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CHAPTER VI

Climate Change Related Disputes in North Kenya

How Kenya's Alternative Justice Systems Could Utilize Co-Production of Knowledge to Curb Pastoral Violence

Jane Enid Ngunzi Murungi / Joyce Nairesia Lesegi / Margherita Paola Poto / Eva Julia Lohse¹

I. Introduction

The Constitution of Kenya, 2010 at Article 159 (2)(c) formally acknowledges Kenyans' most common and preferred ways of resolving disputes.² Since the promulgation of the 2010 Constitution, courts and tribunals are mandated to promote alternative forms of dispute resolution and Alternative Justice Systems (hereafter: AJS).³ AJS are relevant 'to adapt to human right norms; to reduce case backlogs in court; to re-legitimise the State by bringing government closer to the people; by enhancing the role of the State and Citizens as direct actors for their civic autonomy; and to promote a culture which would include viewing the traditional as rational.'⁴ In August 2020, the judiciary launched the AJS Policy. It is documented in the AJS Framework Policy and AJS Baseline Policy. The AJS Policy recommends that Kenya endorses three of four existing AJS typologies: the Autonomous AJS institutions, Autonomous Third-party AJS institutions and Court-Annexed AJS institutions.⁵ The AJS policy is an outcome of comprehensive research, public⁶ and stakeholder participation, guided by the judiciary-led Taskforce on

1 *Murungi* contributed to the research and the drafting of all sections of the chapter, *Lesegi* contributed with the empirical research, *Poto* and *Lohse* supervised and edited the content of the chapter. The authors are grateful to *Juliana Hayden* for the English proofreading and editing.

2 Hiil Justice Needs Survey Kenya Report 55–56. Only 8 % of Kenyans seek help or legal problems from court and 7 % from lawyers.

3 The AJS Policy compares and contrasts the terms Alternative Dispute Desolution (ADR) and Alternative Justice Systems (AJS). The latter refers to the 'plural legal systems which exist in Kenya.' AJS Baseline Policy 6.

4 AJS Framework Policy 4.

5 Alternative Justice Systems Framework Policy.

6 Article 232 (1) d of Constitution requires public participation in policy making. For more on Kenya's legal framework on public participation see *Nizam* and *Muriu*, Basic Requirements for Public Participation Kenya. www.openknowledge.worldbank.org/handle/10986/21664 last access November 2022. License: CC BY 3.0 IGO.

Part II: Co-Production as an Innovative Tool in Decision-Making

Traditional, Informal and Other Mechanisms.⁷ The outcome of the AJS policy could be considered a form of co-produced knowledge. Co-production of knowledge holds to the ‘collaboration of diverse stakeholders, diverse knowledge(s) and value systems.’⁸ As of 2022, the AJS policy is in its second year, and its benefits are yet to be attained. Its weaknesses and limits have also yet to be clearly ascertained. However, as of 2020, Kenya’s Chief Justice appointed a National Steering Committee on the implementation of AJS Policy (hereafter referred to as ‘National AJS Steering Committee’). Its terms of reference include

“capacity building of all actors on human rights framework of AJS to ensure AJS thereto conforms; facilitate training, hold dialogues to reverse social structures that perpetuate oppression; rally actors to support the AJS three typologies; develop tools and knowledge forums to strengthen competence of AJS forums and judiciary staff; work with justice actors to eliminate barriers hindering respect, protect, transform AJS policy.”⁹

Bearing in mind that research shows that most Kenyans prefer dispute resolution through AJS, the work of this National AJS Steering Committee is crucial.

This chapter proposes that the National AJS Steering Committee could strengthen implementation of the AJS policy by considering ways in which AJS typologies could tackle climate change related disputes occurring in northern Kenya, particularly pastoral violence. For the purposes of this chapter, pastoral violence pertains to livestock-raiding, cattle rustling and other cattle-related offences. These include malicious damage to property, assault, murder, manslaughter, corruption such as bribery, falsification of documents, and movement permits for livestock. In Kenya, the penalties for these offences, *inter alia*, range from five years to life imprisonment.¹⁰ Yet, the findings of the Kenya National Human Rights Commission public inquiry suggest that a cattle rustler is unlikely to get arrested or prosecuted.¹¹ Community peace initiatives, such as the Modogashe Declaration, also appear inadequate.¹² These observations notwithstanding, thought leaders across the board realise *inter alia* the important role that civic, traditional and community leaders of regions affected by pastoral violence could play to

7 See the Alternative Justice Systems Framework Policy vii for details the tenure of the AJS taskforce

8 Hakkarainen, Mäkinen-Rostedt, Horcea-Milcu, D’amato, Jämsä, & Soini, Transdisciplinary research in natural resources management: Towards an integrative and transformative use of co-concepts. Sustainable Development, 30(2), 2022, 309–325.

9 Kenya Judiciary letter from the Office of the Chief Justice/President of the Supreme Court dated 9 December 2020 by Hon Chief Justice David Maraga (now retired).

10 Anon The Economist 46; Blomfield The Daily Telegraph 13; Anon Daily Nation 1.

11 Kenya National Commission of Human Rights Mending the Rift 6.

12 Kenya National Human Rights Commission Mending the Rift 8, 95–96.

stem the scourge.¹³ Three justifications support the use of co-production of knowledge in this context. Firstly, many key actors called upon to resolve pastoral violence already have representatives in the National AJS Steering Committee.¹⁴ The National AJS Steering Committee would, in view of its experience, be positively predisposed to consider what the imperatives of a co-production of knowledge process entails. Secondly, the topic of how AJS would address pastoral violence should be of concern to the National AJS Steering Committee. Pastoral violence has the propensity to scuttle traditional, community, and government leadership.¹⁵ All are key factors in the three recommended AJS typologies. As such, the trend of pastoral violence threatens to undermine capacity building efforts regarding the use of the three AJS typologies.¹⁶ Thirdly, quality leadership is required to steer a co-production of knowledge process successfully.¹⁷ Pastoral violence is a complex matter involving a multiplicity of stakeholders from diverse knowledge systems and values. It would be valuable for the National AJS Steering Committee to actively capture, transfer and preserve their institutional knowledge and institutional memory for the cause of ending pastoral violence. The AJS has gained credibility in the national and international communities. However, AJS institutions would not be the sole solution to pastoral violence. Similarly, to their predecessor, the AJS taskforce, they are able to bring together a diversity of views through extensive research and consulting. Their terms of reference currently enable them to mobilize necessary funding to facilitate such activities. The issue of pastoral violence has concerned many, whom it would appear, are working in silos. The National AJS Steering Committee could have meetings with researchers, NGOs, international organisations, civil society organisations (CSOs), community-based organisations (CBOs) and any party which has addressed pastoral violence, in turn breaking down information silos.

Utilizing the co-production process requires further elucidation of its key principles. *Norström et al* have extrapolated and synthesized four principles as best practices in co-production of knowledge processes which are: context, pluralism, goal-orientedness, and interactivity. There is also the monitoring and evaluation of each of these aspects.¹⁸

13 Across the board, all recommendations on cattle rustling seek to include the community leaders, elders, and more.

14 For instance, these include the Ministry of Interior and Coordination of National Government, the National Police Service, the Director of Public Prosecutions, civil society representatives, Office of the Attorney General.

15 *Sharamo et al.*, The politics of pastoral violence: a case study of Isiolo County, Northern Kenya. Future Agricultures Consortium Working Paper, 2014, 95.

16 Kenya National Commission on Human Rights Mending the Rift, p. 79, 98.

17 *Adelle et al.*, Making sense together: The role of scientists in the coproduction of knowledge for policy making, Science and Public Policy, 2020, 56–66.

18 *Norström et al.*, Principles for knowledge co-production in sustainability research, Nature sustainability, 2020, p. 182–190.

This chapter will adapt these four principles to align with a proposed co-production of knowledge for the purposes of strengthening AJS typologies to resolve cases relating to pastoral violence in northern Kenya. The analysis is limited to the first four principles and excludes the aspects of monitoring and evaluation. Therefore, the chapter is arranged into four topics corresponding with context, pluralism, goal-orientedness, and interactivity within the context of pastoral violence. Finally, the chapter will also include an interview between researcher *Jane Murungi* and AJS practitioner *Joyce Lesegi* concerning how climate change has impacted AJS.

II. Applying the principle of 'context' to co-production of knowledge to resolve disputes related to pastoral violence in northern Kenya as exacerbated by climate change

1. The concept of 'context' explained

Norström et al. state that 'context' involves examining 'how the "governance challenge" has emerged; who will be impacted or affected by the outcomes?; who has the power to enable or constrain action?; how will policy, regulatory, institutional and cultural factors shape the process and realization of desired outcomes?'.¹⁹ Therefore, this section will describe how the climate-change governance challenge relating to pastoral violence has emerged and why the north of the country faces this violence. Next, focusing on the AJS policy, a discussion of the factors that would shape a co-production of knowledge process will be presented.

2. The governance challenge of pastoral violence and its relation to climate change in northern Kenya

The livestock industry is a key economic activity in the north of Kenya. Ninety percent of the Kenyan population raise animals for meat and milk production.²⁰ Of the six areas in Kenya that mainly supply livestock for the meat market, four are counties in the north.²¹ They are in arid and semi-arid lands.²² Many herders graze their livestock along River Ewaso Ng'iro and its tributaries. River Ewaso Ng'iro is a major source of water for

19 *Norström et al.*, Principles for knowledge co-production in sustainability research, Nature sustainability, 2020, p. 182–190.

20 www.kilimionews.co.ke/general-news/livestock-population-in-kenya/ last access October 2022.

21 USAID End Market Analysis of Kenyan Livestock and Meat 3, 24.

22 These include Tana River (35,376km²), Turkana (68,860 km²), Marsabit (66,923 km²), Isiolo (25,336 km²), Mandera (25,798 km²), Samburu (20,182 km²), Garissa (44,753 km²) and Wajir (55,841 km²).

this region, it is the second longest river in Kenya. However, man-made and climatic changes are threatening this water resource. During the course of 2014–2022, Kenya witnessed severe, chronic droughts. To date, seasonal rainfall in North Kenya has been perennially poor.

In addition to drought and climate change, researchers have attributed pastoral violence to a variety of drivers. These include, *inter alia*, the culture of ethnic groups in the north to value waging cattle rustling as a rite of passage, a show of masculinity, the perception of a justified practice for purposes of re-stocking livestock;²³ opportunistic entrepreneurial crime,²⁴ heightened by easy access to small and light weapons,²⁵ and incitement by politicians.²⁶ Nevertheless, drought has certainly exacerbated the tenuous situation of pastoral violence for the ordinarily nomadic pastoralists.

This situation raises the question of what efforts have authorities taken to address pastoral violence. In some instances, the police have arrested and arraigned alleged perpetrators of pastoral violence through the formal courts. Through community peace initiatives, traditional and community institutions have also tried to intervene. This has been marginally successful with community agreements, such as the Modogashe Declaration, renewed in 2011. This agreement was reached to control and punish unauthorised grazing, and livestock raiding.²⁷ Nevertheless, the complaint remains that much of pastoral violence goes unpunished.²⁸ Furthermore, it seems to be worsening. Mostly, cattle rustlers/livestock raiders appear relatively undeterred from desisting from their deleterious actions.²⁹ Over the past two decades, Kenya has experienced pastoral violence with new and troubling characteristics unknown to the traditionally seen cattle-rustling.³⁰ The distinct characteristics include the rationale, the duration, the violence,

23 *Kimani and Masiga*, A study on the comprehensive comparison between indigenous cattle rustling and modern cattle rustling in West Pokot County, Kenya. *Traektorià Nauki= Path of Science*, 2020, p. 1011–1016.

24 *Kimani and Masiga*, A study on the comprehensive comparison between indigenous cattle rustling and modern cattle rustling in West Pokot County, Kenya. *Traektorià Nauki= Path of Science*, 2020, p. 1011–1016.

25 Regional Centre on Small Arms (RECSA) *Cattle Rustling*, p. 4, 8.

26 *Sharamo*, The politics of pastoral violence: a case study of Isiolo County, Northern Kenya. Future Agricultures Consortium Working Paper, 2014, 95.

27 Modogashe Declaration III www.peaceagreements.org/viewmasterdocument/1945 [www.peaceagreements.org/wvview/1945/Modogashe%20Declaration%20\(III\)](http://www.peaceagreements.org/wvview/1945/Modogashe%20Declaration%20(III)) last access October 2022.

28 Kenya National Commission of Human Rights *Mending the Rift*, p. 6.

29 Uganda is the exception in the East African region. Otherwise, this is the case for Kenya, Ethiopia, South Sudan and Somalia.

30 *Kimani and Masiga*, A study on the comprehensive comparison between indigenous cattle rustling and modern cattle rustling in West Pokot County, Kenya. *Traektorià Nauki= Path of Science*, 2020, p. 1011–1016.

their militia-like and well-organised criminal enterprises and operations, and impacts on State security agents, game and tourism.³¹

These instances have exceeded the capacity of traditional/community institutions. Pastoral violence in North Kenya presents a governance challenge related to climate change. This chapter proposes that the National AJS Steering Committee use a co-production of knowledge process to further understand how to support all AJS typologies to tackle disputes relating to pastoral violence in North Kenya. Accordingly, the next section will discuss who would be impacted or affected by the outcomes of such a co-production of knowledge process.³²

3. Context

Implementing a co-production of knowledge process is intended to enable the three AJS typologies to better resolve disputes related to pastoral violence. Broadly, there are three categories of those who would be impacted by the outcomes of the process. First, all those providing any AJS service, the dispute resolvers. Second, the potential recipients of AJS services. Third, other interested stakeholders such as researchers, academics, and practitioners whose field of work is related directly or indirectly to North Kenya.

a) Dispute resolvers – an overview

The co-production process would impact those institutions, persons, and structures which the AJS policy expects to resolve disputes. Primary are the three AJS typologies: the autonomous AJS institutions, autonomous third-party AJS institutions and court-annexed AJS institutions. However, they are not exclusive dispute resolvers. Moreover, they work with the support of diverse persons and institutions. Secondary are key persons and/or institutions that Kenyans trust to intervene and solve disputes in an AJS manner. Consequently, the discussion that follows will consider the three AJS typologies as they relate to northern Kenya and further examine these dispute resolvers.

aa) Autonomous AJS institutions in Northern Kenya

Northern Kenya is predominantly rural. In Kenya, communities living in rural areas are accustomed to, and prefer, to seek legal redress from their autonomous AJS institutions. The prevalent ethnic groups in the North include the Turkana, Borana, Burji, So-

31 *Sharamo*, The politics of pastoral violence: a case study of Isiolo County, Northern Kenya. Future Agricultures Consortium Working Paper, 2014, 95.

32 *Norström et al.*, Principles for knowledge co-production in sustainability research, *Nature sustainability*, 2020, p. 182–190.

mali, Rendille and Gabra. There are several AJS autonomous institutions in the region in accordance with the aforementioned ethnic groups and thus cultural awareness is embedded within the autonomous AJS.³³ All those charged with decision-making over disputes from the home level to the highest level would be impacted by a co-production of knowledge process.³⁴

bb) Autonomous third-party AJS institutions in Northern Kenya

‘The main characteristic of the autonomous third-party AJS model is that the State and non-State third parties are not part of any State judicial or quasi-judicial mechanisms.’³⁵ Many institutions are involved in peace building, security, law and order in Northern Kenya. As such, people may consult with them to resolve conflicts that arise. Seventeen percent of Kenyans consider the chief to be the most helpful in resolving a legal dispute.³⁶ Concerning a crime, only 36 % of Kenyans consider the police as most helpful. All in all, 18 % of Kenyans prefer to approach elders, clan elders, assistant chiefs, neighbours, colleagues, church leaders, cultural leaders, NGOs, central government organisations, and contact other parties via relatives.³⁷ These individuals and/or organisations would implement the decisions resulting from a co-production of knowledge process.

cc) Court-annexed AJS institutions in Northern Kenya

Court-annexed AJS envisages an interactive collaboration between a court or tribunal and an AJS forum. For instance, a criminal or civil case that is at any stage in the proceedings could be referred to an AJS forum. The AJS forum could be either an autonomous third party AJS institution, or an autonomous AJS institution. The AJS forum could decide about some or all the aspects of the case. Then, their decision would be relayed back to the court. The court would in turn scrutinize the AJS decision, ensuring it meets all constitutional requirements.³⁸ The AJS policy indicates four possible ways a court could interact with the decision from the AJS forum. These are deference, recognition and enforcement, facilitative interaction, and monism.³⁹ To promote AJS, the

33 This information was recorded by *J. Murungi* during a field trip with the AJS Taskforce on 8 February 2018 in Marsabit county.

34 For more perspectives on the Gada system in dispute resolution see *Aliye* 2019 SKHID, p. 45–51; *Asefa, Mengesha and Almaw* 2019 Conservation Science and Practice, p. 1–3; *Hallpike* 1976 Journal of the International African Institute, p. 48–56.

35 AJS Framework Policy, p. 8.

36 HiiL Justice Needs Survey Kenya report, p. 71.

37 HiiL Justice Needs Survey Kenya report 71. Each of these categories garners 3 %, hence cumulatively are 18 %.

38 Article 159 2(d) requires no undue technicalities to get in the way of justice; AJS Baseline Policy xvii.

39 AJS Framework Policy 9.

judiciary's inclination is for deference and recognition and enforcement.⁴⁰ When the AJS Taskforce was conducting its research for the AJS policy, Isiolo court was selected to pilot a court-annexed AJS. To date, the judiciary is expanding opportunities for similar court annexed-AJS courts in the North of Kenya. In 2021, The National AJS Steering Committee visited the Marsabit and Turkana counties to *inter alia* engage with relevant stakeholders on this matter.⁴¹ A co-production of knowledge process might selectively focus on these specific courts in the North, principally, as they are the ones who would hear cases relating to pastoral violence. However, the entire judiciary needs to be engaged in the process. Firstly, it is their constitutional mandate to promote alternative dispute resolution. Secondly, other counties in Kenya, such as Turkana, West-Pokot, Baringo and Elgeyo-Marakwet also face cattle rustling/livestock raiding.⁴² Furthermore, this creates possibilities for peer-to-peer learning from other court-annexed AJS institutions elsewhere.

dd) Court-annexed AJS institutions elsewhere in Kenya for peer-to-peer learning

The National AJS Steering Committee, continually trains the judiciary and champions the roll-out of more court-annexed AJS institutions. Thus, there will be more opportunities for peer-to-peer learning. The latest reports are of court-annexed AJS institutions linked to law courts in Nakuru law, Kajiado, Mombasa, Meru, Uasin Gishu, Baringo and Narok.⁴³ As the court-annexed AJS model continues to be mainstreamed throughout Kenya, so too would a co-production of knowledge process on how AJS typologies can resolve pastoral violence related cases.

ee) The National Council on Administration of Justice

The judiciary works alongside other actors in the administration of justice. Foremost, is the National Council on Administration of Justice (hereafter 'NCAJ'). Section 34 (1) of the *Judicial Service Commission Act* establishes the NCAJ. Their mandate is 'to ensure a co-ordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system'⁴⁴ The committees and agencies of NCAJ are drawn from diverse sectors. As they work alongside the judiciary to *inter alia* 'formu-

40 AJS Framework Policy 9.

41 State of Judiciary and Administration of Justice 2020/2021 Report.

42 This chapter focuses on counties more towards the north and north-east of Kenya. The counties mentioned here border Uganda. Though lessons are drawn from cattle rustling in that area, the dynamics differ somewhat to those towards the Kenya-Somali border.

43 Update from a member of the National Steering and Implementation Committee of the AJS Policy.

44 Section 35(1) of the Judicial Services Commission, Act No 1 of 2011.

late policies relating to the administration of justice; implement, monitor, evaluate and review strategies for the administration of justice; facilitate the establishment of court user committees at the county level, and mobilize resources for purposes of the efficient administration of justice;⁴⁵ any co-production of knowledge process intended to support AJS typologies to resolve pastoral violence disputes would necessarily involve them. It is foreseeable that the NCAJ could consider co-opting other national agencies and constitutional commissions which directly engage with pastoralists matters, marginalised areas, arid and semi-arid lands and drought. This section now addresses how a co-production of knowledge process for AJS typologies to resolve pastoral violence in northern Kenya involves the political class.

ff) Politicians

Communities that are victims of pastoral violence suffer immense encroachments on their social, economic, political and cultural rights.⁴⁶ Their right to livelihood and ownership of property is truncated as their houses are burnt down, destroyed, and livestock is stolen. Compelled to flee from dangerous environments, many suffer the irony of being internally displaced nomads as their right to peaceful habitations is severed.⁴⁷ Most importantly, their right to life is under threat. Many are killed during pastoral violence incidents.⁴⁸ In such times of crisis, communities seek *inter alia* political support to find practical solutions. Politicians, whether at national, regional or local levels are required to be society's mouth-piece. The Kenya National Commission on Human Rights observed that 'the role of the residents must also be clearly highlighted since they only hold the key to peaceful co-existence; peace cannot be superimposed by external actors'⁴⁹ Therefore, a co-production of knowledge process that seeks to harness AJS typologies must recognize that politicians serve as the link between the different levels of governance: grassroots, county, national and international.

b) Recipients of AJS services

As previously stated, the AJS policy recommends three AJS typologies: Autonomous AJS institutions, Autonomous Third-party AJS institutions and Court-Annexed AJS institutions.⁵⁰ This part will discuss those who would be seeking support from the AJS typologies. Generally, these would be victims of pastoral violence and their witnesses.

45 Section 35 (2)a-d Judicial Services Act No 1 of 2011.

46 See fuller details in part 2.7.1 ad 2.7.2 relating to human rights obligations and violations.

47 Schrepfer and Caterina, On the margin: Kenya's pastoralists, IDMC, 2014, p. 1–40.

48 Appendix 3 of the report at 203–206.

49 Kenya National Commission on Human Rights Mending the Rift: Public Inquiry viii.

50 Alternative Justice Systems Framework Policy 8.

- aa) Pastoralists, Ranchers, Conservancy owners, Small-holders who are attacked⁵¹ and Kenya Wildlife Society, Kenya Forest Service, forest wardens and wildlife park officers

The direct victims of pastoral violence are pastoral communities, ranchers, owners of private conservancies, small-holders that keep livestock. Additionally, wildlife park officers of Kenya Wildlife Society, and forest wardens of Kenya Forest Service who seasonally interact with the migrating pastoralists as the latter traverse the areas under their care.⁵² The Kenya Wildlife Service and Kenya Forest Service officers are required to enforce the laws against trespassers.

Being able to move is a proven strategy for nomadic pastoralists.⁵³ Yet, the risk of being raided inhibits some pastoralists from freely pursuing desired routes and ultimately jeopardises their livestock.⁵⁴ The economic losses resulting from livestock raiding and/or cattle rustling evidence the crime is devastating. From proudly self-reliant livestock keepers, many nomadic pastoralists have now been rendered paupers. Furthermore, taking into consideration that many areas of north Kenya were historically marginalised,⁵⁵ pastoral violence exacerbates what was already a fragile standard of living.

Overall, any aggrieved persons stand to seek justice and solutions from diverse AJS forums. The kind of remedies offered are more appropriate, such as the return of cattle or prompt punishment of perpetrators. A co-production of a knowledge process that seeks to further strengthen AJS typologies to resolve pastoral violence-related disputes would impact them directly.

- bb) Perpetrators and those aiding, abetting and complicit to pastoral violence

Researchers' findings indicate at least four categories of persons perpetrating pastoral violence. First are those doing so as a display of masculinity and/or coming of age rite. To these perpetrators, rustling is not stealing.⁵⁶ Second, are those who feel compelled by economic pressures to access private land, even if it is illegal.⁵⁷ Third, are those who, even if under pressure of drought, are incited by politicians especially during election

51 *Gravesen*, The contested lands of Laikipia: Histories of claims and conflict in a Kenyan landscape. Brill, 2020, p. 181.

52 *Gravesen*, The contested lands of Laikipia: Histories of claims and conflict in a Kenyan landscape. Brill, 2020, p. 181.

53 *Schrepfer and Caterina*, On the margin: Kenya's pastoralists, IDMC, 2014, p. 1–40.

54 *Schrepfer and Caterina*, On the margin: Kenya's pastoralists, IDMC, 2014, p. 1–40.

55 See the report from the Commission of Revenue Allocation.

56 Kenya National Commission of Human Rights Mending the Rift 16.

57 *Schrepfer and Caterina*, On the margin: Kenya's pastoralists, IDMC, 2014, p. 1–40.

campaign periods.⁵⁸ Fourth, are classified as thieves. They aim to steal livestock for onward sale.⁵⁹ Others may masquerade as indigenous cattle rustlers or aid workers, yet instead survey with intention to steal.⁶⁰ All of these perpetrators would be impacted by the outcomes of a comprehensive co-production of knowledge process. The degree to which AJS typologies intervene may vary however, a comprehensive co-production of knowledge process should reveal the gaps in access to justice, and guide how AJS typologies could be strengthened. As it stands, there remains concern over the limits of such institutions as peace committees,⁶¹ with some communities regarding NGOs as incompetent in dealing in peace,⁶² the recalcitrance of unreached raiders,⁶³ and the discouragement of chiefs when their best efforts to stem cattle rustling go unheeded.⁶⁴ Notwithstanding, it is arguable that traditional institutions are integral and solutions are best when established from within.⁶⁵ The key objectives ought to target recovery of livestock, swift punishment of offenders, and sensitivity to avoid counter-productive 'peace-missions'.

c) Other interested stakeholders

aa) Influential key themes by researchers, institutions and practitioners

Many researchers, practitioners, and institutions are interested in diverse topics that would bring useful perspectives to the subject of pastoral violence in Northern Kenya. For instance, the subjects of governance, peace and conflict resolution, security, and law and order directly concern pastoral violence prevention. Other sectors are concerned with issues that may indirectly affect pastoral violence and thus potential AJS interventions. Those working on indirectly related subjects may also participate in a co-production of knowledge process. Thus, the next section will touch upon themes related to land use, holistic perspectives of lives of pastoralists in the north, governance, politics, security, law and order, the Kenyan meat market, and development work by regional and international bodies and organisations working in northern Kenya.

58 *Schrepfer and Caterina*, On the margin: Kenya's pastoralists, IDMC, 2014, p. 1–40.

59 *RECSA Cattle Rustling* 5.

60 *Eaton*, The business of peace: raiding and peace work along the Kenya–Uganda border (Part I). *African Affairs*, 2008, 107.426: 89–110.

61 *Schrepfer and Caterina*, On the margin: Kenya's pastoralists, IDMC, 2014, p. 1–40.

62 Kenya National Human Rights Commission Mending the Rift 8.

63 Kenya National Human Rights Commission Mending the Rift 70.

64 Kenya National Human Rights Commission Mending the Rift 8.

65 Kenya National Human Rights Commission Mending the Rift 8.

bb) Land use, zoning for national parks, wildlife conservancies and sanctuaries, forest use

There are different attitudinal approaches to matters of land use, understanding of land titling and cadastralization of land,⁶⁶ in areas where pastoralists in Kenya have commonly grazed for centuries.⁶⁷ Those against conservancies and registration of private land argue that these practices take away grazing lands from the pastoralists and can compound the pastoralists' pressure to find pasture, particularly during drought. Historically, pastoralists used now privately owned lands, in common. Notably, Kenya's 2009 National Land Policy acknowledges that pastoralists face the difficulty of land access rights.⁶⁸ It has been recommended, *inter alia*, that grazing rights ought to run concurrently with and in privately owned land.⁶⁹ Others also argue that economic interests of wildlife conservancies and game tourism are favoured over pastoralists' interests. Further, those in charge of national parks, wildlife and forests are concerned with the protection of these resources as well as avoiding human-wildlife conflicts.⁷⁰ On occasion, reports allege that cattle rustlers/livestock raiders illegally graze greater numbers of livestock than the forage and foliage there can sustain. In such instances, they disrupt carefully crafted grazing schedules of community grazing committees. At other times, the issue of land access appears to arise from the local politicians over alleged overlapping administrative boundaries, and government's planned land use as part of devolution.⁷¹ It is anticipated that through a co-production of knowledge process, *inter alia* demands would be made of researchers, institutions and practitioners dealing with matters of land use. Institutions could include the National Land Commission, National Environmental Management Authority, State Department on Arid and Semi-Arid Lands, ministries relating to Tourism and Wildlife, Land and Physical Planning, Transport, Water, Agriculture, Livestock and Fisheries, Devolution and Planning, Environment and Natural Resources, Kenya Wildlife Service, Wildlife Research Training Institute, Kenya Forest Service, Kenya Forestry Research Institute,

66 Eaton, The business of peace: raiding and peace work along the Kenya-Uganda border (Part I). African Affairs, 2008, 107.426, p. 89-110.

67 Eaton, The business of peace: raiding and peace work along the Kenya-Uganda border (Part I). African Affairs, 2008, 107.426, p. 89-110.

68 See paragraphs 181 and 183(a)-g) of the Sessional Paper No. 3 - National Land Policy 2009, 43. www.landportal.org/library/resources/lex-faoc163862/national-land-policy-sessional-paper-no-3-2009, last access November 2022.

69 Eaton, The business of peace: raiding and peace work along the Kenya-Uganda border (Part I). African Affairs, 2008, 107.426, p. 89-110.

70 See sections 7, 77 and 78 of the Wildlife and Conservation Management Act No. 47 of 2013 on the functions of Kenya Wildlife Service.

71 Kenya National Human Rights Commission, p. 55-59.

and the Independent Electoral Boundaries Commission. The following section addresses holistic perspectives regarding pastoralists in Northern Kenya.

cc) Nomadic pastoralism holistically, from different perspectives

Eaton presents an example of how an NGO's peace mission in northern Kenya went terribly wrong *inter alia* over a misunderstanding of the appropriateness of songs sung by one group seeking peace. One group thought the songs were a positive message, yet another group felt the songs were a provocation of war. Thus, a well-intentioned event got scuttled.⁷² This points to the importance of understanding the norms and cultures of those in northern Kenya. A holistic view of pastoralists' lives' also includes assessing health, women's issues, child development, access to potable water, climate change, animal husbandry, animal diseases, adaptations for pastoralists' livestock, new occupations, impacts of sedentarization for those adapting life-styles other than pastoralism⁷³, and psycho-socio concerns including trauma from violent conflict.⁷⁴ This requisite knowledge base provides unique perspectives on how to approach the key question of how AJS could resolve pastoral violence. There are many stakeholders who hold an in-depth understanding of their field work/research. That said, a co-production of knowledge process should tread with caution. Due care is required to learn about the locals' views of these very institutions, organisations, researchers and practitioners.

dd) Security, law, order and governance

The single-most distinctive characteristic that has changed the nature of pastoral violence is the emergence of illicit transfer and trade of small and light weapons. Nowadays, pastoral violence perpetrators are armed. It is not surprising that pastoralists in the north, who are victims of pastoral violence, now seek to illicitly acquire weapons for self-defence. Access to these small and light weapons is attributed to (i) rogue/corrupt national police reservists who 'lease out' their security weapons; (ii) Al-Shabaab and other terrorists' activities in the north of Kenya, even into neighbouring countries; (iii) inadequate presence of the State in the north of Kenya, thus residents use self-defence; (iv) ineffective disarmament programmes; (v) porous borders and inadequate border control and management, partly from marginalisation; (vi) breakdown of security, law

72 *Eaton*, The business of peace: raiding and peace work along the Kenya–Uganda border (Part I). African Affairs, 2008, 107.426, p. 89–110.

73 *Eaton*, The business of peace: raiding and peace work along the Kenya–Uganda border (Part I). African Affairs, 2008, 107.426, p. 89–110.

74 *Eaton*, The business of peace: raiding and peace work along the Kenya–Uganda border (Part I). African Affairs, 2008, 107.426, p. 89–110.

and order in neighbouring countries at times of civil conflict; (vii) inadequate management systems for marking and controlling movement of small and light weapons.⁷⁵

Subsequently, all national state security agents responsible for maintaining law and order in the north of the country would be considered stakeholders in a co-production process pertaining to ending violence.⁷⁶ Such a process requires their insights. Similarly, all suppliers and sources of the weaponry, be they in or out of the country, may be also considered stakeholders.

The AJS typologies experiences in handling pastoral violence related cases would be inextricably linked to the efforts of those who are trying to stem such violence including those in charge of law, order and security.

ee) Kenya Meat Commission, private sector livestock purchasers in Nairobi, Mombasa and in neighbouring countries

Some livestock raiders' aim to resell cattle to those in the meat industry in big cities such as Nairobi, Mombasa and Kampala.⁷⁷ Hence, the livestock industry in Kenya and the neighbouring countries of Uganda, Somalia, South Sudan and Ethiopia are important when considering pastoral violence. Key actors include the Kenya Meat Commission, who procure and purchase livestock. Other actors include individuals and organisations operating within this private sector. The outcomes of a co-production of knowledge process would discuss how livestock are raided and then moved to their final destinations- the butchers. Therefore, the eventual outcomes of such a process would affect all state and non-state actors in Kenya's meat industry and neighbouring countries. Hence, some stakeholders have advised methods of monitoring cattle identification and livestock movement and/or cycle monitoring. These methods involve the use of RFID technologies and GPS.⁷⁸ Decisions requiring such controls would affect all parties involved in livestock purchase, movement and eventual preparation for the meat industry.

ff) Regional and international bodies and organisations that work in northern Kenya

Many international NGOs, organisations and regional institutions have experience in matters relating to pastoral violence in the north of Kenya. The foregoing discus-

75 Regional Centre of Small Arms and Light Weapons (RECSA) Cattle Rustling 1–10.

76 This by implication will include their work through international and regional institutions like INTERPOL, EAPCCO and RECSA.

77 Eaton, *The business of peace: raiding and peace work along the Kenya–Uganda border* (Part I). African Affairs, 2008, 107.426, p. 89–110.

78 Siror, *Huanye and Wang et al* 2009 5th International Joint Conference on INC, IMS and IDC.

sions address the perspectives of those who would be impacted by the adoption of a co-production of knowledge process within AJS typologies, including the aforementioned parties.

4. Context: parties with power to enable or constrain action

This section will highlight parties whose support of implementing a co-production of knowledge process within the AJS would be critical for its success. This includes the political class, the national government, relevant private sectors, community elders, land owners where pastoral communities historically grazed, and extends to small and light weapons dealers.

a) Political will

Political will is necessary to support the potential positive outcomes of a co-production process that aims to address pastoral violence. This chapter adopts Brinkerhoff's component framework that defines and describes 'political will' to this concern.⁷⁹ Brinkerhoff asserts a government must take initiative, rather than initiatives arising from external actors. As demonstrated throughout this chapter, pastoral violence threatens not just the peace and security of northern Kenya, but the entire State and the East African region. Therefore, starting with the president, who heads the Government of Kenya, the Constitution requires that he chair the National Security Council (Art 131 1 d), ensure protection of human rights and fundamental freedoms (Art 131 2 e) and charge the National Security Council with the responsibility to 'integrate domestic, foreign and military policies relating to national security to enable the national security organs co-operate and function effectively Art 240 (3) and (6)(a) and (b). Since addressing the illicit use of small and light weapons is central to stemming pastoral violence, and the periodic disarmament programmes in the north seem to be failing, the government is in charge of taking initiative for further steps. It is the national government that must initiate the requisite steps for the following: land policy that considers pastoralists' views, reviews of current land cadastral regimes, operationalise existing national land use policy where there are gaps; high-level dialogue that coordinates with neighbouring country governments on security, law and order; implementing the Mifugo Protocol and any other appropriate measures; policy on movement and identification of livestock from farm to fork; accelerating development in marginalised areas. Secondly, political will entails choice of policy/programme based on technically sound, balanced consideration and analysis of options, anticipated outcomes and costs/benefits. In the context of this topic, the central role of government would play an active role in a co-production of knowl-

79 Brinkerhoff, Unpacking Political Will, U4 Brief, 2010.

edge process to further support the AJS policy. The participation of the central government would signify meeting this component of political will. Thirdly, political will of the government requires the 'mobilisation of stakeholders.' The attitudes of leaders at all levels, national, county, and elders in local communities, must be considered. Politicians' and community leaders' attitudes determine whether law enforcement is likely to receive support. For example, a current recommendation to deter pastoral violence is to 'name and shame politicians'⁸⁰ who are implicated in cattle rustling. Further, there are numerous allegations attributing pastoral violence to politicians with an agenda to dispossess lands from private ranchers.⁸¹ Some have been arraigned in court. There are also allegations of politicians turning a blind eye to pastoral violence, particularly during pre-election campaign periods. Such entanglements must be addressed and handled delicately. A fourth component of political will is public commitment and allocation of resources. A co-production of knowledge research process requires financing. A willingness from the government to allocate a budget for this matter signals political will. The fifth component of political will is the application of credible sanctions. The processes undertaken by the AJS typologies are intended to bring about knowledge of credible sanctions that could be implemented to stem the problem of pastoral violence. A sixth component of political will is 'continuity of effort'. The national government ought to be willing to continue time and resource allocation in the long-term to fight pastoral violence. A seventh component of political will is 'learning and adaptation'. Continuous monitoring and evaluation are integral to the quality co-production of knowledge process. In the instance that this process would be implemented, the government would require the establishment of, and adherence to, a monitoring and evaluation process. It is important to note that the government's political will is often communicated to the community leadership. Hence, the brief that follows.

b) The community leadership including community elders, Council of Elders, religious leaders, *Nyumba-kumi* leaders that are non-State actors

Researchers in the field of pastoral violence call for strengthening community leadership. There is need to address all aspects which prevent local leadership from tackling the violent nature of pastoral violence, including but not limited to corruption and complicity.

80 IGAD Centre for Pastoral Areas and Livestock Development, 2017.

81 See further details where this Chapter discusses politicians.

- c) Small and Light weapon suppliers, illicit armoury suppliers and the armed militia or entrepreneurial criminals disguising themselves as cattle rustlers

Weapons suppliers and those who disguise themselves as cattle rustlers, likely pose the greatest challenge to addressing pastoral violence. For one, they are economically benefitting from the crime. Secondly, they do so undercover. Thus, a co-production process requires their cooperation so as to cease their operations. Alternatively, the environment has to be such that it is far too difficult for them to successfully rustle cattle. Further, as weapons suppliers need ammunition, the illegal sources of ammunition requires attention.⁸²

- d) Meat market in Kenya and neighbouring countries

Strategies to deter criminals who steal livestock in northern Kenya with the aim of supplying butcheries in Nairobi and Mombasa, or elsewhere, are urgently required. Therefore, all wholesale and retail butcheries in Kenya and in neighbouring countries may be included in a co-production of knowledge process within AJS typologies. Consideration of adopting measures similar to certification measures in the extractives sector may also be required.

- e) National Land Commission Adapting national land policy and other measures to consider pastoralists' access to grazing land in private land during drought

Landowners can support or impede the co-production of knowledge process regarding AJS typologies' resolution of pastoral violence disputes. Land matters in Kenya are sensitive. Therefore, any proposal to formalise access rights for nomadic pastoralists to access privately owned land for pasture (even during drought), could spark controversy. However, there are a few landowners in Kenya who enter into short-term contracts, at a fee, permitting pastoralists access to their private lands.⁸³ The 2009 National Land Policy acknowledges these matters and directs that the government address them.⁸⁴ Considering the sensitivity of the matter, debate is needed to strategize a policy plan.

82 Global Initiative Against Transnational Organised Crime www.riskbulletins.globalinitiative.net/es-obs-026/02-kenya-theft-ammunition.html, last access December 2022.

83 AJS Framework Policy 7.

84 See paragraph 183(a)-(g) of the National Land Policy 2009, 43.

5. Context: regulatory, institutional and cultural factors shaping the process and realization of desired outcomes

a) The Constitution

First and foremost, the Constitution would shape the co-production of knowledge process. The constitutional values include rule of law, democracy and participation by the people (10(2a)); human dignity, human rights, and protection of the marginalised (10(2b)); good governance, integrity, transparency and accountability (10(2c)). The co-production process and its outcomes must adhere to all the above. Secondly, Article 159(3) constrains traditional dispute resolution mechanisms not to be used in any way which contravenes the Bill of Rights, or is inconsistent with the Constitution or any written law. Thirdly, Article 67 (2) (f) encourages the application of traditional dispute resolution mechanisms in land conflicts. As does Article 60 (1) (g), which encourages communities to settle land disputes through recognised local community initiatives consistent with this Constitution. Critically, Kenya is signatory to important international human rights conventions. These international laws must also be acknowledged in any co-production of knowledge debate.⁸⁵

b) Human Rights Approach of the AJS Policy

A co-production of knowledge process would recognize the extent to which AJS Policy has associated itself with a human rights framework. There are roles for the judiciary relating to the duty to respect, protect, and transform.⁸⁶

c) National Land Policy, Land laws

Article 67 (2) of the Constitution establishes the National Land Commission. It is to *inter alia* (b) recommend a national land policy to the national government and (e) initiate investigations into historical land injustices and recommend redress; (h) monitor and have oversight responsibilities over land use planning throughout the country. This Commission has been identified as a member of the National AJS Steering Committee. The National Land Commission could, in the short-term, facilitate discussions between nomadic pastoralists and land owners concerning creative ways to allow pastoralists land access, particularly during drought.

85 AJS Framework Policy 3.

86 AJS Framework Policy 7.

d) Commission of Revenue Allocation – Focus on addressing marginalisation of northern Kenya

The status of infrastructure, economic and social, has yet to be improved in northern Kenya. Therefore, all the ongoing efforts by the Commission of Revenue Allocation are to be considered by a co-production of knowledge process participants. The Commission of Revenue Allocation's cooperation with the AJS system is necessary for further socioeconomic improvements in Northern Kenya.

e) The Peace-building policy and legal framework⁸⁷

The National Policy on Peacebuilding and Conflict Management (2015) and the following statutes: the National Cohesion and Integration Act⁸⁸, Truth, Justice and Reconciliation Act must be understood and addressed by all participants within a co-production of knowledge process.⁸⁹

6. Applying the principle of 'pluralism' to co-production of knowledge

Pluralism requires attaining diverse perspectives on an issue. In the context of this chapter, it is important to recognize the National AJS Steering Committee's great experience in gathering views from diverse walks of life. There are established processes for utilizing pluralism to secure sound, innovative ideas.⁹⁰ It is then useful to consider the theory and practicalities of innovation including frameworks, such as design thinking. Common elements of design thinking include: problem identification, collaboration through multi-disciplinary team formation, visualization, hands-on-experiments, feedback processes and integrating it into experimentation. Such elements are aligned with *Norström et al* recommendations on governance. In this specific context, the aim of establishing a transformative co-production of knowledge process is ultimately to better understand and democratically manage North Kenya's natural systems.⁹¹

87 For a brief overview see *Odidi*, Peacebuilding Policies and Frameworks in Kenya ACCORD Conflict & Resilience Monitor 2022/1 August 19, 2022 www.accord.org.za/conflict-trends/peacebuilding-policies-and-frameworks-in-kenya/, last access December 2022.

88 No 12 of 2008.

89 No 6 of 2008.

90 *Johnson*, Where Good Ideas Come from: The Natural History of Innovation, Penguin Group New York, 2010.

91 *Mäkinen-Rostedt*, www.blogs.helsinki.fi/human-nature-transformations/2021/06/29/what-do-co-production-of-knowledge-and-transdisciplinarity-mean/, last access December 2022.

7. Applying the principle of 'goal-orientedness' to co-production of knowledge

It would be anticipated that participants have expertise concerning pastoral violence. However, not all participants would possess the same depth of knowledge regarding AJS policy and the existing AJS typologies. Thus, all parties would be required to learn about the AJS typologies. This is first because, understanding AJS typologies' operations is foundational to the outcome. Secondly, all actors in the AJS typologies need to be strengthened so as to resolve pastoral violence. Thirdly, participants must collaborate to best provide a platform that focuses on how the AJS policy could make a difference, while considering its limitations. To work towards the co-production of knowledge, the National Steering Committee on the Implementation of AJS policy should maintain and develop its multi-stakeholder membership. Committee membership will be tasked with problem identification, problem puzzling and problem solving.⁹²

8. Applying the principle of 'interactiveness' to co-production of knowledge to resolve disputes related to pastoral violence in northern Kenya as exacerbated by climate change

Norström et al advise that the quality of interactivity in co-production of knowledge is important.⁹³ Power dynamics should be identified and handled wisely. Where not dealt with wisely, a co-production process can be counter-productive, skewing the outcome of the process to reinforce inequality.^{94,95} Pastoral violence is awash with uncomfortable topics including marginalisation, land rights issues, political corruption, security agents as accessories to illicit sale of ammunition, unemployment, and changing regard for tradition. *Sharamo and Eaton* note that when addressing pastoral violence, the meeting places chosen throughout the co-production of knowledge process matter for the youth and raider.⁹⁶ It is also important to be aware of the norms regulating how the communi-

92 *Adelle, Pereira, Görgens, & Losch*, Making sense together: The role of scientists in the coproduction of knowledge for policy making. *Science and Public Policy*, 47(1), 2020, p. 56–66.

93 *Norström et al*. Principles for knowledge co-production in sustainability research. *Nature sustainability*, 2020, 3.3, p. 182–190.

94 *Turnhout, Metzke, Wyborn, Klenk, & Louder*, The politics of co-production: participation, power, and transformation. *Current Opinion in Environmental Sustainability*, 42, 2020, p. 15–21.

95 *Turnhout, Metzke, Wyborn, Klenk, & Louder*, The politics of co-production: participation, power, and transformation. *Current Opinion in Environmental Sustainability*, 42, 2020, p. 15–21.

96 *Eaton*, The business of peace: raiding and peace work along the Kenya–Uganda border (Part I). *African Affairs*, 107(426), 2008, 89–110.

ties hold meetings amongst themselves.⁹⁷ For a judiciary member, great discernment is also required, never should such meetings appear to compromise their values and ethics.

III. Conclusion

This chapter has demonstrated how a co-production of knowledge process can be applied to address the governance challenge of pastoral violence. It is an enormous yet necessary task. However, it is certainly within the capacity of the National AJS Steering Committee. The momentum gained by launching the AJS policy should be maintained by addressing how AJS typologies can resolve pastoral violence disputes. Utilising a co-production of knowledge process would be best suited for this task, provided the key principles are followed.

IV. Interview

Interview between *Jane Murungi* and *Joyce Lesegi*

This section presents an interview between the co-authors Jane Enid Nganzi Murungi and Joyce Nairesia Lesegi (the chairlady of the Isiolo Elders Council, representative for Samburu community). The original interview was done in Kiswahili and has been translated into English and edited for clarity.

JM: Hello Mrs Joyce Nairesia Lesegi. Thank you for this opportunity to interview you. May you please tell us a bit about yourself.

JNL: By occupation I am an early childhood education (ECDE) teacher at a school in Isiolo. Since 2012 I have also been serving the community as the chairperson of Isiolo Elders Council (Samburu community representative).

JM: Please tell us what the Elders Council is, and what you do as an elder.

JNL: This is a group of leaders throughout the communities in Kenya. Elders are not politicians. Many are retired and respected persons in their communities. People seek their advice and help in diverse circumstances. As an elder I am called upon to resolve disputes. This can happen anywhere: in prisons, under trees, wherever we are called to assist. I also participate in the Court User Committee at Isiolo Law Courts.

JM: In Kenya, it is rather unusual to have a woman serve in such a position. How did you get to this role?

97 Smith, *Origins and spread of pastoralism in Africa. Nomadic Peoples*, 1993, 91–105.

JNL: In 2011, Isiolo was a 'hotspot' of inter-ethnic violence. There are five major ethnic groups in Isiolo county: Gabra, Borana, Somali, Meru, and Rendille. The cattle rustling and war between these ethnic communities was intense. So many people died, property destroyed, livestock killed. It was a massive social upheaval. So, there were private initiatives within the local communities to see how to stop all the violence and then return to peace. I attended all the meetings. Government officials were present. At some point, the recommendation was that each community elect a representative to participate in the Isiolo Elders Council. I was then elected in 2012 to represent the Samburu community.

JM: Could you describe your work as an elder?

JNL: The Isiolo elder's council finds ways to resolve conflicts. Even today, I continue to participate in conflict resolution. This is Alternative Dispute Resolution (ADR). However, my role in ADR has expanded to the prisons as well. At the time, Chief Justice (now retired) Mutunga, called on us to also assist with resolving disputes that were already going through the court process.

JM: Have you seen climate change impacting matters of dispute resolution in northern Kenya?

JNL: Climate change has been very disruptive to AJS! It is magnifying conflicts. We are having to deal with far bigger conflicts, not ordinary ones. For example, when our pastoral herders went to Laikipia county to graze their cattle, there was a big confrontation between the government security and the herders. Some herders lost their livestock. There is pressure for all the herders to keep their stock alive, they must survive. So, against their liking, they have to go to other counties to graze. Meanwhile, there is more instability in our communities from this climate change. In AJS we sit under trees to resolve our disputes. Therefore, when there is unrest, we really cannot hold dispute settlements. This creates more tension.

JM: What are your views of the AJS policy?

JNL: We are very happy that it has finally been launched. However, we need more training. This will help support how we undertake AJS. We look forward to working with others who can assist us. We wish this particularly given the challenge of climate change creating even more disputes.