

# **Grazing Rights and Practices in a Privatized commons in Kenya**

## **Abstract**

Considerable empirical research has demonstrated the conditions that result in effective management of CPRs. Less is known about how rules and practices evolve after CPRs are privatized, although a number of studies suggest that property rights transitions often lead to multiple, overlapping and contested sets of rights and obligations in the same resource. In this ethnographic case study, the emergence of new grazing rules and practices is examined in the aftermath of the privatization of a pastoral commons in Kenya. Privatization opens up a new set of possible land uses such as rental and sale of land, and simultaneously it challenges Samburu notions of reciprocity and shared responsibility with those of individual rights. Now, almost twenty years after privatization, these tensions are not resolved. One result is that multiple and contradictory property rights co-occur on the same land, a situation that often leads to disputes as well as lack of consensus about rules. In this social climate of uncertainty regarding rights and responsibilities, and where leadership seems to be weak, people appear to be relying more on localized social networks to meet their pragmatic needs for pasture.

Paper presented at the IASC 13<sup>th</sup> biennial conference, Hyderabad, India, January 2011

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## 1. Introduction

Considerable empirical research has demonstrated the conditions that result in effective management of Common Pool Resources (CPRs). From observing such systems in action at particular historical junctures, scholars have described sets of common characteristics typical of effective systems. The best known of these are probably the design principles outlined by Ostrom (1990) that include elements such as defined boundaries of the resource and user group, rules of access to and withdrawal of resource units, monitoring and sanctioning of rule adherence, existence of forums in which people make rules and recognition of their authority to do so. In addition, in light of the collective action requirements attendant upon effective management of CPRs, additional factors that help account for successful management have been proposed including group size (smaller is easier), homogeneity (this is debated, but homogeneity may make cooperation easier given common language, culture, history), degree of hierarchy, and the presence of leaders (political entrepreneurs) to organize action (Acheson 2003, Agrawal 2003).

At the same time that we have a better understanding of how successful CPRs operate, many of them are undergoing change, including relatively rapid change from systems of common property rights to ones that are increasingly individualized. This trend is apparent in many extensive grazing systems around the world that are occupied primarily by livestock herding pastoralists (Rutten 1992, Galaty 1992, Peters 1994, Mwangi 2007, Galvin et al. 2008). There are many drivers of change such as government policies of registration and titling of land, trends toward sedentization of pastoral people, decreasing access to former grazing areas, and changing ideas among pastoralists regarding the future. These changes have profound implications for people and the environment in which they live. They even have global implications in terms of preservation of biodiversity and carbon sequestration.

In the midst of this change, we understand relatively little about how communities moving from systems of common management to increasingly individualized management regimes react and adjust both in terms of their actual practices of land use as well as their ideas about property and rights. What happens to the rules and practices that prevailed under common property management regimes? Do the rules change and, if so, what is the process of change and what are the new rules that emerge? What kind of social relationships evolve over time and are these conducive to collective action, or is collective action even relevant in an increasingly individualized system? In this paper I use the case of the Siambu community in Samburu district, northern Kenya to explore these questions. In the late 1980s and early 1990s land in Siambu was adjudicated into individual, equally sized, privately owned parcels that were distributed among the 240 resident households. The process of privatization was contentious and resulted from a lengthy conflict between those who sought private land and those who wanted to retain common ownership and management of the area (see Lesorogol 2008a for a detailed account of this conflict). Over the last ten years, I have conducted research investigating the effects of the shift from communal to private land

in Siambu (Lesorogol 2003, 2005a,b, 2008b). One focus of the research has been to understand the emergence of new rules of land use and grazing (Lesorogol 2010a). Through interviews, surveys, and observations, I have sought to understand how people are using land differently but also how they are thinking about land differently. What emerges from this work is a complex picture in which both land use and beliefs about collective and individual rights are in flux. Privatization opens up a new set of possible land uses such as rental and sale of land, and simultaneously it challenges Samburu notions of reciprocity and shared responsibility with those of individual rights. Now, almost twenty years after privatization, these tensions are not resolved. One result is that multiple and contradictory property rights co-occur on the same land, a situation that often leads to disputes as well as lack of consensus about rules. In this social climate of uncertainty regarding rights and responsibilities, and where leadership seems to be weak, people appear to be relying more on localized social networks to meet their pragmatic needs for pasture.

## **2. Ethnographic setting and methods**

Samburu district is located in northern Kenya covering an area of about 20,000 square kilometers with a population, primarily ethnic Samburu, of about 220,000 (Kenya National Bureau of Statistics 2010). The district comprises arid and semi-arid lands along a gradient of elevation. The lowland areas (below about 1500 m) are drier with average annual rainfall of about 200-400 mm. and acacia bush land dominates with the exception of the Mathews and Ndoto mountain ranges which constitute important dry season grazing reserves. The lowlands make up about two-thirds of the district area. The other third is the Lorroki plateau in the southwest of the district which is higher elevation (1500-2500 m) and has generally higher rainfall (500-1000 mm annual average). Grasslands predominate on Lorroki interspersed with several areas of forest including the Kirisia hills and the Maralal forest. While rainfall is somewhat higher on Lorroki than in the lowlands, it is still semi-arid with high variability of rainfall in time and space.

Most of the Samburu are livestock herders who raise cattle, sheep, goats, and in the drier areas, camels. Like other pastoral groups in this region, Samburu move seasonally with their herds in order to make use of available pasture and water supplies. Over the last fifty years, however, there are trends away from extensive movement of entire settlements and toward a more transhumant pattern in which herds move while settlements remain in one area for several years. The degree of mobility varies depending on aridity so that people in the lowlands continue to migrate more frequently and further than those living in the highlands, except during serious drought when even people from Lorroki may move livestock long distances.

In the past, particularly in the pre-colonial era before 1900, Samburu pastoralists accessed large areas of land beyond the borders of the current Samburu district. However, since the advent of colonial rule, their access to land has steadily declined for a number of reasons. During colonial times, the British regime solidified ethnic boundaries and restricted movement by various groups including the Samburu. Land to the south of current Samburu district (Laikipia district) was allocated to white settlers during the colonial period and was divided into large private ranches. Some forests

were declared gazetted forests and came under government management restricting legal access by herders. Along the easternmost stretch of the only permanent river in the district, the UasoNyiro, a national game reserve was established. As a result of these factors, Samburu peoples' access to rangeland has been reduced over time. Over the last decade or so, however, Samburu people have forayed into Laikipia district due to shifts in land ownership in that area and to seek better pastures. During serious droughts like those of 2006 and 2008-09 some Samburu migrated as far as the slopes of Mount Kenya which are areas of intensive cultivation by other ethnic groups. These moves have involved significant risks and costs including violent clashes with other groups in Laikipia and grazing fees charged by agriculturalists near Mount Kenya.

While patterns of pastoralism have changed over the years, many Samburu have also begun to engage in a wider array of economic activities including wage labor, livestock marketing, and trade. In some higher rainfall areas with greater potential for crop cultivation, including Siambu, more people are taking up farming of maize, beans, and other vegetables. While diversification is an important strategy, my research in two Samburu communities has shown that livestock (home consumption of livestock products and sales of own livestock) continue to be the core of most household livelihoods constituting upward of fifty percent of household incomes (Lesorogol 2008b).

Accompanying the loss of access to grazing land, in the post-independence period (since 1963) the government conducted land adjudication and titling in some areas of Samburudistrict. Generally, land adjudication in Kenya had the goal of establishing individual freehold title to land in most parts of the country (Okoth-Ogendo 2000). The semi-arid lands inhabited by pastoralists, however, were deemed unsuitable for individual ownership due to their lower productive potential. Instead, the Kenya government decided to establish a system of "group ranches" wherein title to land was transferred to groups of households (Galaty 1994, Rutten 1992). The aim was to transform subsistence pastoralists into commercial producers of livestock for the growing urban markets. This would entail changing the management systems used by pastoralists (e.g. limiting livestock numbers, 'scientifically' managing grazing, and focusing on joint marketing and infrastructure development using ranch land as collateral for loans). Most Samburu were not interested in such radical changes to their livestock production system, and many opposed land ownership of any kind, as it was a foreign concept to them (Lanyasunya 1990). Many Samburu joined group ranches in order to preserve their claim to the land, not from any motivation to alter their techniques of livestock production or land management (Lanyasunya 1990, Lesorogol 2003).

During adjudication in Samburu in the 1970s, some people discovered that they could make individual land claims during the process of land registration. These individuals were generally more educated and/or had been employed or served in the armed forces and had been exposed to private land ownership in other parts of Kenya. They believed that owning land was advantageous both as an economic investment and also as a sign of modernity (Lesorogol 2008a). In some cases, when group ranches were adjudicated a few individuals made claims and some received parcels often without the knowledge of other community members. In Siambu, 38 individuals made claims to land, but the

registration of these claims was discovered by other community members leading to a six year long dispute between the claimants and the elders who opposed them. I recount the history of this dispute and its outcome in detail elsewhere (Lesorogol 2008a), but it is important to note that the long struggle over land adjudication in Siambu ultimately ended in a compromise in which all 240 registered households received parcels of land about 23 acres each. These parcels are located primarily on the flat plains of Siambu that have the most agricultural potential and are also highly desirable grazing lands. An adjacent area, Porokwai, was declared a group ranch. Porokwai extends north from Siambu over an escarpment and is much lower potential for cultivation. It also borders land inhabited by another ethnic group, the Pokot, with whom Samburu have had conflict over the last five years. All adult males are members of the group ranch and, although there has been discussion of the possibility of subdividing it into individual parcels, no concrete actions have been taken to initiate this process.

By 1990, Siambu households were issued titles to their parcels, giving them *de jure* rights over their land and signalling a fundamental shift from a system in which land was managed communally with a council of elders making decisions about land access, to one in which individuals had much more autonomy over land use. The next section discusses how this change has altered ideas about property rights as well as land use rules and practices.

The information discussed in the rest of the paper derives especially from in-depth interviews conducted during the summers of 2008, 2009, and 2010 in Siambu. As part of my larger research project on the implications of changing property rights, these interviews were held with a cross-section of community members varying in age, gender, wealth, income, education, etc. The interviews focused on land use practices, beliefs about land use rules and how these had changed over time, and cases of disputes over land in Siambu. I also had numerous informal discussions with many community members on these and other topics and I observed daily social interaction among community members in the course of the research.

### **3. Property Rights**

Current theories of property rights generally acknowledge that such rights are plural and they are often referred to as 'bundles of rights' in which different groups and individuals may have differentiated claims over a resource (Meinzen-Dick et al. 1997). For example, while one party may have use rights over a resource, they may not be in a position to alienate (sell or rent out) that resource beyond the household unit. Another party (or no party) may hold those rights. The bundle of rights, then, often includes aspects such as use, transfer (through inheritance or other gift), or the right to alienate the resource (sale). In common pool resource (CPR) situations, these rights are important elements of the rules that determine access to and use of the shared resource.

In the Samburu grazing CPR it is not difficult to identify the bundles of rights. All members of the community (in a general sense this would include all ethnic Samburu, although section and clan affiliations might be considered for access to local pastures and water) have access to grazing land and flowing water in their locality. Access to hand dug wells (or otherwise improved water sources) is controlled by those who dug

the wells, and those interested in using them are expected to seek permission in order to do so. Local councils of elders-- in which all adult men are members-- jointly decide when to restrict grazing in certain areas. The most common restriction is on dry season grazing areas such as forests in which grazing is generally prohibited during the rainy season in order to allow grass and trees to grow in the forests for use during the dry season.

While grazing land is managed jointly, livestock are owned by households, and, within the household there are particular rights allocated to different members. Male heads of households have the most expansive rights to livestock as they are able to make decisions about transfers and sales of livestock with little consultation with other household members. While it is considered desirable for men to consult their wives before making such decisions, they are not bound to do so (i.e. there are no obvious social sanctions for not doing so). Men are also primarily responsible for herding decisions both on a daily basis as well as planning and executing seasonal movements of livestock. Again, while men may consult other household members in these matters, and also other households with whom they share herding responsibilities, the final decision rests with them.

Women have rights over their allocated herd (the livestock they receive from their husbands at marriage which they continue to manage throughout their lives). Milking is women's domain and they have authority over the allocation of milk within the household. Women also own the hides and skins of dead animals and can use, transfer, or sell these independently. They also have some discretion over the distribution of meat from a slaughtered animal, although there are numerous rules regarding meat distribution that they are expected to follow. Boys receive livestock from both their fathers and mothers while they are growing up. These animals form the basis of their future herd and once they marry they will assume rights to use, transfer, and alienate these livestock. Girls may also receive some livestock from their parents, but their rights are usually limited to use rights while they are living in their parents' household. Upon marriage, girls normally move to their husband's settlement and receive their allocated herd. The livestock they "owned" while growing up revert to their mother's allocated herd.

This brief example illustrates how the bundle of property rights over land and livestock works among Samburu when land is managed as a CPR. Following privatization of land, the question arises how property rights are allocated. Land registration and titling confers *de jure* rights over land to the holder of the title deed. In Siambu, as in most cases of land titling in Africa, male heads of households are the title holders. In a few cases, widows were named title holders, although in this situation women are perceived as holding the land on behalf of their minor sons who will eventually assume ownership. This parallels, to a certain degree, the practice with livestock in which mothers care for their sons' future herds in her allocated herd.

While possession of title establishes legal rights over land including the ability to transfer, rent, and sell land, these rights are limited to some extent because of partial information regarding the laws governing these actions. For example, although there have been at least sixteen cases of death of land owners in Siambu since titling

occurred, my research reveals that titles have not been officially transferred to the heirs in any of these cases (Lesorogol 2010b). This is primarily due to lack of understanding of the procedures involved in transferring title and, in a few cases where procedures are known (at least, to some extent), due to lack of funds to effect the change. Another example involves land sales. In Kenya, land sales must be approved by the district Land Control Board in order to be legally binding. However, a comparison of land sales reported by community members in Siambu does not correspond precisely with the records of the Samburu Land Control Board (Lesorogol 2008a). This indicates that a number of sales have occurred outside this legal channel and do not have legal standing. Furthermore, the Land Control Board stopped meeting sometime in 2002 and did not resume until around 2008. Thus, sales that took place in this interval also lack legal backing.

A third example of the gaps in understanding regarding property rights also involves the sale of land. In response to complaints that men were selling land without regard to the wellbeing of other members of their families, the government instituted a procedure in which consent to land sales from wives must be presented to the Land Control Board before sales are approved. This provision aims to safeguard women (and presumably their children) from dispossession, but many women are not aware of this rule. Examination of the minutes of the Land Control Board from 1990-2001 reveals that the provision was often neglected during the deliberations over land sales. It may be the case that these formalities often make little difference in peoples' everyday lives. However, these examples demonstrate that conferral of a set of rights may only be as effective as the understanding of those rights. In some cases, such as the sale of land, ignorance of rights and procedures may have important negative welfare effects as in the cases when men sell land without the consent of their family, leaving them, potentially, landless. Also, sales that occur outside the legal framework may be more vulnerable to future disputes and challenges. Without legal standing, these transactions will likely not be guaranteed by the state in such cases.

Many scholars have argued that systems of registration and titling disadvantage those who are not given title, especially women who often lose rights of access and use that they had in the pre-existing system (Gray and Kevane 1999, LastarriaCornhiel 1997, Meinzen-Dick and Mwangi 2008). At the same time, some of this literature investigates the ways in which women assert their rights and claims even in systems that disadvantage them. Gray and Kevane (1999) provide several examples of ways in which women obtain access to land rights even in formal systems that discriminate against them. They note that in some African countries, women are able to purchase land in the market in their own names or through cooperative land buying groups with other women. Another route is to use their relationships with male kin to establish rights of access and use such as serving as custodians of land for their sons. In a few societies, widows without male heirs enter into woman-woman marriages in order to produce new male heirs for the land. These examples demonstrate that formal, *de jure*, rights to land are not the whole story. Rather, formal institutions of property rights interact with informal rules and norms leading to varied outcomes. The shape of outcomes is often contingent on the ability of different social actors to influence events

and to use their bargaining power within the family, community, and *vis- a-vis* the state (Agarwal 2001).

In the case of land in Siambu, we can see some of these mechanisms at work. Not only are formal rights limited and shaped by elements of information, but informal or *de facto* rights to land are also evident. The most basic of these is access to land for household livelihood activities such as livestock grazing and crop cultivation. I will return to grazing practices and rights below, but in terms of access to land for cultivation, there does appear to be a fairly consistent pattern in Siambu in which women are given use rights to cultivate land for home consumption as well as crops for sale. Out of their 23 acre parcels, most households in Siambu only cultivate about one acre (8 acres is the largest farm size recorded, and about one-third of households do not participate in cultivation on a regular basis according to my survey data—Lesorogol 2008b). Unlike societies in which farming is the norm and where the gendered division of labor and rights over fields and produce are well-established, in Siambu growing crops is still a fairly recent activity. The average number of years engaged in cultivation in Siambu is nine. Accordingly, gender roles in farming are less fixed in this community. However, the common pattern is that both men and women are involved in cultivation with men generally carrying out tasks like clearing, fencing, and helping with planting and harvesting. Women tend to focus on planting, weeding, harvesting, storage and processing.

In some households, men and women work on the same field. In other households (and this is probably more common in polygynous households) men allocate each wife a field of her own. This practice seems to parallel in some ways the allocation of livestock herds to each wife, also known as the house-property complex (Hakansson 1989, Oboler 1994). Some households sell crops and both women and men are involved in this activity, although men may be somewhat more likely to market crops, especially if it involves traveling to the district headquarters 20 kilometers away. However, the emergence in the last few years of two local weekly markets provides new outlets for crop sales that may be more accessible to women. Women's use rights to land for cultivation seem well established and common in Siambu. In addition, adult sons (and even some unmarried daughters) that do not own land and continue to reside with their father, may also be allocated land for cultivation, particularly if they are married and need to provide food for their family. Thus, even though formal rights to land rest with the male head of household, women and adult children (especially sons) are generally able to access and use land for cultivation. It is still not entirely clear precisely how such allocation decisions are made and to what extent intra-household bargaining occurs over allocations and gendered roles in farming. Since land for farming is relatively abundant (given small farm sizes relative to total parcel size), there may not be need for extensive bargaining at least in terms of gaining access to land. It is probably more likely that bargaining takes place regarding labor allocation among competing tasks such as farming, livestock management, household work, and other income earning activities like trade. In addition, about a third of households in Siambu rent out all or part of their parcel to commercial wheat/barley farmers who work on a contract basis for Kenya Breweries and use highly mechanized farming processes. How decisions are



made regarding land rental is another area for further investigation of intra-household decision-making and the distribution of benefits.

Gaining access to land for farming and herding appears relatively unproblematic while the household head is alive. More unclear and contentious is the disposition of land when he dies. Samburu people had no rule for inheriting land prior to the adjudication of land and investigation of practices of inheritance reveals that even twenty years hence, there is no single rule governing the practice. I have written about this issue extensively elsewhere (Lesorogol 2010b) so I will just highlight the main finding of that study here. Three different practices of land inheritance are currently found in Siambu—inheritance by the oldest son, inheritance by the youngest son, and inheritance by all sons. Inheritance by the oldest son is the most common and takes two forms. The first is a direct transfer of the father's land to the oldest son while the second is an indirect transfer in which the mother (widow) holds the land in trust for her minor sons who will eventually inherit. This practice has parallels with the rules for livestock inheritance that stipulate that oldest sons inherit their fathers' remaining livestock at his death. In addition, oldest sons are expected to assume many of the father's roles as head of the family, and he is expected to use the livestock inherited in ways that promote the welfare of his younger siblings (e.g. financing their marriages, initiations, and education).

While oldest son inheriting is common, there is also a case to be made for the youngest sons inheriting. The reasoning is that many younger sons did not receive land during the adjudication process because they were minors. Thus, the argument goes, they are now entitled to receive their deceased fathers' land since their older brothers have their own parcels. While this argument is made by younger men, in practice few younger(est) sons have inherited and most people surveyed did not rank this practice very highly. Finally, some people argue in favor of all sons inheriting equally. Again, the rationale for this disposition is one of equity—that everyone should share the resources. This argument is sometimes made by more educated individuals who claim that Kenyan law supports equal inheritance. In fact, Samburu is among the districts that are currently exempted from national inheritance laws that do provide for equitable inheritance. In these districts, mostly in the pastoral areas of the country, customary law is observed regarding inheritance of land and livestock (Kenya, Republic of: Law of Succession). The inheritance example demonstrates how new rules regarding land inheritance are still in flux. There are numerous disputes reported around inheritance issues, also. These seem to hinge particularly on the role of the oldest son in land inheritance and his relationship to his brothers in this process.

I have shown that rights to access land for use and inheritance within the household are emerging in Siambu post-privatization and that these diverge in numerous ways from a simple view of individual freehold title. What about access to resources found on land that has in the past been part of the commons such as firewood and water? In this case, there is a trend toward the commodification of some resources including firewood and timber. While collection of firewood in the past was open to all community members, since privatization this is no longer the case. Instead, women who want to collect firewood in another person's farm need to seek permission to do so. In some cases,

they may be charged for firewood. In the case of cutting down trees for timber, an activity that is on the increase in recent years, there is even tighter control. Generally speaking, land owners will not allow other people to cut down trees on their land for this (or any other) purpose. These new restrictions place increased burdens on women whose plots are not forested. They may need to walk long distances to collect firewood, including going into the government forest or into the deep ravines along streams where access is more open.

Water remains a more widely available resource. Land owners I spoke to agreed that people have rights to collect water from streams or other open, unimproved sources. As is the case under common management, water sources that have been improved (like hand dug wells) are restricted for use by those who put in the effort to improve them. Siambu also has two public dams that are open for use by all community members as well as several streams that run through the area. Thus, access to water does not appear, at this stage, to be a major problem.

To end this section, I will discuss a rule that signals the transformation of norms regarding land rights following privatization: the rule against livestock eating crops in fields. Everyone I spoke to agreed that there was a rule against livestock eating crops and that the landowner was entitled to demand recompense for crop damage caused by livestock. Even in cases where land was not fenced (i.e. all the land under wheat and barley cultivation and some maize fields as well) the onus for preventing livestock consuming crops lay with the herder, not the land owner. Informants reported that there was room to negotiate the extent of fines leveled for this offense. The worst case scenario was if the land owner decided to take the case to the area chief who would then call in the agricultural officer to assess the crop damage and assign a fine. In such cases, the fines were reported to be extremely high. A landowner taking a case to this level, however, appeared to be the exception and not the rule. Instead, in most cases of crop damage, the land owner and livestock owner negotiate a fine that is mutually agreeable. In some cases, a land owner may not even fine the herder, but will forgive the trespass with a warning not to repeat it. When asked when this rule came into effect, many people were unsure but it appears to have emerged in the years following privatization.

This rule is particularly notable because it represents a complete reversal of earlier norms regarding the relationship of livestock to crops. Before land was divided, in the 1970s and '80s, a few people in Siambu had begun growing crops around their settlements. These were primarily men who had seen cultivation when they traveled outside Samburu district either through employment or service in the army. When they returned home, they began to experiment with farming. These experiments were not viewed positively by other community members. Indeed, one informant discussed in bitter detail how members of the community had organized to destroy his fields by deliberately driving their cattle into his maize and letting them eat and trample it (Lesorogol 2008a). This instance of sanctioning was a strong signal that livestock took priority over farming and those who wanted to cultivate did so at their peril. It was a case of collective punishment of an individual who was diverging from norms of land management that prevailed at that time, in the early 1980s. In stark contrast, today, if

livestock enter a maize field and eat or trample the crops, the herder is subject to significant fines, and these are seen as legitimate by virtually all community members. The collective power of the community now protects individual land rights rather than asserting the rights of herders to access pasture. At least, that's how it appears from this rule. In the next section, I discuss how grazing rights and practices post-privatization illustrate the continued ambiguities and tensions between individual and collective rights over land in Siambu.

#### **4. Grazing rights and practices**

Early in my research on privatization of land in Siambu I was surprised by the vigor with which almost everyone I spoke with lauded private land ownership. Given the long conflict that preceded land division, I had expected more people to be skeptical regarding the benefits of privatization, especially people who had opposed it. Instead, I found virtually uniform praise for private land ownership and a strong association of it with modernity, development, and autonomy (Lesorogol 2008b). Over and over people emphasized that since they own their land they can make decisions on land use without recourse to the elders. Indeed, this ability of individuals to decide what to do on their parcels is strongly supported by just about everyone in Siambu, and having this autonomy of decision making is often associated with making decisions that have positive developmental impact (i.e. farming, building modern houses). Individual rights to fence, rent, or sell land are widely recognized in the community. To listen to these discussions, one would believe that any collective element of land management had disappeared following privatization. Yet, both practices and emergent norms of grazing suggest otherwise.

For example, a number of informants explained that they did not want anyone else to graze their livestock on their private parcel. Indeed, these individuals expressed the desire to fence their parcels (not just their maize fields) but cited monetary constraints as the reason they were not able to do so. Some of them own relatively few livestock and are able to meet their grazing needs without leaving their own land. Even in these cases, though, it became clear that it was very difficult to completely prohibit others from grazing livestock on their land. They explained the strategies that people used, as in the following situation, related by a woman in her thirties who wanted to prohibit grazing in her parcel:

They [herders] come and look for grass and say 'please, my cow is sick, give me a place'. And you let them eat that day. And then the next day and the next—and you see you have been pushed.

Here she is explaining how difficult it is to refuse grazing access, especially for needy livestock such as those that are sick or weak or in cases of close relatives and friends who are seeking pasture. In such cases, the land owner will negotiate with the herder. As this woman said, she would only allow them to graze for a day or two, but not on a continuous basis.

While households with few livestock often prefer to limit or even prohibit grazing by others on their land, people who own more livestock are in a perpetual search for pasture. Their twenty-three acre parcels are insufficient to support their livestock year round. Thus, in order for them to survive, they must access additional pasture. In Siambu, there are a number of options. They can take their livestock to the government forest where access to grazing is for the most part unrestricted (since the forest department is very weak in enforcing rules of forest use). Alternatively, they can take their livestock over the escarpment onto Porokwai and surrounding areas, or to neighboring group ranches. Each of these options is utilized by members of the Siambu community. However, each of them entails significant costs in terms of herding labor, monitoring, and negotiating access. Porokwai is quite risky due to neighboring ethnic groups that often steal Samburu livestock, and herding is more difficult there as well as in the forest due to the terrain. Accessing grazing in neighboring group ranches requires negotiation and mature herders who can manage cattle camps away from the home settlement. Therefore, livestock owners with large herds would prefer to have access to grazing land on the plains in Siambu.

There is an emerging grazing access rule that reflects this situation and the varied incentives facing poorer and richer members of the community. This rule stipulates that if land owners do not allow access to their land for grazing, then their livestock will not be allowed to graze on other peoples' land. The implication of this rule is that grazing access should be reciprocal—in order to get land for grazing, one must also provide land for grazing. The inverse is also implied—if one prohibits grazing on his land, his livestock will be prohibited from all the other private land. The rule appears to be oriented toward enabling more access to grazing on the private land in Siambu, something that wealthier livestock owners support.

Unlike the rule about livestock not eating crops, discussed above, this rule is more emergent and contested. In surveys conducted for this study (n=30), about one half of households agreed that this was in fact a rule, while others claimed that while this had been discussed it had not been formally agreed upon, and still others denied that there was such a rule. I have discussed elsewhere the probable origins of this incipient rule which center around objections to some individuals who leased out their land for cultivation and then proceeded to herd their own livestock on other peoples' land (Lesorogol 2010a). Even though there is not a full consensus on this reciprocal grazing access rule, almost everyone surveyed was familiar with a few individuals to whom it had been applied. These are individuals who have prohibited others from grazing on their land and in turn been refused access to grazing themselves. The fact that such cases exist does suggest that the rule is in formative stages. It may have been given further impetus during the severe drought of 2008-09 when many people had to move their livestock off the plains of Siambu to access grazing. At this time, they made significant use of Porokwai and other areas on the escarpment as well as moving their livestock to group ranches some distance away that had more pasture. The experience of serious drought seemed to bring to the fore the way that livestock production in this environment relies on reciprocity and the risks attendant on losing such reciprocal access to grazing resources.

The possibility of this type of reciprocal grazing access rule in the midst of a system of individually owned parcels highlights the tensions that exist between individual rights over land use and collective impulses that remain strong in certain respects. There are challenges to enforcing such a rule should it become consolidated. If an individual does prohibit grazing on his land and then seeks to graze his livestock on others' land, he can only be truly prohibited from doing so if all land owners act in a coordinated fashion to deny him access. If one or two individuals decide to give him access, the enforcement of the rule will break down. Yet, individual rights to make land use decisions are also recognized in the community making it difficult to justify sanctioning those individuals who allowed the recalcitrant member access to their land for grazing.

## 5. Moral debates

The tensions in Siambu regarding grazing access bring to the fore the distinction between individual and collective that are rooted in Samburu culture. Viewed against this background, it may be easier to understand both why such tensions exist and also how they are able to persist over time without resolution. On the one hand, Samburu culture has strong collective elements. As noted above, land has historically been managed collectively by decentralized, inclusive (for men) councils of elders with broad authority to make and enforce decisions through consensus procedures. Furthermore, broad social networks have provided the safety net in this uncertain environment. These networks are characterized by strong corporate organization in terms of male age-sets as well as lineage kinship structures. Members of age-sets spend years, especially as warriors, building strong ties among themselves and have a marked ethic of sharing. Similarly, lineage groups tend to cluster geographically, live together in large settlements, and manage livestock and families in cooperation. Even the most highly valued individual trait, *nkanyit* (a sense of respect and respectability), centers around norms of generosity, sharing and selflessness. In all these aspects, Samburu culture appears highly collectivist.

On the other hand, Samburu culture also has a distinctively individualist orientation, particularly among men. While men are members of lineages, age-sets, and communities of elders, their primary goal in life is (arguably) growing their herd and family. As noted above, livestock are not owned or managed communally, but rather individual households (and especially their male heads) have considerable autonomy regarding livestock management decisions. Men with large herds and families are considered successful and afforded respect (also highly sought after). Those who do not have large herds are often blamed for their poverty if it can be attributed to their individual failings such as being a poor livestock manager, lazy, or consuming too much of one's livestock (being greedy, the opposite of *nkanyit*). Of course, men often cooperate with others in livestock management, but they choose to do so—they are not required to do so (with the possible exception of one's father).

We can observe how this distinction impacts grazing decisions on privatized land in Siambu. Individual rights to land appear to parallel in some form individual rights over livestock albeit in a new domain (and with different permutations of claims by household members, as discussed above). These rights to land are generally accepted and respected (as they are with livestock). At the same time, the moral imperative to allow

livestock access to grazing is difficult to eschew especially during times of duress such as drought or when animals are weak and sick. Similarly, while most people agree that individuals have the right to fence their land, and many claim they would do so if they could afford it, some see the prospect of widespread fencing as the death knell for pastoralism and lament this eventuality. Others, discussing the same prospect, are rather matter of fact in arguing that people will just have to sell their livestock and live with fewer. Meanwhile, while fencing remains quite limited, people continue to graze their livestock on other peoples' land either by negotiating access or simply by sneaking and getting away with it.

The individual/collective tension reflected in land use in Siambu does differ from the conventional situation in an important way. Traditionally, two distinct resources are involved—land and livestock—and each is associated primarily with one side of this duality—land/collective, livestock/individual. In the case of Siambu, the distinction is embodied in one resource, land, which is both individual and collective. Thus, property rights in Siambu are not only distinctive in terms of *de jure* and *de facto* particularities, but they also instantiate this cultural tension between individual and the whole that pervades Samburu society. This may help account for why the tensions and ambiguities regarding land rights and uses are not easily resolved but rather continue to be tolerated and accommodated.

## **6. Conclusion**

This investigation demonstrates that property rights to land in Siambu are complex and remain uncertain in a number of ways. While male heads of households have considerable individual rights to land conferred by titling, other household members also have claims to land including use rights and inheritance rights. Beyond the household, other community members continue to have some access to private land owned by other people, although the extent and nature of these claims is contested and in flux. Thus, elements of private and common rights co-exist on the same parcels of land, leading to tension and ambiguity. These conflicts seem to tap into a deeper tension between individual and collective aspects of Samburuculture, which may help explain why they are not resolved. Instead, in the face of the ambiguities and conflicting views over land use rules and rights, people seem to resort to smaller scales of association. That is, they make decisions about how to use their land and graze their animals primarily in the context of their close neighbors, rather than in the larger context of the community.

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