



SPARC

Supporting Pastoralism
and Agriculture in Recurrent
and Protracted Crises

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UNDERSTANDING AND CHARACTERISING COLLECTIVE TENURE AND TENURE SECURITY IN PASTORAL SYSTEMS

Consolidation of case studies in Burkina Faso, Sudan and Kenya

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About SPARC

Climate change, armed conflict, environmental fragility and weak governance and the impact these have on natural resource-based livelihoods are among the key drivers of both crisis and poverty for communities in some of the world's most vulnerable and conflict-affected countries.

Supporting Pastoralism and Agriculture in Recurrent and Protracted Crises (SPARC) aims to generate evidence and address knowledge gaps to build the resilience of millions of pastoralists, agro-pastoralists and farmers in these communities in sub-Saharan Africa and the Middle East.

We strive to create impact by using research and evidence to develop knowledge that improves how the UK Foreign, Commonwealth & Development Office (FCDO), donors, non-governmental organisations, local and national governments and civil society can empower these communities in the context of climate change.

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BACKGROUND

Land tenure insecurity has been highlighted as a main factor in farmer–herder conflict (Flintan, 2012; Davies et al., 2016; Nassef et al., 2023). While tenure and tenure security for settled land users has been well documented, pastoral collective tenure and degrees of tenure security in pastoral systems are not as well understood.

To explore this issue, we examined collective tenure systems in Burkina Faso, Sudan and Kenya. Two layers of tenure and tenure security were considered: that of the group and that of individuals within the group, recognising that groups are not homogenous. None of the pastoral communities in this study hold any formal documentation for their land but do consider themselves rightful landholders.

To guide the research, we posed the following questions:

1. How do pastoralist communities and their members access grazing land? What are the terms of that access? What happens in the case of disputes?
2. What aspects of the tenure regime are most important for pastoralist communities?
3. What are the main drivers of tenure insecurity for pastoralist communities and their members?



MAIN MESSAGES AND SUMMARY FINDINGS

Robust and legitimate informal collective pastoral tenure systems operate in communal grazing lands tailored to the livelihood goals of pastoralist groups. These are the main systems in play where pressures on the pastoral production system, and shrinking and fragmented rangelands, are minimal. These systems are long-lived, well-organised and have strong local legitimacy in that they are recognised and enforced to varying degrees. The main features of these de facto communal tenure systems are flexibility, community-driven management, dispute resolution, and freedom of movement by the community and others across wide landscapes. These landscapes are kept intact with limited divisions.

The main factors contributing to feelings of tenure security are intrinsic to the pastoralist system. These include: (1) being locally known and respected (i.e. having local legitimacy); (2) maintaining strong relationships with the neighbours; (3) solidarity and cohesion within the group; (4) the fact that all communities have inhabited their respective areas for long periods without major contestation of their land rights; (5) that the community has local control over land and resources and the freedom to set and enforce its own rules, within limits; and (6) communities have respected leaders.

Factors external to the system include: (1) the absence of major conflicts; (2) the absence of large-scale land acquisitions (e.g. for mining concessions, agricultural projects or regional and international initiatives); and (4) the possibility of formal land registration.

Factors that contribute to feelings of tenure insecurity differ. In Burkina Faso, these include previous experience of land loss and continued grazing-land conversion. In Kenya and Sudan, where there has been no previous experience of land loss, there is more concern about the future based on community observations of what is happening in neighbouring areas. For example, in Kenya and Sudan, pastoral groups in neighbouring regions have been dispossessed of their land.

Individual responses were similar to those of the group, with small yet significant variations that could be masked, and lost, in aggregate reporting. Individual responses by men, women and youth regarding the tenure system, and individual feelings of tenure security, did not differ substantially from group responses across countries, and individuals generally expressed themselves in collective terms with regard to grazing land. However, small yet significant variations were reported, making it important to capture individual perspectives alongside those of the group.

For example, in Sudan, wealthier men are better able to access and use grazing lands. However, wealth has reportedly limited influence on access to power and decision-making. There is also a trend towards individualism and commercialisation among youth, which may impact the community's sense of collectivity in the future. Youth recognise this as potentially problematic.

In Burkina Faso and Sudan, women emphasised collective care for vulnerable individuals such as widows and divorcees as a factor contributing to their feelings of tenure security. Although related to group cohesion, it is more specific to the idea of 'leaving no one behind'. In Burkina Faso, women felt markedly less secure than men with respect to collective grazing land. It may be that women do not participate in negotiations and discussions with the host community. Older men, who were more involved in these negotiations, had greater confidence in these negotiations eventually paying off.

In Kenya, while collective interests are prioritised overall, the pastoral collective recognises and protects both individual and communal rights, with land concessions being granted to individual community members by the group. Respondents overwhelmingly confirmed that individual rights within the group are supported and protected, including for orphans and widows. However, there may be indications that certain individual land rights are less protected. For example, women's land rights may be more vulnerable, given existing patriarchal norms and influences. One woman reported that she disagreed that all individual rights are equally protected and was concerned that her daughters may not get their fair share of the available land. In Kenya, the tensions between collective and individual rights have yet to be explored in depth.

Women do not play a significant or visible role in decision-making about collective grazing land, except in Kenya. In Sudan and Burkina Faso, there does not seem to be any sense of grievance about this. While women participate in name only in decision-making in Burkina Faso, this was shared as a fact rather than a problem. In Sudan, all individuals felt that equality between people was a strength of their tenure system, suggesting that women's roles are not seen as inferior to those of men. Alternatively, women's passive position may have been internalised to the extent that it is normalised. In Kenya, women are leaders and have always actively participated in decision-making.

There may be a need to infuse the legitimacy of informal tenure systems with more support (e.g. national legality) in some instances, to give them greater clout in the face of mounting challenges. This might take the form of supplementing existing local legitimacy with documented legitimacy at the national level. This additional support could also serve as an opportunity to address biases and inequalities within local tenure systems.

There are options to formalise collective pastoral land in Burkina Faso and Kenya but such options are less clear in Sudan. However, there are obstacles to formalisation, with valid arguments both for and against. The Kenya case study argues that it is important to understand the inner workings of existing pastoralist tenure systems and tenure security in the local context to inform the conversation on whether strengthening tenure security is required in the first place – and, if required, whether policy and legal interventions are appropriate or whether it would be better to use other types of support that strengthen informal governance systems and structures.

Conflict over resources is more likely to become violent as available lands shrink and competition increases. The causes of conflict are multiple, interacting and highly complex, with pastoral land tenure insecurity highlighted as a main factor (Flintan, 2012; Davies et al., 2016; Nassef et al., 2023). There is, therefore, a need to strengthen pastoral land tenure security to ensure continued access to and use of communal land and to enable pastoral communities to protect against the conversion or excision of rangeland resources. Strengthened land tenure security is also a means of achieving sustainable use of land and natural resources (United Nations Statistics Division, 2021) and can play a main role in better enabling asset holders to respond effectively to climate shocks and stresses, as well as incentivising future investments in productivity, adaptation and mitigation (Henley, 2013; Lawry, 2014; Locke et al., 2013; Lawry et al. 2017).

The way forward

The way forward may involve some version of formalising pastoral communal tenure and rights in rangelands. There is increasing willingness within states to formally recognise pastoralists' communal land rights, which is a welcome development (Robinson and Flintan, 2022) since legal recognition can be a crucial source of legitimacy and also increases the likelihood that these rights are enforceable if threatened (Doss and Meinzen-Dick, 2020 and Timmer, 2010 in Robinson and Flintan, 2022). Alongside promising steps forward on land legislation, there are initiatives on formalisation across several countries (e.g. Ethiopia and Tanzania), and pastoralists themselves are taking action to secure their land rights (see Robinson and Flintan, 2022; Flintan et al., 2021), all providing excellent sources of learning.

While there is much that is promising in the domains of land reform and formal recognition of pastoral communal land, the practice of 'parcelisation' in the rangelands and the influence of an assumed evolution of property towards privatisation remain significant (Flintan et al., 2021).¹ The effect is that formalisation of pastoral tenure is sometimes considered a 'distortion through privatisation' rather than protection of collective pastoral tenure systems

1 For example, there is a tendency to want to formalise communal land into a type of private tenure where ownership and administration is by a pre-defined group for land of a specifically defined boundary (an example is the group ranch model in Kenya). From observing the effects of the group ranch model, this method can be considered distortion through privatisation rather than protection of collective tenure systems (Lenaola, 1996; Kibugi, 2009).

(Lenaola, 1996; Kibugi, 2009). At the same time, mobility, flexibility, adaptability and multiple use by multiple users remain elements insufficiently appreciated or understood in discourse and initiatives on land reform and formalisation of communal land. Or, these elements are discussed in terms of effective incorporation into formal processes to avoid 'the rigidity that statutory tenure often insists upon', which can 'cut off access, use rights and the future claims of others' (Flintan et al., 2021), contributing to the problem rather than solving it.

Formalisation has its challenges and is not, in all cases, synonymous with tenure security (Nizalov et al., 2020). It should be considered only one way in which pastoral tenure security can be strengthened. Indeed, 'about 90% of African land is governed by customary tenure and respective owners and users do not rely on formal tenure to secure their land rights... this basic fact confirms that the concepts of "formal tenure" and "tenure security" are linked but are not synonymous' (Nizalov et al., 2020). There is also the issue that 'any assignment and registration of rights will involve some redistribution of rights and transformation in the nature of the rights themselves. This helps explain why land registration and titling proposals and policies have been divisive in many African countries' (Boone, 2019). Therefore, both formal and informal avenues for tenure protection should be explored, depending on what best suits the context.

For a clearer picture of how best to move forward, it is within pastoral tenure and governance systems themselves that information will be found that can best inform national, subnational and local processes to protect pastoral tenure security, particularly if these processes are to support pastoral systems rather than undermine them (Robinson and Flintan, 2022). Our study aimed to understand collective tenure in the rangelands and tenure security among pastoralists in light of the fact that pastoral collective tenure and degrees of tenure security in pastoral systems are not as well understood as tenure and tenure security for settled land users and, therefore, not as well represented in global measures and platforms such as Prindex and LANDex.

Gender, age and wealth have been highlighted as main factors that underpin social stratification and associated power dynamics within communities. As per Flintan et al., (2021), pastoralist women usually access land and resources as part of the collective, and as part of this collective their rights to resources are generally protected, as it is in the group's interest that women are able to feed their families and contribute to the group's well-being. However, women usually do not have the same decision-making power as men over land and natural resources and must often negotiate access to and use of these resources through male relatives. This is beside the fact that customary practices tend to exclude women. Youth are also generally not part of decision-making processes, even though they tend to provide the main herding labour and experience first-hand the manifestations of tenure insecurity (e.g. blocked migratory routes, contestations over rights of access and conflict over resources). Finally, wealth is another main factor that deserves analysis since it affects social and power relations, particularly in an increasingly monetary economy. To what extent wealth affects access and use of land and natural resources is as yet poorly understood. It is equally important to understand variations for individuals within the community, since not all group members use and access land in the same way and they may also experience land tenure security and governance differently (Flintan et al., 2021).

METHODS

The three communities selected for study were:

- Wakilé Allah pastoralist community In Burkina Faso
- Bagagir pastoralist community in Sudan
- Waldaa pastoralist community In Kenya

In-depth case studies were conducted in Burkina Faso, Sudan and Kenya representing pastoral systems in West and East Africa. Areas affected by violent conflict were avoided for safety reasons and because conflict can be considered a source of interference.

Researchers well-versed in pastoralism and land tenure led the research. They defined and selected typical and well-functioning pastoral systems to identify intrinsic characteristics while minimising interference and complexities.

The study focused on collectively held land and collective land tenure in pastoral grazing lands and on the season in which the pastoral land management system works more robustly and is enforced more strictly (i.e. the rainy season in Burkina Faso and the dry season in Sudan and Kenya).

Focus group discussions (FGDs) explored the experiences of the group overall, and the experiences of individuals within that group to identify variations. The 'substance' and 'assurance' of tenure were discussed.

In this study, the 'substance' of the tenure system refers to the mechanics of the tenure system which includes: (1) who can access or use the land; (2) what are the aspects of the land; (3) the associated bundle of rights such as access, use, management, exclusion and alienation; (4) the conditions of access and use (rules); (5) the authority or governing body defining the rules enforcing the system; and (6) the mechanisms and processes in place to enforce the system. The 'assurance' of tenure refers to tenure security. Researchers included a focus on 'perceived'² tenure security, with an understanding that perceived tenure security can be a function of formal (legal) recognition of access and use rights, and an individual's or group's experience.

A sample of focus group questions, including those on perceptions of tenure security, was field-tested before the main FGDs to ensure the questions were clear and appropriate.³ Changes were made according to the feedback. There were no sensitivities with regard to the perceived tenure-security questions.

2 Perceived tenure security refers to how people assess or view their level of tenure security and the risk that they will lose their right to use land or property in the future (Locke et al., 2021).

3 Research questions are available on request.

An adapted version of the Prindex methodology was used to assess perceived tenure security. A typical Prindex survey assesses respondents' perceived tenure security by asking how likely or unlikely they think it is that they could lose their land or property against their will within the next five years.⁴ This study added more timeframes (i.e. within the next year, within ten years, and within the rest of the respondent's lifetime) to see whether responses differed across timescales. Similar questions were asked about the likelihood that mobility could be lost against a person's will. Participants were also asked about their level of confidence that their children would inherit the community's rights to access, use and mobility, and their level of confidence that not only would their children inherit these rights but that they would be able to enjoy these rights throughout their lifetime. Factors that affect perceived tenure security and insecurity, the potential impacts of loss of rights and previous experience of loss of rights, were also assessed.

Key informant interviews were conducted at local, national and regional levels with members of the community, relevant government officials, and land tenure experts. A thorough literature review was also carried out for each country.



4 See www.prindex.net/about/methodology/

FINDINGS

Livestock, pastoralism and land across case study countries

The literature and key informant interviews inform the following discussion.

In Burkina Faso, livestock is the third national export after cotton and gold, and contributes 30% to export earnings, more than 18% to gross domestic product (GDP) (PNSR, 2018), and 40% to agricultural value addition (FAO, 2019). Pastoralists and agro-pastoralists produce nearly 90% of the meat and more than 95% of the milk for the national market (FAO, 2019). The rangelands that support livestock production are typically held under informal communal tenure systems and constitute about 40% of the country's surface area (authors' calculation based on satellite imagery).

Despite this significant contribution, pastoralism and the rangelands that support it are under considerable pressure. Pastoral land tenure insecurity (Sawadogo, 2011), increasing privatisation and monetisation of rural land (ibid.), and insecurity due to conflict (SNV, Reconcile, 2020) are among the challenges faced. Agricultural expansion and conversion, industrial and artisanal mining and land excision for private investment are the main reasons rangelands are shrinking. While there is no concrete data on the extent of this shrinkage, in 2004, it was estimated that the loss of pastoral space to agriculture was 3.3% per year (MRA, 2012). Loss of land affects even government areas specifically set aside for pastoralists, such as the Sideradougou Zone, which decreased from 307,000 ha at its creation in 1988 to about 51,500 ha in recent years (ONF-BF, 2017). Conflict also drives pastoral dispossession and land loss. Conflict linked to violent extremism has pushed pastoralists to search for more secure areas in southern parts of the country and neighbouring countries, particularly in northern Burkina Faso (SNV; Reconcile, 2020).

The challenges are compounded by the pervasive policy skew towards agriculture and the under- or non-representation of pastoralists in decision-making fora. In Burkina Faso, the legal framework favours agriculture and the privatisation of land (SNV, Reconcile, 2020). In addition, the low involvement of pastoralists in decision-making bodies at the local level hinders them from defending their interests.

In Sudan, livestock consistently contributes more than 60% of the value added to agricultural GDP and about 25% to national GDP (Behnke and Osman, 2011; FAO, 2020).⁵ Pastoralism is the predominant livestock production system in the country (UNEP, 2013) and is said to be responsible for the greater part of the national herd.⁶ Meanwhile, the rangelands that support this production constitute 60% of the country's surface area and are typically held under informal systems of communal land tenure (IUCN, 2021; Gaiballa, 2011).

5 The national herd is estimated at 109 million head (FAO, 2020), putting the country among the top livestock producers in Africa (Wilson, 2018).

6 Between 80% and 90% has been posited, although this percentage is thus far unsubstantiated (Behnke and Osman, 2011).

Land tenure insecurity (Sulieman, 2018), increasing privatisation and monetisation of rural land (UNEP, 2012) and insecurity due to conflict (Sulieman and Young, 2023) are also challenges in Sudan, driving pastoral dispossession and shrinking the rangelands. Large-scale agricultural land grabbing and land acquisition for artisanal gold mining are widespread in many pastoral areas (Sulieman, 2018; Sulieman, 2019). While there are no comprehensive figures on the extent of rangeland loss and fragmentation, the trend is visible and reflected in reviews and case studies that provide telling snapshots based on satellite imagery (UNEP, 2007; Sulieman, 2018).

Insecurity and conflict are persistent problems in many pastoralist areas (Sulieman and Young, 2023). Additionally, there is a trend towards agriculture, with successive Sudanese governments repeatedly depicting large-scale agriculture as the main engine for economic growth and export revenues. This is driving the continuous promotion of industrial-scale agricultural projects (Sulieman, 2015). Finally, pastoralists' participation in decision-making and political spheres is extremely limited (Young et al., 2013) and limits pastoralists' ability to influence trends.⁷

The de jure and de facto tenure setting across countries

TABLE 1. MAIN LAWS RELEVANT TO PASTORALISM AND LAND TENURE AND DE FACTO SITUATION

De jure	De facto
Burkina Faso	
<ul style="list-style-type: none"> ▪ Agrarian and Land Reorganisation Law, 2012 ▪ Rural Land Tenure Law, 2009 ▪ Law of Orientation Relative to Pastoralism, 2002 	<ul style="list-style-type: none"> ▪ Informal communal tenure systems apply in practice ▪ National laws poorly known locally
Sudan	
<ul style="list-style-type: none"> ▪ Civil Transaction Act (1984); repealed the Unregistered Lands Act (1970) ▪ Range and Pasture Law, 2015 	<ul style="list-style-type: none"> ▪ Informal communal tenure systems apply in practice ▪ National laws poorly known locally
Kenya	
<ul style="list-style-type: none"> ▪ National Land Policy, 2009 ▪ Community Land Act, 2016 	<ul style="list-style-type: none"> ▪ Informal communal tenure systems apply in practice ▪ Communities encouraged to register land under the Community Land Act

Source: authors' creation.

⁷ The political landscape seems to be shifting in Sudan, and violent bids for power are currently being made, including by a group with a primarily pastoralist background. This may influence land dynamics.

Burkina Faso

In reality, the land tenure system in pastoral areas is a combination of formal laws and institutions and customary informal systems. These exist side by side or overlap, and sometimes one takes precedence over the other. In the study area, the informal system mainly applies.

At the local level, informal collective tenure systems are firmly in place across the country in terms of social group organisation and land use and management. Typical pastoral communities, which are numerous and mainly made up of the Fulani ethnic group, are organised around leaders known as *rugga*. The land use and management system is generally a typical customary pastoral system that emphasises collective land use and management, and flexible access to resources, over 'ownership' of land.

Three main national laws apply to land in pastoral areas, all of which recognise collectively used or held land and also put forward mechanisms for the registration and formalisation of this land. These include the Agrarian and Land Reorganisation Law of 2012 (RAF), the Rural Land Tenure Law of 2009 (LRFR) and the Law of Orientation Relative to Pastoralism of 2002 (LORP). While the RAF and LRFR are the main laws on land and land management, the LORP is the main national law relevant to pastoralism and pastoral land and formally recognises the contribution of pastoralism in the country (see [Annex 1](#) for further details).

With regard to the formal landscape, while there is recognition of informal and customary collective tenure systems in the law alongside opportunities for formalisation, a progressive position in and of itself, there are a number of obstacles to implementation. For example, the law is poorly or only partially known or understood at the local level. Producers from farming or pastoral communities may know there are laws in place, although most would be hard-pressed to name a law or to describe its content. Further obstacles include a lack of means and connections at the community and individual levels to apply the law, since starting and following legal procedures requires knowing where to begin and how to proceed, and can be costly and time-consuming. Poor or non-existent participation of pastoralists in local formal institutions (SNV, Reconcile, 2020) also means that pastoralists are often not at the table when decisions are made about land. This is compounded by a general and continuing bias towards agriculture and local corruption, where money and connections can influence decision-making, for example, in a civil court procedure.

Sudan

Although national law applies throughout the country, state institutions do not have a significant presence in many parts of Sudan, particularly in rural, remote or conflict-affected areas where the law is not routinely applied. For example, the Unregistered Lands Act of 1970 was never routinely applied in Sudan's non-riverine areas (see [Annex 1](#) for further details). Authorities invoked the law only when a legal basis for state land acquisition was needed and to exert greater control over economic and other activities of interest. More specific to the study area, the state formal legal system is almost non-existent, or at least is not implemented on the ground, and pastoralists are unaware of any formal land legislation.⁸

⁸ With the exception of some presence and effectiveness of the Forest National Corporation (FNC). A locality-led dispute resolution committee is also present, which is functional and intervenes if the purely informal system of dispute resolution does not reach a satisfactory conclusion.

Throughout history, Sudan has always had an embedded customary collective land tenure system. Communal land is managed under tribal units known as *dar* or *hakura*, which means 'homeland'. This is closely linked to the native tribal administration, more commonly called the Native Administration, which is the customary institution responsible for governance (Shazali and Ahmed, 1999).

The management of each tribe and tribal area is administered through different types of hierarchical tribal systems or Native Administrations across Sudan. These systems are, in general, entirely male-dominated. In most pastoral areas, a *nazir* heads the system and is in charge of all administrative affairs associated with the tribe. An *omda* is responsible for tribal subsections, and beneath him comes the *sheikh*, who is responsible for his community at the village or smaller group level.

A number of land tenure laws are in place and are of relevance to pastoral areas. Across the board, none of these laws formally recognises land held under communal traditional land tenure systems as legal ownership, with land rights formally conferred but stopping at usufruct rights (Abdul-Jalil, 2006; UNEP, 2012).⁹ This is despite traditional land tenure systems having existed in the country for centuries, being mainly applied in most pastoral areas and rural communities in Sudan (UNEP, 2012). The state formal land tenure system (*de jure*) is mainly applied in urban areas (Komey, 2009; Abukashawa, 2021), with *de facto* communal tenure systems predominating in pastoral areas.

Pastoralists in Sudan have a history of marginalisation¹⁰ and have, in many places, lost control of their tribal institutions.¹¹ Although many of the roles of tribal leaders have been taken over by modern state institutions, their Native Administration still functions and plays a vital role. Despite the wider national context of massive political changes since the 2019 revolutionary transition and the subsequent fragile political situation in the country, the Native Administration remains the main form of local customary governance, with a continuing local presence and ongoing practical engagement in pastoralists' dealings (Sulieman and Young, 2023). The Native Administration also remains critically important for conflict resolution.

While formal and informal systems are applied concurrently, there is a substantial gap between the two. In his analysis of land issues in Sudan, de Wit (2001) stated that 'bringing the legal state mechanisms closer to these legitimate customs is the core issue of the land question. The granting of legal recognition of existing customary rights would mark progress towards achieving this objective'.

9 The absence of formal recognition of customary land rights has been repeatedly highlighted as an issue. For example, in the country's 2005 Comprehensive Peace Agreement, the 2005 Interim National Constitution, the 2006 Darfur Peace Agreement, and the 2011 Darfur Peace Agreement (UNEP, 2012).

10 See for example Young et al. (2009) for a history of pastoralist marginalisation in Darfur.

11 This began in the 1970s when central government formally took powers away from the Native Administration, whose role had previously been recognised under the British, and replaced sheikhs and other traditional leaders with government appointees.

Kenya

Kenya has recently emerged on the other side of an intensive land reform process, informed by past shortcomings in laws, policies and legislation (see [Annex 1](#) for further details). This reform process began with the delivery of the National Land Policy, which benefited from citizen participation, followed by the Kenya Constitution of 2010, which, like the land policy, was largely citizen-driven. The constitution, among other things, replaced trust lands with community land. Trust lands were a contentious official land category encompassing most open and unregistered pastoral lands in the country. The idea of community land was then formalised and further explained under the Community Land Act (CLA), passed in 2016.

Unlike trust lands, community land belongs to communities, as opposed to communities simply being land users as they were with trust lands. Following a formal registration process as proscribed under the CLA, the full set of land rights¹² is conferred on the community. The community then owns the land, which is then managed through elected committees made up of representatives of all community segments.¹³ Until communities have formally registered their land, it continues to be held in trust by the county government. A main difference from the past is that any investments or proceeds from the land are held by the county government in a community account on behalf of the community, who can then access these proceeds at the time of registration. An example of this can be seen in Turkana, where land investments are currently held in a community account for access on completion of registration.

The Community Land Act is seen as progressive legislation that could properly secure pastoralists' collective land rights, provided it avoids the pitfalls of past registration processes ([Annex 1](#)). However, operationalising the law has been slow, with questions around whether there is true political will to implement it (Alden-Wily, 2018). There are also questions about the state's financial and technical capacity to implement the law (Oloo et al., 2021).

Marsabit, Wajir, Turkana, Garissa, Mandera, Samburu and Tana River counties have the main open, unregistered pastoral lands held in trust in accordance with Article 6 of the CLA (officially community lands). De facto, the majority of this land is still held under customary collective pastoral tenure systems and remains largely undivided to support pastoral mobility and flexible land use.¹⁴ Within these lands, pastoralists are also not averse to holding private plots in urbanising townships or within some parts of the collective land. The informal system is, therefore, the main system in play.

12 Including access, use, management, exclusion and alienation.

13 Pastoral lands are considered part of community land, as per Articles 61 and 63 of the Constitution. The Constitution also explains under Art. 63. (1), '*Community land shall vest in and be held by communities identified based on ethnicity, culture, or similar community of interest*'.

14 In areas where large-scale land excision for government or private interests is not observed.

FIELD WORK FINDINGS: BURKINA FASO – WAKILÉ ALLAH COMMUNITY LAND

The following discussion is informed by the field work conducted by researchers with in-depth knowledge of the context.

The pastoralist community and collective land under study

The Wakilé Allah pastoralist community is a typical pastoralist group located in Burkina Faso's Centre-Sud region. They are in Zoundwéogo Province in the Tigré Peul District. They are Fulani, similar to most pastoral communities in Burkina Faso. Comprising approximately 3,000 men, women and children, the community is a clan of related families who live in the collective land area under study. The community's natural resources include grazing land and seasonal water resources. Just outside the Wakilé Allah's land area live the Tigré Bissa, Tigré Yarcé and Tigré Pissila communities, who are Bissa and Mossi farmers.

During the wet season, most of the community's land is used for agricultural production by farmers and pastoralists, except five designated grazing areas and the lowlands. The lowlands are collective grazing areas with seasonal rainfed water sources and some pre-existing farms. There is also a designated vaccination facility. During the dry season, the entire landscape is used for open grazing by both pastoralists and farmers. Water in the dry season is obtained from boreholes located in the settlements, which are mainly used for human consumption, and from the local river, which is mainly used for watering livestock and subsistence agriculture. The dry season is also when livestock are most mobile and when transhumance takes place across the border to Ghana.

Livestock rearing remains the community's main livelihood, followed by subsistence agriculture (which is increasingly important), artisanal gold mining and, more recently, the construction of houses for rental income.¹⁵ Gold mining and construction are more prominent today given the challenges linked to livestock rearing (degradation of pastures and competition for space) and the lucrative nature of these other activities.

For women, livestock rearing and subsistence agriculture are of equal importance. Women generally do not move with their livestock. This is done by men and children. Women mainly keep small ruminants for milk and for sale. In addition, women make handicrafts and collect forest products, mainly fuelwood and wild foods for domestic use and for sale in local markets. Forest products are in forest stands inside community grazing areas.

People's mobility with their livestock remains central. Short- and long-range mobility are both practised. The group moves shorter distances mainly during the rainy season. In the dry season, long-range mobility takes place to neighbouring Ghana. While the direction of

¹⁵ The community owns approximately 10,000 cattle, 15,000 goats, 15,000 sheep and 500 donkeys.

movements has remained largely the same, the frequency of mobility has increased due to increasingly limited grazing resources within the community's pasture land; in extremely dry years, the group tends to move longer distances.

Today, there is increased pressure on the community's grazing land due to increased demand for agricultural land and more harsh and variable climatic conditions. This makes it more difficult for the community to 'ring-fence' their designated grazing areas during the wet season. In addition, the quality of soil and pastures has noticeably declined. Encroachment and conversion of land for agriculture have been experienced in some parts of the grazing land, concentrating livestock into smaller spaces, and the once cordial relationship between the community and its farming neighbours is becoming strained. There has also been some obstruction of cattle routes. In the dry season, the main and ongoing challenge the community faces is access to the river due to market gardening on the river banks.



The de facto tenure system

The Wakilé Allah community moved to the study area about 45 years ago from areas north of Burkina Faso due to severe droughts in the 1970s and 1980s. The host community, who are Bissa farmers, welcomed the Wakilé Allah community and gave them an area of land to settle on and graze their livestock, on condition that the land is to be accessed and used freely by everyone, with no exclusions. On arrival, there was mutual agreement between the Wakilé Allah community and the Bissa hosts to ring-fence the five designated grazing spaces and the lowlands for grazing during the wet season, except for the few pre-existing farms in the lowlands. This informal arrangement mainly protects the grazing land and, so far, these boundaries are more or less respected. However, there is increasing pressure on them due to the shrinkage of available land and demand on land resources for farming.

The Wakilé Allah community has nurtured a cordial relationship with the chief of the host community, who maintains overall control and responsibility for the land. The pastoralist community is well known locally, particularly by the neighbouring communities

and government technical services. Outsiders can become members of the community so long as they are concerned with livestock and accept the community's rules and norms. The bundle of rights enjoyed by the Wakilé Allah community includes access, use, and some management. However, the host community maintains overall control of the land and de facto 'owns' it, retaining the rights of exclusion and alienation. Seasonal exclusion applies to land under cultivation (i.e. it should not be grazed before harvest season), and the Bissa chief also supports the Wakilé Allah group to ring-fence the five main grazing areas and, to a certain extent, the lowlands, from agricultural land encroachment but with declining success.

The leaders of both communities set the rules and responsibilities, although mostly the Wakilé Allah community takes the lead in decision-making, provided they keep the Bissa chief informed. Leadership in the Wakilé Allah community includes a president, a deputy to the president, an information officer, and a women's officer and her deputy. These individuals are selected by the community and are chosen based on trust, experience, knowledge and confidence in their abilities. The pastoralist community also has a chief (the Tigré Peul chief), who is the most senior person in the clan and who is chosen for his wisdom. The chief sets and modifies minor rules and responsibilities. For more important decisions, he consults the wider community. Change to rules can also be instigated by the community, who can raise issues with the chief.

There are informal mechanisms for conflict mediation and resolution. Community leaders intervene when there is conflict and, for the most part, these informal processes have been effective. Conflict between members of the community is usually resolved amicably. Conflict between the pastoralist group and neighbouring farmers is also usually resolved amicably, with payments of fines for damage done.¹⁶ Cases that are not resolved informally are referred to the municipality.¹⁷ However, most people prefer the informal approach, as it strengthens relationships and trust. Over the past ten years, disagreements related to field damage have increased and are estimated at an average of five per year.

In relation to national laws, the five designated grazing areas in the study area could be called 'land reserved for grazing', and the remainder 'open spaces for grazing', as per the LORP and based on the current de facto land use and management observed (see [Annex 1](#) for a description of these categories). The Bissa host community is, in principle, recognised as owners since land held de facto under customary systems is, in principle, recognised by the LRFR. However, there is no formal legal documentation held by either the pastoralist community or the Bissa hosts, and the system that functions in practice is the informal de facto system. In fact, collectively used and de facto held land in most cases in Burkina Faso has no formal status and is unregistered, except for a few officially registered private livestock ranches located outside the study area.

The substance of tenure and main characteristics of the system

Aside from community settlements, Wakilé Allah land is mainly used for grazing livestock, collecting forest products, and subsistence agriculture in the wet season. The collection of forest products and subsistence agriculture were named the two most important land uses after grazing, with the collection of forest products particularly important for women.

¹⁶ Usually related to agricultural occupation of space, damage to fields, and killing animals trespassing on fields.

¹⁷ There is a Village Land Conciliation Commission (CCFV) in the area, which is a government body that provides local and flexible mechanisms for conflict resolution outside the civil courts, but it is not functional.

The main collective grazing lands in the rainy season are also used to collect forest products. These are inside the five designated grazing areas and in the lowlands. In addition to these two types of collective grazing lands, a vaccination facility is used and managed collectively.

Anyone with livestock, including farmers, is allowed to access and use wet-season grazing land at any time, from either within or outside the community, and these rights cannot be lost. There are no restrictions on movement as long as livestock do not encroach on pre-existing farms within the lowlands. Passage across farms is negotiated with the farmers, who should not block passage. Women have the same rights of access and use as men, although they use the grazing spaces and lowlands primarily for collecting forest products rather than grazing livestock. Symbolic permission to access grazing land is requested from the chief of the host community and is usually granted. Access and use of the vaccination facility is also open and inclusive; however, use requires payment and there are limits on the duration of a stay.

Rules and responsibilities apply when accessing and using the various wet-season grazing areas. With regard to the designated grazing areas and the lowlands, cutting trees (whole trees as well as branches) and setting fires is prohibited, and the land can be used only for grazing and cannot be converted for cultivation, except for the pre-existing farms in the lowlands. These can be somewhat expanded where needed. Livestock are also not allowed to stay in the vaccination facility for long periods, to avoid the spread of disease, and a fee of 1,000 West African CFA Francs is charged per herd for use of the facility. These fees go towards maintenance. While there are rules, enforcement is not strict. The chief of the Wakilé Allah community is mainly responsible for surveying and monitoring and he does what he can, when he can. The wider community is also meant to monitor and report any irregular activity to the chief. While so far the rules are applied (more or less), there are transgressions. These are increasingly due to the mounting pressures on the community's resources. The rules and responsibilities are collectively known and are communicated verbally. They are not documented.

So far, the 'protection' of grazing land is based on mutual respect and understanding between the Wakilé Allah community and their host community. As long as the overall relationship holds, then the agreement holds. However, this relationship is becoming increasingly strained due to increased demand for agricultural land and climate stress. There is also no compensation for converted or lost grazing land.

The main advantages of the tenure system, according to the community, are that there is overall agreement within the community with regard to the system in place (i.e. there is a clear understanding of how things work), that the community maintains good relationships with its neighbours,¹⁸ and that the tenure system is flexible and allows the community to exploit resources as and how they need, with guaranteed rights of movement and access to locations where they are best able to feed and care for their livestock. The main disadvantages are that monitoring and enforcing rules are weak, the system is perhaps 'too flexible', and there is a lack of action to reverse ongoing resource degradation. Flexibility is both an advantage and a weakness: an advantage in that it allows for reciprocity, and a weakness in that more open access makes it difficult to manage resources effectively.

18 This ensures that the pastoral community's norms and rules are known and increases the likelihood that they are respected.

The characteristics highlighted as essential for the community's system to function well and for pastoral livelihoods to remain resilient are similar to those aspects highlighted as strengths of the tenure system. These include flexible access, freedom of movement, control over resource use, agreement between the pastoralist group and the host community, good relationships, and dialogue with others.

Flexible access means that individual herders can decide where to take their livestock and when. Freedom of movement means herders can move with their animals wherever they want, once they have accessed an area. This applies to the wet-season grazing areas and the lowlands. Of the two characteristics, freedom of movement was considered more important than flexible access because gaining access without the ability to move freely does not help livestock who need to move to make the best use of available pasture land. Controls on resource use mean the presence of rules and regulations so the community can ensure that their land and resources continue to provide for them today and in the future. Agreement between the pastoralist group and the host community has protected communal pastoral land use so far and it gives the community's tenure system legitimacy at the local level. Agreement between the pastoralist group and the host community and others is underpinned by acceptance, respect, cordial relationships and continuous dialogue.

Perceived tenure security and factors that affect community perceptions

Perceptions of tenure security were very different for the timescales queried (within the coming year, five years, ten years, and over a respondent's lifetime). Within the next year and the next five years, the majority felt it was 'somewhat likely' to 'very likely' that the community could lose the right to access the collective wet-season grazing land against their will. When asked the same question for within the next ten years and over the rest of the respondent's lifetime, the majority were more optimistic, with most respondents feeling the loss of rights was either 'somewhat likely' or 'unlikely'. For more information see the country reports.

The pessimistic results for the next year and the next five years are mainly influenced by the strong agricultural pressures faced by the community in relation to their grazing lands. Younger members of the community and women provided the more pessimistic responses, while the older men, who have faith in the chief of the host community and his ability and will to safeguard their rights to resources, are less pessimistic. Responses shift from ten years and onwards because the community believes that ongoing dialogue with the host community and with others will eventually pay off and that the trends currently observed will be halted or reversed. Women do not share this view for the longer time horizon and retain their pessimism over all time horizons. These results may be influenced by the fact that women do not participate in inter-community dialogue and are not directly privy to what takes place during these discussions. They mainly see the physical evidence of agriculture pressure and encroachment and the deteriorating relationship with their neighbours.

Half the respondents or more were 'very confident' their children would inherit their access and use rights, and would enjoy these rights throughout their lifetime. The main reason for this confidence is education. The community feels that, because their children are being educated, they will be better equipped to defend their rights to resources. Again, younger respondents and women were less confident for similar reasons. When women were asked on their own to cross-check findings from the mixed group discussion, none responded 'very confident'. Most were only 'somewhat confident' that their children would inherit these rights, and fewer were confident that their children could enjoy these rights over their lifetime.

The majority felt it was 'very unlikely' they could lose the rights of mobility against their will this time next year. Confidence drops within the next five-year time horizon, with most respondents considering it 'somewhat likely'. Over the longer time horizons (ten years and longer), confidence again increases, with most considering it 'unlikely' or 'very unlikely'. Over the next year, it is clear that people feel their current mobility patterns would likely remain unaltered. But over the next five years, they feel they could experience more disruption and blockages while moving given the mounting pressure from agriculture. Optimism around mobility increases over the longer time horizons for similar reasons as those mentioned for access and use, and people believe that dialogue with the host community will eventually pay off. Women do not share the men's optimism regarding mobility, with most considering it 'somewhat likely' that the community would lose rights to mobility over all time horizons. The reasons are similar to those previously mentioned. Also, the majority were 'somewhat confident' their children will inherit mobility rights and will be able to retain these rights throughout their lifetimes. Again, women were less optimistic than the men.

The main factors influencing feelings of tenure security are solidarity and cohesion within the pastoralist group and ongoing and open dialogue with the host community and neighbouring groups. Dialogue was cited as the most important factor preventing the group from losing their rights.

The main factors that influence feelings of tenure insecurity are, from most to least important: (1) the weak or biased application of the law with regard to the protection of grazing lands within the area;¹⁹ (2) the fact that the pastoral space is not demarcated and in this way recognised; (3) erosion of group cohesion; and (4) agricultural encroachment. The community feels that what most compromises their ability to benefit from collective grazing land is that the law is not properly applied in the area. For women, the only threat identified was agricultural encroachment.

Contributing to feelings of tenure insecurity is the community's previous experience with land loss. Portions of grazing land used in the past have been lost, mostly in the eastern part of the pastoral space. This began some 20 years ago with the gradual establishment of fields in these grazing areas. At the time, the community took action to regain these lost spaces by lodging complaints with government authorities. The government took action, cleared out the occupants and marked the grazing land boundaries. However, this did not work for long. The signage used to demarcate the grazing areas was damaged and occupation of the grazing land gradually resumed. This type of encroachment by farmers, not just in the study area but throughout the country, signifies the denial of pastoralists' rights to land and defiance of administrative authority.

Loss of rights to collective pastures would likely mean that the community would need to sell their livestock and increasingly emphasise other economic activities, such as trade, construction in towns and gold panning. It would also mean that those who choose to keep livestock would need to resort to sedentary animal rearing, including the use of bought fodder. Some respondents also did not rule out returning to their original lands.

¹⁹ The community cannot name which law, but they know there are laws in place meant to recognise and protect grazing areas.

Differences for individuals

Overall, individual men and women find the tenure system in place robust, and agreed with the overall group regarding the main features that make the system well suited to their lifestyle. Wealth and level of social commitment, which were considered influencing factors at the individual level, did not affect individual rights of access and use of pastoral grazing land, which are the same for all. At the level of management, women do not participate in decision-making or formal dialogue with neighbouring communities, even though they are nominally represented in the group's leadership structure.

Individual perceptions of tenure security do not differ substantially from those of the group. However, there are some differences in influencing factors. Among individual men (in general), strong community cohesion contributes to feelings of tenure security. Among individual men ranked by level of wealth, attachment to land is an important factor. Among individual men ranked by level of social commitment, good collaboration with other communities was cited. For individual women, the most important influencing factors, in decreasing order of importance, are that: (1) their community is accepted by the host community and by others; (2) there is community cohesion and solidarity between group members; and (3) vulnerable members of the community, such as widows and divorcees, are taken care of by the community.

With regard to factors that contribute to feelings of tenure insecurity, individual men highlighted, in decreasing order of importance, that: (1) laws meant to protect grazing lands are not applied in practice; (2) the pastoral space is not demarcated; and (3) encroachment on space by agricultural fields is a continuing trend. Erosion of group cohesion was not mentioned as an issue. For individual women, the most important factors that make them feel tenure-insecure are the arrival and settlement of migrants in the area (both pastoralists and farmers), and the continued encroachment of agricultural fields into grazing spaces. Both are linked to increased pressure on pastoral resources.

The expected impacts of the loss of rights to collective grazing lands were the same for individuals as for the group, although women mentioned different livelihood activities as alternatives (small businesses and handicrafts, rather than gold mining and construction). Individuals recounted the same experiences with regard to past loss of rights to grazing lands, suggesting that people think collectively about grazing land, rather than as individuals.

To strengthen tenure security and the tenure system, both individual men and women recommended: (1) demarcation of the pastoral space so it would be better recognised; (2) improved monitoring and stricter management and control over resource use; and (3) the introduction of limits on access and use by outsiders. This would require a revision of existing rules and regulations and also agreements with neighbouring communities. Individuals are optimistic about the latter since they feel the chief of the Bissa host community is open to dialogue. They also hope that the government will begin to apply the law in practice within their area, to protect grazing land against land conversion to agriculture.

FIELD WORK FINDINGS: SUDAN – BAGAGIR COMMUNITY LAND

The pastoralist community and collective land under study

The Bagagir pastoral community is a typical pastoralist community in Rahad El Tamor Village in Jabrat El Sheikh Locality in the state of North Kordofan. There are approximately 2,000 men, women and children in a subgroup of the Kababish tribe. People are connected through kinship and common ancestry.²⁰

The area under study is considered the community's dry-season grazing area, where it spends about 70% of the year. Besides being considered the main grazing areas for livestock, the tree stands are also a main source of building material, firewood, wild edible fruits and medicinal and aromatic plants. Mainly women and children collect the latter for household consumption. The seasonal water sources and the community's living quarters are inside the area. A small section of the land is also used for crop production.

There are two main seasonal water sources, the *rahad* and the *wadi* (a natural pond and depression, respectively), which are filled during the rainy season. The water in both used to remain year-round and constituted the community's main supply. However, due to sand encroachment and siltation, both sources now collect only a small amount of water that lasts only to the end of the rainy season and for a small part of the dry season. For most of the dry season, the community and its livestock rely on boreholes and water yards in Um Surra Village, which is about 15 km to the north of Rahad El Tamor and outside their area. They transport the water by carts, tankers and plastic water bladders carried on vehicles.²¹ The water facilities in Um Surra are privately owned and pastoralists have to pay for the water.

Livestock rearing remains the community's central livelihood for men and women alike and is practised on collective grazing land with a typical dry- and wet-season pattern of mobility.²² Other livelihoods connected to livestock rearing are livestock trade in local markets and big urban centres. Within the grazing areas, women also collect forest products.

20 The Kababish is an Arabic-speaking tribe and one of the main camel-herding groups in Sudan.

21 The use of plastic water bladders is something new in the area and started about 15 years ago. They are currently widely used by the people in Rahad El Tamor for domestic use and for watering animals kept close to the houses. They are also used to water flocks of sheep and goats in distant grazing lands. For camels, the normal practice is to trek the herd to water facilities every two to three weeks during the dry season.

22 The community owns approximately 10,000 sheep, 5,000 goats and 4,000 camels.

Smallholder rainfed farming is also practised on a limited scale and for household consumption. Between 3% and 5% of the community's land is used for crop production, mainly staples.²³ In recent years, the community has been paying more attention to farming. While there is no actual increase in the area under cultivation, people are diversifying their crops and cultivating new ones. The main reason is to increase self-sufficiency and reduce the cost of living, which has increased significantly in the last few years.

Additional income streams include sending remittances home from Gulf countries (mainly from Saudi Arabia) and artisanal gold mining (a recent addition). Migrating to Gulf countries and working there as camel herders is an old practice that began during the drought in the mid-1980s when a significant number of people lost part or all of their livestock. Gold mining is a more recent activity and began around 2010. This activity is gaining attention among the area's youth and young pastoralists. Although there are no gold mines in the Bagagir territories, it is flourishing in the surrounding areas.

Mobility remains central to pastoralist livelihoods. Short- and long-range mobility are both practised. During the dry season, community members who own large numbers of livestock move to distant grazing lands, sometimes hundreds of kilometres to the south. During the rainy season, some of the community spend the season in or near their home area, especially those who own small numbers of livestock. Others with larger herds go on to areas in the north and some go as far as the Gizu, a pristine and remote grazing area in the north of North Kordofan and North Darfur states.

Livestock trespassing on agricultural fields is the main challenge during the wet season.

A local committee is responsible for solving disputes around this issue and, so far, there have been no cases that have not been resolved locally by the committee. Livestock mobility does not face any obstacles, as wet-season grazing areas are not densely populated and farming activities are limited. Water access and availability are the biggest challenges during the dry season. Efforts to solve this problem are based on individual solutions through water transport from facilities in nearby Um Surra.

The de facto tenure system

The Bagagir community settled in Rahad El Tamor more than a hundred years ago and has used the land uninterruptedly ever since. Like many rangeland areas in Sudan, the land formally belongs to the state, but de facto and informally, it is collective grazing land belonging to the Bagagir community who enjoy full land rights, including management, exclusion and alienation. The community considers itself '*asyad elarid*' (the landowners) and has very little knowledge of the formal (de jure) tenure systems of the country. The community is well known locally among neighbouring communities and other ethnic groups and maintains strong relationships with neighbouring pastoral communities built up over many years.

23 The community's common ancestor set aside this dedicated farming space within the community's overall grazing lands (based on soil suitability) and, since that time, the community has adhered to this area for farming. Community members believe that confining farming in one area is more comfortable for management purposes and also minimises grazing animals trespassing on agricultural fields.

The community's dry-season grazing land and its forest resources are owned and managed collectively.²⁴ This is based on the common principle in pastoralist areas of open, equal and reciprocal access and use. The community enjoys all rights within its bundle of rights, including access, use, management, exclusion and alienation rights (de facto/informally). However, alienation is generally not applied. Women do not play any direct or visible role in the decision-making aspects of the tenure system, including management, exclusion or transfer of rights for any of the components of the community's land. Women are also not allowed to use or access land far from the village due to social rules and norms. People outside the group can access and use Bagagir community land, with some restrictions, although they do not enjoy any other rights within the bundle. There are community rules and responsibilities, but they are not written down. They are known collectively and transferred orally within the group and from generation to generation. The over-arching rule is to do no harm to the land and its resources (e.g. tree cutting) or the people in the area (e.g. livestock theft). Rules are defined and monitored collectively by the group.

The pastoral communal tenure system remains intact in Rahad El Tamor. Although the rest of the locality has experienced land use change over the last ten years due to the expansion of large-scale mechanised farming and artisanal gold mining, these activities have not affected Rahad El Tamor.

Agricultural land within the dry-season grazing area is held and managed individually by households and families rather than collectively, and a typical plot ranges from 10 to 20 *mukhamus* (1 *mukhamus* equalling 0.7 ha). Use rights can be extended to others by the owners, based on the practice of *akul goom*, a temporary arrangement whereby the landowner grants a landless member of the community the right to use and harvest the land at no cost for a specific season. Harvest usually takes place during the beginning of the dry season and an informal small committee is in place to manage any disputes due to livestock trespassing on farmlands.

The community is represented in the hierarchical traditional tribal system of the Kababish through their sheikh. The community selects the *sheikh* and the position is not inherited. The *sheikh* is usually someone trusted by the community who demonstrates leadership and experience and is well-versed in community rules, norms and traditions passed down orally over generations.²⁵ His responsibilities include decision-making, rule enforcement, dispute resolution, and monitoring and safeguarding the community's common resources. If novel issues arise, the *sheikh* will consult the group to reach a decision.

The community is responsible for managing and improving its resources and has the final say on developments that can or cannot take place on its land. It has not undertaken any active maintenance of its pastures (beyond normal pastoral grazing), given that the land is sufficiently healthy. Although there has been some deterioration of its local water sources (e.g. siltation), it has not undertaken any maintenance. With regard to decisions related to physical interventions on their land, such as water points and water supply, only members of the Bagagir community have the right to make these.

24 With the exception of community farming land, which is held individually.

25 While rules and responsibilities are usually well established and passed down from generation to generation, the system is 'living' and flexible, and rules and responsibilities can be changed with the times as circumstances change.

Membership in the group is open and flexible. There have been many cases of individuals from different tribes across Sudan or from neighbouring countries becoming members of the group, including women marrying in. The main elements for inclusion are that local norms and rules are respected and that individuals participate in the group's collective life, including participation in traditions such as *nafir* (collective work performed voluntarily for the benefit of friends and neighbours). There have been no cases of individuals losing their membership.

The substance of tenure and main characteristics of the system

The main use of community land in the dry season is for grazing, with a small area set aside for farming. Women use the same grazing land for collecting forest products. In the dry season, the community's seasonal water resources last for a short period, after which water must be bought from neighbouring communities throughout most of the dry season. Therefore, the main components of the community's dry-season grazing land, for which rules and norms may apply, are grazing land, forest stands within the broader grazing land, seasonal water resources and the agricultural part of the rangeland.

Grazing land is open for the group and all its members within the territory of the group.

However, the group has an agreement among themselves not to use the area in the immediate surroundings of their village during the rainy season, which is reserved for use only during the dry season.²⁶ This area, locally known as *haram*, spans two to three kilometres around the village. Pastoralists from outside the group are excluded from this area in both the wet and dry seasons but can graze freely everywhere else without permission and for as long as they want.²⁷ The only condition is that everyone respects the general rule of not causing harm to local resources or to the people in the area (e.g. tree cutting, setting fires and stealing animals). If rules are broken, visitors can only pass through without stopping. For example, since 2016, the community has restricted a particular visiting pastoralist group in this way as they were caught stealing on several occasions.

Access and use of forest resources within the group's grazing lands are open to the group and outsiders as long as the rules are observed. For example, cutting trees, charcoal making and shaking trees to drop fruits and pods are prohibited and forest resources are closely monitored. If illicit behaviour is observed, it is reported to the *sheikh* who visits the location to resolve the issue. If the *sheikh* cannot resolve the issue directly, he raises it with the Forest National Corporation (FNC) in Jabrat El Sheikh Locality.²⁸ Such a case occurred in 2020 when a commercial investor was caught cutting trees for charcoal and was reported to the FNC. The FNC issued the investor an evacuation notice, which immediately stopped the activity.

Access and use of the community's water resources (the *rahad* and the *wadi*) is an exclusive right for the people and animals of the community. Outsiders can use and access the water resources for domestic use only and not for their animals. Before the reduced capacity of both water sources, no one was excluded. However, given the limited amount of water, the community had to change the rules in 2000.

26 During the wet season it is allowed to regenerate.

27 Most pastoralists from outside the group pass through twice a year, once at the beginning of the transhumance journey and once at the end.

28 There is a national forestry law in Sudan and prohibited activities within the law are similar to the activities informally prohibited by the community.

For the remainder of the dry season, the community fully depends on its neighbours' privately owned boreholes and water yards in Um Surra. They have to transport water from there individually or take larger livestock there 'on the hoof', with each family relying on its own financial and material resources. Water is paid for and the community has no control over these water sources. Individuals and households with greater means to transport water have better access to it and, in turn, are better able to use different parts of the rangelands since they can transport water to their animals. This makes wealth a differentiating factor between individuals and households and affects the principle of equal access.

Farming is an exclusive right for community members, and outsiders cannot cultivate community land. Within the farming area, each family privately owns its piece of land, which is inherited. Members of the group who do not own land can borrow it from others to cultivate under an *akul goom* arrangement, but the title of the land remains with the original owner. This is a temporary alienation. Harvest usually takes place during the beginning of the dry season and a small informal committee is in place to manage any disputes due to livestock trespassing. All reported cases of trespassing have been within the group. There are no other specific committees in place for land or natural resources.

The main advantage of the community's tenure system is that it is a shared system followed not only by the Bagagir community but also by neighbouring communities, with slight variations. This makes the system well-understood and accepted by everyone. These consecutive and similar systems also allow flexible livestock mobility across different landscapes, as well as reciprocal arrangements for access and use. This is especially important in times of local resource scarcity. Although the system is flexible, another strength is that the community is fully in control of its resources, enforcing rules and limiting what outsiders can and cannot do. For example, excluding outsiders from farming is considered positive because it ensures enough farming land for group members and reduces the chances of conflict between groups. The system also strengthens social relations and coherence through collective work such as *nafir*.

A disadvantage is that, given the open system, animals owned by different groups intermingle, which sometimes causes disease transmission. A problem that the system needs to adapt to or address is that young people are becoming more individualistic and may be losing the spirit of communal work.

The characteristics highlighted as essential for the community's tenure system to function well and for pastoralist livelihoods to remain resilient include: (1) flexibility; (2) unrestricted mobility; (3) the absence of rigid borders; (4) an efficient and effective internal management system; and (5) an inherited sense of collectivity in terms of values and practices.

Flexible and unrestricted mobility on the community's land and neighbouring lands assures timely access to resources, particularly in especially dry years, which occur from time to time. The absence of rigid borders allows mobility over long distances, which is particularly important for camel raisers.

The tenure system is efficient, effective, local and sensitive to resource conditions, climatic factors and the needs of the group. It regulates land and resource use, prioritising the community without losing flexibility and inclusiveness for others. For example, even in times of water scarcity, the community takes a humane approach to basic needs and does not exclude outsiders from using their local water resources but does limit water use to human

consumption only. Also, while outsiders are excluded from grazing in the *haram* area during the dry season, they are allowed to graze outside this zone. Dispute resolution takes place using traditional mechanisms, which function well, and all conflicts and disputes within the group and with outsiders have been effectively resolved locally.

Collectivity is also central. For example, monitoring is a shared responsibility; everyone checks for degradation, overexploitation or activities that go against group rules (e.g. tree cutting). This is important because many groups cross the area during their annual migration cycle and, in turn, many eyes on the ground are needed to monitor harmful or illegal activities. Voluntary collective practices, such as *nafir*, are also firmly established, where community works are done jointly and help is provided to people in need. This extends to neighbouring communities, if necessary. For example, communal solidarity was shown during a wildfire in 2016, which affected multiple communities and was contained by all collectively. Collectivity also extends to agricultural land, which is privately held. Although land is privately owned, there is room for landless community members to get rent-free access to agricultural plots from others. Such behaviour increases solidarity within the group.

The tenure system is an old system, passed down from generation to generation, making it an integral part of the group's historical tribal system based on collective values. This makes the system deeply rooted within the group and fully understood and accepted. At the same time, the system is flexible and can adapt. Rules can be changed and modified where needed. The community can also ask for support from government authorities, such as the FNC, in case they do not succeed in stopping invasive or harmful activities. This shows that dual governance systems can present challenges but also have strengths. In this case, the formal and informal systems complement one another, with the formal system providing backstopping and clout.

Perceived tenure security and factors that affect community perceptions

On the whole, the community perceives their tenure as secure, with most, if not all, respondents saying 'unlikely' or 'very unlikely' to the likelihood of losing their lands or mobility over the multiple timescales put forward (within the year, within five years, within ten years and for the remainder of their lifetimes). With regard to the level of confidence that their children would inherit their access and use rights (or rights to mobility), and also be able to enjoy these rights throughout their lifetimes, all responses were equally optimistic, with most respondents indicating 'very confident.'

The most important factor that influences their feeling of tenure security is that they are, de facto, the first community to settle in this area and have uninterruptedly used the land for at least four generations, with no competing claims to land. Therefore, they consider themselves *asyad elarid* (the landowners). The next most important factor is that the community is part of a larger ethnic group, the Kababish. They have the backing and support of the Kababish and are active participants in the ethnic group's wider affairs. Of equal importance is that there is enough good-quality grazing land in the area and its surroundings, limiting the need for competition and the fact that the area and its surroundings are not affected by conflicts.

The fact that the community is known and respected by neighbouring groups from inside and outside the Kababish also plays a role, with inter-group collective activities such as *nafir* having been known to take place. Also noted was the absence of external threats. For example,

the community's land has no known mineral deposits and is of little interest to government. This renders the local situation different from other parts of the locality where these issues are at play. Finally, the group has never experienced any loss of land or land rights and this too affects perceptions of tenure security.

Most cited threats to their perceived tenure security were unrelated to the tenure system and related to natural phenomena and social change. The community mentioned: disease outbreaks; droughts; lack of water; the reluctance of some of their youth to continue working as herders; the increased individualistic and commercial mindset among them; and population growth increasing demand for farming land, in particular.

When asked about the impact that loss of rights to collective grazing land would have, the group mentioned they would likely: lose their identity and traditions as pastoralists; be forced to sell their livestock and turn to farming; migrate to urban centres and seek alternative livelihoods; and migrate to Gulf countries and work in artisanal gold mining.



FUDECO researchers interview communities in Wuro Bappate, Kenya, 2011. Photo: Guttoff/Mercy Corps

Differences for individuals

While the tenure system is, in principle, considered the same for all, wealth is a differentiating factor in practice. Wealth affects the ability to access and use shared resources. This is most apparent in relation to water, where only the better-off are able to afford plastic water bladders and transport them to the different locations where they are needed. The less wealthy are less able to respond effectively to water shortages and are also less capable of safeguarding a constant water supply due to transport and water costs. This limits their options for livestock keeping. Wealth also influences livelihood choices. Men who are less well-off or have few or no animals will concentrate on farming and expand or intensify this activity, as farming is the most accessible option to rebuild herds.

In practice, cultural norms and practices in relation to gender are also a differentiating factor. Women are constrained by social norms. For example, they do not have freedom of movement like their male counterparts, with young women being limited to the *haram* area around the settlement unless accompanied by a male relative. Women do not normally participate in any of the decision-making aspects of the tenure system. Yet, they shoulder many responsibilities, which increase substantially when their husbands leave to work in Gulf countries or gold mining. For example, they take on the responsibility for the family farm and livestock alongside their normal household duties. Women are also discouraged from self-sufficiency and independence. For example, men will always own a portion of the family's herd and have the option of taking it with them as a foundation for a new herd should they move away. Women are not treated in the same way. A woman may receive a few head of sheep or goats on marriage to take to her new home. This seems more a gesture towards household self-sufficiency in terms of milk and meat rather than livestock as 'money in the bank' and independence, as it is for men.

The limitations on access and use for women, and exclusion from the management of dry-season grazing land, are part of a general context that is biased against women. The community is a typical patriarchal society, with women's roles limited to a primary focus on the household. This 'way of being' is passed down from generation to generation and is deeply rooted to the extent that the women in the community are satisfied with the situation and do not feel that anything is amiss with regard to their rights.²⁹ This finding is corroborated by those in the Intergovernmental Authority on Development Sudan Women's Land Rights Agenda (2021–2030) which states that 'gender roles and gender relations are socially constructed around the supremacy of masculinity and the domination of men over women. This has contributed to women's internalisation of their position as inferior and has compromised women's rights, including the rights to land' (IGAD, 2021).

Among youth, there seems to be less interest in pastoral livestock keeping, a greater desire for independence from the extended family, and a shift in priorities towards individualism and commercialisation. Male youths are interested in combining livestock keeping with more diversified activities, such as migration to the Gulf, farming, gold mining and livestock trade at weekly markets. Migration to the Gulf and gold mining are particularly attractive options. However, youth are also aware of the shortcomings, noting that, although gold mining provides a good income, it also introduces increased competition between pastoral communities who vie for engagement in the sector and pushes people away from a pastoralist way of life, with all

29 Findings from both the mixed FGD and the women's FGD.

this entails. Youth also desire independence from the extended family and feel that they should be supported to grow their own herd and diversify their income sources. Those who already live separately from the extended family stay within the community but prefer to be responsible for only their own herd rather than the family herd, as they feel this is a more efficient way of building wealth. Older generations decry these changes, noting that collective work such as *nafir* should not be optional and that individualism will negatively affect the group's cohesion.

All individuals feel confident in their tenure security, similar to findings for the overall group. Factors that affect individual feelings of tenure security are similar to those of the overall group, with a few additions. For individuals, being part of a larger ethnic group and having strong internal cohesion as a community is most important. They also emphasised the spirit of collectivity and internal social support networks as essential since, this way, no one gets left behind. For example, lending or giving livestock to poor and more vulnerable community members, such as widowed women, was highlighted. Also highlighted were prioritising vulnerable or disadvantaged women for *nafir* activities (e.g. for weeding and preparation of farmland and searching for lost livestock), encouraging widowed women to marry a male relative of the deceased husband, and the fact that community members already in the Gulf will support others back home who want to join them. Individuals have also never experienced a loss of land or land rights.

The main threats to their assurance of tenure are not linked to the tenure system per se but more to external factors. Individuals felt that the main threat would be if gold were to be discovered in the area, which would create competition among community members. Booming artisanal gold mining is also expected to attract many outsiders to the area, which will affect social harmony. The focus on gold mining as a threat is based on individuals observing the effects of this activity in neighbouring areas.

With regard to improvements to the tenure system, most individuals felt that having a more reliable and local source of water supply would level out inequalities in access to water and grazing land and reduce social disparities due to wealth.

People feel that the human and livestock population will likely increase, and competition may become a factor. The ongoing trend of prioritising personal over group interests among youth was also highlighted as an issue that may affect the system. Meanwhile, youth expect the current increased interest in farming, combined with population growth, will likely increase the area under cultivation at the expense of the community's dry-season grazing land.

Characteristics highlighted as essential for the community system to function well were similar to those mentioned by the group. Individuals highlighted equality within their system as an important characteristic. In principle, no one has more power than anyone else. Even the *sheikh* is considered a community member with the same rights as everyone else. Men added that a positive aspect of the system for them is that they can speak their minds during community meetings and, in this way, participate in group decision-making.

Both women and men emphasised collectivity and the social support aspects of the system, such as *nafir*, as main features, although women emphasised this more. They especially highlighted the ability to use agricultural land rent-free and mentioned *nafir* and restocking by more well-off community members as an indispensable service.

FIELD WORK FINDINGS: KENYA – WALDAA COMMUNITY LAND

The pastoralist community and collective land under study

The Waldaa community is a typical pastoral community in Marsabit County, northeastern Kenya. This community is largely Borana, with a shared heritage and ancestry, a shared natural resource base and similar resource-use patterns as practising pastoralists. Five-hundred and fifty households make up the community, including 420 households from among the ‘first inhabitants’ of the area and 130 immigrant households. The number of individuals is estimated at 4,700 men, women and children.

The community land (approximately 60,282 ha) serves as the settlement and wet- and dry-season grazing areas.³⁰ Livestock rearing remains the main livelihood for both men and women in the Waldaa community. They keep cattle, sheep, goats and, more recently, camels, a livestock type not previously kept by the Borana. While agricultural production has been attempted, this has not succeeded on any meaningful scale. Alongside pastoralism, small businesses such as stalls by the roadside and in townships have also been taken up. Mobility is also practised, mainly during the wet season when livestock are grazed between 10 and 20 km from the settlement area to allow the dry-season grazing areas around the settlement to recover. In extreme drought years, the community takes their livestock further to Isiolo and Laikipia counties and across the border to Ethiopia.

Waldaa community land is considered ‘reserve’ grazing land during drought, both for the community and for pastoralists from other communities who can come from far and wide with their livestock during local shortage in their home areas. Twenty or thirty years ago, the Waldaa community could reasonably predict rainfall conditions based on observed rainfall patterns in neighbouring locations. Today, the climate has become much less predictable and also much drier. The local river was abundant when the community first arrived in the area but has since dried up, and people rely on boreholes for their water. In addition, a series of drought years resulted in severe livestock losses and depletion of the area’s grazing resources due to the combined effects of drought and demands that exceeded supply.³¹

For the past three successive years leading up to early 2023, the situation has been dire (locally and in neighbouring countries) to the degree that many pastoralists, including the Waldaa community, have lost a sizeable proportion of their livestock. Many herders have come back empty-handed from across the border in Ethiopia and from further away. This has increased reliance on small-scale businesses and has seen an emphasis on quarrying and tree

30 Approximately 40,000 ha constitute community settlements and the dry-season grazing area (with a ‘core’ area reserved for only the Waldaa community), and 20,000 ha constitute wet-season grazing areas.

31 There were 420,000 cattle in 2018 and 186,440 in 2022 in Marsabit County, constituting a loss of nearly 50% (Marsabit County Government, 2018).

cutting for charcoal making in the last five years, particularly among women. Both practices intensify rangeland degradation. In addition, educated youth are increasingly seeking formal employment elsewhere to supplement their extended family income. Despite these extreme challenges, the community remains committed to livestock rearing and emphasised that they must find ways of adapting to these new harsher conditions. This includes experimenting with new livestock types, such as camels, to cope with water stress. Although uncommon among the Borana, the community feels they must learn to work with camels to adapt. Some households have also migrated to nearby towns.

Quality and availability of pasture resources are the main challenges during the dry season.

Given the all-encompassing droughts experienced in the last few years, the community's dry-season grazing resources are over-stretched. This is exacerbated by the fact that livestock mobility has become an expensive enterprise only affordable to wealthier members of the community. An average community member would need to sell half of their herd to afford the journey, increasing the risk of destitution. Availability of pasture land is also the main challenge during the wet season. Due to increasingly unpredictable rainfall, the wet-season grazing window has reduced from 6–12 months to 1–3 months.

The de facto tenure system

The Waldaa community has been settled in their location for nearly half a century (since 1982) and has used the land uninterrupted since, with most of the land remaining collective grazing land. The community owns the land de facto. In turn, they enjoy the full set of land rights, including management, exclusion and alienation, alongside access and use. These rights are applied in ways that support flexibility and mobility. These rights do not yet have a legal basis. However, the community began the process of formal land registration in 2018 as per the Community Land Act (CLA),³² making the Waldaa community among the first pastoral communities in Kenya to undertake this registration process in open, unregistered community land held in trust under the CLA in the northern parts of the country. This process is currently ongoing and includes registration of community management structures and documentation of community rules and responsibilities.

The community has clearly defined rules, regulations and responsibilities concerning land. These apply to all community members who know and accept the rules. Rules and responsibilities are typically oral and undocumented but are currently being documented as part of the registration process. Community leadership is also well-established, well-functioning and respected. There are two categories of leaders: religious leaders and village elders. Both are under a community chief. Together, they constitute the council of elders, responsible for setting community rules and responsibilities. Rules can also be changed by either the council or the community. For a new rule to pass, or to change a rule, there must be community consensus and also a clear reason. Women are among the community leaders and their participation is not a symbolic nod to gender representation or a by-product of quotas. Women's participation is down to their abilities and leadership qualities. The community chooses all community leaders based on these qualities. Women's participation in leadership roles is also not unusual and has always been the case.

32 In 2018, the Land Development and Governance Institute (LDGI) helped the Waldaa community organise itself to begin the process of land registration. The community has since received training and technical support from various organisations towards registration.

The community has a defined membership known to the community elders. Beyond the original settlers in the area, it is straightforward for newcomers to join the community. Membership is through birthright as well as marriage and registration. Most are members by birth. The community has a list of members, which is reviewed and updated every two years, and there are membership criteria for those who wish to join. For example, a newcomer must have a shared interest in pastoralism and must have been part of the community for at least three years to be considered for membership. Equally, the person must have shown good character and adhered to community rules and regulations during that time. With regard to marriage, a person who has married into the community keeps their membership even if the spouse dies and any children from the marriage, both boys and girls, retain membership indefinitely. A member can choose to give up membership, and membership can also be lost if an individual habitually fails to adhere to community rules and regulations, although this has not yet happened in practice.

Various resource management committees are in place and are responsible for implementing community rules and regulations and monitoring, which is considered effective. These committees are informal structures that include community elders, religious leaders, women, youth, and people with disabilities. Committees include the land management committee, the *mazingira* committee (in charge of conservation, pastures and maintaining all the community's natural resources), and the water resource management committee. The land management committee is in charge of land allocations, for example, approving or rejecting ranch allocations for individuals and decisions related to land improvements, together with the community elders and the chief. Members of these committees are selected through a participatory approach and based on closeness to and knowledge of the resource in question. Committees also include younger members who are better able to move around for monitoring.

Disputes are addressed and resolved through community mechanisms. When a dispute arises, the nearest capable person able to mediate is called upon. If the issue is about water, the problem is taken to the water committee; if about land, then the land management committee is called upon, and so on. If the relevant committee cannot resolve the issue, the dispute is taken to the council of elders. Should the dispute involve the Waldaa community and a visiting pastoralist group, elders from both groups are involved in dispute resolution. Depending on the resolution, community elders may (or may not) compensate groups or individuals if they lose their land rights.

Women stand in high regard within the community. Women's rights to land and resources are considered a birthright; as members of the Waldaa community, women's rights are protected and upheld alongside those of any other members. From the focus group discussions (FGDs), it was clear that women are informed and very protective of their land. It was also clear that women hold a strong position within the community.

The substance of tenure and main characteristics of the system

The main components of the dry-season grazing area are the communal grazing and pasture lands, boreholes for water supply for both human and livestock consumption, and human settlements. In all affairs related to access and use of the community's dry-season grazing area, priority is given to the Waldaa community, who enjoy unrestricted rights with regard to grazing land and water resources, provided people abide by the rules and carry out their

obligations. If someone flouts the rules, community leaders can revoke higher-level rights such as management and participation in decision-making and individuals will then be limited to access and use rights only.

Visiting pastoralists from elsewhere are also openly welcomed on condition that they abide by the community's rules. Permission to use Waldaa grazing lands must be obtained from community elders, at which time conditions for access are defined. These would include duration of access, areas that visitors can use for grazing and watering, the number of incoming livestock and arrangements for reciprocity. The community's core dry-season grazing area is retained for the sole use of Waldaa community members during the dry season, while visiting pastoralists may use grazing areas outside this zone only around water points. With regard to water obtained from boreholes, visiting pastoralists are charged a fee of ten shillings per camel, while the Waldaa community is expected to pay only seven shillings, from which they are often exempted. Visiting pastoralists who flout the rules and shirk their responsibilities may be restricted with regard to future access and use. For example, certain Somali pastoralist groups have had their access restricted by Waldaa elders due to repeated instances of rule-breaking.

The community identified mostly positive characteristics to describe their tenure system.

These include that: (1) the community is strong and cohesive and has a clear tenure system in place; (2) there is equality across the community in terms of access and use of resources; (3) the community has the freedom to set and define its own rules; (4) the community can continue to practise their livelihoods as they choose, including mobility and flexible access to resources; (5) community leadership is known and respected; and (6) the system and its leadership can adapt to and fit in with the requirements of the CLA as part of the current formalisation process. Negative characteristics cited are more along the lines of emerging concerns. People are beginning to fear they could lose land to neighbours or external investors in the longer term if they do not secure legal recognition for their land and tenure system.



They also feel that securing their tenure through formalisation would put them in a better negotiating position. For example, if there were a discussion around external investment in their area, they would be the main actors in the negotiation, rather than the government if the land remained in trust. If valuation of their land were necessary, they would be in a better position since the land would be formally documented.

With regard to the tenure system currently in place, the community did not feel that any major changes were necessary other than formalisation. They feel that how the system is currently set up is best suited to the way they practise their livelihoods. The main feedback regarding change was related to improvements in the natural resource base, including actions linked to rangeland improvement and restoration on a communal or individual scale, which would help the community better adapt to climate stresses.

The characteristics highlighted as essential for the community's tenure system to function well, and for pastoralist livelihoods to remain resilient, are similar to those highlighted as strengths of the tenure system. The main characteristics were the system's flexibility and an efficient and effective internal management system set locally by community members.

Perceived tenure security and factors that affect community perceptions

For the question about the likelihood of losing land or rights to land within the next year, some responses indicated that this is 'somewhat likely' or 'very likely' (4 out of 12 responses), while the remainder felt it 'very unlikely'. For the timescale of five years and onward, the majority of responses were in the category of 'highly unlikely.' While the Waldaa community feels secure in their tenure overall and has no history of loss of land or land rights, the lack of certainty among the few is linked to recent observations of large-scale investments in neighbouring counties like Isiolo, which have disenfranchised rural people (e.g. the Lamu Port and Lamu-Southern Sudan-Ethiopia Transport Corridor (LAPSSET) project and others). This contributes to feelings of concern over land. Additional concerns are that legislation could change in future, making them vulnerable to loss of rights, or that neighbouring communities lay competing claims on their land. The community therefore wants to guard against these possibilities and is keen to finalise the formalisation and registration process to enable them to retain control over what does and does not happen on their land. In this way, they add national legitimacy to what is already a locally legitimate tenure system. The concern, therefore, within the coming year, is that the registration process takes too long, leaving them open to the risks mentioned above.

With regard to mobility, all respondents felt it was 'very unlikely' they could lose the rights of mobility against their will over all timeframes. All were 'very confident' that their children would inherit their mobility and land access and use rights and would be able to enjoy these rights throughout their lifetime. While the findings largely indicate that the community feels secure in their tenure overall, some community members feel that registration would give their tenure security legal clout.

The most important factors that influence the community's feeling of tenure security are: (1) their internal cohesion as a community; (2) their shared and established history in the area for almost half a century without competing land claims; (3) their strong and respected traditional leadership, which successfully resolves disputes; and (4) that they feel they have

full control over their land and resources in that they set and enforce their own rules, which are observed and respected. They also feel a confidence boost from beginning the process of registration.

A factor that affects the community's feeling of tenure insecurity includes concerns about increased in-migration. While in-migration has always happened and is welcomed, the increase has led some people to thinking that perhaps their flexible membership system could be a drawback. The drawback, according to some respondents, is that increased heterogeneity due to in-migration could lead to greater difficulties in reaching a consensus.

When asked about the impact of loss of rights to collective grazing land, the group mentioned they would likely lose their main livelihood.

Differences for individuals

Individuals' responses were similar to those of the group. This consistency indicates that individuals believe that the community's interests serve them well individually and that their rights as individuals within the collective are well protected and recognised by the wider community. Indeed, they are enshrined in community by-laws, which the elders uphold. Community leadership also grants private land concessions to individual members for specific purposes, for example, ranching, and these lands are protected for the individual or the household within the land of the collective. However, in absolute terms, a certain level of group control or supervision of land matters is maintained, which means the group takes precedence over the individual. The reasoning is that land is seen as more than just a means of production. It is an integral part of a way of life, a culture and part of the community's identity.

Sometimes, there is tension between individual and group rights within the collective. While overall, individual rights are supported and protected within the collective, women's land rights may be more vulnerable given the existing patriarchal norms and influences. For example, one woman said she disagreed that all rights of individuals are protected within the community. It came to light that she was concerned that her daughters may not get their fair share of land.

Perceptions of individual tenure security mirrored those of the group in all categories.

Factors that contribute to feelings of tenure security among individuals include: (1) trust in the community's leadership; (2) the presence of by-laws within communal rules and regulations that protect individuals' rights; (3) group cohesion and solidarity; and (4) established membership in the overall group by birth or registration.

Individual loss of land rights has been experienced within the community, but the group generally minimises this type of experience. The only instances of loss of individual land rights have been cases when individuals acquired the land in ways that were not in line with community rules (i.e. when individuals went against the collective). In these cases, the community withdrew the individual's land rights.

It was generally felt that registration would be a positive contribution towards protecting individual land rights. Through a clear statement of individual rights within a legal document, registration may better protect certain individuals who could be more vulnerable to the vagaries of collective opinion.



Goats feed on shrubs within Tiogo Forest, Burkina Faso. Photo: CIF Action

CONCLUSION

The study aimed to understand collective tenure and tenure security among rangeland pastoralists. Two layers of tenure and tenure security were considered: that of the group and that of individuals within the group, recognising that groups are not homogenous.

In Burkina Faso, Sudan and Kenya, the law recognises pastoralism and collective and communal land rights to various degrees, with Kenya and Burkina Faso more progressive in this respect. At the same time, pastoral areas in all three countries face similar challenges, as elsewhere on the continent, including pressures on the pastoral production system and shrinking and fragmentation of rangelands. Where these pressures are at a minimum, we have seen that informal communal tenure systems still robustly apply in pastoral grazing lands and are, in fact, the main tenure systems in play. These systems are long-lasting, well-organised and have strong local legitimacy in that they are recognised, respected and enforced to varying degrees. None of the pastoral communities in the study currently hold any formal documentation for their land, but they do consider themselves the rightful landholders.

Except in Burkina Faso, the pastoral communities in this study enjoy the full set of land rights for their land de facto, including management, exclusion and alienation. Burkina Faso is the exception since local farmers, who are the de facto landholders, host the pastoralist community.³³ Across the three locations, the communal tenure systems described fit what is known about collective pastoral tenure systems (Flintan et al., 2021) in that the rights held

³³ The pastoralist community is granted some management rights but the host community retains overall management and control.

collectively maintain the integrity of the pastoral landscape with limited subdivision, and that mobility is fully supported through a flexible tenure system that enables extensive pastoral land use by the local community as well as by outsiders. It is a system that is welcoming and inclusive of others and encourages reciprocity in times of need, an important feature considering the vagaries of climate in these rangelands. Local controls are applied, including limits on access and use and the application of user fees in some instances. Limits and fees apply to the local community and to outsiders, although the local community is generally prioritised or exempted.

The main characteristics of the de facto communal tenure systems highlighted as essential for local pastoral systems to function well, and for pastoralist livelihoods to remain resilient, are: (1) that these systems are flexible and enable freedom of movement by the community and others across wide landscapes, which are kept intact with limited subdivision; (2) that there is robust yet flexible management that is set and driven locally by the community; and (3) in cases where there are neighbours, that good local relationships are maintained between the pastoralist community and others.

Tenure security was experienced differently across the case study countries. The community in Sudan felt most tenure secure, followed by Kenya, then Burkina Faso. The main factors that contribute to feelings of tenure security are intrinsic to the pastoralist system or the group's lived reality. These include: (1) strong relationships between the group and their neighbours; (2) being locally known and respected (i.e. having local legitimacy); (3) solidarity and cohesion within the group; (4) the fact that all communities have lived in their respective areas for at least 40 years without major contestation of their land rights; (5) that the community has local control over land and resources and the freedom to set and enforce its own rules (within limits in Burkina Faso); and (6) that communities have strong and respected leadership. Factors external to the system were also mentioned, such as the absence of major conflicts, large-scale land acquisition (e.g. for mining concessions, agricultural projects, or regional and international initiatives), and the possibility of formal land registration (cited for Burkina Faso and Kenya).

Factors that contribute to feelings of tenure insecurity are different across countries. In Burkina Faso, these include previous experience with the loss of land and the continued conversion of grazing land for farming. In Kenya and Sudan, the factors are more about concerns for the future based on community observations of what is happening in neighbouring areas. For example, an increased individualistic and commercial mindset among youth in Sudan could influence the 'communalism' of the group and erode group cohesion and the communal tenure system. In both Kenya and Sudan, observing pastoral groups in neighbouring counties being dispossessed of their land raises local concerns.

Introducing different timescales allows a more nuanced understanding of perceived tenure security. In Kenya and Burkina Faso, perceptions of tenure security were different over one year and five years from those over ten years and more.

Individual responses by men, women and youth with regard to the tenure system and individual feelings of tenure security were similar to the responses of the overall group across countries, with slight variations. Individuals generally expressed themselves in collective terms with regard to grazing land. For example, in Burkina Faso, respondents recounted the same experience of loss of grazing land as that of the group, suggesting that individuals think communally about grazing areas.

Individual responses varied slightly from country to country. Wealth, for men, is a differentiating factor in terms of their ability to access and use land and resources in Sudan. Wealthier men have better access to pasture further away because they are better able to pay for water and its transport in the dry season. However, wealth did not seem to have an influence on decision-making or power within the group. In Sudan, youth have a greater desire for independence from the extended family and lean towards individualism. While not linked to the tenure system per se, this may impact the community's sense of collectivity, where individual interests are prioritised above community interests. Youth are aware of this tension.

Women in Burkina Faso and Sudan emphasised collective care for vulnerable individuals such as widows and divorcees as a factor that contributes to their feeling of tenure security. Although related to group cohesion, it is more specific to the idea of leaving no one behind. At the same time, in Burkina Faso, women felt markedly less tenure secure than men regarding collective grazing land. This may be because women do not participate in negotiations and discussions with the host community, making their feelings of tenure security entirely based on ongoing observations of grazing-land conversion. Older men, who were more involved in these negotiations, had greater confidence in these negotiations eventually paying off

In Kenya, both individual and communal rights are recognised and protected by the pastoral collective, with land concessions being granted to individual community members by the group, although, in general, collective interests are prioritised overall. Respondents overwhelmingly confirmed that individual rights within the group are supported and protected, yet there may be indications that certain individual land rights are less protected than others. For example, women's land rights may be more vulnerable given existing patriarchal norms and influences.

Women have little to no visible role in decision-making with regard to collective grazing lands in Sudan and Burkina Faso, and there does not seem to be a sense of grievance about this. While women only nominally participate in decision-making in Burkina Faso, this was shared as a fact rather than a problem. In Sudan, all individuals felt that equality between people was among the strengths of their tenure system, suggesting that women's roles are not seen as inferior. Alternatively, it could be that women's passive position is internalised to the degree that it is normalised. In Kenya, the situation is different. Women are leaders and have always actively participated in decision-making.

Finally, the collective tenure systems across case study countries are, on the whole, robust, locally legitimate and respected. While, in Sudan, tenure formalisation is a non-issue for the study community, the communities in Burkina Faso and Kenya (more so in Kenya) feel that national legitimacy may be necessary to protect them from pressures of land conversion and external land interests, since local legitimacy may not be enough to safeguard local pastoral communities against more powerful interests. Options for formalising collective pastoral land are available in Burkina Faso and Kenya and are less clear for Sudan.³⁴ There are obstacles to formalisation, with valid arguments both for and against. The author of the Kenya case study argues that it is important to understand the inner workings of existing pastoralist tenure systems and tenure security in context to inform the conversation on whether tenure security is required in the first place – and, if required, whether policy and legal interventions are appropriate or whether it would be better to use other types of support that strengthen informal governance systems and structures.

34 The community in Kenya has already begun the formalisation process.

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ANNEX 1: DE JURE AND DE FACTO TENURE RELEVANT TO PASTORAL AREAS – BURKINA FASO, SUDAN AND KENYA

This annex is informed by literature review, main informant interviews and country report authors' prior knowledge of context.

Burkina Faso

De jure tenure

Three main laws apply to land in pastoral areas in Burkina Faso, all of which recognise collectively used/held land and also put forward mechanisms for the registration/formalisation of such land. These are: the Agrarian and Land Reorganisation Law of 2012 (RAF), the Rural Land Tenure Law of 2009 (LRFR), and the Law of Orientation Relative to Pastoralism of 2002 (LORP). While the RAF and LRFR are the main Burkinabé land and land management laws,³⁵ the LORP is the main national law relevant to pastoralism and pastoral land.³⁶

The LORP specifically recognises and endorses pastoralism as an important activity in Burkina Faso, along with some of the livelihood's crucial parts, such as mobility and the right to access land and resources. It also clarifies land, disaggregating government land into a number of subcategories relevant to collectively used pastoral lands. These are pastoral areas of special management (government-established), lands reserved for animal grazing, and open spaces for grazing.

Pastoral areas of special management (or *zones pastorales*) are areas specifically set aside by government for pastoral livestock rearing. Up to 2017, there were 28 of these officially designated pastoral areas in the country (ONF-BF, 2017). In these areas, government holds decision-making rights, while pastoralists have rights of access and use. Pastoralists obtain these rights through formal arrangements. Pastoralists can also apply for land concessions within these areas, for which they may be granted rights of management, either collectively or as individuals. However, overall responsibility and control lies with government (national or municipal).

35 The first relates to land in general and the second relates to rural land specifically. Both are general laws and mention pastoralists among other land users.

36 Besides the three main laws, a number of additional laws are relevant, for example the national forest law, water law, and environment law, all of which contain provisions that can have an impact on resource use locally if the law is applied in practice.

Land reserved for animal grazing is land recognised by government as used first and foremost for livestock grazing. In these areas, pastoralists are allowed free and uncontrolled access. Open spaces for grazing, on the other hand, describe land that is used by multiple users for multiple concurrent purposes – such as crop farming, forest use and other uses. In these spaces, pastoralists have recognised rights of access, on condition that they do not infringe on other users' concurrent land rights. For example, pastoralists have rights of access to fields left fallow or to fields after collection of harvest (unless expressly prohibited by the owner).³⁷ While ultimate decision-making regarding both these lands lies with the state or municipality, in reality these two categories of land are treated in a hands-off way allowing local/traditional de facto tenure systems to operate.

In relation to these laws, most collectively used and de facto 'held' land could fall under one of the categories of government grazing land under the LORP (e.g. 'land reserved for animal grazing' and 'open spaces for grazing') and could also be considered private land. It can be considered private land since de facto held land under customary systems is, in principle, recognised by the LRFR. It can also be considered grazing land as per government definitions insofar as the LORP describes systems that more or less match the land governance systems seen in practice. However, collectively used and de facto held land, in most cases, has no formal status (i.e. is unregistered), with the exception of a few officially registered private livestock ranches located outside the study area.

All three laws put forward mechanisms for the registration/formalisation of collective land. However, there are differences between the laws in terms of the name of the document being obtained, the process for obtaining it, and approving authorities.³⁸ For example, the RAF and LRFR put forward land charters and Certificates of Rural Land Possession (APFRs) to formalise tenure in areas where collective customary tenure systems predominate, and describe the process for each.

APFRs function like a deed to private land and confer the full set of land rights on the holder, including access, use, management, exclusion and alienation. To start this process, the local village land tenure commission (CFV), established by the municipality, checks whether there are any existing or competing claims on the land. In contrast, a land charter allows for the documentation of existing de facto rights, rules, responsibilities and land governance mechanisms, in this way formalising local or traditional tenure systems. Under a land charter, the breadth of rights conferred on each of the parties to the charter is decided through a process of local consultation and can vary from location to location. A community or group can be responsible for the overall management of the land in question and could also be granted rights of exclusion should this be collectively agreed. However, the right of alienation remains with the owner. In all cases, the community must first be legally recognised to start the official registration process. This can be done, for example, by registering as a formal pastoralist organisation. Some formal pastoralist organisations are already in place, but these are few.

37 In both land reserved for animal grazing and open spaces for grazing, it is possible for individuals and groups to formalise their relationship to land in a number of ways, including through a land charter, a Certificate of Rural Land Possession (APFR) or a title deed (all provided for in the RAF and LRFR). If an individual or group obtains legal ownership of land (e.g. through an APFR or a title deed) within these lands, they are within their rights to exclude other users.

38 The differences are primarily between the LORP and the RAF/LRFR.

Women's and youth land rights can be considered in the RAF and the LRFR, but not in the LORP.³⁹ The LRFR and the RAF (among other laws) not only make specific mention of women and youth but also provide for the setting of land allocation quotas for these groups within land developed by the state or local authorities. While the translation of law into practice can vary from place to place, having placeholders and provisions for marginalised groups (such as women and youth) in the law allows organisations and other advocates to use legal backing when arguing cases. For example, the provisions made for women and youth in the RAF and LRFR are regularly invoked by projects and programmes working with agricultural groups in Burkina Faso, to the point that the Ministry of Agriculture has announced that more than 60% of land allocations in 2021 have gone to women and young people. The same cannot yet be said for the translation of the law into practice for pastoral women and youth (or at least their situation regarding land is less known). This could be due to the absence of specific provisions for women and youth in the LORP.

Main institutions responsible for implementing land laws locally include decentralised representatives of the national ministries, the municipality and, in certain cases (for example, for processing APFRs), the CFVs. The CFVs are meant to represent all local land users/owners and should have a good grasp of the de facto situation of the area's different land resources. Their role is to recommend that the municipality enables more effective decision-making. Village land conciliation commissions (or CCFVs) are set up alongside the CFVs at the village level to deal with land disputes. These commissions are government bodies that step in when there are disputes over land, and are meant to provide local and more flexible mechanisms to conflict resolution outside civil courts. Formal procedures through the civil courts can be pursued if no resolution is found through the CCFV process. CCFVs exist in more than 200 municipalities of the 351 in the country (DGFOMR, 2019). In municipalities where these are not established or functioning, the customary authorities, the prefecture (state-appointed representatives at the municipality level), or the municipality authority (voted in by local constituents) can intervene.

De facto tenure

In reality, the de facto land tenure system in pastoral areas is a combination of formal laws and institutions and customary/informal systems. These exist side by side or overlap, and sometimes one takes precedence over the other.

Informal systems are firmly in place at the local level, regarding social group organisation and land use and management. Typical pastoral communities – numerous in Burkina Faso and mainly belonging to the Peul (or Fulani) ethnic group – are generally organised around leaders known as *rugga*. The *rugga* are responsible for ensuring the cohesion of the community or clan and the security of community members and their livestock and other assets. They have detailed knowledge of the local pastoral environment and pay particular attention to the community's annual transhumance (in terms of routes, organisation, etc.). The system of land use and management is generally a typical customary pastoral system that emphasises collective land use and management and flexible access to resources over 'ownership' of land per se.

39 Only rights at the level of the household are recognised, without further disaggregation.

With regard to the formal landscape, while recognition of informal/customary collective tenure systems, as described above, exists in the law alongside opportunities for formalisation – a progressive position in and of itself – there are a number of obstacles to implementation. For example, the law is poorly or only partially known or understood at the local level. Producers from farming or pastoral communities may know there are laws in place, although most would be hard-pressed to name a law or to describe its content. Technical government officials may generally know the specific laws relevant to their field of specialisation, while their staff at the very local level – those most likely to interact with communities – may not have this level of knowledge. This situation creates space for weak, partial or unfair application of the law in practice.

Further obstacles to implementation of the law include a lack of means (and connections) at the community and individual levels to apply the law, since starting and following legal procedures requires knowing where to begin (and how to move forward) and can be costly and time-consuming. Poor or non-existent participation of pastoralists in CFVs and CCFVs (SNV, Reconcile, 2020) also means that pastoralists are often not present at the table when decisions about land are made. This is compounded by a general and continuing bias towards agriculture and by local corruption – where money and connections at the local level can influence decision-making, for example in a civil court procedure or regarding a decision about land.⁴⁰

Sudan

De jure tenure

Formal land tenure laws were first introduced in Sudan during the time of British colonialisation,⁴¹ when the principle of control and management of land by a central government or authority was introduced. This legacy continued post-independence (UNEP, 2012) and continues to this day.

A number of land tenure laws are in place and are relevant to pastoral areas in Sudan. Across the board, none of these laws formally recognises land held under communal traditional land tenure systems as legal ownership, with land rights formally conferred stopping at usufruct rights (Abdul-Jalil, 2006; UNEP, 2012).⁴² This is despite the fact that traditional land tenure systems have existed in the country for centuries, and are mainly applied in the bulk of pastoral areas and rural communities in Sudan (UNEP, 2012). In fact, the state formal land tenure system (de jure) mainly functions and is applied in the country's urban areas (Komey, 2009; Abukashawa, 2021), with de facto tenure systems predominating outside urban centres.

40 According to the country report author, arbitrations for access to land are generally made to the disadvantage of pastoralists, while at the same time farmers accuse pastoralists of bribing officials in dispute-resolution processes to tip the balance in their favour.

41 Including the Land Settlement and Registration Ordinance of 1925 and the Land Cancellation Act of 1930. The latter is still in force today and allows government to appropriate land for public purposes (UNEP, 2012).

42 The absence of formal recognition of customary land rights has been repeatedly highlighted as an issue that needs to be urgently addressed. This has been highlighted, for example, in the country's 2005 Comprehensive Peace Agreement, the 2005 Interim National Constitution, the 2006 Darfur Peace Agreement, and the 2011 Darfur Peace Agreement (signed in Doha) (UNEP, 2012).

There is an obvious and substantial gap between the two systems. In his analysis of the land question in Sudan, de Wit (2001) stated that 'bringing the legal state mechanisms closer to these legitimate customs is the core issue of the land question. The granting of legal recognition of existing customary rights would mark progress towards achieving this objective'.

Among the acts and laws on land tenure in Sudan, the 1970 Unregistered Lands Act stands as a notable example of how formal law does not sufficiently recognise or value the traditional and historical land rights of pastoralists and smallholder farmers in Sudan.⁴³ The act put all unregistered land under state ownership, including communal land used by different pastoralist groups (Sulieman, 2015). It essentially nationalised all unregistered land, which accounts for some 90% of the country's land (Komey, 2009). The government could dispense the land as deemed appropriate – essentially setting the stage for the wholesale commodification and privatisation of land (UNEP, 2012). The act did not define the legal status of existing historical traditional land users and gave the government broad powers to evict, and complete discretion with regard to compensation. The act provided a legal basis for land acquisition, which dispossessed local communities of their customary land rights.

The 1984 Civil Transaction Act (CTA), which repealed the Unregistered Lands Act, was more progressive insofar as it acknowledged the presence of existing land users and gave local communities usufruct rights, although legal landownership remained with government (Abdul-Jalil, 2006). The CTA is also one of the first laws to specifically address grazing land. Under the CTA, all fallow land in the country is treated as pasture land. In this land, the government has the right to impose temporal or spatial restrictions on grazing as seen fit. The law also paradoxically provides the possibility of allocating and registering grazing land, at the same time giving the government the right to restrict or cancel such benefits (UNEP, 2012).

The Local Government Act of 1988 was the state's attempt at filling the land management and administration vacuum created at the local level when the government abolished the Native Administration in 1971. The Local Government Act set the stage for the creation of local bodies linked to the formal state apparatus: land management committees responsible for land management and administration. These committees were meant to take into consideration the 'local realities' of the land (UNEP, 2012). The Interim Constitution of 2005 went further, calling for the formal incorporation of customary laws and practices in land management and administration. It stipulated the creation of land commissions (one at the national level and a number at the state level) to improve the adjudication and administration of land. However, the rights of representation of rural land users (e.g. pastoralists and smallholder farmers) were not reflected in the document (UNEP, 2012), and the commissions (where established) are not functional (IGAD, 2021).

The relatively recent law on range and pasture continues to emphasise centralised control over resources. According to the 2015 Range and Pasture Law, the state authorities control and manage the rangelands in coordination with users. Like the CTA, this law allows communities to allocate and register pasture land. However, the state authorities retain the right to cancel this registration (Egemi, 2017). The law further bans cultivation in grazing lands and forbids agricultural activities on defined livestock routes, yet at the same time includes the following clause: 'Disposal of the Rangelands shall be prohibited in any form of transfer of ownership

43 In fact, this law was followed very shortly, in 1971, by a law abolishing the Native Administration (i.e. customary governance institutions that have existed throughout Sudan's history) as a show of government control (UNEP, 2012).

or restriction thereon, save after the approval of the Minister, upon recommendation of the Competent administration.'

Multiple institutions are involved in decision-making around land, with no clear institutional lead (IGAD, 2021). This includes sectoral ministries (e.g. the ministries of agriculture, physical planning, animal resources, etc.) and the localities (*mahaliyya*). To confuse matters further, ministries have been carved up, combined, dissolved, and reinstated multiple times over the last few decades, with main departments shifted from one ministry to another. For example, the Department of Range and Pasture has been shifted between the ministries of agriculture and animal resources multiple times. In addition, ministry offices – particularly at the local level – are often under-funded and under-resourced.

Gender-blindness pervades the legal and policy landscapes on land in Sudan and assumes that the entire household benefits equally when the head of a household is given land (IGAD, 2021). Women are often under-represented in land-related institutions, gender responsiveness is generally absent in land administration systems, and data collection on land is on the whole gender blind (*ibid.*). Poor placeholders for women's land rights in the official domain create ample room for gender discrimination in access, control and ownership of land.

De facto tenure

Throughout its history, Sudan has always had an embedded customary, collective system of land tenure in place. Communal land is managed under tribal units known as *dar* or *hakura*, which means homeland. The idea of the customary tribal homeland is the most important part of rural land tenure in Sudan and is closely linked to the native tribal administration – more commonly called the Native Administration – which is the customary institution responsible for governance (Shazali and Ahmed, 1999).

The management of each tribe (and tribal area) is administered through different types of hierarchical tribal systems (or Native Administration) across Sudan. These systems are, in general, entirely male-dominated. In most pastoral areas in the country, a *nazir* heads the system and is in charge of all administrative affairs associated with the tribe. An *omda* is responsible for tribal subsections, and beneath him comes the *sheikh*, who is responsible for his community at the village or smaller group level. The community (or group) is the basic unit in a collective pastoral tenure system and is based on kinship and common ancestry (i.e. the group is connected by blood and marriage). A group normally descends from one ancestral grandfather in Sudan, which is common.

Members of a group have equal access to rangeland resources and also have exclusive rights over all other resources within their territories. This means they have the right to exclude others, but this is generally not applied in practice unless there are good reasons – such as in situations of severe water scarcity. The group is normally the first group to have occupied the area and is duly acknowledged by neighbouring groups from the same tribe and also from other surrounding tribes. Normally, each group has shared values, with members supporting one another and performing collective work. Collective work, which is performed voluntarily for the benefit of friends and neighbours (locally called *nafir*), is one of the ways in which the group strengthens its internal social ties. It is, in fact, considered a collective responsibility. The *nafir* system can also extend to neighbouring groups within the tribe or to groups from other tribes, depending on the relationship with that group and on mutual benefits and interests. While group membership is primarily based on kinship and common descent, it is also possible for

outsiders to join the group. These outsiders can be accepted as members of the group over time if they respect the local rules and customs. In such cases, the outsider will eventually be given full rights as a member.

Within the *dar* territory, individuals and groups from the tribe have the right to access and use the resources they require, which includes grazing land and land for farming (Elhadary, 2010). Within the tribal homeland, the collective tenure security of the tribe is established and individual rights to land are recognised and could be inherited but with no power to alienate land from the tenure of the tribe (this right is held by the collective). Guests and members of other tribes also have rights of access and use of the area's resources with some possible restrictions – for example, farming or access to water resources during specific periods. In some areas, outsiders are allowed access to land to cultivate for specific periods, which they then leave to the original owner. This temporal agreement is known as *akul goom*, which means 'eat and leave'. Normally, no rents need to be paid in *akul goom* arrangements (Babiker, 2008; Elhadary, 2010). Such open systems give pastoralists the advantage of exploiting various resources in different ecological zones (Abdul-Jalil, 2006), as arrangements are reciprocal with permitted flexible access and use.

While not all tribes in Sudan have a *dar*, those who do not – such as a number of pastoral tribes in Darfur – have historically been acknowledged secondary rights holders and have generally had access and use rights to the *dars* of others (UNEP, 2012). Passing through the tribal lands of sedentary farming groups, for example, was traditionally organised through special arrangements between the traditional leaders from each group to ensure that the customary rights of each side were maintained (Abdul-Jalil, 2006).

Overlapping rights for different users is a common characteristic in communal grazing lands across Sudan. Although these rights are accepted in principle, there are sets of rules that define how they are to be used or requested (Abdul-Jalil, 2006). These rules vary according to location and the relationships between the individuals and groups involved. The most common overlapping rights and uses in communal rangelands include access to water for humans and animals, access to livestock routes and passage, and access to forest resources (e.g. hunting, gathering of wild fruits, collection of fuelwood). Organising these rights within the same group and between different groups differs from one place or community to another depending on many social factors and the condition of the resources to be used (Abdul-Jalil, 2006).

Customary systems also have shortcomings. While these systems grant primary rights for *dar* members, they may also show some discrimination towards outsiders by excluding them from some rights, such as access to water resources for animal use (normally during times of resource scarcity). Women are also excluded from decision-making in these systems, and decision-making power is usually concentrated in the hands of one or a select few (Babiker, 2008).

Although pastoralists in Sudan are marginalised⁴⁴ and have, in many places, lost control of their tribal institutions (as many of the roles of tribal leaders have been taken over by modern state institutions), their native tribal administration still functions and plays a vital role. Despite the wider national context of massive political changes since the 2019 revolutionary transition, and the subsequent fragile political situation in the country that has critically crippled national and local formal government, the tribal administration remains the main form of local customary

44 See for example Young et al. (2009) for a history of pastoralist marginalisation in Darfur.

governance, with a continuing local presence and ongoing practical engagement in pastoralists' dealings (Suliaman and Young, 2023). The Native Administration also remains critically important for conflict resolution. Although a wide range of conflict-management institutions exists in pastoralist areas in the country, the most important and historically recognised mechanism remains the Native Administration. Tribal leaders have engaged in almost all types of traditional dispute-resolution mechanisms (Egemi, 2017), and continue to do so.

It is clear that there are two land tenure systems functioning concurrently in the country – the formal and the informal systems. As mentioned above, the state's formal land tenure system functions more robustly in urban areas (Komey, 2009; Abukashawa, 2021), and de facto tenure systems predominate in rural areas. While the law applies in all parts of the country, state institutions do not have a significant presence in many parts of the country – particularly in rural, remote or conflict-affected areas – and the law is not routinely applied. For example, the Unregistered Lands Act of 1970 was never routinely applied in Sudan's non-riverine areas. Authorities invoked the law only when a legal basis for state land acquisition was needed and to exert greater control over economic activities and other activities of interest. More specific to the study area, the state formal legal system is almost non-existent, or at least is not implemented on the ground⁴⁵ in Jabrat El Sheikh Locality (or *mahaliyya*), where the study community is located. For example, the 2015 Range and Pasture Law, which gives the Department of Range and Pasture the right to manage the rangelands, is not implemented in Jabrat El Sheikh Locality and pastoralists are also unaware of this law or other formal land legislations.

With regard to gender, due to the country's predominantly patriarchal approach, 'gender roles and gender relations are socially constructed around the supremacy of masculinity and the domination of males over females. This has contributed to women's internalisation of their position as inferior compared to men. Therefore, this has compromised women's rights, including the rights to land' (IGAD, 2021).

Kenya

De jure tenure

Pastoralism is formally recognised in Kenya. For example, the National Land Policy of 2009 asserts that the government shall recognise pastoralism as a legitimate land-use and production system and provide flexible and negotiated cross-boundary access to natural resources. Equally, the policy recognises that special attention must be given to pastoralism, given the historical perception around pastoralism and pastoral land. Similarly, the National Environment Policy states that the government is to implement a livestock policy that is cognisant of livestock mobility and communal management of natural resources. In fact, across livestock policy, there is a clear recognition of the importance of mobility for pastoralists and references to promoting and protecting it.

In Kenya's past, land was officially categorised as private land, government land and trust lands, with most open pastoral lands falling under the latter category. The concept of trust lands was first introduced under the British as the colonial government's way of 'acknowledging'

45 With the exception of some presence and effectiveness of the Forest National Corporation (FNC). A locality-led dispute resolution committee is also present, which is functional and intervenes if the purely informal system of dispute resolution does not reach a satisfactory conclusion.

land held collectively under customary systems in rural areas under the 1938 Land Ordinance. Post-independence, it was the Kenyan government's way of doing the same, under the Trust Land Act of 1968 and the Land Group Representatives Act of 1968. Trust land extended only access/use rights to communities. Rights of management, exclusion and alienation remained with the government (Matteo, 2021). County governments (then councils) had delegated power to lease land concessions from within trust lands to individuals or companies, to sanction land alienation and privatisation, and to adjudicate land rights. This opened up trust lands to extensive political interference (Matteo, 2022) and made it straightforward to excise land from communal pastoral rangelands – an activity that takes place today.

Also in the past, some pastoral lands were privatised as group ranches. The group-ranch concept was introduced in 1965/1966 to privatise the rangelands and to transform subsistence-focused pastoral production systems into more modern and commercial livestock production (Kamau and John, 1998). It gave communities greater control and land rights within specific collective land parcels. While originally intended to improve livestock productivity, pastoralists used the group-ranch model to establish greater rights to land and to ward against pastoral land allocation to outsiders (Marcel, 1995).

However, the group-ranch model proved far from ideal to protect collective pastoral tenure systems. Given the emphasis on privatisation and production under this tenure model, it was seen over time that land within group ranches became increasingly subdivided and parcelled, mainly for crop production, and often with the blessing of the community's common leadership (Mwangi, 2007; John, 1994). This posed serious mobility challenges and uninterrupted rangeland use for livestock production (Kamau and John, 1998). It also emphasised glaring inequalities within communities. For example, the long-term legacy of privatisation and parcellation under this tenure model is one of landlessness and poverty (Rutten, 1992), as some gained and others lost. Women also lost out. As group ranches were subdivided and parcelled, women were marginalised in this process due to entrenched patriarchal norms and an all-male leadership that favoured men, with women given smaller parcels of land in drier areas far away from water points and access routes. Conflicts over land became a regular feature in these areas (Campbell et al., 2000).

Today, given the historically precarious situation of collectively held pastoral land under the category of trust lands, and given the lessons learned from the group ranch model, Kenya has emerged on the other side of a land-reform process that has taken previous shortcomings into account. This reform process began with the delivery of the National Land Policy, which benefited from deeper citizen participation, followed by the Kenya Constitution of 2010, which, like the land policy, was largely citizen-driven. The constitution, among other things, replaced trust lands with community land. Community land was then formalised and further explained under the Community Land Act (CLA) passed in 2016.

Unlike trust lands (where communities are merely land users), community land belongs to communities. Following a formal registration process as prescribed under the CLA, the full set of land rights is conferred on the community. The community then owns the land, which is to be managed through elected committees made up of all segments of the community (GOK, 2010; 2016). Until communities have formally registered their land, the land continues to be held in trust by the county government, with the main difference being that any investments/proceeds from the land are to be held in a community account on behalf of communities, to be accessed at the time of registration. An example of this can be seen in Turkana, where land investments are currently held in a community account on behalf of communities for access on completion of registration.

There is a sense of optimism that communal land registered under the CLA will yield different results from those observed for group ranches, given that the principles underpinning the two models are different. The first was a state-led initiative emphasising commercialisation and privatisation. The second is a community-led initiative that advocates for the formal recognition of community ownership as per the de facto communal tenure systems already in place. The CLA is also seen as a means of formally rectifying inequalities and inequities in customary systems, such as the marginalisation of women and youth, given specific provisions for this in the law.

The CLA and the Kenya Constitution of 2010, among other national policies and legislations, promote women's rights (including land rights) and outlaw gender discrimination. However, attention must be paid to this aspect during implementation to reduce the known gap between progressive policies and legislations and realities on the ground, where patriarchal systems still dominate and which have been known to influence implementation of the laws.

De facto tenure

Marsabit, Wajir, Turkana, Garissa, Mandera, Samburu and Tana River counties are the main open unregistered pastoral lands held in trust in accordance with Article 6 of the CLA (officially community lands). However, de facto, the land is still held under customary collective pastoral tenure systems and remains largely undivided, to support pastoral mobility and flexible land use. Within these lands, pastoralists are also not averse to holding private plots in urbanising townships and also within some parts of collective land. The informal system is, therefore, the main system in play.

The CLA is seen as a progressive legislation that could properly secure pastoralists' collective land rights. However, operationalisation of the law is slow, with questions about whether there is genuine political will to implement it (Alden-Wily, 2018). There are also questions about the state's financial and technical capacity to realise the full implementation (Oloo et al., 2021).

Women access pastoral land and natural resources as part of the pastoral collective, and their access to natural resources is still mediated through male relatives by marriage or kinship. There remains, therefore, the risk of women losing out on land rights should provisions under national laws not be implemented (or should they not be implemented in a timely fashion) (Oloo et al., 2021).

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