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Intimate exclusion and pastoralist elites' role in large scale-land acquisition in Kenya*

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A B S T R A C T

Many large-scale land acquisition studies focus on the role of powerful transnational corporations, foreign and domestic governments. Instead, we shift the focus to the role of local actors, in this case, pastoralists in Samburu County, Kenya. Here, we apply the concept of ‘intimate exclusion’ and show that pastoralist elites’ desire and ability to maximise productive and financial gains from customary land, coupled with their privileged understanding of land-related laws and regulations and ability to use or threaten others with violence, enables the control of extensive customary lands and the exclusion of weaker pastoralists. These processes, we find, are rooted in the country’s capitalist development trajectory traceable to colonial rule. Overall, the paper highlights local ‘homegrown’ actors’ role in large-scale land acquisition, how social intimacy provides space and opportunity for unequal benefits and how historical gains offer unique opportunities to gain from new political and economic developments.

Keywords—Large-scale land acquisition, pastoralist elites, intimate exclusion, Kenya.

I N T R O D U C T I O N

This paper contributes to scholarship on large-scale land acquisition in sub-Saharan Africa, a phenomenon often depicted as ‘land grabbing’ or a ‘global land rush’ resulting from the global financial crisis of 2007–2008 (Borras *et al.* 2012; Batterbury & Ndi 2018). From around the year 2012, critical researchers (see, for instance, Edelman *et al.* 2013: 1520; Oya 2013: 8) have called for a transition of large-scale land acquisition research beyond the ‘hype’ or ‘making sense’ epoch, a research phase mainly focused on understanding and highlighting the extensive acreages, widespread conflicts and displacement of local communities by influential external actors. In response, a rich body of literature has emerged in the last decade, demonstrating, among other dynamics, the complex, context-specific processes of incorporation, resistance and acquiescence (Hall *et al.* 2015), the progressive and regressive outcomes (Oberlack *et al.* 2019) and the interconnectedness between historical and contemporary land grabbing, including the role of powerful domestic actors (Edelman *et al.* 2013; Klopp & Lumumba 2014; Manji 2020).

Despite the many strengths of this recent research, we contend three crucial empirical areas need further attention, which we aim to fill with this study. First, a focus on the role of pastoralists in large-scale land acquisitions remains minimal, which itself may be related to the longstanding neglect of pastoralists in policy (Bukari & Schareika 2015; Nyariki & Amwata 2019) or, more broadly, in scholarship on agrarian change (Scoones 2021). As a result, pastoralists tend to be depicted as marginalised, helpless, and as inherent victims of diverse social, economic and political processes, including the appropriation of customary lands by more powerful national and global actors (Mbaria & Ogada 2017; Bukari & Kuusaana 2018; The Oakland Institute 2021).

Second, recent efforts to trace powerful domestic actors' role in land grabbing and in the context of broader global processes adopt national perspectives which combine small and large-scale developments (Manji 2012; Klopp & Lumumba 2014). These processes have collectively been described in Kenya as the irregular and illegal allocation of small and vast chunks of public land (GoK 2004). In this article, we focus on dynamics related to the control of land on a large scale in contexts of pastoralism and involving pastoralists. According to the Land Matrix, domestic, large-scale land acquisitions cover 50 or more hectares, while transnational large-scale land acquisitions involve 200 or more hectares (Land Matrix 2023). Due to the size of such deals, both in terms of capital and expanse of land, large-scale land acquisitions may fundamentally alter a region's social, economic and political dynamics (Casse *et al.* 2017).

Third, recent large-scale land acquisition studies focus on singular-type acquisitions (such as green energy or crude oil) that governments or transnational corporations predominantly control (Achiba 2019; Ndi *et al.* 2021). However, it is essential to consider the interconnectedness of different types of control of large amounts of land, including those involving reworking rules of access, as they tend to reinforce each other and have compound implications for affected populations (Bluwstein *et al.* 2018).

Thus, this paper shifts the focus of analysis from the role of influential national and multinational actors to the role of local actors, in this case, Samburu pastoralists, in initiating and shaping the control of interrelated large-scale land acquisitions, and which we trace to the 1980s. Clearly, different types of pastoralists exist, but the defining feature of pastoralism is the ability of pastoralists to exploit the variability of natural environments, migrate in the face of diverse forms of uncertainty, and subscribe to and safeguard distinct forms of social organisation where livestock production plays a central role (Almagor 1980; Scoones 2021). A focus on pastoralists' roles in such acquisitions is of scholarly relevance and significance because pastoralists are often depicted as historically marginalised, persistently losing out to land-related developments, and as their customary lands are enclosed, acquired or sold off by more powerful national and global actors. Relatedly, social, economic and political relationships within specific pastoralist communities are invariably conceptualised as egalitarian, with the risk of negating stratification, internal divisions and divergent interests (Salzman 1999). Although pastoral egalitarianism is now challenged by evidence of social, economic and political differentiation (Roth 2000; Lesorogol 2008), notions of pastoral egalitarianism prevail today (Scoones 2021). By focusing on the prominent role played by pastoralists in initiating, sustaining and contesting large areas of customary land, the article privileges pastoralists' agency in processes which exclude countless other pastoralists and nuances narratives of land-related exploitation in terms of the Global North versus the Global South (Stacey 2023).

Primary data for this study were collected in Samburu County, one of Kenya's 47 devolved governments, between September 2020 and August 2022.

Samburu County is predominantly inhabited by Samburu pastoralists, who, through their ethnogenesis, share multiple social–cultural–political relations and histories (Simpson & Waweru 2012). For instance, the community's clan system significantly influences settlement plans and constitutes 'the most important social, political and economy of the Samburu community' (Fratkin 1979: 58). Furthermore, it is within the clan system, and the resultant hierarchical and patrilineal kin relationship where group loyalty and cohesion are anchored (Spencer 2004). At the same time, group identity is shaped by ecological uncertainty, politicisation, historical conflict processes and cooperation with neighbouring pastoralist communities, including the Pokot, Turkana, Borana and Maasai of Baringo Turkana, Marsabit/Isiolo and Laikipia counties, respectively (Okumu *et al.* 2017). However, there are also clear drivers of heterogeneity within and between Samburu pastoralists, including differentiated wealth, educational, gender-based and generational inequalities (Lesorogol 2008).

We argue that drivers of community differentiation among Samburu pastoralists are exacerbated by the capitalistic development trajectory inherited by the post-independent Kenya government from colonial rule. Here, we see the emergence of influential pastoralists with ambitions to control and gain economically from pastoral rangelands and which exclude resource-weak pastoralists. Therefore, we frame pastoralist elites as a heterogeneous group, including politicians, government officials, entrepreneurs, church leaders and other professionals, who share identification with the specific values and practices of Samburu pastoralists but who nonetheless develop productive and financial capabilities of customary lands for private gains. To trace these dynamics, we apply the concept of 'intimate exclusion' initially proposed by Hall *et al.* (2011) to describe day-to-day exclusion processes among 'social intimates' in Southeast Asia.

The paper is structured as follows: The following section elaborates on the concept of 'intimate exclusion', which constitutes the conceptual framework for analysing micro-level land claims and counterclaims resulting in the alienation of extensive lands by members of a closely knit society at the exclusion of others. After this section, we describe the study methods and study area. This section is followed by a historicised perspective on large-scale land acquisition, highlighting the role of domestic actors in the colonial era, during post-independence and in contemporary times. This section, therefore, provides a national historical backdrop to the role of domestic actors in controlling vast amounts of land at the exclusion of others. After that, we discuss the privatisation of vast customary lands and the establishment of community-based conservancies as the key, interrelated domestic large-scale land acquisition in Samburu County. We then show how pastoralists draw on the powers of 'intimate exclusion' to drive or contest the large-scale appropriation of pastoral rangelands. Finally, a conclusion draws together the main points, returns to the overall argument and provides perspectives.

INTIMATE EXCLUSION

Researchers have applied three main theoretical frameworks to study large-scale land acquisitions. First, while acknowledging the likely adverse implications, analysis supportive of market-based growth holds that large-scale land acquisition provides opportunities for socioeconomic transformation through improved productivity and mentorship of small-scale farmers (Deininger & Byerlee 2011). For this school of thought, 'responsible business conduct' can mitigate the negative impacts of large-scale land acquisition (Borras & Franco 2014). On the other hand, broader political economy studies such as those based on Marxian and Neo-Marxian thought typically highlight how hegemonic global political-economic powers such as (neo)colonialism and neoliberalism adversely impact local populations through violent primitive accumulation, or accumulation and dispossession processes (Harvey 2007; Kelly 2011). Although this body of scholarship has succeeded in providing global and national perspectives driving accumulation and dispossession processes, it is critiqued for its totalising tendency and inadequate attention to micro-level dynamics (Leo 1984; Li 2014; Stacey 2023). Lastly, critical political economy studies highlight the complexity of processes related to the control of vast amounts of land and generally posit that the phenomenon results in more losers than winners due to the disproportionate power of promoters and implementers (Borras *et al.* 2011; Fairhead *et al.* 2012; Hall *et al.* 2015). This paper builds on the latter body of knowledge to understand how micro-level capitalistic relationships result in exclusion and the accumulation of extensive land by members of the same close-knit community. Towards this end, we apply the concept of 'intimate exclusion' (Hall *et al.* 2011).

According to Hall *et al.* (2011: 4–5), 'intimate exclusion' involves the double-edged process of claiming and counterclaiming land among 'social intimates' pursuing capital accumulation. Intimate exclusion takes place through four powers. *Force* involves the use and threat of different types of violence by state and non-state actors to exclude. *Regulation* involves formal state and legal instruments and informal institutions that set rules. *Markets* cover the use of prices and economic transactions to incentivise individualisation, and *legitimation* establishes the moral basis for actors' exclusive claims, entrenches regulation, the use of markets and force as politically and socially acceptable bases for exclusion.

The interplay between the powers of intimate exclusion enables some actors to set the price for owning or accessing land that is unaffordable to others; lend resources at rates certain groups cannot afford; purchase lands at distress prices; enclose entire commons and draw on comparative advantages to benefit from diverse developmental prerogatives (Hall *et al.* 2011). This land-based exclusion results from increased attention to private ownership and exclusive access influenced by capitalistic forms of production and linkages between changing local relations around land and processes of global capitalism. The result is ongoing contestation as neighbours, kin, kith and others with shared histories

and relations of mutual dependency and social interaction seek to exclude to maximise individual interests (Hall *et al.* 2011).

However, as suggested by Hall *et al.* (2011) and much research across sub-Saharan Africa, the powerful social, economic, political and customary actors are better placed to influence, direct and take advantage of changes in policy, formal state law and customary practices than their less powerful counterparts (Leo 1984; Lund 2008; Kanyinga 2009; Honig 2017; Boone *et al.* 2019; Achiba & Lengoiboni 2020; Gravesen 2020; Di Matteo 2022). By applying the concept of 'intimate exclusion' to pastoralist dynamics in Kenya, we aim to contribute to these understandings and shed light on the role influential pastoralists of different subgroups play in land uncertainty, conflict and differentiation, a perspective we find missing in current scholarship.

METHODS

Multiple qualitative methods were employed for this study. For the literature review, we examined relevant published, archival, grey literature and data from the Land Matrix database¹ to produce a historicised, national-level perspective, which, together with the conceptual framing, provided perspectives for the primary data analysis. Primary data were collected in Samburu County during repeated visits and contact with respondents between September 2020 and August 2022. In all, 39 semi-structured interviews were conducted with government officials, civil society and NGO representatives, large-scale landowners, local opinion leaders and community leaders, and 12 focus group discussions with between 5 and 10 community members from different group ranches, community lands, conservancy board members and ordinary men, women and youth from Samburu County. These data were recorded and transcribed and underwent content analysis to identify key themes, quotes and meanings. In addition, we undertook participatory mapping, transect walks and longer drives around pastoralists' land and conservation areas to better understand the processes and physical features described during the interviews and focus group discussions. We used entrusted locals as interpreters and guides. The diversity of primary data collection methods enabled the collection of rich ethnographic material, which provided for triangulation and consideration of the perspective of different respondents (Hammersley 2010).

STUDY AREA

Samburu County (Figure 1) measures approximately 21,000 km² and is predominantly inhabited by Samburu pastoralists who rely on livestock rearing (cattle, goats, sheep and camels in a few households) as their key livelihood (Samburu County Government 2018). The county is arid and semi-arid land (ASAL), an ecological condition characterised by minimal annual rainfall of 250 in the more arid areas and 900 mm in the less arid regions, and high annual temperature of between 15.5 and 33°C (Samburu County

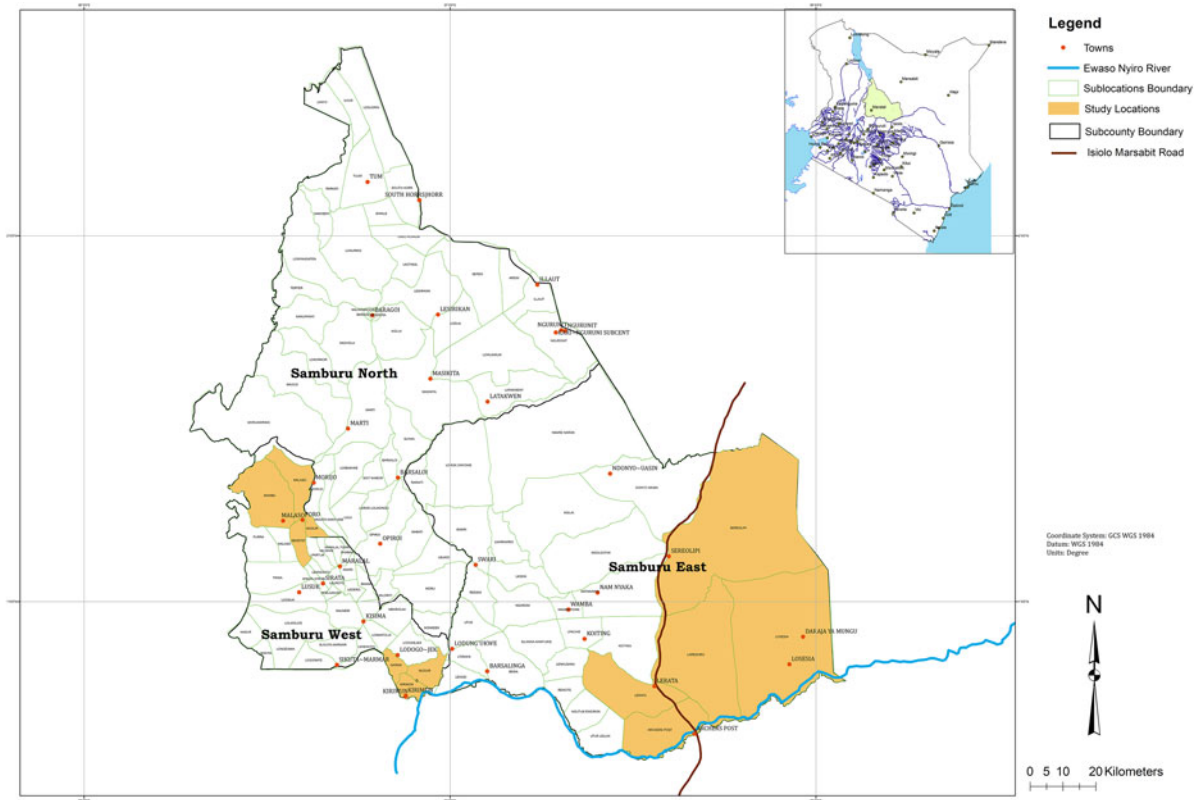


Figure 1 Map of Samburu County showing study areas.
Source: Designed by authors and Njenga Wainaina.

Government 2018). The government of Kenya categorises 75% of the 310,327 residents of the county as ‘poor’ (Commission on Revenue Allocation 2022).

Samburu County (then Samburu district) was one of the ASAL regions where the independent Kenya government introduced the group ranch system in the late 1960s.² One pre-condition for membership of a group ranch was ‘social intimacy’, such as belonging to the same tribe, clan, section or family. Since the Samburu clan system was and remains central in shaping settlement plans (Spencer 2004; Fratkin 1979; Simpson & Waweru 2012), a defining feature of group ranches was the influence of clan settlement patterns (Lesorogol 2008). Thus, members of a group ranch were not just of the Samburu tribe but also, in many cases, clan members.

We collected data for this study mainly in four group ranches: Losesia, Sereolipi, Kirimon and Porro, located in four administrative locations of Waso, Sereolipi, Kirimon and Malaso, respectively.³ These areas were selected purposefully because initial scoping fieldwork suggested contested and changing land relations together with historical and contemporary large-scale land acquisitions. In addition, the four locations represent the social-economic and ecological diversity of Samburu County. While Losesia and Sereolipi are in the more arid parts of Samburu and are not keen on subdividing their group ranch, Kirimon and Porro are in the less dry, higher altitude areas of the county. During fieldwork, members of Kirimon group ranch reported that they had agreed to subdivide their group ranch, while Porro community was the first community in Samburu to subdivide their group ranch in 1986 (see more details in the section: domestic large-scale land acquisition in Samburu). Thus, the study adopted an area-wide approach, enabling the examination of interconnected large-scale land acquisitions in different historical periods.

In the next section, we situate powerful domestic actors’ and social intimates’ control of large land areas within a historical context. Based on this review, we categorise Kenya’s large-scale land acquisitions involving domestic actors and social intimates into three interconnected phases: colonial, post-independence and contemporary acquisitions, and which shape, and are shaped by, the broader capitalistic trajectory of Kenya’s land relations and challenges to customary tenure through various land governance reforms and maladministration.

DOMESTIC LARGE-SCALE LAND ACQUISITIONS IN KENYA

Colonial period

The first stage in the longstanding phenomenon of capitalistic-driven irregular and illegal large-scale land acquisitions in Kenya is traceable to 1895 when the British government alienated and acquired vast areas to establish the East Africa Protectorate (Sorrenson 1962; Okoth-Ogendo 1991). In 1902, the colonial power enacted the Crowns Land Ordinance, which provided a legal basis for the widespread dispossession of African communities from long-held

communal land and supported the establishment of settler colonies, cash cropping for export markets, and sedentary farming (Sorrenson 1962). By 1914, nearly 2 million hectares of land had been taken away from their original owners, particularly the Kikuyu, Maasai and Nandi, which had increased to almost 2.9 million of 'White Highlands' by 1924 (Syagga 2006). While the colonial government acknowledged the accumulation of extensive lands by white settlers as a problem, it also encouraged the practice because it relied on it for economic development (Sorrenson 1962).

The encroachment and control of lands previously managed through communal land tenure resulted in agitation and resistance from the disenfranchised communities. However, in the 'White Highlands', so called due to their high potential for crop and dairy production, it only increased the concentration of land held by settler farmers (Leo 1984; Kanyinga 2000; Klopp & Lumumba 2014). In addition, an emerging class of Africans, particularly chiefs and local-level employees of the colonial government, started to own 'huge lands through grabbing or buying the land of their neighbours cheaply' (Muthama n.d.: 10). Data on the sizes of lands appropriated by indigenous communities are scant, but during this period, it is clear that some Africans used newfound privileged positions, the use force and knowledge of market opportunities to exclude kith and kin. By the 1940s, a broad class of land-owning Kenyans had emerged, comprising mainly Kikuyus inhabiting the country's central region, an area known to be favourable for cash crop production (Leo 1984).

In the 1950s, the Swynnerton Plan recommended private land ownership through the land consolidation and registration programme in the 'White Highlands' (Leo 1984; Okoth-Ogendo 1991; Kanyinga 2000). The plan also promoted the establishment of grazing schemes and group ranches in the pastoralist-inhabited arid and semi-arid regions (Mwangi & Ostrom 2009). Previously, the colonial government utilised northern Kenya as security buffer zones due to a misconstrued understanding of the region as unproductive and of pastoralists as generally difficult to govern due to nomadism (U.K. Parliament 1964). At the same time, however, the colonial power continued to castigate pastoralism, arguing that individual livestock ownership under communal land ownership was unsustainable, an understanding that fed into and would become a dominant narrative of the 'tragedy of the commons' (Hardin 1968). As shown below, the Swynnerton Plan fundamentally influenced the land governance approach adopted by Kenya's post-independence government, paving the way for further 'intimate exclusion'.

Post-independence period

The post-independence government in Kenya, led by Jomo Kenyatta, starting in 1964, adopted a peasantisation programme in the crop farming region of the country, thereby replacing colonial-era large-scale agriculture with family-labour-driven smallholder agriculture (Leo 1984). However, by the late

1960s, this government began to promote large-scale farming as the most viable agricultural production strategy, neglecting the focus on small-scale agriculture and continuing with forms of land governance favouring political and economic elites (Hornsby 2012). This agrarian production strategy was based on two main rationales. First was the capitalistic-inspired assumption that wealth from elite-driven large-scale agricultural production would trickle down and result in broad-based economic growth, development and betterment (Leo 1984; Kanyinga 2000). Second, it was both convenient and imperative for the outgoing colonial regime to hand over a land governance system that did not undermine existing land-based power and where substantial areas of fertile land were to remain under the control of a privileged and politically powerful elite (Kanyinga 2000, 2009).

Literature shows that the post-colonial land governance policy ushered in a new phase of illegal and irregular land acquisition by wealthier and better politically connected communities such as the Kikuyu, national politicians and national economic elites (Leo 1984; Kanyinga 2000). Yet, we also see clear examples of intimate exclusion, particularly in the 'White Highlands'. Here, instead of the post-independent government making land previously owned by white settlers available for redistribution among the landless as initially designed, influential state officers and politicians colluded to acquire such lands. For instance, in 1964, President Jomo Kenyatta gifted his tribesman, a political friend turned foe, JM Kariuki, land amounting to 800 hectares of land in OI Kalau (Daily Nation 2017), a region at that time inhabited by the members of the Kikuyu community from which both politicians belonged.

In the pastoralists' inhabited ASALs, a unique privatisation model was adopted. Here, the post-independence government sought to privatise the pastoral rangelands of particular pastoralist communities and individuals through two laws, namely the Land (Adjudication) Act (National Council for Law Reporting 1968*b*) and the Land (Group Representatives) Act (National Council for Law Reporting 1968*a*). While the Land Adjudication Act provided for the ascertainment and recording of rights and interests in Trust Land by individuals and groups, the Group Representatives Act provided for the incorporation of representatives of groups recorded as owners of lands in line with the Land Adjudication Act.⁴

The Land (Group Representatives) Act defined a group as a tribe, clan, section, family or other group whose land, under recognised customary law, belonged communally to the group members (National Council for Law Reporting 1968*a*). Accordingly, every registered member of the group ranch – mainly adult men – was an equal and joint owner of group land (Lesorogol 2008; Mwangi & Ostrom 2009). Group ranches were managed by elected representatives, mainly local social, political and economic elites. However, studies have shown that the group ranch system undermined rather than strengthened pastoral production due to an inadequate understanding of pastoralism as a retrogressive practice (Mwangi & Ostrom 2009). As we show later through the case of Samburu, land privatisation in the pastoralist regions, the land adjudication and the group ranch system provided solid opportunities for influential

pastoralists to gain control of large amounts of land through the older and more contemporary processes of changing land management practices. First though, we provide a national perspective on contemporary large-scale land acquisitions involving powerful domestic actors in Kenya and discuss the national policy and legislative efforts to address land misgovernance.

The contemporary period

The third phase of large-scale land acquisitions in Kenya began in the early 2000s, following the global re-emergence of interests in land control for diverse production and financial imperatives. According to the Land Matrix, 14 large-scale land acquisitions cumulatively covering about 111,000 hectares of land have been completed in Kenya since 2000 (Land Matrix 2023). The size of these acquisitions ranges from 200 to 30,000 hectares, with a median value of 6,500 hectares. The objectives of these acquisitions vary but mainly target the production of renewable energy, food, conservation areas and tourism development. The role of powerful domestic actors in such land developments mirrors the actions of their transnational counterparts in responding to searching out land-based destinations for capital investment and fulfilling and appealing to global norms to solve food, feed and 'green imperatives'. Furthermore, the Land Matrix data suggest that most such acquisitions are in the country's ASALs, indicating a continuation of *terra nullius* understandings and *tragedy of commons* theories in the appropriation of customary lands in Kenya.

However, the Land Matrix data have two main gaps. First, the database documents domestically driven large-scale land acquisitions owned by the state and large companies, thereby missing those owned or operated by local and national political and economic elites. The unavailability and unreliability of data may explain this gap since many large-scale land acquisitions are undertaken through highly opaque processes (Klopp & Lumumba 2014). Second, the Land Matrix database omits acquisitions involving institutional reconfigurations of land use, access and ownership rules without changing land tenure, even though this may constitute 'land grabbing' (Fairhead *et al.* 2012).

A fading promise for land governance reforms?

Widespread maladministration, corruption and the politicisation of land administration processes in Kenya, coupled with agitation for increased representation and democratisation, prompted public outcry and the emergence of nationwide civil society-led agitation for land reforms from the early 1990s. In response, under the Moi and Kibaki Presidencies, the Kenyan government commissioned several inquiries into the land question (see GoK 2004, 2013; Manji 2020). These confirmed what many Kenyans already knew and had lived with for decades – widespread, historical abuse of land laws. The inquiries, therefore, called for radical changes in land governance. However, little progress was made in the struggle for improved land governance and dispensing

justice for those dispossessed or alienated from land, mainly because the state officers mandated to address the malaise were complicit (Klopp 2000; Khamisi 2018; Manji 2020).

However, following the election of the National Rainbow Coalition government in 2003, a new constitution with reformist land laws was inaugurated in 2010. Among other things, the new constitution required the inauguration of a devolved system of government consisting of 47 county governments and the enactment of four land laws the Land Act, the Land Registration Act, the National Land Commission Act and the Community Land Act (GoK 2010). Three parts of the 2010 Constitution are particularly relevant to this paper. These include the devolved system of government, the Community Land Act (National Council for Law Reporting 2016a) and the National Land Commission Act (Kenya Law Reporting 2012). Under the devolved system of government, county governments are mandated to manage and legislate on diverse local issues, including those related to community land, provided that these actions are not in contravention with national laws and policies. On the other hand, like the Land (Group Representative) Act, the Community Land Act provides the legal framework for the ownership and management of customary lands, but it requires broader participation and ownership by men, women and youth. Lastly, the National Land Commission provides the legal framework within which to address the many historical land injustices.

The reformist land laws under the 2010 Constitution have the potential to dramatically increase public accountability and decision-making around land management in a pluralistic (private, public, communal) and previously misgoverned land management and administration system (Alden-Wily 2018). However, political interference and power struggles have subverted the aims of these laws and reversed policy and legislative gains (Boone *et al.* 2019; Achiba & Lengoiboni 2020; Manji 2020; Hassan *et al.* 2022). This has resulted in a failure to address the longstanding problem of the involvement of powerful domestic actors in large-scale land acquisitions, which is the subject of the next section, where we examine the role of pastoralists.

FINDINGS AND DISCUSSION

This section comprises three parts. The first presents the main large-scale land acquisitions in the study area. The second uses the concept of intimate exclusion to examine the strategies employed by Samburu pastoralist elites to claim vast areas of customary lands and the reactions by poorer pastoralists to counter these claims. Lastly, we discuss the dynamics interconnecting the different examples of large-scale land acquisition in this region.

Domestic large-scale land acquisitions in Samburu

Two prominent types of large-scale land acquisitions involving pastoralists are present in Samburu. The first is the privatisation of substantial stretches of

formerly communally held land by well-placed Samburu pastoralists and politically influential actors, including local politicians (councillors and Members of Parliament), highly ranked military officers, businessmen and local volunteers, in collaboration with government officers responsible for implementing the Land Adjudication Act and Land (Group) Representative Act (1968*a*, 1968*b*).

For instance, in Waso, close to 40,000 hectares of land was alienated for private ownership among 37 elites starting in 1981 (National Council for Law Reporting 2016*b*; FGD#1 members, Archers Post, 09.01.21). According to respondents, three actors not from Samburu were also involved in these acquisitions, but people of Samburu descent predominantly drove the acquisitions. As a result of the privatisation of what was communally held land, approximately 1,000 Samburu pastoralist households had to share the land that remained under the Group Ranch, measuring 113,653 hectares (about 20 hectares per person). Meanwhile, on average, some 37 individuals gained about 1,000 hectares each. Notably, the redistribution to individual pastoralists was highly unequal, with one individual we talked to acquiring around 8,000 hectares (document accessed during Key Informant Interview #24, Samburu East 19.01.22).

The diverse strategies employed to alienate these lands by a few Samburu pastoralists to the exclusion of others are discussed in more detail in a later section. Suffice to mention here that some respondents claimed that privatising vast lands to some pastoralists, including influential people in the military, would safeguard Samburu pastoralists from attacks and encroachment by other pastoralist communities in the neighbouring regions (FGD#1 Members, Archers Post 9.01.21). In addition, a county government official stated that Samburu elders willingly 'gifted' vast amounts of land to some respected community members based on their level of understanding at that time (Key Informant Interview#9, Mararal 24.05.21). These narratives correspond to the colonial practice of utilising the extensive parts of northern Kenya as a security buffer zone and the allocation of the most valuable lands to economic elites. Indeed, as we see later, evidence of force, market rationale and a better understanding of regulations by the beneficiaries of these acquisitions challenge these narratives. Consequently, despite their formalisation, these extensive lands are often 'encroached' by Samburu and non-Samburu nomadic pastoralists and remain highly contested, thereby shaping the ability of Samburu pastoralists to use access and own land.

The second type of pastoralist-led large-scale land acquisition is less obvious because it does not involve tenure changes. Instead, it relates to what has been described as 'green-grabbing', where laws and norms governing land use and access are reconfigured to disadvantage existing land users and cut off access to resources on which their livelihoods depend (Fairhead *et al.* 2012). In Samburu, pastoralist elites have collaborated with external actors and state officers to alienate vast community lands to fulfil imperatives for community-based conservation, which resembles 'green grabbing' as access to certain lands is denied. On top of altering pastoralists' land control through

newly introduced rules and regulations, extensive lands are also fenced off and set aside as wildlife sanctuaries. In Samburu East, one fenced-off sanctuary measures approximately 10,000 hectares (NRT 2019: 75) and, like others, it enjoys broad local to national support in the form of rules, laws and regulations such as armed conservancy guards, complex geospatial monitoring technologies and the installation of electric fences (multiple interviews and observations).

The establishment of community-based conservancies in Samburu can be traced to the early 2000s, a period corresponding to the onset of the ‘global land rush’ earlier mentioned. As one Samburu pastoralist explained:

In Samburu East, approximately 75% of our land is now under Community-Based Conservancies. We tried to resist, but Ian Craig won through the influence of a former Member of Parliament (MP). This is how most of the land was brought under conservation (Key Informant Interview #21, Archers Post, 19.01.22).

And as a former Samburu pastoralist politician stated:

The first conservancy to be established here was Namnyak. So, when I saw Namnyak coming up well, I also started my[our] conservancy, Kalama. Later, I also pressured the Sera people to join in, so that is how community-based conservation started in Samburu (Key Informant Interview #24, Archers Post 19.01.22).

In the first vignette, the respondent explains the role of a local pastoralist politician alongside the highly influential Kenyan of white descent whose family has been involved in large-scale farming, tourism and conservation since the 1920s and, in recent years, has helped establish extensive community-based conservancies (NRT 2013). In the second vignette, it becomes clear how powerful pastoralist elites influenced others to join in.

Once a community-based conservancy is established, the Community Land Management Committees (CLMCs) – the local-level land management committee established under the Community Land Act – or Group Ranch Boards in areas where group ranches are yet to transition into community land are mandated to manage the conservancy (Key Informant Interview #21, Archers Post, 19.01.22; Key Informant Interview #29, Maralal, 24.01.22). In this way, the CLMC becomes the ‘highest governing body’ for the community-based conservancies (NRT 2013: 8). The Community Conservancy Boards decide over financial resources stemming from tourist-driven, income-generating activities in the conservancies.

While community-based conservation promoters assert that elections to committees ensure fair community representation, this was challenged by many different respondents, who highlighted examples of malpractice during the election of community leaders to influential positions. Local critics also pointed out that the CLMCs are also mandated to oversee the everyday running of the community-based conservancies, including financial management, and which has become a key source of contention due, allegedly, to tourist activities proving to be lucrative sources of funding. (Key Informant Interview #29, Maralal 24.01.22; Key Informant Interview, Nairobi #31,

14.06.22). To exemplify, members of Losesia group ranch are presently in a protracted leadership conflict based on what many respondents stated were personal interests in the considerable income related to tourist activities. As such, the (re) configuration of land control following the setting up of community-based conservancies has provided a range of uneven opportunities within historically close-knit communities, which, in turn, undermines the ambition and spirit of the 2016 Community Land Act to enhance equitable land access, use and ownership of customary lands, and to radically improve on the failings of the old Land (Group) Representatives Act (1968*a*, 1968*b*) (Key Informant Interview #5, Maralal 24.01.22).

Diverse pastoralist strategies relating to large-scale land acquisitions

In this section, we discuss the strategies employed by Samburu pastoralist elites and the land-related contestations resulting in marginalisation using the concept of intimate exclusion.

The use of force

The use or threat of a broad range of types of violence is evident in the alienation and contestation of the acquisition of vast lands. This is illustrated through two statements below:

In the 1980s, a white farmer used to lease the Group Ranch's land to undertake large-scale wheat farming. The interaction with the land lease business motivated some community members to privatise the entire Group Ranch at the expense of most residents to benefit more from trading with the farmer. The poorer pastoralists were being forced to lesser productive areas of the group ranch. The result was a violent conflict, which eventually saw the involvement of President Moi, who directed the subdivision of the Group Ranch among all members to avert an impending catastrophe (Key Informant Interview #11, Porro, 24.05.21).

What is the future of our pastoralism? Are we being locked out from our lands by community conservancies, yet it is risky to talk about this? (Participant, FGD#1 Members, Archers Post 9.01.21)

In the first vignette, two pastoralist subgroups compete to control land, with well-positioned and influential pastoralists and those employed seeking to privatise communal rangelands to maximise incomes from farming at the expense of other pastoralist groups. The relationship between the white farmer and influential Samburu pastoralists exemplifies how introducing new crops and promoting market-driven agricultural growth, which becomes integrated into local economies, also causes land-related contestations. To gain the substantial acreage needed for market-based wheat production, influential pastoralists sought, therefore, to forcibly relocate other pastoralist groups to more marginal parts of the group ranch, which met resistance from those in favour of upholding customary land tenure. The result was a violent conflict

with opposing assertions of private and customary land claims. However, attempting to gain control over the customary land with violence was averted with the intervention of the external investor – whose enterprise risked loss – and the stepping in of influential national political actors. In this case, supporters of communal land tenure lost, and the contest ended in the privatisation of land among the residents in 1986, which is not surprising given the spirit of post-independence Kenya's land policy that prioritised privatisation and market-driven growth, and where President Moi directed the sub-division (privatisation) of the contested lands.

The second vignette highlights how opponents of community-based conservation fear exclusion and the end of their pastoralist production. The view suggests a form of symbolic violence, where conservancies limit opportunities for pastoralists' production and hesitate to voice opposition to 'conservation'. Although promoters of community-based conservancies refute accusations of heavy-handedness, fieldwork confirmed increased surveillance, security and near militarisation of rangelands, with patrols, game rangers and anti-poaching units, members of which can gain Kenya Police Reserve status, and the allocation of government-issued firearms (also, NRT 2017). All of this is purported to protect wildlife and ward off encroachers from the newly demarcated conservancies, but local pastoralist opponents claim human rights abuses against their traditional way of living (Key Informant Interview #22, Archers Post, 18.01.22). These contentions are significant because securitisation and militarisation are integral features of land-based accumulation and dispossession (Harvey 2007; Fairhead *et al.* 2012) and as the show and exercise of force become legitimate means to convince others of ownership status and signal who has the right to be there (Ribot & Peluso 2003).

'Ubinafsi': maximising economic gain from land

In Samburu, evidence suggests that markets, mainly through the privatisation of land, play a critical role in accumulation and dispossession processes. Multiple interviews and FGDs brought out the notion of 'ubinafsi', the Swahili locution for 'self-interest', as an explanation for pastoralists acquiring extensive private lands and commodifying traditional rangelands. In this context, pastoralists who spearheaded the large-scale privatisation of pastoral rangelands in the 1980s aimed to develop land markets and maximise land ownership to gain personally from increasing the production of large herds of livestock and speculating on the financial value of the land. Similarly, respondents evoked notions of self-interest in describing the role of some pastoralists in driving and sustaining the alienation of large amounts of land for community-based conservation. These contentions are illustrated in the vignettes below.

When we were working on the formation of group ranches in the 1970s, a few individuals were working on getting title deeds, which they eventually secured. Most Samburu people refused privatisation because they wanted to protect their grazing lands. However, those who went for private land are now in a very high

class compared to others. Most of them are now millionaires because some of them even used their title deeds to get loans, and they went on to buy 300–400 cows and over 1000 goats (Key Informant Interview #25, Kirimon 22.01.22).

These three guys [some members of the Group Ranch Board] from the [Samburu] community have been elected to serve everyone. However, they pursue their interests instead of community interest. So, yes, we are one community, but the three people have got their interest. This is especially concerning money (Participant, FGD#10, Archers Post 20.01.22).

Both vignettes show how well-placed pastoralists acquired land and used market logic to legitimate activities, maximise personal gains and undermine customary tenure. One such influential pastoralist was a former private sector employee who now owns an extensive ranch and has a solid knowledge of how title deeds enable access to competitive bank loans, which could be used for new land investments in neighbouring town centres with appreciating land prices. The sentiment here was that if an investor wished to purchase *his* land, he would readily sell it even if this would 'render squatters, pastoralists – who often use the land for grazing without owning it' (Key Informant Interview #24, Samburu East 19.01.22). Of course, it is significant here that it is only because of his pastoralist heritage that he was first able to benefit from having a title deed in the first place, which has since provided new opportunities for economic gains as well as provides grounds for land-based contestation as fellow community members lose out. These examples of how enjoying privileged status as a title holder later offers further opportunities to gain from market forces show limits to understanding land tenure in arid and semi-arid regions of East Africa as highly fluid (Galaty 2016). In contrast, Samburu County presents ample evidence of different trajectories. That is, early land-related gain results in further gains, and historically unfavourable land-related conditions continue as more of the same or worse – with the fencing off hundreds of kilometres of land by new owners, including highly securitised investments by external investors and which make it near impossible for marginalised pastoralists to access previously available lands for grazing. In the view of one respondent, the result is pronounced class differences and struggles (Participant, FGD#11, Porro, 24.01.22).

Gaining from regulations

As earlier mentioned, the privatisation of vast customary lands by well-positioned Samburu pastoralists followed the enactment of the Land (Adjudication) and the Land (Group Representatives) Acts (1968*a*, 1968*b*). Still, they were passed when only a select few Samburu pastoralists had a formal education allowing a better understanding of the laws. The basic literacy level in Samburu today stands at 34% (Samburu County Government 2018). Essential reading and writing among Samburu pastoralists were indeed, therefore, extremely low four decades ago. As such, few educated pastoralists could

take advantage of the provisions in the law allowing the privatisation of rangelands at scales that are now highly contested. One respondent who acquired substantial areas of land at the time remarked:

During the land adjudication process, I was very young and employed. As young and employed people, we must follow what we see and hear, so when laws like these come in, and we understand them, we must take advantage. We told many people to take up land, but they said they would not subdivide the land of Samburus. So, if people do not want and it is legally and possible, you do and leave them out (Key Informant Interview #24, Samburu East 19.01.22).

In this example, the large-scale landowner legitimises his ownership of extensive land based on his ability to understand and use the law and sees it as no fault of his own that others cannot do the same and end up excluded. Still, the Land Adjudication Act (National Council for Law Reporting 1968*b*, for instance, Section 5C, Section 13) did allow individuals to claim interests in former trust lands. However, as earlier seen, the privatisation of extensive pastoral rangelands was anchored on the colonial land policy that misconstrued extensive pastoralism as retrogressive and destructive. Besides, the alienation of customary rangelands by a few Samburu pastoralists based on this law remains highly contested today in public parlance and courts of law because pastoralist elites took advantage of the ignorance of fellow pastoralists (National Council for Law Reporting 2016*b*, 2017; Daily Nation 2020).

Some excluded Samburu pastoralists are now seeking redress from the National Land Commission because they consider the acquisitions a historical injustice (Key Informant Interview #15, Maralal 8.5.21; Key Informant Interview #29, Maralal 24.01.22). However, the capacity of laws and regulations originating from Kenya's reformist constitution to improve on historical, land-related injustices is weakened by multiple factors, including the manipulation by local elites and a seemingly lack of political will. For example, in Samburu, an under-resourced county-level office of the National Land Commission was only established in 2015 – three years after the enactment of the National Land Commission Act (2012).

In addition, influential pastoralists are working hard to negate the Community Land Act, which otherwise aims to provide legal protection to remaining customary lands in Kenya. For instance, in one group ranch, leadership and membership essentially agree on the need to sub-divide their land (privatise to individual members of the group ranch) rather than register it as community land under the new Community Land Law (Focus Group #7, Kirimon 22.01.22). A well-off pastoralist is providing financial support for the privatisation process. As a result, critics expectedly point out that facilitating the subdivision of the customary owned land into private parcels will likely enable the well-placed to buy land later from poor pastoralists, including selling under distress, which will inevitably lead to the concentration of land in fewer pastoralist hands (Key Informant Interview #29, Maralal 24.01.22). All this indicates agree that indebting poorer members of intimate groups

and buying off their property at fire sales prices constitute a crucial process in intimate exclusion (Hall *et al.* 2011).

Community-based conservation promoters also draw on the Community Land Act (2016a) to legitimise the control of extensive lands in Samburu. For instance, some perceive the Community Land Act as 'friendlier' to community-based conservation compared to private land tenure, where more accountability is required due to associated absolute control over land (Key Informant Interview #29, Maralal, 24.01.22; Key Informant Interview #21, Archers Post, 19.01.22). In response, promoters of community-based conservancies are at the forefront of supporting and fast-tracking Samburu pastoralists to register their lands as community land (Key Informant Interview #22, Archers Post, 18.01.22, FGD#12members, Sereolipi, 21.01.22). For the County government, this direction promises more income from tourism, employment for youths and other tourism-related developments (Key Informant Interview #21, Archers Post, 19.01.22; telephone interview with Key Informant Interview #17 08.12.22). Thus, the protection of existing conservancies and the creation of more is promoted despite opposition from some residents.

The interconnectedness between domestic large scale land acquisitions in Samburu

This section outlines the primary dynamics connecting the privatisation of extensive customary lands and the establishment of community-based conservancies. First, some influential pastoralists involved in the establishment of group ranches and the process of the annexation of vast rangelands for private ownership also play a vital role in the establishment of community-based conservancies. This was clear from talking to a former group ranch committee member, a local politician, who many years previously had, through his capacity and political contacts, secured a large area of land for himself, and which now had come to overlap with a large area demarcated as a conservation area (Key Informant Interview #24, Samburu East 19.01.22). Because of the boundary overlap between his land and the conservation area, he now claims to be entitled to a share of the income from tourism activities and investments on his private land. This demonstrates how local processes of land accumulation involving Samburu pastoralists become enmeshed in broader global processes financed by transnational capital (Manji 2012).

Second, the landmasses targeted for appropriation by pastoralist elites are inevitably the most productive areas, which is a strategy reflecting historical colonial practices earlier discussed. For instance, in the lowlands where rainfed agriculture is impossible due to aridity, pastoralist elites typically target the ecologically vibrant rangelands with perennial water and better quality pasture. This overlap between large-scale land acquisition, productive pastoral rangelands and customary migration routes is illustrated in Figure 2. As shown in the sketch map, extensive private lands (the individual ranches to the east) and areas set aside for exclusive tourism business (see Sera

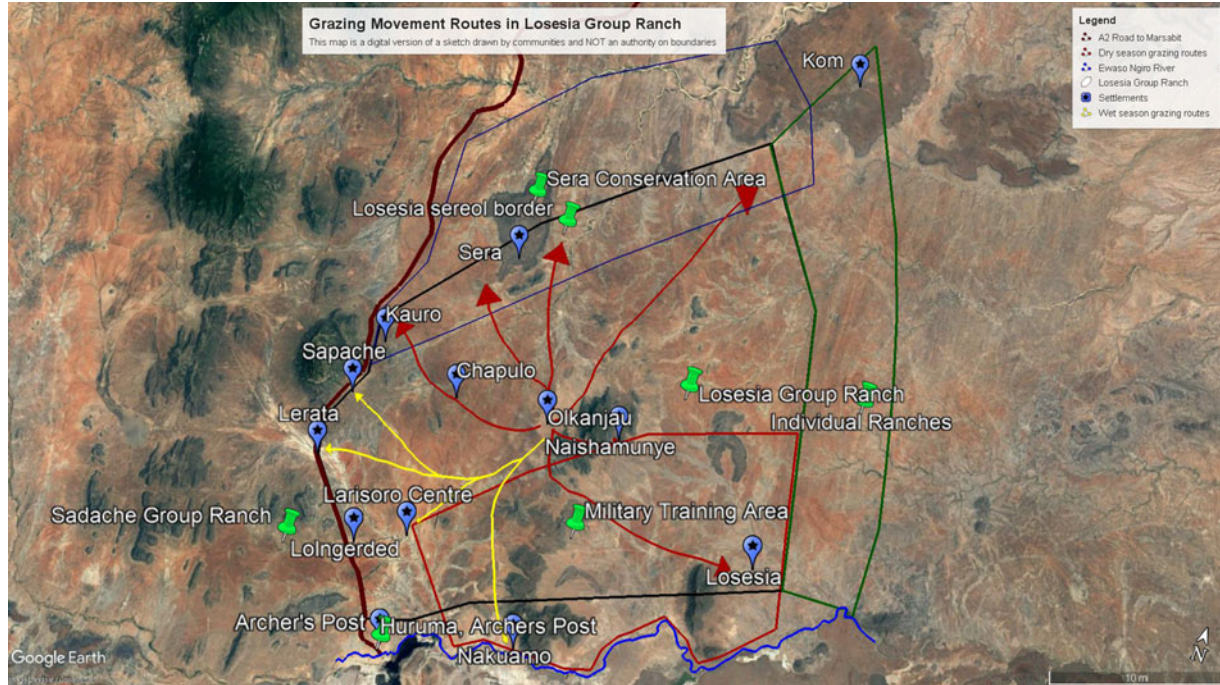


Figure 2 Sketch map of Losesia group ranch showing the relationship between domestic large-scale land acquisition and pastoralists' grazing/migration routes.

Source: Digitised by authors and Njenga Wainaina.

Conservation Area to the north) interfere with Samburu pastoralists' dry-season migration routes (to the North and East).

CONCLUSION

In this paper, we have examined the role of pastoralists in controlling large amounts of customary lands. We identify the outright privatisation of customary lands and the creation of community-based conservancies as the two major and interrelated large-scale land acquisitions in Samburu County of Kenya involving well-positioned pastoralists. These processes differ but are interlinked due to the historical role different sub-groups of pastoralists play in their structuration and reproduction, expansiveness, exclusionary nature and tendency to target the more ecologically vibrant areas.

In Samburu, these processes are predominantly driven by pastoralists who, in large part, owe their ability to gain from their roots in pastoralist communities, as members of families who benefited from the group ranch system, who gained from political positions and as first generations of educated pastoralists, and who continue to gain from Kenya's continued capitalistic developmental trajectory. Since the colonial period, this capitalistic development pathway has favoured large-scale farming to the detriment of smallholding agriculture and pastoralism based on customary tenure. As a result, large-scale land acquisitions driven by Samburu pastoralists have significantly altered Samburu's socio-economic and local political dynamics, resulting in intra-communal conflicts, land-based stratification, increased litigation and diminishing pastoralists' grazing land from the widespread enclosure and increased securitisation.

The paper contributes to debates about large-scale land acquisitions by highlighting the role local 'homegrown' actors play in such processes; how social intimacy provides space and opportunity for unequal gains; and, importantly, how historical gains offer unique opportunities to gain from new political and economic developments. In all, this shows that pastoralists are not just victims of large-scale land grabbing and global economic forces, and pastoralism is not particularly egalitarian, but pastoralists themselves are key actors in global processes that undermine pastoralism as a viable form of rural production, as they partake in large-scale acquisitions, and aggravate land-based inequality.

NOTES

1. The Land Matrix is a global database that monitors large-scale land acquisitions in low- and middle-income countries (<https://landmatrix.org/>). Although other initiatives, such as GRAIN (<https://grain.org/landgrab>) exist, Land Matrix is the most comprehensive and widely cited database on large-scale land acquisitions (Oya 2013).

2. Other regions where the Group Ranch system was introduced in Kenya include Kajiado, Narok, Kwale, Pokot, Laikipia and Baringo (Rutten 1992).

3. One administration location may contain one or more Group Ranches.

4. Trust Lands included land managed by post-independence local governments on behalf of communities as under colonial rule.

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