaws say for shared resources, if outsiders come, they send their elders first, and they make a written agreement that specifies how long they are planning to stay here. When that day comes, they must go back. But, since land is not registered, we haven't used those ones yet.")

One significant barrier to participatory rule-making is that the written bylaws only exist in English. All of the assessed communities based their bylaws heavily on the model Rules and Regulations provided in the Third Schedule of the Regulations; many provisions of communities' bylaws are identical to the Model Rules and Regulations. The written bylaws are, as a result, jargon-heavy, legalistic, and inaccessible to most of the people affected by those rules. None of the surveyed communities have translated a written copy of their bylaws into Kiswahili, Maa, Afaan Oromo, or any other local languages.<sup>287</sup> None of the assessed communities had official versions of their bylaws in audio, visual, or any other non-written form.

If bylaws do become operational and, as a result, start to significantly affect pastoralists' movements and resource-use practices, the effects will require further study. The most relevant rule identified in this research is that, in Maa-speaking communities, communities have disallowed temporary settlements (*laleta*) for security and grazing-management reasons;

herders have stopped making *laleta* and now stay in relatives' compounds, instead.<sup>288</sup> Assessed communities viewed these changes as increasing the community's security without a significant cost to mobility. It seems that the rule was codified during the registration process but isn't entirely attributable to registration alone, since other rule-makers—especially conservancy boards and elders in the *nyumba kumi* system—pushed for it, too. Among the Afaan Oromo-speaking communities of the study area, *forr* settlements are still universally permitted and widely utilized. Herders noted a general, but still limited, increase in the need to seek permission before movement or temporary settlement.<sup>289</sup> Herders also felt strongly, as discussed elsewhere, that registration should not limit pastoral mobility or the use of *forr* settlements.<sup>290</sup>

The short- or long-term effects of shifting away from mobility-centric practices like *laleta* are not yet clear. Herders in Moropusi and Lpus, for instance, noted they had not observed any differences in their cattle since replacing mobility-focused strategies with more regulated,

<sup>287</sup> Some communities, like Moropusi, have, according to CLMC members, orally translated their bylaws and shared the rules with community members. Focus group discussion with leaders, Moropusi, September 2024 ("Registration is an advantage to us, because, nowadays, for any rules that are made, 70% of the people are aware of those rules. We translate everything into our mother tongue [Maa] and go to every village, so that everyone can understand.") Others view the bylaws as a tool for younger people with more formal education and English-language proficiency. Focus group discussion with leaders, Walda, September 2024 ("The point of writing down the rules is to teach it to the younger people. The elders already know, it's what they learnt from their forefathers.")

<sup>288</sup> Focus group discussion with women, Ltirimini, August 2024 ("For settlement, it is different now – we used to decide where to temporarily settle on our own, but now you have to stay within the community. It has really changed compared to before, where we used to settle on our own in *laleta*."); Focus group discussion with herders, Shulmai, September 2024 ("This rule – about outsiders staying at a member's place instead of *laleta* – was introduced so that the community knows you, where you come from, and where you live. The day you get back [to your community], you alert your host also. So, if you go with someone's goats or cows, it will be known.")

<sup>289</sup> See, e.g., Focus group discussion with herders in Ambalo, October 2024 ("There is nothing new we have noted; we have been just accessing the resources the same way. Even before, the process was the same; if you move into someone else place you must inform them through their elders. This is not new. The only new thing is that the government has built and strengthened the community elders and leaders who manage our resources. There is a peace committee in every location; they even arrest people and sometimes take them to the police.")

<sup>290</sup> See, e.g., Focus group discussion with herders, Saleti, September 2024 ("Our land is very big. We have no problem registering it separately as Chari and Cherab, but one side should not limit the movement of the other. They are always coming to our side, we are going to theirs – that bylaw should not restrict our movement."); Focus group discussion with women, Saleti, September 2024 ("Nobody controls access to water and pasture; we just use it. We just go where God directs us to look for pasture and water. We just wake, we face where we want, and we go. ... If we are deep inside the bush, no one is even asking us. This thing of laws for land and resources is a bit new for us. Traditionally, there was never such control. In our region, there is nothing like that thing of, 'You are not supposed to graze here during some season, you must wait.' We just graze where we want. It should remain that way.")





conservation-based ways of herding.<sup>291</sup>

A group of herders in Shulmai assessed that, in their experience, taking additional care to manage grazing in a smaller land area was the easiest and most beneficial option for people with fifty or fewer heads of cattle, but that people with large herds—100 cattle or more—required more mobility.<sup>292</sup> The effects of these changes on individual resource users and their households thus require and deserve significant and ongoing investigation in the future.

Many people in trust land communities expressed skepticism about registration's effects on mobility<sup>293</sup> and tend to associate registration with “closing” or “locking” the land.<sup>294</sup> For example, women in Bulesa said, *“We fear that the land will be closed by registration. The reason that Samburus*

*have a problem is most of their land has been closed for conservancies and parks, so they don't have enough land for grazing, and they come here. We think that land registration is closing land, like it did for Samburus and Rendilles, and we will have a lot of problems with it.”*<sup>295</sup> A herder from Ngaremarara

<sup>291</sup> Key informant interview with herder, Moropusi, September 2024 (“I don't see any effect that these new rules have had on the cattles themselves.”); Focus group discussion with herders from Lkisin, Ngilai West, in Lpus, August 2024 (“I have heard of new rules that are supposed to be followed, unlike before. They told us to live within the communities' settlements. Also, some dams are restricted around Barsalinga for these newcomers coming to graze and to look for water. I have not encountered any challenges here because of these rules and I don't see any difference for my cattle.”)

<sup>292</sup> Focus group discussion with herder, Shulmai, September 2024.

<sup>293</sup> Focus group discussion with leaders, Biliqo, Chari, September 2024 (“Borana are one unit of community – we don't have division. Boraani kuta inqab. By registering these as separate units, this will inhibit someone from Cherab to go and graze freely in Chari, and that is not a good thing.”); Focus group discussion with herders, Galgallo Dhiqo, Rawana, September 2024 (“Initially, when these things [registration] started, everyone had fears and people were angry. But, after people went and heard, they came back happy. So, for me, what is good for all communities is good for me.”) Focus group discussion with women, Dadach Elele, Walda, October 2024 (“Registration will affect access to resources among pastoralists because, once land belongs to a certain people, that open access is restricted simply by virtue of registration.”)

<sup>294</sup> See, e.g., Focus group discussion with women, Merti South, Cherab, September 2024 (“Registration will deny our neighbors in Kinna access to our land, because this side is Merti, and also, we can't go to their sides because there will be a law that restricts people after registration.”); Key informant interview with herder, Biliqo, Chari, September 2024 (“Registration- is it closing the land? (laaf hidan?). ... Everybody should be given their place; everyone should have their own place. Everyone will have a border (seera jirrani). Everyone will have their own part where they can graze – although, I know nyap will keep on coming to our side, by force. Even Kom, that place has died because of them. If they register that land, they will have a lot of trouble – Samburus will still come. All that part of Kom is ours, but we can't graze there because of them. That's why we are just grazing this badha near the river and the homesteads.”); Key informant interview with herder from Ngaremarara in Kinna, September 2024 (“I have never heard of community land registration, I don't know anything about that. But, yes, I think registration would bother me. If the Kinna community gets their title deed, I won't have anywhere to feed my goats. [RA: Can you explain why you assume you could not access Kinna anymore? Registration would not necessarily prevent outsiders from grazing in Kinna] Oh! Then, I see no problem. I think registration could be good, then. We are neighbors and we get along, so I don't see any issue.”).

<sup>295</sup> Focus group discussion with women, Bulesa, Chari, September 2024.

who had brought his goats to Moliti, in Kinna, assumed on face that Kinna's registration would bar him access: *"Yes, registration would bother me. If they get the title deed, I won't have anywhere to feed my goats since I can't come here."* When a research assistant explained that Kinna would not necessarily refuse access for outsiders after titling, the herder changed his mind: *"Oh! Then, no problem. Registration of Kinna wouldn't be any bother to us in Ngaremara. We get along and, if they don't close the land, I don't see any issue."*<sup>296</sup>

Members of county or national government interviewed for this study endorsed the position that more intensive land-management practices would, when considered jointly with the fixed-border mapping described above, reduce inter-communal disputes and, ultimately, benefit pastoralists and pastoral economies.<sup>297</sup> The deputy director of geospatial data technologies in Samburu county said, for example, that *"providing communities with accurate and detailed information about land use and boundaries"* will leave communities *"better equipped to manage their resources sustainably and adapt to changing environmental conditions."*<sup>298</sup> A representative of the National Land Commission similarly described fixed, as opposed to general, boundaries as *"the only way"* to safeguard community land tenure *"and introduce a much more sustainable livelihood and use of their land."*<sup>299</sup>



<sup>296</sup> Focus group discussion with herders, Moliti, Kinna, September 2024 ("I have heard that there is something to do with land registration. You know, the people here [in Kinna] are not so much into pushing others out. There's no such thing of, 'If you're not from here, go back to your place.' So, this one is new to me – that one of telling people, 'This land is now yours.'")

<sup>297</sup> Interview with the director of survey, County Government of Marsabit, November 2024.

<sup>298</sup> Interview with deputy director of geospatial technologies, County Government of Samburu, November 2024.

<sup>299</sup> Interview with representative of the National Land Commission, November 2024 ("In my opinion, we are shifting from how we've always known our community land to be, where the extent was endless- you are dealing with a group which was largely pastoral, moving from place to place without restriction. But, now, you're in a regime where you want to safeguard the tenure and introduce a much more sustainable livelihood and use their land much more productively. So, the discourse now is about how communities can maximize potential of their land for economic gain, enter into agreements, e.g. for carbon. So, you're coming into a regime where you want these communities to see how best they can utilize their land. The only way to do that is to know, this is the precise extent of our land. To encourage communities to do land use plans and manage their way of life in a much more sustainable way – the only way that can be achieved, in our opinion, is by being very clear on the extent of the boundaries. They need to know, up to where is our land? So, going forward, fixed boundaries are the way to go. Also, judges on the Environment and Land Court have told us that some ninety percent of disputes they are receiving are related to boundary issues which are a result of general boundaries. So, our direction to the Ministry is, use fixed boundaries for adjudication so that they are able to resolve these disputes.")



## 2.5 Forming new resource-governance institutions

The Community Land Act empowers two institutions to govern community land: the Community Land Management Committee, or CLMC, and the Community Assembly. The CLMC is authorized, among other powers, to manage and administer registered community land on behalf of the community, to make rules and regulations which govern the community, and to coordinate the development of community land-use plans.<sup>300</sup> The Assembly, comprised of all registered members above 18 years of age,<sup>301</sup> is vested with final decision-making authority over the composition of the CLMC, the content of the community's rules and regulations, and any decisions to convert community land or sign agreements with investors.<sup>302</sup>

In other words, in addition to creating new rules and regulations, as described in the Bylaws subsection above, the registration process also requires communities to form new institutions to enforce those rules and, more broadly, to govern resource use within the community's land. Some observers have described these new, statutorily mandated institutions as a "parallel system" that "creates conflicts and undermines the authority of elders in land governance," with detrimental effects on pastoral mobility, reciprocity, and resource use.<sup>303</sup> Other scholars have characterized pastoral governance structures as hybrid institutions which, instead of being supplanted or duplicated by newer structures, continuously adapt to changing political circumstances by blending traditional and statutory systems.<sup>304</sup> In this view, institutional control over pastoral mobility and resource sharing would be expected to shift gradually and in diverse ways among various communities.

Separately, many stakeholders have argued that, in response to deeply entrenched problems of patriarchy and elitism in traditional pastoral land-governance systems, using institutional reforms to increase the decision-making authority of young people and women, among others, over land and resources is necessary to achieve equitable, transparent, and sustainable resource-sharing in the rangelands, even if such changes come at the expense of male elders' real or perceived authority.<sup>305</sup>

To assess how communities are implementing the required changes and how, if at all, those changes are affecting resource use, this study collected information about:

- i) the governance structures that exist in each assessed community, both prior to registration and since;
- ii) the composition and procedures of each structure;
- iii) how different structures relate to one another; and
- iv) how community members view and interact with the various structures, in terms of their day-to-day access to and use of resources.

<sup>300</sup> CLA, s. 15(4).

<sup>301</sup> CLA, s. 15(1).

<sup>302</sup> CLA, ss. 15(3), 21(2), 23(b), & 36(3).

<sup>303</sup> Nathan et al., *Community Land Act*, see above note 154 ("The new CLA system grants equal rights to women and young adults, who have previously been excluded from co-owning and accessing community land, but it neglects the pre-existing role of the customary councils of elders. The new system, moreover, undermines the patterns of reciprocity that traditionally have allowed pastoralists to access other communities' grazing and watering areas during droughts, and which relied on negotiations between elders.")

<sup>304</sup> See generally Boku Tache & Ben Irwin, *Traditional institutions, multiple stakeholders and modern perspectives in common property: Accompanying change within Borana pastoral systems* (Apr. 2003).

<sup>305</sup> See, e.g., IFAD, *How to do: Gender and pastoralism: Pastoral development* (Jun. 2020).



The study found very significant degrees of overlap between CLMCs, councils of elders, and water- and grazing-management committees in every assessed community, as well as, in some cases, conservancies and community forest associations. CLMCs are young institutions with little practical involvement, in most cases, in the day-to-day management of pastoralists' access to pasture or water. Community Assemblies, too, are very far from functional in the communities assessed in this study and, in large land areas like Cherab, Cherab, and Turbi, will likely be very difficult to meaningfully operationalize.

Every community assessed in this study came to the registration process with an already-diverse institutional landscape, discussed in the Background section above, within which a range of actors make rules affecting the use of pasture and water. The study found that registration has compounded that complexity, since each community has chosen to integrate the CLMC and Assembly into pre-existing structures in its own unique way. Some communities have positioned the CLMC as a distinct committee that coordinates with, and holds designated seats on, other committees.<sup>306</sup> Others have integrated existing water and grazing committees as sub-committees of the CLMC.<sup>307</sup> Some communities have combined both approaches: Shulmai, for example, has conservancy, grazing, and water sub-committees of the CLMC, but a separate, cooperative relationship with ILMAMUSI Community Forest Association, where the CLMC chair has a designated seat.



<sup>306</sup> Focus group discussion with leaders, Maiyanat, September 2024 ("The CLMC is above everyone else – Nyumba Kumi, WRUA, and elders – on matters grazing, water, and other resources. If we register a conservancy, the conservancy board will be under the CLMCs, too.")

<sup>307</sup> Background interview with area chief, Shulmai, September 2024 ("The CLMC board is the same as the conservancy board. CLMC runs the conservancy. CLMC & CFA are less aligned- only the chairman of CLMC sits on the CFA.")

The day-to-day permissions that determine resource users' access to water and pasture are almost always granted or denied by elders and, in some cases, area chiefs.<sup>308</sup> Some people in former group ranch communities also mentioned CLMC members, in conjunction with elders, as authoritative decision-makers who control access to sources of pasture or water.<sup>309</sup> CLMCs were generally described by participants in this study as fledgling institutions that are not as well known or powerful as other resource-governance institutions.<sup>310</sup> Many CLMC members agreed with that assessment and requested additional capacity-building and sensitization from duty bearers and CSOs.<sup>311</sup> Community members who participated in this study disagreed, often quite strongly, about where CLMCs will or should fit into the power structure in the future.<sup>312</sup>

<sup>308</sup> Focus group discussion with women, Biliqo, Chari, September 2024 ("If we cross the [Ewaso Ng'iro] river with our cattles, we ask permission from the chief- several times we have been told to return with our cattles. The elders consulted with the chief and the chief told us to go back with our cattles."); Bulesa ("We follow the elders and the area chief when we move to those places; they are the ones who control these resources."); Focus group discussion with herders, Merti North, Chari, September 2024 ("When we want to access resources, we access them through the chief and the village elders of the outside community. Sometimes, our leaders (viongozi, not jarolle) talk with the leaders of the other side."); Focus group discussion with women, Nkaroni, August 2024 ("We are the ones who decide where to go and access the resources like firewood. But, when you move out of the community, you have to follow the rules of that area, set by the conservancies or the elders."); Focus group discussion with herders from Lkisin, Ngilai West, at a water point in Lpus, August 2024 ("We made a phone call to community elders for permission for grazing. Lukumae are our allies – they granted us permission for grazing.") Moropusi herder ("If you want to shift to a new place, you must approach the elders to give you instruction of a place to live. If it's a private ranch, we wait for the elders to give us the go-ahead and tell us how many cattles we can take inside, and how much to pay."); Key informant interview with herder from Isiolo at Ewaso Ng'iro river, August 2024 ("The Samburu elders control the resources we need. In the past few years, we had a very bad relationship with the *morans* from the Samburu community. There were raids on each other, and it was challenging for us to access resources in Samburu.")

<sup>309</sup> Individual interview with herder from Ngilai in Lpus, August 2024 ("The resources here are controlled by elders and the CLMC. We have good relationships with Samburu people, though word has it that new herders are being chased away."); Focus group discussion with women, Maiyanat, September 2024 ("We believe that if you want to go and graze for a neighbor, you request an elder, but for water or firewood, we just go and take without permission. That's free for us. The process we follow is for grazing, only. We go to the [CLMC] chairman or the elders within that community. We explain our issue with grass and then they go to approach their community. Or, we go to the grazing committee."); Focus group discussion with herders, Shulmai, September 2024 ("We only recognize CLMC when we have a serious conflict and someone needs to be punished, or if we have a request to go to the [private] ranches and we need a permit. That's the time we call the CLMC. For matters grazing, we go to the elders.")

<sup>310</sup> See, e.g., Focus group discussion with leaders, Shulmai, September 2024 ("We work as elders to control grazing. Some of the time, if the decision that the CLMC makes to control the grazing, the elders refuse. So, we discuss with them and call the community. And we have some CLMC elders. We try to reach one decision to follow. But most of the decisions are from elders."); Focus group discussion with leaders, Rawana, October 2024 ("We see the CLMC like the other committees – mazingira, water – that are already functioning. We expect them to operate like the committees we used to: to deal with what they can, and to bring to the elders table issues that are more difficult to resolve. So, we are yet to understand fully the implication of the new management system.")

<sup>311</sup> See, e.g., Focus group discussion with leaders, Lerata, August 2024 ("We are still new as CLMCs, so we need a proper capacity building in order to understand the bylaws.")

<sup>312</sup> Bulesa leaders ("All of these actors [CLMC, conservancy, *jarolle dedha* and *jarolle ardha*] have roles to play. And, before all of these, the community should be first. But, they all must work together. There is nothing that elders can do alone; nothing the chief can do alone; nothing conservancies can do alone.")

The following exchange among focus group participants in Chari,<sup>313</sup> prompted by a question about how to resolve conflicting directives from various decision-makers, is illustrative of some of the complex dynamics at play:

#### **Participant 1**

This is a very difficult question. Between elders, the CLMC, and the [Biliqo-Bulesa] conservancy, the people who have most authority over grazing are the community elders, especially those who are on the CLMC. These conservancy people, they are not implementers, but they have money and they have capacity and they have their underdeals ... . They make themselves seem like they manage these resources. An outsider might think that it's the conservancy which is managing the community resources – but it isn't! Their implementation is zero.

#### **Participant 2**

Me, I think the grazing committee of the CLMC and the elders have absolute power. But, the CLMC and the elders are not the same thing. The CLMC is interim – it is not as well established as the elders' councils. They [the CLMC] are not at full acting capacity. It's the local elders who have the most power over resource-sharing. When the matter comes up, people come to the elders.

#### **Participant 3**

But these elders are useless – it's conservancy people who have power, because they have money! They divide us [elders] – they call each of us aside, they make deals, and they mismanage us. That's how we elders become useless and how the conservancy people take center stage in resource-sharing and making people think they manage our resources.

#### **Participant 4**

Yes, the conservancies have significant power. These elders are divided by money. The conservancy has money and capacity – to me, I see that it is the conservancy board members who have more power than even the elders themselves, or the CLMC. Some of these elders are crooked; they will give wrong information to the community, as long as they are paid.

<sup>313</sup> Focus group discussion with leaders, Biliqo, Chari, September 2024.





Moreover, although the Community Land Act envisages participatory and democratic land governance that subordinates these various elite decision makers to the authority of the Community Assembly, this study found that most communities are quite far from achieving those requirements. Only a minority of participants in this study, for example, emphasized that the community is the true owner of all resources and the highest decision-making body, above the CLMC.<sup>314</sup>

Many comments in focus group discussions treated CLMC members or elders as empowered to make decisions about land or resources without involving the community.<sup>315</sup> The assessed communities have struggled, often significantly, to operationalize their Community Assemblies, given large land areas and population sizes in places like Chari, Cherab, and Turbi.<sup>316</sup> Similarly, the study indicated that many CLMC elections involve zonal or clan-based quota systems, incomplete attendance by communities at scheduled Assembly meetings, or forms of political patronage that undercut the openness and transparency of the community's electoral decisions.<sup>317</sup>

<sup>314</sup> See, e.g., Focus group discussion with women, Bulesa, Chari, September 2024 ("We are following the aada Borana. Even the conservancies follow our laws. Dedha laws are what govern everyone."); Focus group discussion with leaders, Walda, September 2024 ("The whole community has power over resources, via the committees, inclusive of CLMC.")

<sup>315</sup> Focus group discussion with leaders, Walda, September 2024 ("We have decisions that committees make without involving the community, but, for some things, e.g., selecting the committees, we do an assembly. For some things, though, we don't have to call the whole community – we just call the elders.")

<sup>316</sup> See, e.g., Focus group discussion with leaders, Bubisa, Turbi, October 2024 (citing a meeting of 75 elders as "a huge gathering" that "probably met quorum" for a community land of 13,600 people.)

<sup>317</sup> Interview with area chief, Shulmai, September 2024 ("If someone wants to stand as chairman, they select their team before the election. If you run for chairperson and want to win, you have to go to the villages and have them elect 2-3 people to join your cabinet. ... Then, after those zone elections, we call all people to one place and we do one election. Each chairperson candidate competes, with his cabinet. If you win, you have your whole team to work under you; the representatives join the chairpersons automatically. Hapa, hakuna mambo za opposition.")

Participants in this study also disagreed over whether land-governance structures are, in fact, becoming more inclusive of women, youth, and others. In Samburu, for example, women in Narokie said: *"When women join CLMCs, there is nothing that can change. We can't make rules independently because men will look down upon us. If there are rules to be followed or decisions to be made, we rely mostly on men. Men can still make rules independently, but women cannot stand alone."*<sup>318</sup> In Laikipia, women in Moropusi said: *"In previous years, we had no women joining any of those committees or anything about grazing or community affairs, but the new law recognizes women. Some women are even on the CLMC."*<sup>319</sup>

Women in Shulmai, however, noted that: *"In controlling grazing and other resources, we know that elders are more influential than women. Out of ten CLMC members, we only have one or two women who are active. The other few women are just there. Women do not have a lot of power."*<sup>320</sup> In this context, the study found that male elders remain well represented on all of the assessed CLMC boards, while women members do not constitute a majority on any CLMC board in the study area. CLMCs in all of the assessed communities are also expected to consult closely with male elders who are not on the CLMC.<sup>321</sup>



<sup>318</sup> Focus group discussion with women, Narokie, Nkaroni, August 2024.

<sup>319</sup> Focus group discussion with women, Moropusi, September 2024. See also Focus group discussion with women, Dadach Elele, Walda, September 2024 ("It [power] is shifting. Previously, women did not participate, and we wouldn't even sit under the same shade with elders. But now, there is nothing that can happen without women. We are even more powerful than elders now."); Focus group discussion with women, Turbi, October 2024 ("Before, the elders used to refer to women as children. In resource governance, we were not considered important, and we were not ever invited to discuss those issues. But, for the CLMCs, I know that women are there. There's a change since women and youth have begun being included in that thing. We can attend the meetings, we can air our voice, and we can see what they decide. Even if there is just a meeting of four people, women and youth are given a place there. Maybe the change is, since youth are involved, they tend to take care of those things.")

<sup>320</sup> Focus group discussion with women, Shulmai, September 2024.

<sup>321</sup> See, e.g., Focus group discussion with leaders, Lpus, September 2024 ("The elders and CLMC lead the community but the decision making is entirely on the community members. CLMCs consult the elders and community members."); Focus group discussion with leaders, Funan Qumbi, Rawana, October 2024 ("Elders are the ones to enforce the laws; various resources have their own committees, but it is generally elders who do enforcement. Everything has a committee, and this committee is selected by the elders. So, governance is by committees and elders. It's the elders who monitor your actions.")





In some cases, CLMCs are seen as explicitly or implicitly subordinate to elders' authority.<sup>322</sup> Participants in this study reported that elders still hold the most authority, by far, over the enforcement of rules and resolution of disputes.<sup>323</sup> In Samburu, women in Nkaroni said: *"No, women are not involved in any decision-making processes about land or grazing. Community elders usually make their rules in loipi and we are later informed on how and what they have decided."*<sup>324</sup>

Focus group discussions also revealed differing opinions about whether and how male elders' institutional power over water and pasture should change.<sup>325</sup> Women in Chari and Turbi, for example, highlighted issues with elder men's management of water sources and expressed a preference for committee-based management structures that

<sup>322</sup> Focus group discussion with leaders, Nkaroni, August 2024 ("The elders have authority over management of community land and the CLMCs work under close supervision of the community elders. The CLMCs also work with the bylaws and traditional rules. When it comes to conflicts, the elders are the ones who settle the disputes in loipi. In case of any development matters or any agreements the CLMCs are planning, they have to bring it to loipi. All decisions are done in loipi."); Focus group discussion with leaders, Bubisa, Turbi, October 2024 ("We have Yaa. We have two Yaa within this [Turbi] ward: Yaa Odola and Yaa Galbo. They have their representatives on the CLMC, and we have given them a copy of the registration. One member from each Yaa is on the CLMC. We don't work on anything without consulting the Yaa -- the Yaa are the highest decision-makers, so we would never have a CLMC decision that conflicts with the Yaa. It has never happened."); Focus group discussion with leaders, Shulmai, September 2024 ("We work as elders to control grazing. Some of the time, the elders refuse the decision that the CLMC makes to control the grazing. So, we discuss with them and call the community, too. And we have some elders on the CLMC. We try to reach one decision to follow. But, most of the decisions [about grazing] are from elders.")

<sup>323</sup> Focus group discussion with leaders, Moropusi, September 2024 ("We have a committee that we have nowadays to control grazing- we call it a holistic grazing committee. If there is a conflict, the grazing committee calls wazee -- all wazee, not just grazing -- to solve that issue. All of the wazee have to punish those who have broken rules and decide the type of punishment to give to that person. It is very fair."); Focus group discussion with women, Narokie, Nkaroni, August 2024 ("When issues arise, the community elders are the ones who go and restrict the outsiders who have accessed the lands that were locked."); Focus group discussion with women, Lpus, August 2024 ("Yes, we have been affected as outsiders have accessed the grazing lands that were locked. The elders are the ones resolving these issues and it is fair. Women are not involved."); Focus group discussion with leaders, Walda, September 2024 ("In terms of hierarchy, it's the elders, both those on the committees and those from the various settlements, who have authority; they are the ones to give access or permission. And elders are the ones to resolve disputes.")

<sup>324</sup> Focus group discussion with women, Narokie, Nkaroni, August 2024.

<sup>325</sup> See, e.g., Focus group discussion with leaders, Kinna, September 2024 ("[Participant 1] We prefer elders. Even though we have CLMCs, elders should continue to have authority. [Participant 2] CLMCs should be in charge because they have clear laws. We have seen some elders grabbing land. Land grabbing is prominent because dedha laws are not as powerful. Things are also changing. Dedha has become like a token system. [Participant 3] Previously, we used to be governed by dedha and, now that we are about to register our land, we will have a CLMC who will manage it. During the transition, most community members have tried to grab land. [Participant 4] There is no public participation under dedha and therefore no accountability. This has led to a lot of loss of land. Governance should be by the CLMC. [Participant 5 (from dedha member)] Any laws we try to pass are not implemented. Even if we take them to the county government, they do not respect our laws. We are losing our relevance because of that. For conservancy, they are not fully accepted by the people; only by a few. [Participant 6] After registration, CLMC should be the most powerful. Dedha will only support the CLMC.")



include women.<sup>326</sup> Some women in Shulmai, however, argued that men should continue to exercise their traditional management roles over water and pasture, though women will supervise their work.<sup>327</sup> Women participating in the study in Samburu also expressed their preference for men to continue doing the herding of livestock, since those men are more likely to know the boundaries of the community's land and resources.<sup>328</sup>

Focus group discussions also included disagreements about which actors should enforce a community's resource-governance rules, and how. For example, some participants felt that elders' curses (*ldeket* or *abars*) were most effective in regulating herders' conduct, while others preferred involvement by the police;<sup>329</sup> many participants felt that male elders remain best placed to ensure the community's rules are followed, though some preferred enforcement by chiefs.<sup>330</sup> Only a small minority of participants felt the CLMCs are well placed to enforce day-to-day rules concerning access to and use of resources.

This analysis suggests, then, that changes to the institutional governance of land and resources in the study area have been slow and uneven. In the assessed communities, the CLMC (or interim CLMC) and the Community Assembly are fledgling institutions that are being integrated into, rather than formed in parallel to, existing structures of authority over land and resources. It is difficult to know at this early stage whether these emerging forms of institutional hybridity will be helpful—by retaining positive dimensions of traditional systems, for example, while disincentivizing the exclusion of women, young people, and minorities—or will create further challenges for pastoral legal systems,

<sup>326</sup> Focus group discussion with women, Bulesa, Chari, September 2024 ("There are water points in Bulesa that, kitambo, were under the authority of elders. They got money from it every month. It was tap water; it was a lot of money. It was benefitting the managers themselves- they were eating the money that was meant for repairs. So, we had a meeting, and to strengthen that system, we should have a treasurer who's a woman, because she understands the issues of women with water. Now, we change the committee every three years. When one person is in charge, he mismanages it; so, we had to come with a committee.")

<sup>327</sup> Focus group discussion with women, Shulmai, September 2024 ("If a woman is given authority to lead for grazing and other issues of cattles, we believe it's not right. We don't agree to be given that authority. It's for elders, only. If there are no elders there to do that work, we have a youth generation [of men]- we would give it to them. But, women will be watching to see how they manage. Women are present on the grazing committees."); see also Focus group discussion with women women herders, Saleti, Cherab, September 2024 ("I have heard there are women among the elders, but I have never followed it up, so I am not sure. It used to be men, alone. The world is now a bit changed – even women are becoming governors and being elected other places. So, for us to be included now, we are just following how the world is going. It's a good thing. [Another participant says.] I think, even if it's just the elder men, that one is okay, I have no problem with that.")

<sup>328</sup> Focus group discussion with women, Narokie, Nkaroni, August 2024 ("Before, when we were young, we used to send our children to take the livestock for grazing. But now, the children go to school, leaving women to look after the livestock. We prefer to send morans and big boys to take care of the livestock because they know the rules and where it is locked for grazing. You can't just graze anywhere- some areas are reserved for dry season grazing. If you break the rules, you will be fined.")

<sup>329</sup> Focus group discussion with leaders, Maiyanat, September 2024 ("Traditional laws are the best, though, because people really feared *ldeket* (curses) and the elders were very powerful. Some people died or got injured after *ldeket*. Some of their animals were injured by lions or other things. Traditional laws brought a lot of discipline – they were very effective. It was final – if it is cursed, it is cursed. Even today, some people fear the curse more than the police."); Focus group discussion with leaders, Shulmai, September 2024 ("Nowadays some people are not following the orders from elders- they just break the rules. They follow paths that are prohibited; they take water where they are not supposed to; they use places for wildlife or tourism as a cattle place. It's those people from our neighboring counties, Isiolo and Samburu, who are bringing a lot of issues and who don't respect the elders' rules. [Woman participant says:] Some of the warani from Samburu and Isiolo, if they get you taking water or fetching water, they make you give it to their cattles, and say, 'later you can come back to get your water.' But when you come back, the water is dirty because cattles are stepping inside, or maybe you don't get water at all.")

<sup>330</sup> Key informant interview with area chief, Korbasa, Cherab, September 2024 ("We would have really loved for everything, all of our resources, to be controlled by the elders, but nobody can enforce their rulings. Like, nobody is going to be arrested for going against their *muritii* (rulings). The *wazees/jarole* institutions need to be strengthened.")



like the elite-capture problems of the group ranch era.

Going forward, close monitoring and detailed studies of Community Assemblies and, especially, of CLMCs will be very important in identifying the ideal structure, role, and function for these new institutions, and for avoiding problems like elite capture. Although participants in this study were generally reluctant to speak to outsiders about sensitive, intra-community power dynamics or disputes, especially on a compressed timeline and during a focus group discussion, the interviews highlighted many already-observable shortcomings of CLMCs—especially concerning election processes—and Community Assemblies. Pastoralists, duty bearers, and civil society actors must collaborate on many further studies of how CLMCs and Assemblies can and should operate.





## 2.6 Ensuring public awareness and participation

The Regulations require that the national and county governments each undertake public education and awareness initiatives about provisions of the Act and communities' rights over community land.<sup>331</sup> At the county level, the awareness campaigns must be "continuous" and, after the election of CLMCs, involve coordination between the CLMCs and the relevant government agencies.<sup>332</sup> The Community Land Act also binds "every person dealing with community land" to be guided, at all times, by constitutionally recognized principles of governance and land policy,<sup>333</sup> including, among other things, public participation, transparency, accountability, and respect for human rights.<sup>334</sup>



The study asked participants about their knowledge of and opinions about registration, and asked participants to demonstrate knowledge of their community's bylaws and CLMCs. It found that, although a majority of community members are generally aware and in favor of community land registration, many people in all of the assessed communities have little to no detailed knowledge of important parts of the registration process, like mapping, bylaws, or elections. Many participants—especially women, young people, and people directly engaged in herding livestock—called for deeper and more regular efforts to educate communities about registration and its effects.

This study found that communities are, on the whole, aware and in favor of registration.<sup>335</sup> In Bulesa, for example, leaders stated: *"We see just good effects, because, before, our land had no owner (haikukuwa na abba). We just see registration as a good thing. That is why we went for that paper."*<sup>336</sup> In Shulmai, herders explained, *"We prefer to have Shulmai or Maiyanat title deeds because now we know our boundaries, the boundaries between us, and we know our lands and where they*

<sup>331</sup> Regulations s. 27.

<sup>332</sup> *Id.* at s. 27(2).

<sup>333</sup> CLA s. 3(a&b).

<sup>334</sup> Constitution of Kenya, art. 10(2)(a-c).

<sup>335</sup> See, e.g., Focus group discussion with women herders, Saleti, Cherab, September 2024 ("It won't have any problem for us if we register the land. In fact, we would love for registration to happen- it could even happen today, at this moment, and we would be happy. These Safara and Korree come as if this land has no owner. Our land is very big."); Focus group discussion with women, Walda, September 2024 ("We don't think registration has any negative impact for us. Our land is very vast, and it is enough for our animals."); Focus group discussion with herders, Mulandanur, Cherab, September 2024 ("We are living with Somalis around, Samburus on the other side. If registration means being told, 'Boranas don't cross here, Samburus don't cross here,' that one is good for us."); Focus group with women, Kinna, September 2024 ("Registration is very good – zaidi dhansa. We support that one a lot."); Focus group discussion with women, Shulmai, September 2024 ("Registration, we really appreciate that one – it has given us power. If somebody who is an intruder comes, you can defend yourself using the title deed.").

<sup>336</sup> Focus group discussion with leaders, Bulesa, Chari, September 2024. See also Key informant interview with herder, Biliqo, Chari, September 2024 ("I don't think there is anything bad from making community land be registered. It is good; we even want it that way. Registering resources is good. We want it that way, if we can get it."); Focus group discussion with leaders, Kinna, September 2024 ("We prefer the modern way of registration which is written, because it is documented and stored. In case there is an issue in future, it can be referenced. The traditional way was not bad, but I think the current one is better. The world has gone through a lot of changes, including technologically, so it is important that our laws are documented and stored. Our old laws have made us lose some of our land. In a neighboring community, they have gone to school and have stored their land on Google Maps and have claimed a lot of our land through technology. We need to embrace registration in order to protect our land.")



*extend to. In the group ranch period, we never knew where the boundary was.*"<sup>337</sup> In Ambalo, women described a recent experience with a potential investor which underscored the importance, in the participants' opinion, of using registration to protect the community from land grabbing or exploitation.<sup>338</sup> In Samburu, cattle herders in Ndikir commented, *"Registration has brought good changes to the community as new projects have emerged, like new boreholes being constructed. It is not affecting resource-sharing within our community in any negative way – it has only brought some slight changes on where not to graze or settle."*<sup>339</sup> Many people, especially in trust land areas, have important hesitations, discussed in the Bylaws section above, about whether registration will "close" or "lock" the land.<sup>340</sup> Many participants in Isiolo and Marsabit assumed, early in the interviews, that they would lose access to areas which were registered by other communities.<sup>341</sup> In the group ranches, many participants in this study remain unsure of how registration will affect them. In Samburu, women in Lpus said, for example: *"Women are not aware of the bylaws. Community elders are the ones enforcing these laws; women are not involved. We are not sure of how they will affect our use of resources."*<sup>342</sup> These perceptions demonstrate, among other things, that many community members' knowledge of the specifics of registration remains quite low, especially among women and herders as compared to male elders and among trust land communities as compared to former group ranches.

This study found that, in most of the assessed communities, registration has been an elite-dominated process that does not directly include many of the people most affected by the new rules. When asked about sketch mapping and bylaws drafting, for example, most community leaders said that they relied heavily or exclusively on existing processes of representative, rather than direct, community participation. In Turbi, for example, CLMC members said: *"For mapping, we called representatives from every corner of the ward and they came here to Turbi town to discuss."*<sup>343</sup> In Samburu, leaders said quite emphatically: *"The elders have authority over management of community land; the CLMCs work under close supervision of the community elders. In case of any development matters, or any agreements the CLMCs are planning, they have to bring it to the loip [elders' council]. All decisions are made [by male elders] in loip."*<sup>344</sup> In Biliqo, a woman herding goats near the Ewaso Nyiro river said: *"Personally, I've never been involved in registration, but I have heard about it. The elders have spoken for us, I think. It's the elders who make the rules, obviously. I am*

<sup>337</sup> Focus group discussion with herders, Shulmai, September 2024. Participants in the same focus group also said: "In those previous years, we normally stayed together – we never know where your place is, where your neighbor's place is ending. We would just shift from one place to another, since we are friends. Anyone can go and say, 'This is my boundary,' but you never know. Now, with Shulmai, we know the boundary, so we can tell someone, 'Shift from here.'" *Id.*

<sup>338</sup> Focus group discussion with women, Ambalo, October 2024 ("No, we don't know anything about it [bylaws]. We have heard of land registrations, though. Recently, some people came to us and asked us to sign some papers for them because they wanted to take a special 'sand' – which usually produces some lights when put in fire – to a lab for testing. We refused. We said, 'These people might grab our land and resources. Let us not sign anything until we register our land.'")

<sup>339</sup> Focus group discussion with herders, Ndikir, Nkaroni, August 2024.

<sup>340</sup> See, e.g., Focus group discussion with leaders, Ltirimin, August 2024 ("We have good relationships with all communities. We have locked our land covered with pasture, though. If there are individuals who don't want these rules, they are allowed to go to other areas they want. But for us, we have to conserve our land.")

<sup>341</sup> See, e.g., Key informant interview with herder from Ngaremarara in Kinna, September 2024; Key informant interview with herder, Biliqo, Chari, September 2024; Focus group discussion with herders, Galgallo Dhiqo, Rawana, October 2024.

<sup>342</sup> Focus group discussion with women, Lpus, August 2024.

<sup>343</sup> Focus group discussion with leaders, Turbi, October 2024.

<sup>344</sup> Focus group discussion with leaders, Nkaroni, August 2024.

*not invited to such things; I don't even know they exist.*"<sup>345</sup>

Participants in this study strongly expressed the need for more education and inclusion of all people affected by community land registration, especially for women, young people, minority groups, and others who have historically been shut out of land governance. For example, a herder in Mulandanur, a forr settlement outside of Merti town, emphasized: *If there is any law being implemented that concerns pastoralists, the people out here who are moving around with their cattle should be involved. People who come from outside do not come out here to the rangelands (bhadia), where people are experiencing the real problems. The NGOs and conservancies just go to towns and hear from people there, who don't know. When they do things that way, they make some wrong laws, or they make laws that herders don't understand. ... People should be coming to speak to us where we are, not just limiting their stays to the towns.*<sup>346</sup>



“

*If there is any law being implemented that concerns pastoralists, the people out here who are moving around with their cattle should be involved.*

Similarly, leaders in Lpus and Nkaroni called on duty bearers to provide, among other things, sensitizations to women about bylaws and capacity-building support for CLMCs.<sup>347</sup> In Shulmai, women suggested: *“Bylaws should be discussed twice per year, with everyone, not just the CLMC, so that we can remember. Registration is a new thing to us and some of us may forget.”*<sup>348</sup> In Dadach Elele, in Walda, women assessed: *“Our thoughts on land registration are that we are not fully aware, as women, compared to other people in the community. We have not been sensitized enough.”*<sup>349</sup>

<sup>345</sup> Key informant interview with herder, Biliqo, Chari, September 2024. See also Key informant interview with moran, Moropusi, September 2024 (“We have had a lot of changes from previous years to now. Elders are the ones making the changes – some elders divide lands nowadays into conservation areas and settlements. We warriors are no longer free in shifting from one place to another – we follow the rules. We don't know about bylaws (sheria). We aren't involved in making them; we just follow the instructions of the elders. We fear their curses!”)

<sup>346</sup> Focus group discussion with herders, Mulandanur, Cherab, September 2024 (“Involvement of all people in the land governance would be a helpful thing. If everyone is called for a meeting and told these things, that would be very good. It would be good for us to be informed.”)

<sup>347</sup> Focus group discussion with leaders, Lpus, August 2024; Focus group discussion with leaders, Nkaroni, August 2024.

<sup>348</sup> Focus group discussion with women, Shulmai, September 2024.

<sup>349</sup> Focus group discussion with women, Dadach Elele, Walda, September 2024.



The study indicates, then, that community land registration is being done by and with pastoralists, but not in ways that achieve meaningful participation by historically marginalised groups or by those who directly derive their livelihoods from the land. This aligns with a broader unwillingness or inability, identified in past studies of development programs in northern Kenya, of civil society actors and duty bearers to genuinely align their ways of working with the ways in which pastoralist communities make decisions.<sup>350</sup>

The lack of deep participation by many community members in land registration will have mixed effects on mobility, resource-sharing, and pastoral livelihoods. In the near term, the elite-driven nature of registration will likely limit registration's impacts on pastoral production systems, since the affected herders may not even be aware that the legal status of particular land areas or resources has changed. Kenyan pastoralists also have an established history of ignoring or mobilizing against rules, especially those made by outsiders, that do not work for them. Elite capture of decision-making over land and resources is generally harmful, in Kenya and elsewhere, to larger community interests and to pastoral livelihoods, underscoring the need for much deeper education and engagement of everyday members of affected communities, as envisioned by the Community Land Act.



<sup>350</sup> Robinson et al, "Pastoralist decision-making," see above note 115, at p. 18.



## 2.7 Resolving disputes

The Community Land Act recognizes that the process of registering and adjudicating community land will lead to disputes.<sup>351</sup> The Act and Regulations state that disputes arising from registration or adjudication should be resolved, at the initial stage, through alternative justice mechanisms, like councils of elders applying customary law.<sup>352</sup> If the chosen local mechanism is unable to resolve the dispute, the complainant can use CLA Form 11 to refer the dispute to the land adjudication officer in charge of the registration unit covering the land at issue. The Cabinet Secretary for Lands may then appoint an ad hoc committee—made up of members of county government, a government surveyor, a land adjudication officer, and community representatives—to hear and decide the case.<sup>353</sup>



Any party dissatisfied with the ad hoc committee's decision may appeal to court within thirty days of the determination of the dispute.<sup>354</sup> These provisions supplement the general dispute-resolution powers given to adjudication officers under the Land Adjudication Act.<sup>355</sup> A land adjudication and settlement assistant in the Samburu county government described the adjudication team's typical handling of disputes during adjudication as follows:



*"After demarcation, the maps are validated and registers are created. A meeting will be scheduled with communities that have grievances, and they will be provided with a copy of the maps and registers. A notice period of 60 days will be given for submitting any claims. If any errors are identified, they will be labelled as objections. If no claims are submitted, it will be announced that the registration process is complete. If objections are raised, the land adjudication officer will hear them and make a decision. If no agreement is reached, the registrar will listen to the cases and render a decision."*<sup>356</sup>

<sup>351</sup> CLA, s. 48(2)(b).

<sup>352</sup> CLA, s. 39; see also Regulations, Third Schedule, Rule 25.

<sup>353</sup> Regulations, s. 25(4-11).

<sup>354</sup> Regulations, s. 25(13).

<sup>355</sup> Land Adjudication Act, s. 19(2) ("If there are two or more conflicting claims to an interest in land and the recording officer is unable to resolve the conflict, he shall submit the dispute to the committee to decide.")

<sup>356</sup> Interview with land adjudication and settlement assistant, County Government of Samburu, November 2024.

Members of the National Land Commission added that, when disputes are raised during the process of demarcation, the adjudication stops until the dispute is resolved.<sup>357</sup> This can slow the pace of land registration significantly.<sup>358</sup> This study indicated, however, that community lands can be registered with certain portions left unadjudicated. In Nkaroni and Lpus, the 5,000-acre area that was used as bank-loan collateral has yet to be demarcated, but both communities have received title deeds.<sup>359</sup>

This study did not collect detailed information from communities about official dispute-resolution processes, since none of the assessed communities knew about or had made use of the mechanisms described above. That lack of public awareness suggests, though, that duty bearers must make further efforts to ensure that dispute-resolution mechanisms are well known and accessible to communities. The research also noted some disagreements, discussed in the *Resource-governance*

*institutions* subsection above, about whether, and to what extent, elders' councils are the best mechanism for dealing with conflicts and disputes.

Although duty bearers at all levels of government prefer, and are mandated to, work through existing local structures of dispute resolution,<sup>360</sup> this research suggests caution in relying exclusively on male elders without involving other structures, like *mazingira* or peace committees, government actors, or the Community Assembly. There are several reasons for a multi-actor approach. Participants in many parts of the study area noted elders' potential to prioritize individual financial gain over community interests, example.<sup>361</sup> Over-reliance on male elders may also reinforce gender discrimination.<sup>362</sup> In some cases, as herders in Chari explained, government intervention is needed to resolve serious disputes that outstrip elders' authority.<sup>363</sup>

<sup>357</sup> Interview with representative of the National Land Commission, November 2024.

<sup>358</sup> *Id.*

<sup>359</sup> Focus group discussion with leaders, Nkaroni, August 2024.

<sup>360</sup> Interview with representative of the National Land Commission, November 2024; Interview with surveyor, County Government of Isiolo, November 2024 ("We really do try our best to work through local structures which are there and people identify with – it's the same method used for relief aid. The elders are there and they're effective. So we believe for community land, it will also be effective. But, there will be some instances where people will be left out."); Interview with land adjudication and settlement assistant, County Government of Samburu, November 2024 ("Elders have been actively involved in resolving any conflicts that may arise from these situations [of conflicts arising from new bylaws].").

<sup>361</sup> See, e.g., Focus group discussion with herders, Mulandanur, Cherab, September 2024 ("Usually, elders resolve the issues very fairly; even if it is fines, they impose the fines very fairly. Well, actually, I think those elders in town (dhir), they are corrupt, they take money. But, those out here in rural areas (bhadia), they are very fair. They don't have sins- they speak the truth."); Focus group discussion with leaders, Bubisa, Turbi, October 2024 ("At normal times, traditionally, elders respect their position, they respect- but, you know, these days things are changing. Elders can easily be bought and turned into brokers. That is true, these days. Some elders are corrupt.")

<sup>362</sup> Focus group discussion with women, Turbi, October 2024 ("Sometimes, you can walk for 15 km all day to get 20L of water for your family. Then, the elder at the borehole can tell you to wait until all the livestock have finished drinking, but you need to get home to your kids! They can make you wait for 24 or 48 hours for just 20L of water. They say, 'animals are more important than you.'")

<sup>363</sup> See, e.g., Focus group discussion with herders, Mulandanur, Cherab, September 2024 ("Whoever causes any issues along the dedha, the elders hold them accountable. If someone burns the environment, for example, the jarolle usually stop him and have their discussion about what to do with him. If it's beyond them, they take it to the police, but first they try to solve it as elders. They meet and discuss your fine, whether you have committed an infraction. You may be found innocent, but, if you are found guilty, you are fined. If the issue is too big, they will go to the police."); Focus group discussion with herders, Saleti, Cherab, September 2024 ("The elders are the decision-makers. When conflict happens, there isn't much effort for resolution. The crisis takes its own course; whoever is powerful will win and the community is at a loss. Sometimes [political] leaders must be involved because the elders are not effective in resolving such conflicts.")



This study found that with proper attention and resourcing, registration and adjudication could be helpful and long-awaited exercises in peacebuilding and dispute resolution. If handled poorly, however, registration seems likely to spark boundary disputes that may escalate into violent conflicts.<sup>364</sup> Participants in this study consistently shared hopes that registration might ameliorate or resolve conflicts, especially

in hotspot areas like Sabarwawa, Kom, or Yamicha,<sup>365</sup> and noted that violent conflicts have disastrous impacts on their access to important resources and, as a result, on pastoral systems and livelihoods.<sup>366</sup> It is imperative, then, for duty bearers, communities, and other stakeholders to proceed in good faith with a maximally transparent, peace-promoting process of community land registration.



<sup>364</sup> See, e.g., Focus group discussion with herders, Merti North, Chari, September 2024 ("Land registration by others won't affect us, unless they cut our land. If they cut our land, we will die before we accept that [tutakufa nayo]. If they cut our land, we won't allow it.")

<sup>365</sup> See, e.g., Focus group discussion with herders, Saleti, Cherab, September 2024 ("Registration is a good thing. It will give us security for our land. It may affect free movement, but, in the end, we will have fewer intrusions and more security of our land. ... Registration will affect communities who we have conflicts with. Samburus and Somalis will not come freely into Kom or Yamicha. There will be clear rules, which will give us confidence.")

<sup>366</sup> See, e.g., Focus group discussion with women, Kinna, September 2024 ("We've been in a good relationship with Somalis for almost 25 years. But, when the conflict came, it really disrupted those beneficial relationships. We usually have seven lorries working between these two counties. People here are farmers, they take bananas and other things to Somali markets. Somalis have goats and other things that we like to buy from there. All that business was lost due to conflict. And we realized we were using a lot of young life, so we had to negotiate for peace with them. And we knew that, many of the poorest people in the community rely on farming that they sell to Somali people, so we know those people were suffering."); Focus group discussion with women, Dadach Elele, Walda, September 2024 ("Our most important resource is water; without water, our living is difficult. ... We also have land. We have [irrigated] farms. We also have livestock. We have a forest, farms, and vegetables in the farms. Another resource we have is peace. Without peace, we can't access anything else."); Key informant interview with Turkana herder from Isiolo, Ewaso Ng'iro, August 2024 ("The Ewaso Nyiro is a shared resource among so many community lands, it is the main source of water for animals here. It is easier to access this river as we now live in harmony with the Samburu Community. In the past, in the midst of conflicts, the Turkana community would not access this river. Now, thanks to peace efforts of elders and government agencies, we are now accessing this side.")





### 3. Legal Analysis

This section briefly outlines some of the legal and policy commitments that oblige the Kenyan government, at the national and county levels, to support pastoralism and pastoral livelihoods, including by implementing the Community Land Act and Regulations in ways that protect or strengthen pastoral production systems.

#### 3.1 Kenyan Legal and Policy Framework

Kenyan constitutional law requires the state to be particularly attentive to the rights and resource-use practices of pastoralists. Article 260 of the Constitution defines “pastoral persons and communities” as among the “marginalised groups” who are entitled, under Article 56, to affirmative action programs designed to promote, among other things, the development of “their cultural values, languages and practices.”<sup>367</sup> Courts have interpreted Article 56 as requiring duty bearers to proactively build affirmative actions into the implementation of facially neutral policies, in order to prevent any indirect discrimination against marginalised groups<sup>368</sup> and, additionally, to compensate for the lingering effects of past injustices.<sup>369</sup>

<sup>367</sup> Constitution of Kenya, 2010, Arts. 260, 56.

<sup>368</sup> Centre for Minority Rights Development (CEMIRIDE) & 2 others v Attorney General & 2 others; Independent Electoral and Boundaries Commission (Interested Party) (Petition E002 of 2022) [2022] KEHC 955 (KLR) (4 April 2022) (Judgment).

<sup>369</sup> Federation of Women Lawyers - Kenya (FIDA-K) & 5 others v Attorney General & another [2011] KEHC 2099 (KLR).

When implementing the Community Land Act, the government must take additional steps, beyond the typical land adjudication process, that protect and strengthen pastoralists' unique systems of land and resource governance. The Constitution also requires, in Article 69, the State to "ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits."<sup>370</sup> The definition of "sustainable" resource use in Kenyan law requires resource-governance policies to be based, in part, on the "cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural resources."<sup>371</sup> The required components of the registration process—communities' bylaws, for example, or adjudication—must adequately protect the access and use rights that pastoralists traditionally apply in their management of Kenya's rangelands.

Numerous policy documents provide additional detail on the state's obligation to register pastoral lands in a manner that is as protective as possible of pastoral systems and livelihoods. For example, the National Land Policy (Sessional Paper No. 3 of 2009) categorizes pastoral land issues among "land issues requiring special intervention."<sup>372</sup> The Policy requires that the government "establish suitable methods for defining and registering land rights in pastoral areas while allowing pastoralists to maintain their unique land systems and livelihoods."<sup>373</sup> The State must also "provide for flexible and negotiated cross boundary access to protected areas, water, pastures and salt licks among different stakeholders for mutual

benefit."<sup>374</sup>

Similarly, Sessional Paper No. 8 of 2012 on the National Policy for Development of Northern Kenya and other Arid Lands (the ASAL Policy) seeks to strengthen pastoralism as a livelihood and a land-use system (Policy element 4), and to "protect and promote the mobility and institutional arrangements that are essential to productive pastoralism." The Government of Kenya's Vision 2030 Development Strategy for Northern Kenya and other Arid Lands commits to, among other things, "integrate traditional systems of natural resource management in all policy affecting the natural resource base" and "reconcile traditional and modern systems of authority and governance."<sup>375</sup> At the ministerial level, the Ministry of Agriculture's Range Management and Pastoralism Strategy 2021–2031 aims to achieve "enhanced sustainable pastoralism" in the rangelands of Kenya," by ensuring "adequate mobility of the nomadic pastoral systems" and "reversing the loss of traditional dry season grazing arrangements," among other objectives.<sup>376</sup>



<sup>370</sup> Constitution of Kenya, 2010, Art. 69.

<sup>371</sup> Environmental Management and Co-ordination Act, Cap. 387, s. 5(b) [EMCA].

<sup>372</sup> National Land Policy, *Sessional Paper No. 3 of 2009*, s. 3.6 [NLP].

<sup>373</sup> NLP, at para. 183(c).

<sup>374</sup> NLP, at para. 183(g).

<sup>375</sup> Government of the Republic of Kenya, *Vision 2030: Development Strategy for Northern Kenya and other Arid Lands* (2012), p. 90. The Strategy also states that the government will "[e]nsure that the needs of pastoral land use and customary institutions are fully taken into account in all legislation and institutions pertaining to the National Land Commission." *Id.*, at p. 34.

<sup>376</sup> Ministry of Agriculture, Livestock, Fisheries and Cooperatives, *Range Management and Pastoralism Strategy 2021–2031* (2021), p. 61.



The Community Land Act integrates some of these requirements directly into Kenyan land law. Section 20 of the Act provides, for example, that, after registration, communities “shall establish ... measures to facilitate the access, use and comanagement of forests, water and other resources by communities who have customary rights to these resources.”<sup>377</sup>

Sections 14 and 28 of the Community Land Act provide for applications by non-members for grazing rights or customary rights of use and occupancy, and require that, in considering such applications, registered communities “take into consideration” the “customs and practices of pastoral communities relating to land.”<sup>378</sup>



<sup>377</sup> CLA, s. 20(1)(c).

<sup>378</sup> CLA, ss. 14(2) and 28(1). Communities may withdraw a grazing right granted under sub-section 28(3) if, “in a meeting convened for that purpose,” members judge “such cancellation to be in the interest of the residents of the community concerned.” Violations of grazing plans or other community restrictions are valid grounds for withdrawing grazing rights. *Id.*, at s. 28(2) & (4).



### 3.2 International Standards and Good Practice

Kenya is a signatory to a number of binding international human rights treaties that protect the land and resource rights of Indigenous peoples, including the African Charter on Human and Peoples' Rights (African Charter), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). These treaties also oblige Kenya to respect, protect, and fulfill various human rights of all people within its territory—the right to food, for example, or, in the African Charter, the right to property—that, in many rural communities, depend on people's access to and management of land and natural resources.<sup>379</sup> Kenya has also endorsed the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) and the African Union's Policy Framework for Pastoralism in Africa, two non-binding but authoritative documents that provide, among other things, for the legal

recognition of communal land tenure and the recognition and protection of the traditional systems pastoralists use to govern the commons.<sup>380</sup>

Community land registration is a rights-affirming step towards fulfillment of the Kenyan government's international obligations to provide legally recognize the land tenure rights of Indigenous peoples<sup>381</sup> and to protect the rights of people in rural areas, including pastoralists, to access, sustainably use, and manage land and other natural resources.<sup>382</sup>

International standards make clear, though, that community land registration should also protect the mobility and resource-governance practices that allow pastoralist communities to use land productively.<sup>383</sup>

International law also provides for rural and Indigenous communities' rights to participate in and benefit from programs, including land titling, that affect their lands, lives, and livelihoods.<sup>384</sup>

<sup>379</sup> See generally Lorenzo Cotula, Moussa Djiré, & Ringo W. Tenga, *The Right to Food and Access to Natural Resources: Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor* (2008); Committee on Economic, Social, and Cultural Rights, *General Comment No. 12: The Right to Adequate Food* (Art. 11), UN Doc. E/C.12/1999/5 (1999).

<sup>380</sup> United Nations Declaration on the Rights of Indigenous Peoples, A Res 61/295, UNGAOR, 61st Sess, Supp No 53, UN Doc A/RES/61/295 (2007) [UNDRIP]; African Union Department of Rural Economy and Agriculture, *Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities* (Oct. 2010) [AU Policy Framework].

<sup>381</sup> See generally Geir Ulfstein, "Indigenous Peoples' Right to Land," *Max Planck Yearbook of United Nations Law*, vol. 8 (2004); Committee on Economic, Social, and Cultural Rights, *Concluding observations on the combined second to fifth periodic reports of Kenya*, UN Doc. E/C.12/KEN/CO/2-5.

<sup>382</sup> See generally Lotta Viikari, "Rural Local Communities as Holders of Human Rights: From Aboriginal Subsistence Whaling to Small-Scale Local Community Whaling?," *Nordic Journal of Human Rights*, vol. 40, no. 1 (2022); Christophe Golay & Adriana Bessa, *Research Brief: The Right to Land and Other Natural Resources* (May 2017).

<sup>383</sup> UNDROP, for example, clarifies that the recognition of pastoralists' land and resource rights should enable pastoralists "to achieve an adequate standard of living ... and to develop their cultures." UNDROP 17(1). UNDROP also encourages duty bearers to "recognize and protect the natural commons and their related systems of collective use and management," meaning that, in Kenya, registration should formally recognize and strengthen commons-management systems like *dedha* and *enata nkop*. UNDROP 17(3).

<sup>384</sup> Indigenous peoples have the right to give or withhold their free, prior, and informed consent to any legislative or administrative measures that may affect them. UNDRIP, see above note 388, at art. 19. Similarly, Article 10 of UNDROP protects the right of pastoral producers, among other groups, in rural areas "to active and free participation ... in the preparation and implementation of policies, programmes and projects that may affect their lives, land and livelihoods." Article 11 of UNDROP additionally requires that governments "take appropriate measures" to ensure rural people, including pastoralists, "have access to relevant, transparent, timely and adequate information in a language and form and through means adequate to their cultural methods ... so as to ensure their effective participation" in the aforementioned decision-making processes which affect their lands and communities.



At the regional level, the African Union Policy Framework for Pastoralism in Africa similarly describes the recognition of pastoralists' communal land tenure as a legal obligation and also a means to "build on and thereby improve indigenous rights to [and tenure over] pastoral resources of land, pasture and water."<sup>385</sup> The Framework calls on governments to "acknowledge the legitimacy of indigenous pastoral institutions," including through "recognition ... of the important role of traditional pastoral leadership and structures in ... management of land tenure and mobility." The Framework also provides that, in addition to securing pastoral tenure over and access to rangelands, governments should "support policy reform or development which enables ... pastoral mobility," both within and between countries.<sup>386</sup> Other regional policies in eastern Africa, including the East African Community (EAC) Livestock

Policy and the Intergovernmental Authority on Development (IGAD) Protocol on Transhumance, also recommend governments recognize the importance of traditional systems and institutions.<sup>387</sup>

In practice, it can be difficult for governments to fulfill the obligation to secure pastoral land and resource tenure while also ensuring full protection of pastoral governance systems, identities, and livelihoods. For example, formal recognition processes often try to clearly define the territorial and social-group boundaries of collectively managed resources, in order to exclude outsiders who might break rules or overexploit resources.<sup>388</sup> Geographic and social borders of pastoral systems, however, are often loosely defined and left open to change, as a way to protect herders' mobility.<sup>389</sup> Pastoral systems also typically allow multiple layers of overlapping, equally legitimate rights by different groups to the same resources, a reality that formalization processes often struggle to recognize.<sup>390</sup>

<sup>385</sup> AU Policy Framework, see above note 388, Strategy 1.4.

<sup>386</sup> *Id.*, at Strategy 2.2.

<sup>387</sup> East African Community, EAC Livestock Policy, adopted by the 34th Council of Ministers (Sept. 5, 2016); Intergovernmental Authority on Development, *IGAD Protocol on Transhumance* (Feb. 2020).

<sup>388</sup> See generally Daniel W. Bromley, *Environment and Economy: Property Rights and Public Policy* (1991); Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (1990); Arun Agrawal, "Common property institutions and sustainable governance of resources," *World Development* vol. 29, no. 10 (2001).

<sup>389</sup> Roy Behnke, "Open access and the sovereign commons: A political ecology of pastoral land tenure," *Land Use Policy* vol. 76 (2018).

<sup>390</sup> See, e.g., María E. Fernandez-Giménez & B. Batbuyan, "Law and Disorder: Local Implementation of Mongolia's Land Law," *Development and Change* vol. 35, no. 1 (2004); Margaret A. Rugadya, "Land tenure as a cause of tensions and driver of conflict among mining communities in Karamoja, Uganda: Is secure property rights a solution?" *Land Use Policy*, vol. 94 (May 2020).



This challenge—of adequately securing pastoralists' rights to land and resources without imposing rigid rules and borders onto flexible, layered, and semi-open pastoral systems—has been described by academics and land-rights practitioners as a “paradox of pastoral tenure.”<sup>391</sup> National laws and policies have grappled with these competing priorities in diverse ways and with a range of outcomes for pastoralists.<sup>392</sup> Although experimentation in other contexts offers few simple solutions or definitive answers, academic studies of international practice have identified some possible areas of priority for implementers of the CLA and Regulations.

Broadly, implementation of the Community Land Act should be adjusted to recognize and protect a broader “web” of rights and interests over land and resources in pastoral areas.<sup>393</sup> Many West African countries, for example, either discourage or entirely forbid the registration of any absolute rights to exclusion or alienation, in order to protect existing secondary and derivative rights and to ensure rural people's access to natural resources.<sup>394</sup> In Kenya, the Ministry should set clear principles for how the adjudication and registration processes will avoid over-emphasising primary ownership or exclusion rights, and should

include clear messaging about titling's effects on access and user rights in its public education programs. The registrar should also support CLMCs in registering secondary user rights and taking other steps, as required under the CLA, to protect the customary rights that underpin pastoral production systems.

Second, experiences in a range of other countries—Mongolia, Morocco, Tajikistan, and Sudan, for instance—indicate that herders' interests are better served by detailed land-use zoning and resource-mapping processes than by adjudication and titling alone.<sup>395</sup> Duty bearers should provide support to communities in zoning large land areas exclusively for pastoral use, as well as identifying and protecting important livestock corridors and their associated linchpin resources. Community land registrars and civil society actors should also support CLMCs in designing bylaws that emphasize reciprocity, mobility, and the maintenance of social relationships, including by explicitly including non-members in community decision-making processes regarding land and resources.<sup>396</sup>

<sup>391</sup> María E. Fernández-Giménez, “Spatial and Social Boundaries and the Paradox of Pastoral Land Tenure: A Case Study from Postsocialist Mongolia,” *Human Ecology*, vol. 30 (Mar. 2002); see also Lance Robinson & Fiona Flintan, “Can formalisation of pastoral land tenure overcome its paradoxes? Reflections from East Africa,” *Pastoralism* vol. 12, no. 34 (Aug. 2022).

<sup>392</sup> See generally Fiona Flintan, Lance Robinson, & Mary Allen Bello, A Review of Tenure and Governance in the Pastoral Lands of East and West Africa (Dec. 2021) [Tenure and Governance].

<sup>393</sup> Ruth Meinzen-Dick & Esther Mwangi, “Cutting the web of interests: Pitfalls of formalizing property rights,” *Land Use Policy* vol. 26, no. 1 (2008)

<sup>394</sup> See, e.g., Abdullahi Umar, Examining the State of Pastoral Resources under Common Property Regime, and Pastoralists Accessibility in Drylands of Niger and Nigeria (Dec. 2022).

<sup>395</sup> Flintan, Robinson, & Bello, *Tenure and Governance*, see above note 400, at p. 55 (“It appears to be more appropriate to focus on protecting key linchpin resources for pastoralists within loose boundary-defined rangeland units registered for use by different land users.”); Ginger R.H. Allington et al., “Context matters: Rethinking resource governance theories for Mongolian pastoral systems,” *Land Use Policy* vol. 142 (Jul. 2024) (“[P]olicies [in Mongolia] that support flexible pasture access, maintain social relationships at multiple scales, and assist herders in reinforcing customary norms or developing and enforcing formal pasture use rules where desired, will be most effective. ... To achieve both secure pasture rights and maximum flexibility, herders' collective rights to pasture could be ensured through large-scale zoning rather than tenure. Under this approach, large areas would be designated (zoned) for pastoral use only, and other uses restricted to much smaller specific areas.”)

<sup>396</sup> Erin Kitchell, Matthew Turner, & John McPeak, “Mapping of pastoral corridors: practices and politics in eastern Senegal,” *Pastoralism* vol. 4, no. 17 (2014) (“Therefore, if corridor mapping is approached as part of an ongoing process of negotiated land use planning rather than as an end in itself, it can be an important step in enabling coordination across competing institutions. ... Maintaining flexible access to local pastures requires recognizing the secondary use rights of outsiders ... and creating mechanisms for including them in decision-making.”)

This study also suggests that Kenyan land law should place stronger, more practicable checks and balances on the decision-making power of CLMCs.

Finally, all stakeholders participating in or affected by land titling in Kenya's rangelands must recognize that registration and adjudication are tools, rather than ends in and of themselves. The Government of Kenya must provide the funding and resources necessary to: adjudicate diverse rights and interests in community lands and effectively map key resources and user groups; to establish and capacitate institutions, especially Community Assemblies; monitor and, in some cases, mediate customary processes of negotiation and dispute resolution; and conduct regular, detailed research of land titling's effects on pastoral mobility and pastoral production. Experiences in other countries—as well as in Kenya's own experience with group ranches—make clear that, without proper resourcing and implementation, progressive reforms like the CLA may fail to deliver promised gains, or even worsen socioeconomic outcomes for the millions of Kenyans who depend on community lands for their homes, livelihoods, and identities.<sup>397</sup>

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<sup>397</sup> Michael Odhiambo, *Pastoralism and Land Access Issues in Africa* (Apr. 2024).



## 4. Conclusion and Recommendations

This learning initiative sought to engage with pastoralists' questions about how community land registration in Kenya affects, or will affect, pastoral mobility, reciprocity, and resource-sharing. The study found that, at this early stage, registration is widely popular among members of affected communities but is not well understood, especially by land-dependent people engaged directly in livestock production. The findings suggest that registration, as currently implemented, is overemphasising exclusion rights and under-protecting access and user rights established on the basis of seasonality, reciprocity, or negotiation. The research also indicates that women, herders, clan or ethnic minorities, and other groups historically marginalised in land governance have not been sufficiently involved in land registration.

In response, duty bearers, civil society actors, community members, and other stakeholders should take all available steps, including those outlined below, to more fully align implementation of the CLA and its Regulations with rights-based protections for pastoral resource-governance and livelihood systems, as required by Kenyan and international law and informed by global best practices.

### To the Ministry of Lands

- *Create safeguards during and after the adjudication process to ensure seasonal or reciprocal use rights are registered.*
- *Explore options, including using satellite imagery or piloting a rapid result initiative, to streamline or fast track the adjudication process for community land.*
- *Address shortcomings in public participation that are excluding many resource users from participation in the registration process.*
- *Develop tool kits on steps of mapping diverse resource user-groups as a critical step before registration.*
- *Continuously study the effects of boundary-making and rangeland-management practices on pastoral production systems, with disaggregated data about the differentiated resource needs of different groups.*

### To the National Land Commission

- *Conduct research and advise the Ministry on how to register a full range of pastoralists' rights to and interests in community land, including customary use and access rights.*
- *Continuously study the effects of boundary-making and rangeland-management practices on pastoral production systems, with disaggregated data about the differentiated resource needs of different groups.*

### To Parliament

- *Allocate more financial and technical resources to community land registration, including by lobbying for budgets to be allocated to the registration of community land and earmarking funding for intergovernmental processes.*

**To county governments**

- *Allocate more financial and technical resources to community land registration, including to continuous public awareness campaigns, as required under the CLA.*

**To the Community Land Registrars**

- *Monitor and work to improve the elections of CLMC members, and educate community members about duties and responsibilities of CLMCs.*
- *Require further revisions to any community bylaws that do not mention user rights, inter-communal reciprocity, information sharing, and dispute resolution.*

**To adjudication teams**

- *Employ an inclusive approach to mapping that includes knowledgeable elders and representatives of minority communities and other groups.*
- *Take steps to ensure the adjudication process registers the interests of a range of stakeholders, including seasonal users and members of neighboring communities.*

**To civil society actors**

- *Support communities to double-lock customary rights of use and access, rather than ownership rights alone.*
- *Conduct mobile sensitization programs targeting pastoralists outside of permanent settlements to explain community land registration and emphasize the community assembly's role in management.*
- *Use digital technologies to provide people with reliable information about community land registration via social media, vernacular radio, and other means.*
- *Expand the monitoring of CLMC elections and membership registers, and offer casework or referral pathways for those aggrieved by any CLA processes.*
- *Continuously monitor and periodically study the implementation of the Community Land Act and its Regulations, including through broad-scale collaborative research across contexts with affected communities.*

**To members of the Community Land Management Committees**

- *Translate bylaws into local languages and create audiovisual materials to educate community members and neighbors on the rules and regulations.*
- *Register non-members' customary rights under CLA Forms 9 and 10 and use those meetings as opportunities for peacebuilding and dialogue with other communities.*

**To communities**

- *Regularly dialogue with and involve neighbors in rule-making about shared resources and seasonal or reciprocal relationships.*

- *Call on CLMC members to operate transparently, invest in community-wide sensitization, and educate diverse resource user-groups about the status and implications of registration.*
- *Play an active role in land governance, including through Community Assembly meetings.*



 NAMATI