Maasai women's land rights in Kenya:

Insights from African feminisms

October 2023

A thesis submitted to McGill University in partial fulfillment of the requirements of the degree of Master of Arts.

Abstract

The present thesis examines the normative questions raised by changes in land rights and their effects on gender relations in Kenya. Specifically, it employs African feminist perspectives to comprehend the discussions surrounding the formalization of land rights and the resulting consequences on gender inequalities within the land tenure systems of Maasai pastoralist communities. While it builds upon the extensive empirical literature on women's land rights in Kenya and pastoralist communities, the analysis primarily focuses on normative aspects, acknowledging the necessity to revisit and explore the fundamental moral dilemmas intensified by these processes. Primarily, through this normative analysis, I will argue that land laws in Kenya are disconnected from the realities of Maasai pastoralist women. These legal structures not only perpetuate colonial legacies but also uphold privatization as the sole valid model of property. Moreover, the integration of women within this framework follows an ineffective paradigm that disregards cultural considerations in favor of liberal ideals of human rights. Aligned with Njoki Wane's perspective on Indigenous knowledge systems, I argue that through promoting women's Indigenous knowledge, it becomes possible to address the tension between 'progressive' endeavors to advance women's land rights and Indigenous ways of life and land management that may not align with a human rights-based approach.

Résumé

La présente thèse examine les questions normatives soulevées par les changements dans les droits fonciers et leurs effets sur les relations de genre au Kenya. Plus précisément, elle utilise les perspectives féministes africaines pour comprendre les discussions entourant la formalisation des droits fonciers et les conséquences qui en découlent sur les inégalités de genre au sein des systèmes de tenure foncière des communautés pastorales Maasaï. Bien qu'elle s'appuie sur une vaste littérature empirique sur les droits fonciers des femmes au Kenya et dans les communautés pastorales, cette analyse se concentre principalement sur les aspects normatifs, reconnaissant la nécessité de revisiter et d'explorer les dilemmes moraux fondamentaux intensifiés par ces processus. Principalement, à travers cette analyse normative, je soutiendrai que les lois foncières au Kenya sont déconnectées des réalités des femmes pastorales Maasaï. Ces structures légales perpétuent non seulement les héritages coloniaux, mais elles soutiennent également la privatisation comme le seul modèle valide. De plus, l'intégration des femmes dans ce cadre suit un paradigme inefficace qui néglige les considérations culturelles au profit des idéaux libéraux des droits humains. En accord avec la perspective de Njoki Wane sur les systèmes de connaissances autochtones, je défendrai également que la promotion des connaissances autochtones des femmes permet de résoudre la tension entre les efforts "progressistes" visant à promouvoir les droits fonciers des femmes et les modes de vie autochtones et la gestion des terres qui ne sont peut-être pas conformes à une approche fondée sur les droits humains.

Acknowledgements

I would like to begin by expressing my gratitude to my supervisor, Professor Megan Bradley, for her guidance and invaluable advice. It is your support that has given shape to this academic project, turning my ideas into a reality. Moreover, I am deeply grateful to Professor Catherine Lu for her supervision during the final stages of my thesis writing. Your availability and insightful feedback revitalized my confidence in my work.

This project's origins and structure are deeply indebted to the various professors to whom I turned to receive their precious insights and scientific knowledge. I extend my appreciation to Kariuki Kirigia for our discussions that played a pivotal role in shaping my research topic. Professor Khalid Medani, not only for acting as an examiner but also for your invaluable feedback on my thesis proposal, I am sincerely thankful. Professors Jon Unruh and Michael Brown, for their critical interventions during my seminar paper, where I began to refine my ideas. Lastly, a big thank you to ILEPA in Narok County, Kenya for welcoming me (even virtually) during my internship that played a pivotal role in inspiring this thesis.

To my friends at the university and the GRAPHOS writing support group – your emotional and psychological support has been priceless. And my friends and colleagues, you always had the right words to boost my confidence. Thanks to all of you, I felt at home, far from my home, and this contributed significantly to my motivation throughout the writing process. A special mention goes to my dear friend, Ouarda Zirar – you were the best accountability buddy one could ask for. Thank you for our calls, your feedback, and your support during the thesis.

Finally, I extend my heartfelt thanks to my mother, Safia Mediouni, and my sister, Farah Mediouni. I cannot express enough how grateful I am for everything you have done for me throughout my academic journey. You are the driving force behind these achievements.

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I. Introduction

Why do legal reforms and institutional frameworks in Kenya fail to secure land rights or claims for women from pastoral Maasai communities? My method is to answer this question using core insights from African feminist thought, especially in debates around the formalization of land rights and implications for gender inequalities in tenure systems within pastoral Maasai communities in Kenya.

Within the scope of this thesis, I explore the ways in which legal and institutional frameworks in Kenya fail to give women from pastoral Maasai communities access to land. By bringing African feminist theories to bear on this issue, the paper aims to probe the ongoing discourses and visions around land policies and analyze their implications in terms of gender relations in the Maasai communities in Kenya. African feminisms aim to amplify the diverse voices of African women by centring their views and experiences. This is a broad body of literature that explores various moral concerns in Africa, including for instance the political involvement of women or the impact of colonialism on the division of gender roles in society (Mekgwe, 2008). However, it is uncommon to come across normative analyses that explore the moral implications of land laws, which is where my contribution lies. This approach will firstly, unveil the underlying power dynamics entrenched within land laws in Kenya and secondly, show the importance of respecting communities' traditions and culture when implementing land policies and integrating women in land formalization processes (Yacob-Haliso & Falola, 2021).

I argue that women's land rights are jeopardized by laws that are disconnected from the realities of Maasai pastoralist communities. Through the insights provided by African feminists, I recognize that while culture can pose challenges to women's rights, its inherent fluidity enables it to adapt. However, in contrast, legal and institutional structures freeze women in subordinate

gender roles falsely associated with their culture. Indeed, these structures often perpetuate colonial legacies, prioritize privatization as the sole valid model of property, and integrate women using an inefficient paradigm that disregards culture in favor of human rights-based ideals. It is possible to reconcile culture and human rights. It is important to mention here that the thesis aligns with Alan Patten's non-essentialist view of culture (Patten, 2014). Culture is seen as a set of common traits shared by groups of people, transmitted and perpetuated through socialization (Patten 2014, 39). But I also acknowledge that culture is an integral part of individuals' identities, and therefore, in a just society, cultural minorities should be recognized and accommodated (Patten 2014, 10). I will also demonstrate that by recognizing and respecting Indigenous women's knowledge, including as it relates to land use and governance, it is possible to integrate them into tenure systems while respecting and sustaining Indigenous traditions and ways of life. The concept of Indigenous knowledge in African feminist theory and especially, as put forward by Njoki Wane, can help critique and ultimately decolonize land laws that discriminate against Maasai women in Kenya. The government needs to take Indigenous knowledge into account when thinking about these policies and not just impose the imported moral values of gender mainstreaming without really considering their ways of life, their knowledge, and their specific needs. Furthermore, by promoting this knowledge as an added benefit to the communities, the government can justify the inclusion of women in land matters while also respecting community customs.

The topic of the thesis arises from the observation of two problems affecting local populations' land access and land use in Kenya: first, exceptional periods of drought associated with the effects of climate change are exacerbating pressure on land use patterns (IPCC 2019, Mutuku 2023); and second, the increasing dispossession of populations from ancestral lands (Onyango & Elliott 2022). These issues are now the subject of numerous initiatives at national and

international levels, such as the development of new laws, policies and adaptation schemes. However, these measures remain too superficial and even tend to favor privileged groups, further marginalizing Indigenous peoples, and particularly Indigenous women (Olawuyi, 2021). Indeed, although this thesis does not focus explicitly on climate issues, the effects of climate change can have a significant impact on land rights. Recent calls by the international community to strengthen the land rights of pastoralist communities and women in particular to cope with the extreme drought in Kenya show how crucial it is to address this subject (EU Commission 2022, RFI 2022).

With regard to Indigenous pastoralists' land rights, enjoyment of these rights is undercut by a long history of land dispossession (Riamit & Kirigia 2021, 150). Many have examined the different laws governing this issue in Kenya since the colonial period and have regretted the marginalization and exploitation of Indigenous communities[1] (Berry 1993, Boone 2019, Galaty 2016, Hughes 2006, Mwangi 2007, Onyango & Elliott 2022, Hassan et al. 2022, Riamit & Kirigia 2021). The various failed legislative attempts to reinforce land rights in Kenya have led to much debate and disputes that should not be overlooked. Against this background, a growing number of initiatives, such as the Community Land Act of 2016, are being put in place in Kenya to help people claim their land rights. Some scholars and advocates suggest that these initiatives need to be strengthened, particularly among Indigenous peoples who are even more disadvantaged in such processes, because they often lack financial means, access to education or social capital, among other reasons (Riamit & Kirigia, 2021). The Community Land Act of 2016 is related to the Kenyan

[1] Kenya has ratified the UNDRIP but lacks a specific constitutional definition of Indigenous Peoples (Makoloo 2005, 8). As a result, certain groups like pastoral communities, including the Maasai, have identified themselves as such based on their lifestyles. However, Kenya has a historical tendency to marginalize and overlook the rights of these populations, primarily due to concerns about land and resources (Makoloo 2005, 10).

land policy of 2010 and is part of the international movement for community land rights, given its aim of promoting Indigenous peoples' traditions and ways of life (Hassan et al. 2022, Alden Wily 2018, Zakout & White 2019). By encouraging communities to come together and define themselves, to claim their community lands and land rights, the CLA supports recognition of the communities and their practices, human rights, women's rights and land rights after a systematic past of land dispossession (NAMATI & FAO, 2020). However, recent research suggests that in practice, this new land law does not really address the problems encountered by pastoralist communities in Kenya and in fact tends to encourage further dispossession (Boone 2019, Hassan et al. 2022, Alden Wily 2018). Of particular interest for the thesis, the Community Land Act seems to be detached from pastoralist practices, in that it tends to favor sedentary agriculture, and further excludes women because it imposes values of inclusion and human rights in ways that are disconnected from the realities of pastoralist groups, notably by not empowering the communities or respecting their traditions (Hassan et al. 2022, Alden Wily 2018). The CLA also overlooks the ways in which these populations benefit from an essential knowledge of the land and the ecosystem (Esiobu in Yacob-Haliso & Falola 2021, Zakout & White 2019). Although I focus on Kenyan land laws in general, the case of the CLA will be mobilized as an example to enrich my reflection on the case study.

These are the paradoxes that will be analyzed in the thesis, focusing on the Maasai, a semi-nomadic and pastoralist people who have retained many of their traditions (Riamit & Kirigia 2021, ILEPA 2021). Considering the roles of women in land tenure relations, including in the case of the Maasai, is essential because they are those who work the land the most, they are the main actors responsible for food security throughout the world; and at the level of local populations, they are leaders in sustainable practices (Harcourt 2017, Jandreau & Berkes 2016, Yacob-Haliso & Falola

2021). However, gendered power dynamics mean that women face multiple inequalities and forms of discrimination, such as lack of access to education, health care, poverty, and access to ancestral land (Davison, 2018). In fact, it is important to consider the lack of land ownership and land rights of women, notably Indigenous women. In many cultures, including the Maasai, women do not inherit the land they work and cultivate (ILEPA 2021, Hassan et al. 2022). However, research suggests that customary laws are not the main reason for their exclusion. As it will be demonstrated later in the thesis, women and Indigenous women especially suffer mainly from capitalist methods of land privatization, their limited access to credit, and lack of recognition of their work and ways of living (Harcourt 2017, Olawuyi 2021, Hassan et al., 2022).

To develop my argument, I will proceed as follows: firstly, I will review the existing empirical literature on land rights and gender inequalities in Kenya, focusing on the specific impacts on pastoralists communities. Then, I will analyze the field of African feminisms, highlighting their key contributions to the discussion. These insights will guide the empirical investigation, which will be the third step, where I will examine the marginalization of pastoralist Maasai communities through land laws, then explore its effect on the implementation of the Community Land Act of 2016 in Kenya. Lastly, I will apply the concept of Indigenous knowledge, as highlighted by African feminists, to the case study of the Maasai in Kenya. All of this will ultimately allow me to answer my research question while also reflecting on new paths for research.

II. Methodology

This thesis will use methods in normative political theory. African feminism can be considered as a normative political theory because it uses "prescriptive or evaluative

statements (…) as sets of propositions that must be internally consistent and must be defended against opposing views" (Bauböck in Della & Keating 2008, 41). When there is an intention to bring normative theory into conversation with empirical research, most theorists will illustrate their normative arguments with a particular case—in this thesis, the case is that of the formalization of land rights and the resulting consequences on gender inequalities within the land tenure systems of Maasai pastoralist communities in Kenya (Baübock in Della & Keating, 2008). I selected this case because the issue of land governance has been particularly important since colonial times in Kenya, and it is especially pronounced in the Maasai rangelands in the Southern part of the country (Galaty 2016, Riamit & Kirigia 2021). Furthermore, the recent Community Land Act (that will be used as an example supporting my case study) is promoted as a means to overcome the pitfalls of previous laws, but it is crucial to examine whether it addresses the challenges discussed regarding the dispossession of Maasai's lands. As mentioned earlier in the introduction, the issue of gender inequalities is particularly important given the central role of women in agricultural work. However, gender dynamics are all too often ignored in discussions about land rights and land tenure reforms (Archambault & Zoomers, 2015). That is why I chose to focus on the nuanced effects of land formalization on women within Maasai communities in Kenya. But women and girls across Africa, Asia, and Latin America suffer from their exclusion from land allocations (United Nations, 2023). In light of African feminist thought being normative and deeply rooted in historicity, it is conceivable that my examination can transcend beyond the Kenyan context, thereby enabling an analysis of power dynamics entrenched within specific land tenure systems.

I will in particular engage the work of Njoki Wane, applying her work to better understand the implications of the formalization of land rights on gender relations within pastoral Maasai

communities in Kenya. In developing my discussion of the Maasai, I will draw extensively on published literature on this population, and land rights regimes in Kenya more broadly.

A multidisciplinary approach will be emphasized in this work, since African feminist thought complements research in the politics of land rights, in political science, geography, anthropology and other disciplines.

This thesis will also explore the concept of Indigenous knowledge, which will be useful not only to challenge Western hegemonic claims to knowledge that so often dominates discussions of land rights but may also generate new normative insights. By taking seriously the concept of Indigenous knowledge, the thesis aims to take a decolonial approach to understanding gender and land rights. It will consider how to value women's knowledge while respecting their traditions and community, in that the land laws may be made more sensitive towards this knowledge and its utility.

The consideration of positionality or reflexivity is essential to avoid replicating the power dynamics I aim to examine. Positionality refers to the acknowledgement of the researcher's subjective perspectives and biases (Amoureux & Steele 2016, Massoud 2022). Individuals' subjectivity can influence their assumptions and approach to research. Reflecting on this can help bring awareness to the unequal relationships between the researcher and the subjects of study (Amoureux & Steele 2016, Massoud 2022). In her work on decolonization, Njoki Wane strongly encourages writers to focus on their positionality (Wane et al., 2011). She even emphasizes that the very term 'research' is intricately tied to European imperialism and colonialism (Wane et al. 2011). She advocates for challenging and subverting colonial modes of thinking, while also encouraging critical examination of cultural practices and knowledge through open dialogue

(Wane et al. 2011). The issue of positionality in relation to Indigenous knowledge is of great significance to me, as I have a mixed heritage and possess cultural knowledge specific to my Turkish and Algerian family origins. However, I am fully aware of the predominantly Western education I have received, through formal education and through growing up in a Western country. Despite being distanced from the realities of Maasai women in Kenya and my different social status shields me from encountering similar challenges, I am conscious of the internal conflict that arises when the knowledge we have inherited clashes with the prevailing knowledge promoted in society, even at my own personal level.

While I draw insights from African feminist perspectives, it is important to acknowledge that their voices may not be the ultimate authority when discussing Indigenous communities. Firstly, for the simple reason that these scholars do not come from the Maasai community. Additionally, it is crucial to recognize the power dynamics at play in this context. Since this work is normative and rooted in theory, future research should directly engage with the experiences and perspectives of the communities involved.

III. Context

Before delving into the theoretical reflection, it is essential to provide a brief background on the Maasai community, including their traditional social structure, particularly concerning land tenure and gender roles, and the contemporary challenges they confront. The Maasai are semi-nomadic pastoralists living on the grass savanna in southern Kenya and northern Tanzania (Bussmannn et al. 2018, Talk 1987). According to the last Kenyan census of 2019, they represent 2.5% of the population of Kenya (Statista, 2022). They practice the transhumance which involves moving livestock between different grazing areas or pastures in response to seasonal changes in

weather, vegetation, and water availability, establishing a unique relationship with the land (ILEPA 2021, Seno & Shaw 2002). In Maasai traditional tenure system, individuals from various clans enjoy shared access to grazing lands, regulated by customary laws (Seno & Shaw, 2002). The elders hold a central position as the most influential authority, leading meetings and resolving disputes via negotiation and mediation (ILEPA 2021, Talk 1987). Significantly, these elders make decisions regarding land access, utilization and administration (Talk, 1987). Consequently, land rights within Maasai communities reflect social constraints. Like other pastoral societies, the Maasai community is commonly acknowledged as patriarchal, with a male dominance in ideology (Talk 1987, 51). Key elements of this patriarchal structure include the patrilinear clan organization and the male age set system, which act as pivotal frameworks that facilitate the concentration of control over productive resources and labor primarily into the hands of married men, thereby perpetuating gender inequalities (Talk 1987, 51). Consequently, although women do have certain access and influence over land utilization and labor through the communal land tenure system, they are not eligible for inheritance rights and have no legal claim to livestock ownership (Talk, 1987). Women may gain access to land through marriage, but these rights are often contingent on their marital status (Talk 1987, 59). Gender roles are divided, with men primarily responsible for herding livestock, while women are responsible for household chores, such as cooking, cleaning, and caring for children, but also, milking cows, collecting water and firewood (Kereto et al. 2022, 8).

But today, given the current context (including the commercialization of Maasai labor, rising population, climate change, and new land policies), it has become increasingly challenging for the Maasai to maintain their pastoral way of life (Bussmannn et al. 2018, Nkedianye et al. 2020). Consequently, a growing trend towards sedentarization is observed, many communities

have shifted to permanent settlements, driven by economic prospects like tourism, trade, and agriculture, marking a profound departure from their traditional nomadic lifestyle (Bussmannn et al. 2018). As a result, traditional social and economic structures that once facilitated reciprocity and mutual support during difficult times, such as communal land tenures, can no longer adequately support the most vulnerable community members, like widows, which leads to increase poverty (Nkedianye et al. 2020, 2). Besides this, with communities needing to adapt, the overarching trend of urbanization has similar effects on the Maasai. Among communities located closer to urban centers, there is an observed increase in family education levels and children's enrollment in school, a decline in polygyny, and a decrease in the number of wives per husband (Nkedianye et al. 2020, 2). Lastly, Maasai women tend more and more to diversify sources of income for the family, acquiring new roles within the communities (Bobadoye et al., 2016). Thus, striking a balance between preserving cultural traditions and adapting to changing realities remains a complex and ongoing process for the Maasai in Kenya.

IV. Theoretical reflection

In this section, I will present the literature pertaining to land rights in Kenya, focusing in particular on gendered inequalities and tenure dynamics in Indigenous and pastoral communities. The subsequent theoretical reflection will first discuss the empirical research that has shaped and inspired my normative analysis. Secondly, it will introduce African feminist scholarship that will serve as a guiding framework for this work.

1. A complex issue from multiple perspectives

In this subsection, the intersection of various perspectives from different theoretical fields discussing land laws, the formalization of land rights and its effects on population in Africa and

Kenya, will shed light on the obstacles to Maasai women's access to land. More precisely, I will demonstrate, that far from being neutral, land laws are political and reflect power dynamics that reinforce gender inequalities. As these laws are based on property models incompatible with the lives of Maasai pastoral communities, they solidify identities and gender roles established during colonialism, consequently excluding Maasai pastoral communities and women in their land rights.

The politics of land rights

An extensive body of literature has emerged on the politics of land rights in Africa, including in Kenya. This work stresses that land laws have an inherently political nature (Berry 1993, Boone 2014, 2019, Yngstrom 2002). This nature should not be neglected in the processes of law-making, land registration[2] and titling, because they produce power relations, the inclusion of some actors and the exclusion of others and therefore, the reinforcement of multiple inequalities. Authors have highlighted the significance of taking gender into account when studying landholding dynamics in Africa, emphasizing that women's tenure insecurity is frequently overlooked (Lastarria-Cornhiel 1997, Mackenzie 1998, Yngstrom 2002). Sara Berry, for instance, argues that land processes have an influence on socio-political relationships, but also that these social relations (including gender relations) play a significant role in determining actual patterns of access to land, even after land registration (Berry, 1993).

Berry addresses the impact of colonialism on land rights and gender relations in Africa (Berry, 1993). Deviating from a structuralist approach in analyzing Africa, the author highlights that shifts in land access are not solely a result of new rules imposed by European settlers (Berry, 1993). Instead, like other authors, she emphasizes that these changes are shaped by social

[2] The process of legally recording and documenting property ownership and related rights for land parcels.

interactions and the decisions made by groups in response to evolving socio-economic circumstances (Berry 1993, Mackenzie 1998, Yngstrom 2002). In precolonial times, access to land was determined by group membership and kinship relationships, which allowed, through negotiation, the movement of people across territories in times of drought, disease, or political crisis (Berry 1993, Mackenzie 1998, Yngstrom 2002). Recognizing that individual land ownership was absent in Africa during that period, women had access to land as equal members of their communities (Berry, 1993). However, with the advent of colonialism, new legal frameworks were introduced to exert greater control over the acquired lands. Berry's explanation suggests that although communal ownership remained under indirect rule, interpretations and enforcement of customary rules lacked clarity (Berry, 1993). Additionally, colonial authorities legally excluded women from land ownership and utilization by recognizing only male-headed households (Berry 1993, Boone 2014). An essential phenomenon underscored by Berry (1993) is the marketization of rural labor and the subsequent emergence of social differentiation. Moreover, during the late colonial and post-independence periods, African governments struggled to reconcile the tensions between traditional customs and contemporary governance systems, leading to a complex and contentious landscape surrounding land access (Berry, 1993). Particularly, Berry defines the situation as follows: "while land tenure in Africa is characterized by a murky superstructure of conflicting interpretations of customary and contemporary rules, as its base, commercialization and the centralization of power in colonial and postcolonial states have transformed land rights from a corollary of social identity to a marketable asset, control of which is becoming concentrated in the hands of wealthy and/or powerful people" (Berry 1993, 132). This particular phenomenon created tensions within rural households, which Berry elucidates through the interplay of market forces and social dynamics (Berry, 1993). In Kenya, for example, the Mbari elders exerted their

influence to prohibit women from inheriting land. This practice was further supported by Kenyan men who pressured Land Boards to protect Mbari holdings by denying land titles to women (Berry 1993, 133). In response, women began to establish informal self-help groups aimed at assisting each other in obtaining land and other forms of rural property (Berry 1993, 133). This example illustrates the significant influence of social relations in shaping the actual patterns of land access. Furthermore, this resonates with other findings that argue that women's exclusion from land access is often attributed to their supposed lack of modernity and cultural barriers that prevent them from inheriting land, when in many cases, women have utilized cultural practices (social relationships, cultural institutions) to secure resources and gain access to land (Mackenzie 1998, Yngstrom 2002). Once again, this shows how processes concerning land ownership and related laws are susceptible to interpretation, adaptation, and revision based on the specific context (Berry, 1993, Lastarria-Cornhiel 1997, Mackenzie 1998, Yngstrom 2002). This also demonstrates how crucial it is to analyze land processes through the lens of social dynamic and social relations, considering every actor in these processes, including those who are marginalized.

Catherine Boone complements Berry's thinking because she is interested in the structure of institutions and how it affects and influences relationships between individuals, communities, and states (Boone, 2014). Boone focuses more on the postcolonial period and in one of her books; *Property and Political Order in Africa: Land Rights and the Structure of Politics*, argues that property institutions shape land dynamics, such as land-related competition and conflict (Boone, 2014). The author aligns with other research that examines the causal relationship between social relations and property rights in Kenya (Meinzen-Dick and Mwangi, 2009). In another study, Boone (2019) argues that although land registration is often framed as part of community-protection or ethno-justice agendas, it entails tensions and trade-offs. For Boone, titling almost

always produces a transformation and redistribution of rights which will automatically create winners and losers and thus forms of dispossession or disempowerment (Boone, 2019). It is important to mention here, that this argument has been validated in other research demonstrating that Maasai women have been excluded from land access through various land policies in Kenya (Meizen-Dick & Mwangi 2007, Mwangi 2007, 2009). Boone goes on to discuss the introduction of Kenya's 2010 constitution and the 2012 land Act, which have created debates regarding the devolved administration of land rights (Boone, 2019). These conflicts revolve around the question whether devolved powers should prioritize the land claims of those currently farming the land, including those who purchased land in earlier decades (titleholders or not), or if the new county authorities should aim to restore land to members of the ethnic group that holds the titular (or majority) representation within each county (Boone 2019, 394). In this way, the author confirms that "the decision to register rights does not resolve the logically prior matter of who the legitimate rights-holders actually are" (Boone 2019, 394). The author further critiques the registration of communal and ethnic land rights that echo with the definition of the Community Land Act of what a community is and the desire that populations define themselves: this approach has the unintended consequence of solidifying identities and artificially constructing group boundaries, which can potentially lead to additional conflicts and dynamics of winners and losers (Boone, 2019). Or in other words, for Boone the "legal recognition of communal rights can legitimate rules of land access that discriminate along the lines of ethnicity, gender, age, religion or other ascriptive status" (Boone 2019, 393).

The two authors, with their focus on institutions and political economy, emphasize the crucial attention that must be given to change when studying Africa. They highlight the influence of social interactions and power dynamics on land access and registration. Importantly, they stress

the need to refrain from imposing Western models onto the African context (Berry 1993, Boone 2014, 2019). What emerges from this analysis is the significance of power relations and the marginalization of certain actors, particularly women, who experienced a shift from being fully integrated members of the community with land access to a division of labor imposed by the new economic structure. Colonialism formalized unequal rights for women, confining their roles to household chores and consumption (Berry 1993, Wane 2014, Yngstrom 2002). The tension between traditional customs and contemporary political power, which originated during colonialism, persists and is further reinforced by patronage relationships and market-driven incentives (Berry 1993, Boone 2014, Lastarria-Cornhiel 1997, Mackenzie 1998, Meinzen-Dick & Mwangi 2009, Wane 2014, Yngstrom 2002). Additional insights from anthropology, geography, and economics underscore the existence of conflicting ownership models in Africa, highlighting the urge to consider the specific needs of the local populations rather than imposing incompatible models (Galaty 2016, Hassan et al. 2022, Unruh & Abdul-Jalil 2012).

Conflicting models of property

Regarding the pastoral communities and specifically the Maasai, because they are semi-nomadic, they need to move across lands. However, many have demonstrated that land laws tend to see privatization as the end of the story and therefore are not sensitive to the needs of such populations (Galaty 2016, Hassan et al. 2022, Unruh & Abdul-Jalil 2012, Yngstrom 2002). Boone even asks whether the Community Land Act of 2016 in Kenya is not favoring the sedentary farmers (winners) over pastoralists (losers) (Boone, 2019). She brings forward the idea that formalizing *already existing rights* creates changes in the nature of the controls on property (Boone, 2019). The different actors involved in these processes see these changes as opportunities to serve their own interests, and thus the law will always favor one group or another. There is in fact often a

desire to lock in an individual, privatized model of ownership, yet the laws tend to be subject to interpretation, adaptation, and revision; they are not static (Berry 1993, Hassan et al. 2022). Anthropology and geography studies on pastoralist communities in Africa are very useful, complementing political science research by showing how much these laws are not in line with the constant strategies and adaptation of the pastoralists (Galaty 2016, Hassan et al. 2022, Unruh & Abdul-Jalil 2012). Because these communities have a perpetual need for movement, Galaty (2016) proposes a *dynamic model of property,* that encourages land laws to be sensitive to the constant adaptation and renegotiation of the communities' lives. This is increasingly important in the context of climate change, where resources are becoming scarcer, so populations have increasing need to go even further to find grazing land. Instead of favoring flexibility, the governments and international community are imposing a static view of property, reducing the possibilities for managing land access and conflict, and endangering livelihoods (Galaty 2016, Hassan et al. 2022, Unruh & Abdul-Jalil 2012).

To grasp this argument, it is imperative to delve into the theories and discussions surrounding land access and the formalization of land laws. Theorists posit that it traces back to the ideas and debates sparked by Hardin in the 1960s, wherein he denounced the perils and drawbacks of *open access,* a concept known as *the tragedy of the commons* (Galaty 2016, Hassan et al. 2022). The concept of the tragedy of the commons has exerted significant influence, rooted in neoliberal ideology, leading to rapid promotion of individual property rights by most societies and governments as the optimal approach for ensuring land access and its sustainable management (Hassan et al. 2022, 4). Other research explains this as evolutionary models that influence land policies based on the ideology that every society must move from *traditional* landholding systems to modernized ones, understood as the privatization of land rights (Yngstrom, 2002). However, it

has become evident that extreme privatization does not align with all societies, if any, and the notion of open access is relevant in certain contexts, with communal property rights mistakenly perceived as facilitating such a situation (Hassan et al., 2022, Yngstrom 2002). In fact, scholars like Ostrom (2000), among others, argue that true open access does not truly exist in practical terms. On the contrary, land managed by communities has always existed, taking on a diverse and unique character within each community members (Hassan et al., 2022, Yngstrom 2002). In essence, access to and utilization of community land is subject to negotiation and renegotiation. It is the responsibility of community institutions to effectively govern these lands in a sustainable manner that promotes the well-being of the communities they serve (Hassan et al., 2022).

Overall, land rights shape and are shaped by social dynamics and have an overtly political nature. In this way, there is a need to deconstruct a hegemonic and fixed vision of the African continent and its local communities. This vision is not sensitive to Indigenous people's knowledge and experiences with the land, or the negotiations and adaptations related to ownership and access to land (Galaty 2016, Harcourt 2017, Unruh & Abdul-Jalil 2012, Yacob-Haliso & Falola 2021). Additionally, based on what was seen earlier above, women's land rights seem to be compromised by the effects of colonial legacies, the commercialization of rural labor, and the divergence between Indigenous customs and practices and contemporary political power (Berry 1994, Boone 2014, 2019, Galaty 2016, Meinzen-Dick & Mwangi 2009, Mwangi 2007, 2009, Hassan et al. 2022, Yacob-Haliso & Falola 2021, Yngstrom 2002). To understand this problem, it is necessary to adopt a point of view that decolonizes this hegemonic vision commonly found in land rights scholarship and practice and uses a new discourse that includes women in a way that respects the communities they belong to and their traditions. This can be achieved by engaging with African feminisms.

2. Engaging African feminist thought

Debates surrounding a common struggle: an overview of African feminisms

"An African woman who identifies herself as a feminist recognizes her potential as a human being – not necessarily a female human being – and is proud of the areas in which she excels, be it on the home front or in the workplace" (Nkealah 2006, 136).

Through an exploration of African feminist thought, I aim to show that the supposed opposition between culture and human rights is unfounded. To examine gender inequalities in the formalization of land rights among the Maasai in Kenya, it is essential to embrace a feminist perspective that acknowledges the diversity of identities, the unique challenges faced by these women, and the significance of preserving their cultural heritage.

The field of African feminism has become very prolific but is first and foremost grounded in lived experiences, activism and grassroots movements of African women (Guy-Sheftall 2003, Steady 1989, Wane 2005, Wane et al. 2011). In fact, many authors associate it with a movement that translates into the multiple actions taken by women to free themselves from the yoke of oppression (Amaefula 2021, Guy-Sheftall 2003, Sudarkasa 1986, Wane et al. 2011, Wane 2014). There are now several strands of literature within the field of African feminism, some of which are focused on the diaspora (e.g., Black feminism) and others on indigeneity (Steady 1989, Wane et al. 2011).

Although scholars tend to speak of African feminisms in the plural, several common ideas can be drawn from them. First of all, the importance of community and collectivity characterizing the African continent is found in the field (Wane et al., 2011). This community often translates into cooperation between African women to achieve greater gender equality (Wane et al., 2011). Secondly, even though some authors do not make it their main focus, the idea of fighting

colonialism and colonial legacies impacting the status of women across the continent remains important (Guy-Sheftall 2003, Steady 1989, Wane et al. 2011, Wane 2014). Finally, the most important point is the idea of accounting for the specificity of African women's experiences: they face multiple discriminations – relating to race, class, sex, culture – and they cannot be represented by *the mainstream and well-established* feminism (Amaefula 2021, Guy-Sheftall 2003, Nnaemeka 1997, Steady 1989, Sudarkasa 1986, Wane et al. 2011, Wane 2014). This feminism reflects (white) Western women's lives and demands, which are not (necessarily) the same as African women.

African feminism is now a rich literature, but some deplore its lack of unity and the array of debates underway (Nnaemeka 1997, Amaefula 2021). Some authors completely reject the term "feminism" to speak of African women's experiences because it belongs to a discourse that has been constituted through white European women's lives and is therefore a *foreign import* (Wane et al. 2011, 13). For instance, there is a notable split between *feminists* and *womanists*. Womanists reject the notion that men constitute a uniform group in direct conflict with women to oppress them (Amaefula, 2019). Instead, womanists view their advocacy as primarily centered on human rights, which can involve working alongside men, rather than opposing them as a distinct social category (Amaefula 2019, Nkealah 2006). However, Nkealah argues that this debate oversimplifies the complex realities of African women's struggles, and that such views reflect a misconception of feminism as inherently individualistic, anti-male, and anti-culture (in the sense of – everything related to tradition) (Nkealah 2006, 134). In her research, she advocates for alternative approaches to feminism that are better suited to the needs of African women and promote their empowerment

(Nkealah, 2006). This debate highlights a core question that underpins this research: *does the protection of human rights necessarily conflict with cultural practices?*

African feminists have provided a compelling response to this question through their perspectives on both gender and culture. To begin with, gender refers to a socially constructed concept that assigns individuals a particular status or identity within a given context or moment (Amaefula 2019, Nkealah 2006). In particular, Amaefula aligns with Butler's theory of gender performativity, which asserts that gender is a fluid and unstable construct (Amaefula 2019, 132). According to this view, gender is a product of our actions (or *performances*), that vary depending on the situation (Amaefula, 2019). As such, it is not an essential quality, but rather a lived experience: "gender is a process, not a project" (Amaefula 2019, 120). But in the African context, a key issue is the disruption of gender roles that occurred during the colonial era. Amaefula and other scholars highlight the importance of examining this period, as it provides insight into the fluidity of gender in the face of shifting events and struggles (Amaefula, 2019). The period leading up to independence was a crucial time in which gender roles were constructed and reconstructed to adapt to changing circumstance, for instance: "protest is presented as a major factor that determines the impulsive alteration of an individual's gendered dispositions" (Amaefula 2019, 135). This understanding of gender is forceful and carries significant implications for comprehending the dynamics of land rights politics, as emphasized in empirical research presented earlier above. The classification of women based on gender becomes a mechanism for denying them access to land. As highlighted by Boone (1993), when community land rights are legally recognized, it leads to competition for land based on predetermined identities, including gender. Consequently, gender can be utilized as a means of discrimination.

In terms of culture, African feminists recognize the detrimental nature of suppressing it, as culture is an inherent aspect of one's identity. However, theorists like Nkealah emphasizes the importance of adapting customs and traditions to align with human rights principles (Nkealah, 2006). She argues that the reality that African women may need to challenge traditional values, which are deeply rooted in their cultural identity, in order to attain "freedom and independence" (Nkealah 2006, 139). This perspective recognizes that, like gender, culture is socially constructed, fluid, and subject to change as individual's attitudes and beliefs evolve, subsequently influencing their actions (An-Naim and Hammond, 2002). By adopting this perspective on culture, women can participate in feminist advocacy while retaining their cultural beliefs: they can "bridge the gap between consciousness and activism" (Nkealah 2006, 140). This approach aligns well with the earlier observations, highlighting the consistent flexibility and resilience of pastoralists' lifestyles in response to changes. It reinforces the notion that cultural practices (whether Indigenous or Western) are not fixed but rather adaptable.

Hence, according to African feminists, the fluidity of gender and culture presents an avenue for meaningful dialogue between the two. This understanding enables the pursuit of human rights while simultaneously embracing cultural identities. However, these studies have brought attention to the challenge of formalizing laws that discriminate against women, persisting from the colonial period to the present day, which lock them in subordinate roles and jeopardize their access to land. Furthermore, it provides valuable insights into the potential constraints of community land policies aimed at Indigenous peoples. By promoting self-definition and demarcation of land parcels within communities, such policies often embrace a fixed perception of culture (Galaty 2016, Nkealah 2006, Hassan et al. 2022, Unruh & Abdul-Jalil 2012).

But other important debates revolve around *which* African women are concerned by this field. Many authors put forward African women's access to power and their leadership as proof of an advance for gender equality in African societies (Wane et al., 2011). However, authors like Wane (2011) point out that this idea is not necessarily true and that we must not ignore the diversity of women's conditions in Africa. Like men, women's initial social status, for example the families to which they belong, strongly influence their access to politics (Wane et al., 2011). This context-specific perspective is essential for the present research, because Indigenous women are often not the highest in terms of social status, with the most power or capital. Although there are also hierarchies in this context, the focus will be on ordinary women and men in Maasai communities. This goes along with Amaefula's call for a unification of these theories turned towards more essential –"remedial, proactive and practical" – concerns of humanity (Amaefula 2021, 303). This is in part, where the paper wishes to contribute to the literature, by using the theoretical tools offered by African feminisms to illuminate a concrete issue: analyzing the moral implications of the formalization of land rights for gender relations in Indigenous Maasai communities.

Through the lens of African feminism, the lack of land rights for women can be comprehended as an outcome of cultural beliefs intertwined with Western values imposed during the era of colonialism, but also now, with capitalist and neoliberal systems, wherein gender is constructed as a fixed category (Amaefula 2019, 2021, Nkealah 2006, Wane et al., 2011, Wane 2014). While various feminist approaches exist, there is a shared consensus on the need to dismantle patriarchal systems: "it is indisputable that patriarchal subjection to women transcends borders, peoples and cultures" (Nkealah 2006, 137). African feminists embrace a holistic perspective of gender and culture, allowing for adaptability. This feminist approach encompasses

the collective while acknowledging the diverse paths of African women, prioritizes the specific needs and struggles they face, and recognizes the significance of culture. While African women confront numerous injustices that often perpetuate a cycle of oppression, the aim is not to solely portray them as victims, but rather as agents of change who possess capabilities and resources. This work aims to showcase women from Maasai communities using their resources to empower themselves and contribute to development. This notion, combined with the idea of the importance of culture, resonates particularly with the discourse on Indigenous knowledge, notably exemplified by the insights of Njoki Wane.

Njoki Wane's African feminist approach

Njoki Wane's approach to African feminism is central to the thesis. While she primarily specializes in the field of education and her studies (2011, 2014) revolve around the decolonization of knowledge and local educational practices, her work also holds significant relevance in reconciling culture with human rights. Additionally, her research conducted alongside rural women in Kenya offers valuable solutions to the issues raised in the preceding sections (Wane et al. 2011, Wane 2014). Through her empirical research, Wane explores the ways in which predominant relations of power and knowledge govern men and women, using the framework of African feminist discourse (Wane et al. 2011). Njoki Wane emphasizes the importance of the anti-colonial dimension of African feminism and includes in her vision all women and, specifically women from the grassroots with a focus on action and on problems more related to basic needs (Wane et al. 2011). Indeed, Wane demonstrates how gender relations were profoundly affected by the colonial era (Wane et al. 2011, Wane 2014). Specifically, in Kenya, women experienced a decline in their power and autonomy as a result of the imposition of a colonial ideology centered on profit extraction and aligned with the European class system (Wane 2014, 54). Consequently,

women's subordination manifested in heightened control over their labor and reproductive capacities, ultimately reinforcing systems of male dominance (Mbilinyi, 1994). Wane asserts that these discriminatory systems and beliefs persist today, and they have been further reinforced with the emergence of capitalism (Wane 2014, 55). As a result, women continue to be confined to the role of motherhood, which is now devalued due to the values propagated by capitalism: "whereas the roles of women as home-makers, child-bearers, and caretakers were valued in the past, today they are undervalued in urban, capitalist Kenya" (Wane 2014, 42).

To further support her reasoning, the author engages in a discussion on development in Africa (Wane et al., 2011). Through her study involving rural women in Kenya, Wane draws two significant conclusions by asking them how they defined development (Wane et al., 2011). Firstly, echoing Ogundipe-Leslie's perspective, the concept of development is deeply rooted in Western imperialist and misogynistic discourses, prioritizing production and consumption values over the genuine needs of the recipients (Ogundipe-Leslie 1994, Wane et al. 2011). The voices of African people, particularly African women, are disregarded despite being directly affected by these initiatives – hence, power dynamics are at play within development: "the voices of local peoples, workers, women, and children are particularly unlikely to be taken into account in the development process" (Wane et al. 2011, 147). This is true for Kenya as well, where the presence of women in politics is significant. Despite numerous examples of gender discrimination by the state (such as in property ownership), women often remain silent out of fear, highlighting once again their subordination at all levels of society (Wane 2014, 53). Secondly, Wane's research reveals that the term "development" has multiple definitions, particularly, rural women in Kenya could identify the satisfaction of basic needs as a major concern (Wane et al., 2011). This underscores the importance of considering and including the perspectives of the recipients. Wane advocates for a

development that addresses the question of *development for whom* (Wane et al., 2011). The current model of development poses a threat to rural women, thus necessitating a shift towards a more demasculinized approach to development, as supported by Ogundipe-Leslie, and the use of more androgynous terms that address the concerns of both women and men in society (Ogundipe-Leslie 1994, Wane et al., 2011).

Thus, Wane aligns with the perspectives put forward earlier by African feminists, advocating for a feminism that focuses on addressing societal issues instead of adopting a binary perspective and that is grounded in community, activism, and self-definition of women (Amaefula 2019, 2021, Nkealah 2006, Wane et al. 2011, Wane 2014). This is the particular point of view that I will use in my analysis coupled with Wane's postcolonial and structuralist approaches that deconstruct gender relations in a context of intense marketization of rural labor (Wane et al. 2011, Wane 2014). However, she takes a step further by emphasizing the importance of valuing women's resources and capabilities and, notably, promoting Indigenous knowledge of African women (Wane et al. 2011, Wane 2014). Through this concept, Wane seeks to reconcile culture and feminism because, in her view, "Indigenous knowledge is used as the ground of discussion by way of holistic forms of living and learning that is non-linear and offer strategies for cultural resistance" (Wane et al. 2011, 135).

Indigenous knowledge systems and African feminist thought

Before delving into Njoki Wane's exploration of Indigenous knowledge, it is crucial to examine the discourse surrounding this concept in Africa. Across various disciplines, extensive research has been conducted on Indigenous knowledge systems in the continent (Oloruntoba and Yacob-Haliso 2020, Wane et al. 2011, Wane 2014). Within the field of political science, this concept assumes significant importance as it unveils the power dynamics within society,

highlighting that knowledge production is inherently political and influenced by power relationships (Oloruntoba and Yacob-Haliso, 2020). During the colonial era in Africa, the imposition of Western knowledge was perceived as a means of domination, leading to the oppression of diverse African knowledge systems (Oloruntoba and Yacob-Haliso, 2020). This process, referred to by Oloruntoba and Yacob-Haliso, as *epistemicide,* continues to leave its imprint on the present, as postcolonial Africa, with few exceptions, has continued to perpetuate a trajectory of devaluing Indigenous knowledge in the formulation and implementation of education policies (Oloruntoba and Yacob-Haliso 2020, 2). The scientific production and research around this concept have highlighted the significant presence of Indigenous knowledge systems, revealing their contributions to state building, economic development, and conflict resolution (Oloruntoba and Yacob-Haliso 2020, 4). There is a growing push in contemporary times to actively advocate for and safeguard this knowledge. Nevertheless, scholars like Wane do not advocate for a complete restoration of traditional social systems, considering the practical challenges posed by colonial legacies and the recognition that romanticizing the past alone cannot address the current crises in Africa (Wane et al., 2011).

Across the African continent, agriculture stands out as a domain where the mobilization of the concept of Indigenous knowledge is highly significant (Oloruntoba and Yacob-Haliso, 2020). However, a prevailing trend is observed, wherein this valuable knowledge is often overlooked in favor of modern practices that align with the capitalist system, thereby contributing to significant challenges: "agriculture, which provides a source of livelihood for the rural dwellers, who constitute the most of our population, has been subjected to a number of government policies which seem to have concentrated more on aspects of production and marketing but less on preservation

and storage, the twin processes that are crucial for food availability at all times" (Oloruntoba and Yacob-Haliso 2020, 247).

Other studies evidenced that Indigenous knowledge offers a lens through which gender inequalities in Africa can be explored (Oloruntoba and Yacob-Haliso, 2020). One study even showed that male-centric science frequently collaborates with Western corporations and has, on numerous occasions, hindered true comprehension and meaningful research aimed at promoting gender equality (Emeagwali, 2021). Indeed, the lack of recognition of women's contributions to Indigenous knowledge and the disregard for their gendered knowledge systems is a concern that is often lamented (Oloruntoba and Yacob-Haliso, 2020).

For further reflection, Kenyan and African feminist authors such as Chika Ezeanya Esiobu (Esiobu in Yacob-Haliso & Falola 2021) and Wangari Maathai, for instance, points out how Africans are sometimes conditioned to think that their problems must be solved by the international community, by outsiders (Maathai, 2005). This means that the Western production of Africa, as eternally poor and in need, also manifests itself on the continent. This dynamic may also play out in relation to women, who although are key actors in working the land and the first to become aware of environmental issues, often do not have their essential roles recognized (Maathai, 2005). Esiobu also theorizes women's Indigenous knowledge in Africa but focuses more on the environment, which is related to the essential role of women in working the land. She deplores the lack of recognition of the growing engagement of women in Indigenous knowledge and the non-respect of their gendered-knowledge systems in the quest for sustainable development (Esiobu in Yacob-Haliso & Falola, 2021). The author also points out the multiple discriminations faced by rural women and how it involves "poverty, a lack of education, and little access to seats of power and policy makers" (Esiobu in Yacob-Haliso & Falola 2021, 109).

Njoki Wane's approach of Indigenous knowledge

Wane puts forward the concept of *African Indigenous knowledge* "to challenge the institutional powers and imperialistic structures that have prevented many African women from realizing the importance of dismantling the colonial patriarchal structures left behind by colonizers after the attainment of political independence" (Wane et al. 2011, 7). With this concept, she sheds light on the knowledge transmitted by local women and the bonds they create between them, which has been alienated by colonial patriarchal productions (Wane et al. 2011). In this way, promoting women's knowledge means challenging the power relations that have been established on the continent and even further, Wane but also, Ogundipe-Leslie argue that "it is not necessary for Third World countries to imitate institutions, models, and structures that are characteristic of Western countries (and) that the misconception of African value s on the part of the implementers of the modernization paradigm has destroyed the very fabric of African cultures" (Wane et al. 2011, 139). Here, it is necessary to understand the importance of what Wane undertakes, because it is a whole way of seeing the world and of making sense of it which is often silenced by institutional powers. It is in this way, then, that the unequal access to land faced by Maasai women in Kenya will be analyzed in this thesis: *with an African feminism that is action-oriented, community-focused, and grounded in a framework of Indigenous knowledge that challenges the productions of imperial thought.* Wane does not idealize the knowledge of local communities but, rather, demonstrates that the changes introduced in societies can be a constraint to their autonomy and "affects the assurance, self-identity, and self-direction of community-controlled survival" (Wane 2014, 23). Especially, with the concept of Indigenous knowledge, Wane sees women as actors of change, she celebrates their point of view and includes their knowledge. She however deplores that Indigenous women's knowledge tends to be ignored because it does not use the codes of knowledge of the dominant (Wane, 2014).

In fact, in the course of her study, Wane found that Embu women were willing to talk to development planners about improving their "Indigenous technologies" (Wane et al. 2011, 140). This supports an idea of Indigenous knowledge as holistic and inclusive, leaving room for communication with what is considered *modern knowledge* (Wane et al., 2011). Like culture and gender, Wane defends an idea of Indigenous knowledge that is not fixed, but rather open to change. But for this to happen, Indigenous knowledge would still have to be considered and integrated into development debates and public policies. As already pointed out, we're witnessing more of a suppression of this knowledge, with so-called modern (Western) knowledge seen as the only valid one. To reach this goal, Njoki Wane invites planners to take into account the real needs of women in these communities, and in particular everything that makes up their lives: "planners and innovators of African development must become more conversant with the physical, social, and cultural mores of the communities they propose to help. They need to understand the family structures, the gender roles, and the decision-making processes in these communities. Planners have to be aware of what women are willing to give up without suffering pain and regret, and what they can integrate into without violating their natural laws. (…) To acknowledge less is to do these women a great disservice." (Wane 2014, 79).

Njoki Wane touches briefly on questions of land ownership, arguing that land ownership in Africa did not have a Western sense and refers usually to communal property (Wane 2014, 104). But more importantly, Wane specifies that African women's land use was secured by the patriarchal Indigenous rules but threatened by the colonial and pre-colonial eras (Wane 2014, 104). Njoki Wane does not explore this issue in depth and does not directly examine the link between the recognition of women's Indigenous knowledge and the advancement of their rights to land. Furthermore, although her scholarship is theoretically rich, much of Wane's work is empirical and

does not delve in detail into the fundamental normative issues that play into discussions of land rights. This is what my work will illuminate, by drawing out the implications of her scholarship for this vital issue.

The literature on African feminism provides important insights into the debates outlined above on the conflicts between "progressive" attempts to strengthen and secure women's land rights, and the sometimes counter-productive effects these initiatives have, particularly in Indigenous communities. When looking at land rights without addressing women, we neglect the power relations produced in processes of formalization of land rights, resulting in ethnocentric and sexist views. African feminist approaches can help shed light on the historic nature of the exclusion of these women and how policies and institutional discourses are imposed, favoring Western ideals in ways that still shape land policies on the African continent. This leads to the denigration of specific knowledge and experiences, which are nevertheless crucial for addressing issues of land ownership. By promoting Indigenous knowledge, Njoki Wane's feminist approach provides a concrete response to the discrimination against women from these communities. African feminist approaches usefully focus on the actions of marginalized women, and their basic needs. This knowledge is in this way valued and invites us to rethink land policies in order to support ways of life that are non-linear and embody strategies for survival like this of Indigenous women such as the Maasai (Wane et al. 2011).

The present theoretical reflection has, therefore, highlighted essential lines of thought from African feminists. These insights serve as a lens through which changes in land rights and their impact on gender dynamics within the land tenure systems of pastoral Maasai communities can be comprehensively examined. Within this framework, African feminists, notably Wane, advocate for a perspective that refrains from perceiving culture as diametrically opposed to human rights.

Instead, it urges us to regard both gender and culture as social constructs, that are, in reality, fluid and subject to change depending on context. However, it is crucial to recognize that when these identities are solidified through legal formalization, they can be used as a driver of discrimination. This is why African feminists advocate for a postcolonial analysis to understand how Western values were imposed during colonialism and continue to thrive with the advent of capitalism and privatization. In conclusion, this analysis underscores the significance of concentrating on societal concerns as defined by women themselves, their communities, and their advocacy efforts. It emphasizes the agency and potential of these actors, challenging the perception of them as mere victims. Within this context, the concept of Indigenous knowledge emerges as a vital instrument, facilitating the preservation of the lifestyles of these communities and, particularly, the women within them.

V. Empirical Case Study

1. The marginalization of pastoralist Maasai communities through legal and institutional structures

In this section, I will show that contemporary political power in Kenya perpetuates the colonial legacy of marginalization of Maasai pastoral communities and women through land laws. It will be seen that these discriminatory practices are supported by the production of an imaginary narrative surrounding Maasai identity, which has persisted since colonial times. It will at the same time demonstrate that the case study illustrates what is put forth by African feminists, namely that a construction of Maasai culture and gender has been established and they are being confined within these constructs. This is done in order to further exclude them through land laws that contradict these produced identities.

Firstly, colonial enterprise among the Maasai in Kenya was built on denying their identity (Sun 2023, Riamit & Kirigia 2021). At the outset, this process involved the hierarchical categorization of African Indigenous communities, elevating the image of the Maasai warrior as superior to others (Sun 2023, 63). As disagreements between the colonizers and the Maasai grew, and greed escalated, Maasai's identities were frozen as relics of the past (Galaty 2002, Sun 2023). The Maasai were reduced to cultural and traditional aspects (clothing, jewelry, and cultural practices) in opposition to the so-called progress and modernity of the West (Galaty 2002, Hodgson 2011, Sun 2023). These narratives were quickly institutionalized as exploitative laws were implemented, especially concerning Maasai lands, completely detached from Maasai identity (Riamit & Kirigia, 2021).

This non-recognition resulted in the creation of ethnic boundaries that restricted the movement of the communities and their subsistence goods (Galaty, 2016). Scholars trace the start of Maasai land dispossession to the Anglo-Maasai treaties of 1904 and 1911, transferring vast areas of the Rift Valley for colonial agriculture and ranching, endangering the nomadic and pastoral way of life and threatening their cultural fabric (Hughes 2006, Lesorogol 2008, Mwangi 2007, Riamit & Kirigia 2021). A striking example can be found in the establishment of reservation areas for the Maasai which isolated them from interacting with the outside world, including trade (Riamit & Kirigia, 2021). The Maasai received veterinary aid, water, and other assistance, which led to an increase in livestock numbers within the limited areas, resulting in land degradation (Riamit & Kirigia, 2021). This degradation unfairly laid the blame on the Maasai community (Hughes 2006, Lesorogol 2008, Mwangi 2007). This demonstrates how colonialism alienated Maasai ways of life, considered backward, by implementing systems promoting productivity or any other aspects of modernity that drastically contradicted pastoralist practices (Hodgson, 2011).

The "image that pastoralists are unready to grasp the opportunities of modernization, unproductive in their use of rangelands, and represent unworthy trustees of the environmental resources of the great East Savanna" persisted even after independence and justified the land laws that followed in Kenya (Galaty 2002, 348). Indeed, the marginalization continued with the creation of trust lands and groups ranches with independence that favored the subdivision of lands, the privatization of individual plots, and thus the dispossession of the lands of the Maasai through patronage and corruption relationships (Galaty 2016, Hassan et al. 2022, Riamit & Kirigia 2021). The example of the Group Ranches is compelling as it had a contrary outcome to what was promised. This land law promoted the formation of GRs, which were lands collectively owned with elected representatives (Riamit & Kirigia, 2021). The promises, backed by the international community, were to safeguard the lands of pastoral communities, enhance Maasai economic productivity, and preserve the environment (with supervision to ensure the Maasai did not exceed the carrying capacities of the ranches) (Riamit & Kirigia, 2021). However, in practice, the mandatory elections of GRs representatives (who were often the same individuals and not truly representing the community) resulted in the subdivision of GRs into individual private parcels (Riamit & Kirigia, 2021). Consequently, this led to favoring the acquisition of lands for outsiders rather than benefiting pastoral groups. Corruption became evident as dissenting voices were suppressed by threatening to allocate communities poor-quality parcels with restricted access to pasture, water, or opportunities for crop cultivation (Mwangi, 2007). Moreover, this process was further strengthened as marketization systems expanded (Meinzen-Dick & Mwangi, 2009). This demonstrates that even after independence, the needs of the Maasai are still overlooked and reflect a reductionist image of the Maasai communities: "(…) displacing (them) in an anachronistic

vacuum, away from their contemporaneous contexts (…) who are dissociated from their lands, with no place in the neoliberal present and future" (Sun 2023, 63).

This narrative surrounding the Maasai, depicting the man who kills the lion with his spear, also had the consequence of completely disregarding the women within these communities (Hodgson 1999, 2001, Sun 2023). In fact, just as they did with Maasai's identity at large, the colons imposed Western values on the Maasai communities, redefining gender roles and relations: "as part of rebuilding and fortifying the economic position of the colonies, colonial officials tried to bring order to the perceived chaos of African social, economic, and political relations by reshaping African ideas and practices. 'Stabilizing' marriage and reinforcing patriarchal control became a key concern of missionaries and colonial officers (in collaboration with some African men and women), as did teaching Africans to be more 'efficient' and 'productive' farmers and herders and charging women to be 'better' mothers responsible for protecting and improving society's morals" (Hodgson 2001, 13). Concretely, during the colonial period, Maasai men were placed at the forefront of political and economic affairs, relegating women to the private sphere (Grandin, 1991). A separation of roles based on gender occurred, with men in charge of decision-making regarding key livelihood matters, and women responsible for childcare and household duties (Grandin 1991, Hodgson 1999, 2001, Massoi 2015).

What is also central is that with the intensification of the market and the encouragement for men to sell livestock, women quickly lost access to livestock and land (Smith, 2014). In other words, the marketization of Maasai labor led to unequal gender relations, marginalizing women, until today, and even more so nowadays: "(…) commoditization, the intensification of the market economy and increased needs and uses for money have transformed the meaning and use of key economic resources among Maasai (…): livestock has changed from a resource with multiple,

intertwined layers of control and rights to an individually (male) owned commodity; agricultural crops have been redefined as primarily food or cash crops; and land is being transformed from a shared, abundant resource to a bounded, scarce, individually controlled asset. These processes, promoted since the early colonial period by 'development' interventions, have produced numerous changes in Maasai gender relations, including the creation of separate, male- controlled political and economic domain" (Hodgson 1999, 119). It is important to understand that this changing perception of livestock and land had an impact on both culture and gender as Maasai women were assigned new qualities, denigrating traits associated with childhood (innate irresponsibility, inexperience…), with the aim of economically excluding them and reinforcing their dependence on men (Hodgson, 1999, 2001). This observation is notable, with a clear difference between men and women, and even among women of different generations. For instance, in an anthropological study among a Maasai community, it could have been noted that elderly women readily responded to political questions and what needed improvement within their community, while younger women often said they had no idea (Hodgson, 1999). Furthermore, the introduction of technology in agriculture has made women's work less essential (Kameri-Mbote, 2006). Men take charge of tasks that require operating machinery, while women are left with only the manual labor, justified by the argument that it is too difficult for them (Hodgson, 1999). To sum up, "the (recent) image of women as children (within Maasai communities) is not just a cultural statement, but a statement of power" (Hodgson 1999, 126).

I can therefore assert that what was put forward in the theoretical part of this paper is confirmed. The preceding paragraphs have shown how a fabricated Maasai identity was established to exert control over these communities. Even in present times, the Maasai are predominantly portrayed through a cultural lens, considered traditional and resistant to change

(Galaty, 2002). This portrayal justifies policies that dictate their fate without taking their actual needs into account, ultimately leading to dispossession of their way of life. Maasai women have been confined to the private sphere, and gender roles have become institutionalized, devaluing their status and relegating them to a subordinate position, reminiscent of children (Hodgson, 1999). This situation suggests that gender disparities in land access extend beyond cultural factors; they are a result of power dynamics in an increasingly competitive environment. Nevertheless, as observed by African feminists, it is essential to move beyond these narrow perspectives of gender and culture and instead focus on how communities define themselves. Despite the detrimental effects of colonialism on the land rights of the Maasai and women, they continue to employ continuous adaptations and strategies to navigate their circumstances (Bobadoye et al. 2016, Galaty 2016, Willy & Chiuri 2010).

Firstly, facing the imposition of colonial borders, the Maasai and other pastoral communities across Africa adapted for the betterment of their practices (e.g. the need to move to other pastures) by cooperating through cross communities agreements and marriage alliances (Johnson et al. 1988, Unruh & Abdul-Jalil 2012). These strategies are ways to bypass laws that are completely opposed to pastoral practices, allowing the communities to move despite increasingly limited parcels of land. Secondly, research in anthropology prompts us to question our own perception of modernization. The Western view of progress, innovation, or evolution has become so dominant that any progress not aligned with the model promoted in the current system is disregarded (Galaty, 2002). For instance, John G Galaty, in his research (2002) among Maasai communities argues that progress should be considered relative to the available means (rural vs urban, rich or less productive areas, wet or dry regions, etc.) and highlights the rapidity with which pastoral communities have adopted veterinary care, water development or new livestock breeds

among others innovations (deemed suitable). But also, regarding land access, the researcher was able to identify two specific strategies to cope with climate change, population growth, land loss or land degradation, and decreasing livestock holdings for instance, which are the intensification (by changing land use systems to increase productivity per hectare) and extensification (by expanding their territories into unoccupied areas or neighboring communities' lands) (Pollini & Galaty 2021, 278). Moreover, what is important to mention is the Maasai's ability to adapt to changes while preserving their distinct cultural identity (Galaty 2002, Martinez & Waldron 2006, Thompson & Homewood 2002). Globalization is a clear example of this: rather than succumbing to homogenization, the Maasai have adeptly navigated the challenges of globalization while preserving their culture, blending old and new elements to maintain their way of life in a constantly evolving world (Kirigia & Ramit 2018, Martinez & Waldron 2006, Thompson & Homewood 2002). Precisely, this attitude can be referred to as diversification which is the integration of pastoralism with various other livelihood strategies, such as farming, conservation, tourism, business and wage employment, often involving migration to small towns or urban centers (Pollini & Galaty 2021, 291). By embracing change while staying rooted in their traditions, the Maasai demonstrate that progress is not necessarily synonymous with conventional notions of development but rather lies in maintaining the essence of their unique identity: "pastoralists, rightfully, will perpetuate local traditions as they see it, and will continue seeking access to the amenities and privileges of the urban and modern world as they are able" (Galaty 2002, 362).

When exploring the gender dynamics within Maasai society, what can be highlighted, and is aligned with African feminists' insights, is that gender roles are not static but constantly evolving in response to changes in power dynamics caused by shifts in the production system (Archambault

2011, Westervelt 2018). Notably, Maasai women have played a pivotal role in adapting to new economic realities by expanding their roles beyond traditional household responsibilities (Willy and Chiuri, 2010). They have actively participated in small-scale businesses, pursued education, and engaged in advocacy, thereby elevating their standing within the community and challenging gender norms (Bobadoye et al., 2016). This point is highly significant for the paper. On one hand, it highlights the resilience of Maasai women and the fluidity of gender and culture; men and women are not confined to rigid roles, but rather these roles evolve. On the other hand, it serves as evidence of gender inequalities in tenure systems. Indeed, in a context where pastoral ways of life are endangered by land laws promoting privatization and sedentary lifestyle, it is often the women who adapt their roles and distance themselves from these traditional practices (Bussmann et al., 2018). This underscores the arguments advanced earlier, as emphasized by African feminists. Because women's tasks are not directly geared toward commercialization (as per Western discourses and productions), they are perceived as less significant (Bobadoye et al., 2016). Consequently, they are the ones who must diversify family income when changes (like extreme privatization with new land tenure laws) occur within the community context: "Women are losing their user rights to resources, especially lactating cows, other small animals and resources such as firewood. Thus, whereas from a national perspective land adjudication and titling among the Maasai is positive, it is affecting most Maasai wives negatively, forcing them to renegotiate new livelihood arrangements within the family institution" (Willy and Chiuri 2010, 747). This is also supported by Wangui, who argues that: "the current model of development intervention focused on livestock and not pastoralists could lead to worsening conditions for pastoralists, especially women. Strengthening pastoral livelihoods is especially critical today in the face of increasing incidences and intensities of drought and increased vulnerabilities created by past development

interventions" (Wangui 2008, 375-6). So because women's central role in livestock production is overlooked by the simple fact that they do not have the right to sell it, they acquire new roles within the community by diversifying their activities; these new roles grant them access to new knowledge but also contribute to the erosion of their Indigenous knowledge (Bussmannn et al., 2018). This is the question I will address in the final section. However, it is essential to first examine how the phenomena observed up to this point manifest in the latest enactment of the Community Land Act of 2016 in Kenya.

2. The case of the Community Land Act of 2016 in Kenya

Drawing on the insights of African feminists and the findings from the preceding discussion, it will be argued that, although promising in certain aspects (that align with what has been argued so far), the Community Land Act of 2016 (CLA) actually encourages more privatization and land subdivision, leading to new tensions and competitions among various stakeholders, which further exacerbates gender inequalities. Specifically, in the implementation of the law, it becomes apparent that its underlying moral principles are not aligned with the needs and lifestyles of pastoral communities.

As the law is recent, there is limited empirical research on its effects on Maasai communities and on women in particular. Therefore, I will analyze both the law itself through the lens of African feminists and the findings I have made so far. Additionally, I will draw from an empirical study on the Samburu, a semi-nomadic and pastoral tribe in Kenya to establish connections and gain further insights (Hassan et al., 2022).

The CLA represents a significant departure from previous laws that have predominantly advocated for individual land privatization, which, in turn, resulted in the dispossession of land from pastoral communities, including the Maasai (as presented earlier above) (NAMATI & FAO

2020, Riamit & Kirigia 2021, Alden Wily 2018). As mentioned at the beginning of the paper, it is assumed by the various local and international political powers, that community lands registered under the CLA should now replace the group ranches and trust lands, freeing themselves from the dark past of corruption and patronage relationships (ILEPA 2021, NAMATI & FAO 2020, Alden Wily 2018). The process of registration of community lands is still ongoing in Kenya and is supported by local and international governmental and non-governmental organizations because it contains a crucial dimension of human rights, and of preservation of communities, traditions, and the environment (IWGIA 2019, Mwangi 2009, Alden Wily 2018, Zakout & White 2019). For instance, it is important to note that three of the 17 Sustainable Development Goals call for securing community land rights (Veit, 2019). Community land has historically encompassed a significant portion of land in numerous countries, and in Kenya, it constitutes approximately up to 60% of the total land area, predominantly located in the arid Northern region (Veit 2019, Alden Wily 2018). This vast expanse of community land is spread across 21 out of the 47 counties and is mainly inhabited by pastoralist communities (Alden Wily, 2018). It provides "security, status, social identity and a safety net" for the communities (who, for many, strongly value the land in their culture and spirituality) (Veit, 2019). This, in part, explains the importance of strengthening peoples' community land rights, especially in the face of companies competing for more and more territory, as global demand for food, fuel, minerals, and wood products explodes (Veit, 2019).

The first evidence that the CLA is a significant advancement for the protection of land rights of Maasai communities is that it acknowledges all community lands as belonging to the communities, even if they are not yet registered (Alden Wily, 2018). The Act recognizes the legitimate authority of communities in governing their lands by facilitating the establishment of decision-making bodies. Indeed, it requires communities to elect committees consisting of men,

women, and representatives from the villages within the community land (NAMATI & FAO 2020, Alden Wily 2018). The committees have the responsibility of collecting evidence to substantiate the community's land claim and to come to an agreement on the delineation of land boundaries (NAMATI & FAO 2020, Alden Wily 2018). Additionally, the CLA insists on the significance of resolving boundary conflicts at the community level before legally submitting the claim to the government (CLA, Section 39.2). Importantly, the Act follows the Land Act of 2012 in acknowledging the importance of customary law as it is stipulated that "there shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems" (LA s.5 (2) in Alden Wily 2018). But it specifies that these laws must be consistent with the human and social rights enshrined in the Kenyan Constitution (Alden Wily, 2018). In this way, the CLA promotes gender mainstreaming and youth inclusion, thereby guaranteeing that all community members have a voice in the land claim process. This aligns with Kenya's 2010 constitution, which emphasizes that "all people – women, men, elders, youth, ethnic minorities, and people with disabilities – have the same right to own, manage, govern, and inherit land" (NAMATI & FAO 2020, 7). The 2010 Constitution further reinforces gender mainstreaming through a provision that urges the State to adopt legislative and policy measures to ensure that no more than two-thirds of members in elective or appointive bodies are of the same gender (NAMATI & FAO, 2020). Lastly, it is also important to note that the CLA legally defines what constitutes a 'community' stressing that it involves a "distinct and organized group that share any of the following attributes: common ancestry, similar culture or unique mode of livelihood, socioeconomic or other similar common interest, geographical space, ecological space, ethnicity" (CLA, Section 2). It is possible to understand the appeal of this definition as it allows communities to self-identify.

So, from this perspective, the CLA appears to be an initiative aligned with what I have advocated in the theoretical part: recognition of culture and tradition, emphasis on community rather than individuality, or in short, acknowledgement of the specific needs of pastoral communities. Furthermore, it seems to be a positive step forward for women who have traditionally relied on communal land for their livelihoods. It also provides women with a platform (through the committees) to participate in land management decisions, especially considering that the Act (and the Constitution) stipulates their inheritance. This legislative initiative therefore marks a pivotal step toward rectifying past land-related injustices and empowering pastoralist communities with greater autonomy over their territorial resources.

However, it is in the implementation of the law that one realizes that the overarching universal concepts on which this law is based do not reflect the needs of pastoral communities, specifically the Maasai. On the contrary, once again, it appears that this law promotes sedentary lifestyles and tends to overlook the significance of Maasai traditions and in this way, further excludes women.

Firstly, the CLA's approach of encouraging communities to delineate and define their land parcels may not fully align with the fluid and dynamic nature of traditional Maasai practices, as mentioned, their way of life requires them to move across vast expanses of land (Galaty, 2016). A compelling example of this was highlighted in the field research conducted in Samburu County in which community members had limited knowledge of the registration process under the Act (Hassan et al., 2022). This lack of understanding was partly attributed to the absence of mobile outreach units, which could have provided essential information and support to nomadic populations (Hassan et al., 2022). Additionally, the research emphasizes that, contrary to its intended purpose, the CLA encourages further land subdivision (Hassan et al., 2022). Many

community members expressed their preference for opting towards subdivision rather than claiming their community land because according to them, the neighboring lands were already fenced off (Hassan et al., 2022). So here, there is the idea, that the government is adding another layer of legislation to pre-existing outcomes of privatization processes. Furthermore, due to the CLA's emphasis on inclusivity, families feared that registering their land collectively might result in smaller individual parcels (Hassan et al., 2022).

This notion resonates with what was previously emphasized in the theoretical section, as the formalization of rights inevitably involves competition among various stakeholders. In this context, community rights take on a sense of individualization, particularly because communities are encouraged to define themselves, and this process of identity definition often leads to differentiation from other communities or even within the same community (Boone, 2019). Particularly, what has been observed is that contrary to what was highlighted by the initiative, women's access to land is not necessarily improved in the formalization process. This has been reflected in the Samburu county (Hassan et al. 2022). One of the main discontent amongst the communities was the encouragement in the CLA of the election of representatives, (the community land management committee) paralleling the council of elders with a new institution without clarifying roles (Hassan et al. 2022). While the Community Land Act encourages women's involvement in decision-making, the omission of the elders' crucial cultural role led to a situation where women were absent from all general assembly meetings related to the implementation of the CLA (Hassan et al. 2022). The CLA's approach of simply including women without considering existing power dynamics and traditions resulted in disrespecting the traditional norms and generated new tensions. This oversight may have strengthened the elders' resentment, potentially providing them with further reasons to exclude women. This supports my argument

that the CLA imposes major liberal values without taking into account the culture of communities and, as a result, perpetuates gender inequalities in access to property. Other recent research provides additional explanations for women's exclusion through the CLA such as: the fact that it does not clearly stipulate that women can be allocated land independently from men, women in customary marriages being viewed as outsiders in their husbands' communities; local officials having the authority to determine community membership without any checks or oversight; legal rules not adequately addressing intra-household rights; traditional male control over common property governance; and women's limited familiarity, knowledge, and confidence to actively engage in resource governance (Massay 2019, Alden Wily 2018).

Another concern is that the Act's provisions might not fully consider the diverse needs and priorities of Maasai women. Their livelihoods and cultural practices, which rely heavily on land, could be adversely affected if the Act does not account for their unique roles and contributions to land management and conservation. For women, instead of imposing so-called universal principles that actually clash with the legitimacy of Maasai culture, it would be necessary to demonstrate that their knowledge is beneficial for the well-being of the entire community. This will be demonstrated in the upcoming section, where I will engage with the concept of Indigenous knowledge as highlighted by Njoki Wane.

3. Revalorizing Maasai women's Indigenous knowledge

In this section, I will apply the concept of Indigenous knowledge, as illuminated in the normative reflection, to the case study of the Maasai in Kenya. By doing so, the aim is to demonstrate, as argued by Wane, how the concept of Indigenous knowledge unveils power dynamics between so-called modern practices favoring the capitalist system and Indigenous knowledge. Additionally, it sheds light on gender inequalities. Specifically, when contextualizing

this discourse within the realm of land rights, it will be shown that land tenure laws in Kenya often disregard Indigenous knowledge and, furthermore, that intensive privatization jeopardizes Indigenous knowledge. Much like culture and gender, Indigenous knowledge must be viewed as fluid and adaptable, susceptible to change. Lastly, I will argue that promoting this knowledge challenges established power relations and better addresses the needs of Maasai women.

As a reminder, the Maasai in Kenya are renowned for their practices that they diligently retain and safeguard to this day. They continue to primarily employ traditional methods and in this way are custodians of Indigenous knowledge that has been transmitted across generations (Kereto et al., 2022). Specifically, their pastoral way of life imparts upon them a profound understanding of sustainable land management practices (Kariuki et al., 2018). This encompasses their expertise in rotational grazing, water conservation, and land use patterns, among others (Kariuki et al. 2018, Kereto et al. 2022). Moreover, they possess a profound knowledge of herbal medicine, which draws upon the diverse flora of their environment (Kereto et al., 2022). Similarly, their knowledge of livestock care and management is highly regarded, encompassing practices related to animal health, breeding, and milking techniques (Nkedianye et al. 2020, Pollini & Galaty, 2021). It is also important to add that Maasai women possess an extensive knowledge of the specific tasks assigned to them within the communities, such as milking cows, cooking, cleaning, and the collection of water and firewood (Kereto et al. 2022, Wangui 2008). This reflects a significant interdependence within the Maasai communities, where each individual's knowledge relies on the knowledge of others. Such interdependence is frequently overlooked, as it will be demonstrated in the following lines (Kereto et al., 2022).

As evidenced earlier in the paper, the Maasai community has not remained unaffected by the infiltration of Western modes of living, which has consequently triggered a gradual erosion of

their Indigenous knowledge (Bussmann et al., 2018). Despite the burgeoning efforts aimed at securing this knowledge, notably supported by development agencies, it is crucial to acknowledge that these initiatives are not devoid of constraints (Esiobu 2019, Wane 2014). Specifically, research shows that the push from nomadic to more sedentary lifestyle (notably promoted by Kenyan land laws) lead to an accelerating loss of Indigenous knowledge (Bussmann et al. 2018, Wangui 2008). Moreover, an intensification of this knowledge loss is observed among women (Wangui, 2008). The explanation for this phenomenon can once again be illuminated through the insights of African feminists. Indeed, as laws fail to consider women's needs and the Maasai way of life, and tend to prioritize everything related to commercialization, women have been excluded from all commercial activities (they do not have inheritance rights to land and thus do not have the right to sell what comes from it, livestock for instance) (Kipuri 2008, Wangui 2008). As a result, their roles and, by extension, their knowledge are devalued. It is in this manner, for instance, that Wangui was able to demonstrate the loss of control by women over milk resources and argued that: "(…) despite increased involvement in livestock production activities, women's limited control over the economic aspects of these endeavors underscores the need for nuanced policies that empower women holistically within evolving pastoralist contexts." (Wangui 2008, 370).

Other evidence of this lack of recognition of Maasai women's knowledge includes, for example, the introduction of technologies aimed at improving the daily lives of the communities, without consulting women (Wane, 2014). This actually does not align with their needs and, on the contrary, diminishes the importance of women's roles. Instead of emphasizing livestock (for instance) commercialization, attention could be directed towards addressing the essential need for more accessible water sources, particularly during drought periods, as mentioned by Maasai women during a research (Bobadoye et al., 2016).

Continuing the line of thought initiated from the outset of this work, I can assert that land laws, by embracing a static view of culture and gender, consequently uphold a binary perception of roles within communities, thereby relegating women's roles to secondary positions, as they are prevented from selling. In this regard, Kameri-Mbote (2006) suggests that instead of focusing solely on land ownership, land laws should consider roles as determining land rights. Following this logic would make land rights more equitable for women, who are predominantly engaged in land-related work, and more importantly, due to the interdependence of various roles within the Maasai communities (Kameri-Mbote, 2006). This would shift the moralistic discourse propagated by the new land laws in Kenya that impose women's land rights (without really giving the community the means to integrate them) towards emphasizing their roles, which would align more with Maasai culture. Moreover, this echoes the importance of collectivity as put forward by Wane (2011, 2014) and the African feminists, as advanced in the normative reflection.

This is why we observe a greater loss of knowledge among women and the women of the younger generations (Wane, 2014). This is further evidenced by the fact that they are the most likely to switch to different sectors of activity, as demonstrated earlier in the text. However, if I follow Wane's insights, this diversification of roles among Maasai women is not only negative. Firstly, it highlights their adaptability and resilience, as argued earlier. Secondly, it signifies the acquisition of new knowledge, thus illustrating the fluid nature of knowledge and the potential for the exchange of different forms of knowledge, as long as it aligns with the community's interests (Wane et al., 2011). This is also supported in empirical literature. Indeed, in a study conducted among the Maasai in the Narok County, Kenya, it was argued that initiatives aimed at promoting the preservation of these landscapes must necessarily consider these hybrid systems of knowledge that combine both types of knowledge (the so-called 'modern' and traditional) (Jandreau and

Berkes, 2016). This is attributed to a dynamic learning system in response to the need to adapt to a changing context (Jandreau and Berkes, 2016). Hence the need for land laws that do not confine communities to binary roles and instead enable them to constantly adapt to changing contexts. Especially with the increase in droughts, pastoral communities need to travel farther to feed livestock (Kereto et al., 2022). However, laws requiring them to demarcate their land parcel (e.g., The CLA) reduce their resilience and encourage them to abandon their nomadic lifestyle for more sedentary ones, resulting in a loss of traditional knowledge.

At this point in the reflection, the question arises as to whether the laws are sufficient to address the land claims of Maasai women. Once again, it has been found throughout the thesis that, on the one hand, laws tend to create and solidify identities, and because they are subject to interpretation, it is often those with the most resources who can benefit from them (cf. The politics of land rights).On the other hand, the current context is characterized by the rise of the private property model, with any other form seen as backward (cf. Conflicting models of property). As demonstrated, even though there is a trend towards returning to communal land rights, in practice, these rights still support a privatized vision of property that does not align with the need of flexibility for pastoral communities and women. This idea then reminds us of how laws, when confronted with reality, can have opposite effects. Borowiak's research (2004) on farmers' rights illustrates this idea well. Indeed, with the introduction of commercial models of intellectual property within agriculture, farmers had to adopt the language of rights to protect their autonomy and gain recognition for their contributions (Borowiak 2004, 511). However, Borowiak was able to demonstrate that while the discourse on farmers' rights helped highlight their claims and challenge the dominant discourse of commercial breeder's rights, the reality is much more asymmetrical between these two groups, and the rights are easily subject to interpretation

(Borowiak 2004, 534). He also adds that rural communities are now regulated by norms and institutions ill-equipped to understand the claims and needs of these communities (Borowiak 2004, 535). As a result, there is a legal discourse that creates an impression of parity between the rights of breeders and farmers, and by extension, a lack of recognition for farmers' demands (Borowiak 2004, 534).

In this way, focusing on the promotion of Indigenous knowledge would be a way to produce a counter-hegemonic discourse that would challenge the dominant capitalist discourse implied in these laws, by highlighting the potential of these communities. Or in other words, it would go towards what Borowiak recommends in response to this issue: "more work needs to be done to think through how dominant discourses and transnational regimes can be transformed so that they are more receptive and responsive to the histories, experiences, and needs-articulations of those whose lives are so deeply affected by their operation." (Borowiak 2004, 536). Governmental representatives and non-governmental organization should adopt strategic narratives that underscore the collective advantages of women's Indigenous knowledge for the broader community. Instead of relying on moralistic and paternalistic discourses, this recommendation capitalizes on the empirical evidence elucidated earlier, describing women's pivotal role in upholding Indigenous knowledge. This approach serves as a means to decolonize the notion that local women are solely victims of patriarchy, with no thought of their own. On the contrary, they are great defenders of their culture (Esiobu, 2019). It thus also values traditions instead of systematically opposing culture with human rights. More extensively, these efforts should equip communities with the tools needed to recognize their potential and the means to use them. Notably, a considerable obstacle to the active participation of Maasai but also, pastoralist

communities at large, in land claims pertains to a lack of education and illiteracy (mostly amongst women of these communities) (Moyo 2017, 13).

VI. Conclusion

In conclusion, this thesis has delved into a normative issue, using the formalization of land rights as a concrete case for examination. Particularly, my research question was: Why do legal and institutional frameworks in Kenya fail to secure land rights or claims for women from pastoral Maasai communities? With African feminists' insights to enlighten the debates around formalization of land rights and implications for gender inequalities in tenure systems within pastoral Maasai communities in Kenya. Through this exploration, I have uncovered the moral implications of land rights formalization, particularly concerning gender equality and the safeguarding of human rights, encompassing the preservation of Indigenous communities, their traditions, and their environments.

Drawing from the insights of African feminists, I can derive several key conclusions from the case of the Maasai in Kenya. Gender inequalities within land tenure systems are not merely a matter of culture but are deeply rooted in power dynamics that originated during colonialism. These dynamics were perpetuated by constructing identities for the Maasai as perennially backward and relegating women from these communities to the private sphere. These identities justified the disregard for the needs of the Maasai (and pastoral communities more broadly) by advocating privatization as the sole valid model of property. However, what could be observed among the Maasai, in line with the holistic vision of African feminists, is their adaptability and flexibility in the face of drastic changes in their environment. The Maasai have diversified their ways of life (and continue to) to meet their needs, albeit greatly imperiled by recent land laws in Kenya, all while maintaining a strong attachment to their culture. Similarly, Maasai women have displayed great resilience, with many turning to alternative activities. However, this adaptation underscores the existing gender inequalities and land rights insecurity. Furthermore, the case of

the Community Land Act of 2016 has demonstrated the practical application of moral injustices imposed upon the Maasai (and pastoral communities) through land laws. It is evident that relying on great universal principles holds little weight if the laws are not adaptive to the needs of communities. Formalizing land rights inevitably involves power dynamics, and it is imperative to ensure that the most vulnerable do not consistently end up as the *losers* of such processes. This can only be achieved by considering their needs and by valuing their potential and knowledge. Hence, I concluded this analysis by mobilizing the concept of Indigenous knowledge. It once again shed light on power dynamics within land tenure systems among the Maasai in Kenya. Specifically, it highlighted that because women are relegated to the private sphere (an outcome of the fixed vision of culture and gender), and contemporary society predominantly values marketization, their Indigenous knowledge is denigrated. Consequently, they are more likely to lose their Indigenous knowledge. In the final section of this work, an important question has been raised, that is, whether legal reform is the sole option in the face of such fluid social roles, and are they sufficient? The reflection I conducted in this thesis leads me to question them and instead think about other alternatives that would focus more on the Indigenous knowledge of these communities.

However, it is essential to acknowledge the limitations of this study. The examination of climate change, a central issue for the Maasai in Kenya, was beyond the scope of this paper. As stated in the introduction, recent periods of drought have placed the Maasai and pastoral populations in the Horn of Africa in considerable jeopardy (EU Commission, 2022). Although it is important that international organizations have sounded the alarm on this exceptional drought, it seems that the measures taken are still not sufficient and the African continent once again feels alone in facing climate change, even though the problem arises from actions on a global scale

(Courrier International, 2022). More precisely, the measures are so far too disconnected from people's needs and do not consider the local knowledge of the populations (Courrier International, 2022). Yet, in the case of pastoralist communities, as mentioned before, they have an indispensable knowledge about the land and the climate. Moreover, many have demonstrated that Maasai's pastoralism and their seasonal migration, allowing time for the land to recover, is a sustainable way to use the ecosystem to its fullest without damaging it (Cultural Survival, 2010). Thus, in order to better address the needs of Maasai communities, it would be important to conduct a similar analysis of initiatives and discourses surrounding climate change. The perspectives of African feminists could help decolonize this very top-down vision of the great Western powers on climate change, that is far too disconnected from the realities of pastoralist communities and better integrate them in such discussions.

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