

**Dissolving the Pastoral Commons, Enhancing Enclosures:
Commercialization, Corruption and Colonial Continuities amongst
Maasai Pastoralists of Southern Kenya.**

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degree of Masters of Arts

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Abstract

Maasai pastoral landholdings presently collectively held and managed under group ranch tenure arrangement are increasingly under pressure to subdivide and privatize. Subsequent processes of defining, administering, allocating and securing land rights and associated resources within pastoral landholdings has remained largely contentious. The complex interplay between market forces, state bureaucracy (policy, legal and administrative framework), customary value systems and institutions in the process of allocating land rights against a backdrop of competing land-use options and mounting population pressure provides the setting for unpacking the dynamics of land related graft.

This thesis presents new data to analyze emerging and increasing incidences of practices and activities that could generally be described as ‘corrupt’ in the process of subdivision and privatization of pastoral commons. Understanding the roles, interests and strategies of different social actors and institutions – local group ranch members, group ranch officials, ministry of lands officials, private sector investors (conservationists, tourism sector players, land surveyors, lawyers) - during the land subdivision processes, seen in the light of historical and current social, economic, and political trajectories, can help deepen our understanding of land related corruption and its likely impact on future land use trends and local livelihoods. In particular, community conservation initiatives driven by private sector investors, local community members’ unfamiliarity with functioning of the state bureaucracy and personal agency in rent seeking tendencies inevitably have the strongest influence on social equity with respect to land and associated resources within the GR context.

However, the increase in land related graft is not a simple function of the shortfalls arising from market inequity and state inefficiency related outcomes. They are as much influenced by carry-over of practices of indigenous value systems on resource distribution based on reciprocity. These findings are relevant not only for Maji moto group ranch and group ranches adjacent to Maasai Mara game reserve, but also for pastoral livelihood and land-use options elsewhere in Kenya and sub-Saharan Africa.

Résumé

Les propriétés foncières pastorales Maasai actuellement détenues et gérées collectivement sous arrangement « mandat ranch de groupe » sont de plus en plus sous pression de parcelisation et privatisation. Les processus ultérieurs de définition, d'administration, affectation et sécurisation des droits fonciers et des ressources connexes au sein de propriétés foncières pastorales sont restés largement controversés. L'interaction complexe entre les forces du marché, la bureaucratie d'État (politique, cadre juridique et administratif), les systèmes de valeurs et institutions coutumiers dans le processus d'allocation des droits fonciers dans un contexte d'options concurrentes d'utilisation des terres et la pression démographique offrent un cadre pour le déballage de la dynamique de corruption liée à la terre.

Cette thèse présente de nouvelles données qui analysent l'émergence et l'augmentation de l'incidence des pratiques et des activités qui pourraient généralement être décrites comme « corrompues » dans le processus de lotissement et de privatisation des biens communs pastoraux. Comprendre les rôles, intérêts et stratégies des différents acteurs sociaux et institutions - membres locaux du groupe de ranchs, responsables de ranchs, fonctionnaires du ministère des terres, investisseurs du secteur privé (écologistes, acteurs du secteur du tourisme, arpenteurs-géomètres, avocats) - pendant le déroulement du processus de lotissement, considérés à la lumière des trajectoires sociales actuelles et historiques, économiques et politiques, peuvent aider à approfondir notre compréhension de la corruption liée à la terre et son impact probable sur les tendances futures d'utilisation des terres et des moyens de subsistance locaux. En particulier, les initiatives de conservation communautaires stimulées par les investisseurs du secteur privé, la méconnaissance du fonctionnement de la bureaucratie étatique par les membres des collectivités locales et les actions personnelles dans les efforts de recherche de rentes ont inévitablement une plus forte influence sur l'équité sociale par rapport à la terre et aux ressources associées dans le contexte GR.

Cependant, l'augmentation des griefs liés à la terre ne provient pas simplement des déficits résultant de l'inégalité du marché et de l'incapacité de l'État à atteindre les résultats attendus. Mais, ils sont aussi très influencés par les pratiques de systèmes de valeurs autochtones relatives à la répartition des ressources fondées sur la réciprocité. Ces

conclusions sont pertinentes non seulement pour le groupe de ranchs Maji Moto et des ranchs collectifs adjacents à la réserve de chasse Masai Mara, mais aussi pour les moyens de subsistance pastoraux et des options d'utilisation des terres ailleurs au Kenya et en Afrique subsaharienne.

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PREFACE

OLKIU: A Meeting speaks to the ‘Ear’

On January 5th 2005, by mid-morning three men were seated under a particular tree near the Maji Moto shopping centre. As time progressed, slowly the crowd swelled, growing in number and noise. Soon the gathering (of entirely men) took the shape of a semi-circle of human bodies huddled together, seated on the bare ground wrapped in their red-maasai *shukas*. Before long, seats (about 15 in number) were arranged along a line in front of the seated men, forming the front row of the curve. It turned out that the empty seats were reserved for the local leadership within Maji moto group ranch (GR) and/location – group chairman and committee members; the Chiefs, the Councilor and the 19% directors and signatories.¹ The seats were supplied from the nearby administration Chiefs’ house within the shopping centre. One by one the elders took turns in leading the crowd in prayers to God:

May God answer the prayers of the one who went before me; we say let the meeting be Aromatic, Sweet, Calm, and may it pass under the cow’s belly

To anyone who goes contrary to our good intentions, stay far off from us, pass over there; he who hates us, you do not belong to us. We’ve shaken you off from our shukas, and may you go down with the sunset

When Cattle go out to graze, may they encounter peace, may they avoid ‘forests’; May the shepherds herding them be courageous; May they escape from the snare of furry and furless lions

May God sanction your deliberations; may God guide you to that which will help the society; May you hold this meeting, and one other, be spared, multiply, be redeemed, remain ours and God’s; may what you resolve to do abide

May you remain owners of livestock and people!! (for the Maa version see Annex 1)

¹ The 19% leadership structure is a team comprising of three directors nominated by each of the eight group ranches under Narok County Council (NCC) to the Board of Directors of the joint Maasai Mara Group Ranches Association, providing policy guidelines on management of the funds from the NCC; four ‘Signatories’ manage individual group ranches’ accounts.

Other than the rhythmic responses (*Naai*, let be so) emanating from the participants in the meeting, punctuating the prayer offered by the only standing elder, all others remained silent and somber. After the customary prayers, usually offered before any *Olkiu/Olchani* (community meeting) commences, are done, various representatives from the different *immurua* (sections) of GR members volunteer themselves to share *ilomon* (news) from their respective regions. It turned out that those residing at the furthest corner(s) of the GR (30kms away) had arrived the previous evening.

This section of the meeting was unusually hurried through, giving a hint of the anxiety and the palpable tension felt within the meeting. Strange, too, was the fact that the meeting had commenced before the arrival of a single representative of the group leadership. From a casual observer's point of view, there seemed to be no particular individual controlling the meeting. But, it was noticeable that, at any given moment in the course of the meeting, only one person stood to address the meeting at a time. *NKasiooki** stood and posted the all too important question meant to trigger the process of arriving at the agenda of the meeting: "*koleng'ae olchani, naa kejaa*" (whose is the meeting and what does the meeting say?). *Naoliki* stood to respond, *Enaai entumo, naa Erikore eiguanare, amu eishira nkishu* (the meeting is mine and is about our leadership; because the cattle have cried). Soon, these deliberations were halted when the group leadership made their way to the site of the meeting. The elders had sent one of the youths present to request the leadership not to attend the meeting because the agenda was about them, and that they would be allowed to attend the meeting later in the day.

The group leadership protested the proposal, saying, if they were not allowed to attend the meeting in their capacity as community leaders, they would demand to attend in their capacity as ordinary GR members. After a heated argument that lasted for a couple of minutes, the seated group members numbering about eight hundred chose to symbolically walk away from the leadership to set the meeting a few hundred meters away from the original site. Traditionally, two feuding sides are often separated in the course of deliberations to allow for further consultation within individual parties – *Enkilepata* – to facilitate consensus.

This action was unprecedented. The leadership team had no option but to walk back to the nearby shopping centre and let the members continue uninterrupted. Eventually,

after lengthy and heated deliberations, the members present resolved to undertake a vote of no confidence in the entire leadership of the group ranch. To validate this unprecedented move, individual petitions for each category of leadership were drafted, outlining grounds for the allegations of loss of trust in each category. The said petitions were signed by all the members present and forwarded to all the relevant government offices.

.This thesis will address the momentous events that led up to and rose out of this meeting, a vote of no confidence in the group ranch leadership that was intended to save it from being corruptly and inequitably subdivided and parceled out.

Rationale of the Study: Land Privatization and Corruption in the Pastoral Context

The land tenure regimes initiated in Kenya in the mid-50s, encountered and continue to encounter myriad problems at the national and local levels, arising from the heightened contests over ownership of and general security of rights to land. This has become central because the question of land tenure and land reform and its impact on poor and vulnerable groups is of importance. The resulting competition over land and associated resources has not only driven up prices and sharpened real and perceived inequalities of income and wealth; increased land related conflicts has disrupted the social order, but has also intensified public debate over the legitimacy and accountability of institutions relied on during land arbitration (Unknown, Conference paper, 12th, Dec. 2000). Whereas there is a rich literature on land tenure and pastoralism in Kenya, there is inadequate focus on how land-associated graft plays out in reality at the local level (Alden Wily, L., 2003; Lesorogol, 2005; Mwangi, 2007). Therefore, an inquiry into the question around pastoralism, land and corruption draws my interest for a number of reasons.

Firstly, land tenure as an area of inquiry draws my attention because of its role as a primary resource base influencing economic, cultural and symbolic aspects of rural communities, especially pastoralists. Understanding the complex dynamics influencing land ownership, access and control, is made the more important because of the growing landlessness problem experienced in Kenya today. Estimated to rise at the rate of 1.5% annually, and affecting 10 percent of the population by the 1990s (Rutten, 1992 p.87), landlessness is a mounting problem in the country. By 2009, the total country's population had grown from 4 million (at the time of the colonial encounter) to about 40 million (GoK, Census, 2009). Given the high concentration of the population in the high rainfall areas of the Central Highlands and Western Kenya; the pressure upon land (not to mention the remaining wildlife) is increasingly evident, not least because of the scarcity of formal employment and the overreliance by a majority of the population upon land based economic production systems. Specifically, only 20% of the country's land mass is considered conducive for arable farming and the rest categorised as Semi-arid to arid

lands. With about 80% of the population concentrated in the highlands, pressure is now rising on the drier parts of the country where pastoralism thrives (Southall, 2005).

For most Kenyans, therefore, land is their only means of subsistence, and ultimately land may be a question of life or death for individuals. This has made land one of the most contentious issues in the country today. According to Leo (1984:181) “Land is Kenya’s obsession, as order is Germany’s and self-sufficiency is Israel’s. The Kenyan land question is a time bomb and a very hot issue” (Rutten, 1992, p.88). Hence, an understanding the role of land in Kenya’s history would clarify its persisting symbolic importance as a locus of resistance to the form of rule that has been practiced in Kenya. One might say that Kenya was founded by successive acts of land grabbing, and, hence, land grabbing is as old as Kenya itself, if not older (Klopp, 2000; Murungi, 1995; Southall, 2005). Looking at pastoralism as a land use system in the context of a growing movement of some of the country’s population towards the pastoral rangelands generally viewed by farming communities and policy makers as underutilized, or ‘idle land’, provides interesting dimensions to the land question in Kenya.

The role of security of land tenure in the development agenda - in the eyes of donors, government and community - as it relates to pastoralism as a land use system provides further grounds for this inquiry. In Kenya and in East Africa, decision makers in Government, the donor community and the wider public often perceive pastoralism to be an archaic, economically inefficient and environmentally destructive form of land use. Pastoralists are viewed as backward, resistant to change and inherently violent, willfully refusing the benefits of modernization because of their irrational attachment to their animals and mobile style. These deep-seated perceptions have had and continue to have a direct impact on policy, justifying either alienation of pastoral land or measures to turn pastoralists into ‘modern’ livestock keepers (Fratkin, 1997; Galaty and Munei, 1999; Mcbae, 2003; Salzman, 1980).

Such policies perpetuate a vicious cycle of increasing poverty, resource conflict and environmental degradation that reinforces the very perceptions surrounding pastoralism as a livelihood system. This not only deprives pastoralists of their rights of self-determination, but it also represent a missed opportunity to capitalize on the significant economic and ecologic potential pastoralism offers in arid and semi-arid areas

of Kenya in a context of increasing climatic variation. These perceptions continue to be disseminated through the media and are often articulated in policy documents. Land is not just a primary resource base but more importantly a prerequisite for pastoral production and access to land to the pastoral communities means livelihood and basic survival.

Additionally, literature reviewed indicates a general shift within the pastoral production system from a livestock gift and/exchange system to a more land and money oriented system. Initial theoretical literature on pastoralism was dominated by an argument questioning the rationality of pastoral strategies. As far back as the 1920s, Herskovits, argued for the existence of a 'cattle complex' among pastoral societies; which posited that there existed such close cultural ties between herders and their animals that gave rise to management practices considered to be remote from rational economic strategies (cited in Fratkin, 1997; Galaty, 1980). This theory was largely criticized for its tendency to over-unify the character of pastoralists in their modes of production while at the same time over emphasising the isolation of pastoral systems from the wider societies of which they were usually a part (Aronson, 1980; Galaty, 1980:17). Galaty points at the sale of livestock (as opposed to its traditional exchange) and ownership of land as the key contemporary means by which Maasai relations of inequality are maintained (Galaty, 1981). The study therefore aims at contributing to increased understanding of how commoditization and subsequent commercialization of pastoral holdings plays out at the project site and of its impact on local livelihoods.

Fourthly, the study endeavours to contribute to the on-going debate on the persistent conflict between customary rights to land and individual and private property rights in efforts to establish security of tenure, especially in pastoral rangelands. While on one hand collective ownership of land is essential for effective pastoral production, individual ownership of land on the other, acquired through land fragmentation and subsequent privatization, is considered antithetical to pastoralism as an economic and social production system based on the commons but is at the same time amenable to market oriented exchanges. This has often generated numerous land disputes and losses, with far reaching consequences, including loss of human lives. Dehorn and Mwangi (2008) report a noted increase in tensions associated to efforts to secure land rights in the

rangelands of Africa. The tensions centre around formal and legal protection of individual rights, viewed against collective customary tenures with an emerging and growing recognition of a flexibility and inclusivity attributed to informal land tenure systems. There is therefore growing interest in communal tenure to land especially among scholars and policy makers, as a solution to land tenure issues in the rangelands of Africa (Ostrom, 1990; Harvevik, 1997).

This argument is also related to the development discourse of local level participation, democratic and bottom-up approaches as alternatives to the top-down technocratic approaches initially espoused by development agencies and policy makers in government. Kenya is the latest in a growing line of states to recognise community tenure, providing in its new constitution that laws be passed to enable *communities* be acknowledged directly as land owners in their own right (GoK, 2010, Art. 234; Alden Wily, L., 2003). But again, despite the recognition of positive attributes of customary tenure to land, it is important to note that benefits from Common Pool Resources (CPRs) may not necessarily be fairly evenly distributed but are often differentiated. Elite capture and exclusion of women and young people, for example, continue to pose a significant challenge to decentralized processes. Additionally, contrary to the growing interests and recognition of common pool resources, including pastoralism, certain scholars have observed a growing and sustained pastoralists' demand for the dissolution of the commons. The reasons for this mismatch between scholars and policy makers on the one hand and pastoralists on the other, may be located outside of the presumed belief in the superiority of individual property rights to land over communal ownership. For security of land tenure to occur, identifying the nature and sources of threats that create insecurity and tailoring policy solutions to threats is paramount (Galvin et. Al., 2008; Mcbae, 2003; Mwangi et al., 2008; Ojwang and Juma, 1996). There is therefore need to attempt reconciliation of statutory rights with customary rights.

The need to understand dynamics of perceived increase in incidences of land-related corruption in the country and more importantly in group ranches provides further grounds for this study. Literature material reviewed indicates an upsurge of incessant contests over property rights to land related to activities that could be termed as corrupt. Galaty's study (1994) at Ewuaso Kedong, Lesorogol's (2005) on Samburu and

Mwangi's (2007) on Kajiado group ranches (Iloodariak, Elangata wuas, Olkinos) all agree that land fragmentation through the process of subdivision is often fraught with exclusion, conflict, competition and unequal distribution of wealth. Ironically, the rhetoric on land sub-division is supported by the argument that informality increases vulnerability of the poor to corruption. In several instances the frustrations that arise from land related graft has served as a catalyst for increased demands for fragmentation and privatization of pastoral holdings (Galaty, 1990; Lesorogol, 2005; Mwangi, 2007). And, while a topic of much discussion and a locus of increasing mobilization in Kenya, deepening corruption around land allocation has largely failed to attract commensurate attention on the part of scholars. The Maji moto GR Case Study would perhaps provide more insight into this ever confounding, social, economic and political challenge. The site draws my interest due to unique characteristic that make it a potential ground for generating new insights on the questions under consideration.

Firstly, the GR has been in the process of individuating pastoral landholdings for well over two decades but with minimal success. Understanding the various obstacles internal and or external to the community contributing to this state of affairs will, it is hoped, generate meaningful data that will not only enrich scholarly discourse on transformation of property rights to land, but may also be part of the solution to these challenges. Second, beyond the two decades struggle for individuation, the process has also been punctuated by specific events/encounters pitting individual sectors or groups within the community against one another and the community against the state bureaucracy, occasionally mediated by Civil Society Organizations (CSOs). These encounters provide a glimpse of the dynamics of power plays and the role of various social actors and institutions in ensuing contests over resource allocation.

Furthermore, the eventual temporal successes of the struggle in reversing certain aspects of the land subdivision and distribution processes - perceived by the majority of group members to be unfair, illegal and corrupt – begs for inquiry to seek for lessons behind the successes. The GR is also one of the communal ranches located at the periphery of the world-renowned Maasai Mara Game Reserve (MMGR). Empirical research has shown that at least 70% of the wildlife from the conservation protected area lives within communal ranches at any given time. Thus, tourism and wildlife

conservation issues also add an interesting twist on the dynamics of land use and land-related graft and corruption and may influence decision making around land subdivision in the group ranch (Homewood and Thompson, 2002).

The situation has bred general uncertainties and dissatisfaction with GR leadership structures, predominantly thought to be the result of privatization of land tenure. Individuation of communal land tenure through the process of subdivision is therefore argued to be the nexus within which these contests are enacted. Understanding land related corruption is also critical in the sense that time taken contesting and staking claims on property rights to land (through litigation) also determines the productivity of that land. Thus, even in the case of group ranches where property rights to land have been achieved to some degree, the duration and ease of access to the litigation process becomes a precondition for achieving improved land use productivity, including food security. Land subdivision and associated graft is not only an economic livelihood concern, but also a social-cultural and justice concern often tied to the tendency of individuals to dispose of portions of their share of land to the market once land is individualized.

Interest in the study of land-related corruption in the pastoral context draws my attention because of the emerging empirical evidence that threats to tenure security in GR landholdings is shifting from “being appropriation by the state and non-maasai to individuals’ need to secure their and their families’ claims against appropriation by influential individuals from within the community” (Mwangi and Dehorn, 2008). Even though property rights to land might be vested in groups as corporate entities, the dilemma remains of how resources are to be allocated, accessed, used and managed within groups themselves. The rights of women, youths and poorer individuals are particularly vulnerable as indicated earlier. So far efforts to secure land rights through privatization have tended to destabilize and erode customary advantages of flexibility. Stabilizing land-holdings yet avoiding negative effects of titling and individualization of tenure, especially in the rangeland, remains a key policy question (Bruce, 1993; Bruce and Migot-Adhola, 1994; Cornia, 1994; Havnevik, 1998).

Finally, the relationship between the state bureaucracy and Maasai local traditional/indigenous institutions in the context of land tenure and its influence on land

management and resource distribution is one more ground for the study. Of particular interest in this point is the process of bringing leaders into office, the means of regulating norms of behaviour expected of leaders and public participation in decision making and principles of resource distribution amongst groups members. According to Bromley, viable common resource use depends on institutions that identify the group rights holders, establish procedures for joint-decision making, define rights to and schedules for resource extraction, and formulate reasonable benefits to be gained and sanctions against infractions (Bromley, 1992; Galaty, 1994a; Ostrom, 1990).

Guide to the Study

This paper commences with a brief presentation of a theoretical framework on property rights to land and corruption, providing a general guide for the organization of the inquiry. Next, an overview of pastoralism as a land use system practised under increasing pressure (endogenous and exogenous), with specific reference to the Maasai pastoral commons is provided. The aim here is to demonstrate the rationale behind communal land tenure and the dynamism inherent in these system and the associated institutions in the context of disequilibrium environments. The ultimate goal of the section is to shed some light on how this delicate balance is transformed through individuation and privatization of land tenure.

This is then followed with a brief historical context on the evolution of property rights in Kenya with focus on pastoral Maasailand. The section profiles key moments within the policy and legal environment over time, with the aim of demonstrating the historicity of the contemporary land tenure situation in Maasailand in general, and the study site in particular. I then consider and question the mediation process enacted by social actors and institutions in the transformation of land tenure regimes from communal/collective to private and individual ownership. The goal here is to demonstrate how local institutions and social organizations interact with external forces of privatization and individualization of pastoral landholdings to embrace, delay, modify or reject notions of individuation of landholdings.

To achieve this, Maji moto group ranch provides a case study of the struggle over land rights, which is presented and analysed. The author adopts the view that this transitional phase is liminal in the context of security of land tenure and hence subject to all forms of manipulation, arm-twisting, omissions and commissions reflected in notions of corruption, as demonstrated in the cited case. Further, the paper considers and problematizes arguments that pastoral societies are egalitarian in nature and hence generally exhibit social equity and fairness in resource distribution as opposed to forces of modernity as enacted in state bureaucracy and market oriented institutions. Additionally, the paper examines the nature of interactions between traditional customary institutions, market-oriented forces of change and state bureaucracy to illustrate the

complexity inherent in endeavours to distribute property rights to land. This is followed by a brief review of the policy and legal environment in Kenya with respect to the subject of the inquiry.

Lastly, the author concludes with an assertion that evolution of property rights historically, the world over and in particular within the project site, have often been a contested process fraught with underhanded dealings pitting poor local land owners and the less influential members of society on the one hand against the powerful, wealthy and well-placed elite members of society on the other. Finally, the paper closes with a number of recommendations for future consideration by researchers, policy makers and group ranchers.

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CHAPTER 1

INTRODUCTION

Theoretical framework

This paper will utilize theories of property rights to explain the evolution of property rights in the research site and will organize the inquiry according to an institutional evolution framework within the context of the pastoral commons (Mwangi, 2007; Ostrom, 2005). The study arises from the definition of property rights as “*the capacity to call upon the collective to stand behind one’s claim to a benefit stream*” (Bromley, 1991, emphasis in original) or “rules governing the use of resources” (Ensminger, 1992; in Knox et al., 2002). The proposed framework also recognizes the role of social actors as individual agents often driven by personal goals and interests enacted within the broader social, economic and political arenas, including societal goals and collective rights and interests, mediated by the State and markets. The discussion of theory on property rights in land will be integrated with theoretical literature on pastoralism and corruption.

The theory of property rights the world over is a long and well traveled route. The scholarly interest and sustained inquiry into the question of the evolution of property rights (to land) is critical because the way in which land rights are assigned ultimately influences the social, economic and political development of society (Deininger, 2003; Lesorogol, 2007; Mwangi, 2005; Mwangi, 2007). Land as the primary base of resources is crucial because it serves not only economic, cultural and symbolic functions, but, equally, access to it means livelihood and survival to most rural communities. The question therefore of what property rights regimes are most effective in attaining desirable political, moral, economic, environmental and social goals in society is of critical importance, especially in Africa where issues of development, poverty, and inequality and corruption loom large, all intertwined with land rights.

Overall, arguments regarding the emergence and evolution of property rights point at the interaction of economic and political forces embedded in the value system of society as the nexus of this evolution. These theories range from arguments around market-oriented forces and perceived associated growth, to governance-oriented factors, equally associated with distributive concerns, often in response to complexities occasioned by increases in population densities.

Elsewhere, these arguments are often clustered either towards the demand side and or the supply side of both institutions and resources. Besides establishing a facilitative environment within which the market dynamics operate the state also influences the evolution of property rights through policy choices promoted or disregarded. This constitutes the supply side of the institutional framework. The demand side of the argument holds that when a resource becomes scarce, its value increases, thereby increasing the gains from privatization. In this case, the tendency is for social actors to push for privatization of property rights in order to maximize the anticipated benefits to the individual. The general theoretical arguments posit that private property rights to land are superior and advanced in relation to communal and collective rights, as in the case of the commons (World Bank, 1989; Platteau, 1996; Kanyinga, 1998; Mwangi, 2007).

The Market-oriented argument

This argument is premised on the thinking that traditional and customary property rights - often associated with common ownership of property - are wasteful either due to underutilization or overexploitation of natural resources, and hence inefficient and unsustainable. The overuse of resources in the context of common resource regimes is generally associated with environmental degradation thought to arise from, in the case of pastoralists, notions that overstocking leads to overgrazing of the rangelands and eventual desertification. It is argued that management of resources under customary ownership is hardly regulated and often associated with an open access-free-for-all (Fratkin and Mearns, 2003; Mwangi, 2007; Lesorogol, 2007; Knox et al., 2002; Hardin, 1968).

This school of thought is heavily influenced by earlier thinking of economic theorists and range ecologists, particularly Garret Hardin's (1968) seminal piece on 'The Tragedy of the Commons'. This theory has received its fair share of criticism. The theory in principle saw individuals as economic actors in society who are solely driven by a raw and insatiable appetite for returns, unaware of the finite nature of resources and without regard for future generations, who often appear to act in isolation. Additionally, the theory confuses common property regimes and open access, and fails to account for existence of successfully managed common resources over space and time. Applying the theory of the Tragedy of the Commons to rangelands, it was assumed that pastoralism relied on open access systems, with no controls over resource use, and

leading inevitably to destructive extraction. But, contrary to this argument Indigenous pastoral systems have instead been increasingly recognized as common property resource management systems, with established institutions for communal control, which can deliver sustainable use, and have commonly done so. Thus, Hardin's theory was simplistic and abstract in nature (Homewood et al., 2004; Lesorogol, 2008; Galaty, 1992; Mwangi, 2005; Mwangi, 2007; Ecologist, WB 1993; Rutten, 1992).

According to the Ecologist (1993) the theory postulates a scenario of a society in which “authority rests nowhere; in which there is no property at all; and in which production of an external market takes precedence over subsistence” (Ecologist, 1993:13). Further, Hardin's theory doesn't account for the resiliency and diversity in both species characteristics and grazing requirements and patterns of utilization of the pastureland by livestock.

The applicability of the theory of the tragedy of the commons on the pastoral commons was further challenged by the emergence of the new range ecology thinking regarding the non-equilibrium nature of the rangelands and by an ever growing interest and expanded literature on common property resources. The ‘new range ecology’ re-conceptualizes pastoralist relations with the environment in more nuanced ways with greater appreciation of the complexity of vegetation dynamics and individualistic plant–environment relationships, as they interact with herbivores and random events or ‘disturbance’ on rangelands challenging the rather simplified Clementian models of plant succession that assume an orderly and predictable progression to a ‘climax’ equilibrium state. Under the new range ecology thinking, state and transition models do not assume a linear progression for vegetation development on a given site. Instead they offer a variety of states of some temporal durability or stability, with a number of possible pathways or transitions between them (Roe Emery et., 1998).

The effect of herbivory on grass production and nutrient dynamics, have been comprehensively reported for semi-arid eutrophic African savannas. Large herbivore increase the amount of food available both for themselves and other herbivores that graze on the same spot, through improving its quality and digestability, thereby creating and maintaining the so called ‘grazing lawn’.¹ Verben K. E. and Young V.P (2010) argue that different combinations of cattle and wildlife have different effects, largely via contrasting forage preferences, on the

¹ Grazing lawn - An expanse of short grass in an immature state, has in addition grass with a higher leaf to stem ratio and higher bulk density than that of tall grass stands. Olkos 114: 108 – 116, 2006. Grazing lawns contribute to the subsistence of mesoherbivores on dystrophic savannas.

persistence of landscape heterogeneity in savanna ecosystems. So each grass species benefitted from facilitation when it was the preferred forage for the dominant grazer.

Despite the growing body of knowledge challenging the rationale of the theory on the tragedy of the commons in the context of pastoral rangelands the theory has had a significant influence on the development of individual property rights, especially within the context of pastoral rangelands of East Africa. The proposed solution, it was argued, was the individuation, privatization and or nationalization of land rights. The individualized land tenure system is supported by neo-classical economic literature positing that land titling or security of land tenure, including the right to freely dispose of land without approval, is the surest way to restore the growth potential of African regions subject to high levels of population and poverty.

The market oriented arguments for individuation of rights to resources is therefore premised upon notions of sustainability and efficiency in resource utilization. In the eyes of development agencies and government, the argument holds that security of land tenure is a key factor in the development agenda, hence the push to secure property rights through privatization and titling as an incentive to foster productivity and address concerns over rising poverty. Also, informality of land rights as seen in customary land holding regimes is thought to increase vulnerability of the poor to corruption. The anticipated increase in tenure security under individual property, it is argued, would result in significant benefits in terms of equity, investment, credit supply, and reduced expenditure of resources on defensive activities (World Bank, 1989; Mwangi, 2007).

Specifically, security of tenure would reduce uncertainty over land transactions, facilitate transfer of land to individuals with the capacity to maximize production, and contribute to a reduction of excessive fragmentation and subdivision often associated with traditional land allocation and inheritance patterns. More efficient cropping choices and more long-term investments in land will further evolve from enhanced tenure security. Credit supply will automatically increase through the potential of using land as collateral (World Bank, 1989; Platteau, 1996; Kanyinga, 1998)

Establishment of individual property rights is also associated with responses to exogenous forces of change such as emergence of new markets and increases in population which in turn may increase competition over scarce resources. Conversely, scarcity of resources may result in relative increases in resource value. It is further argued that this would then

increase possible gains from privatization due to the anticipated reduction or elimination of costs associated with collective governance. Increased access to markets tends to increase the value of land and may lead to either the emergence of institutions that facilitate a more precise definition of property rights or the emergence of costly conflict over land rights. Population pressure and imposition of property rights by external forces (colonialism, for example) often contribute to similar outcomes (Deininger, 2003).

Distributive arguments

A second theory argues that those in power may establish certain types of property rights to exclude others or influence their behavior. In this case, the imposition of property rights will not necessarily be associated with economic benefits and may be extremely sub-optimal from a social perspective (Deininger, 2003; Mwangi, 2007). While the need to respond to market incentives and/ or disincentives may influence the transformation of communal land holdings by privatizing land tenure to enhance efficiency, contestation by social actors, groups and individuals over power and wealth in society could also result in the emergence of property right regimes to serve specific interests, especially that of particularly powerful social actors.

Mwangi (2007) observes that understanding the nature of the conflicts and political interventions over resources would provide a glimpse of would be losers and winners of institutional change. Mwangi argues that individuals will often position themselves in such a way as to influence the process of institutional change towards the establishment of property rights regimes and or institutions that would best serve their interest and guarantee maximum protection of their rights. The degree of homogeneity in interests and perceived equity in distribution of rights would therefore influence the pace of institutional change, and, consequently, the nature of property rights regimes.

In pushing for their diverse interests, social actors would align themselves with other players, institutions and networks that identify with their position and would provide most immediate responses to challenges, such as by invoking state authority, or intimidation and threats by the powerful.

Colonial rulers for example often introduced discriminatory systems of property rights in which they used coercion to obtain labour, or reduced the amount of land available for peasant cultivation and grazing by allocating rights to 'unoccupied' lands to the ruling class, thereby

confining free peasant cultivation to infertile or remote areas with poor infrastructure and market access. Examples in Kenya include the 1918/26/39 squatter laws, restrictions on market access, formalization of dual pricing, quarantine and forced destocking, monopoly marketing associations, prohibition of African exports, subsidies to mechanization, amongst other strategies (Deininger, 2003). This argument recognizes the realities of social differentiation among the various social actors in society and their influence on outcomes of institutional change, demonstrating that communities do not respond to forces of change uniformly.

The Institutions argument

As indicated elsewhere in this paper, property rights emerge through the interaction of political and economic forces. The state is the key player in the establishment of policy and legal provisions governing the definition and administration of property rights. Deininger (2003:7) asserts that the involvement of the state in the establishment and guarantee of property rights to land is essential because of the need to halt the possibility of dissipation of resources by individuals in their struggle to establish property rights, to facilitate equity and minimize costs normally associated with non-systematic approaches, and also to benefit from the synergies of the network effects resulting from consistent availability of information across administrative units (ibid).

Deininger (2007:22) contends that property rights are social contracts backed up by the power of the state or the community (at various levels) that allow individuals or groups to lay “a claim to a benefit or income stream that the State will agree to protect through the assignment of duty to others who may covet, or somehow interfere with, the benefit stream”. In this sense, then, governments play a critical role in determining how property rights are defined, how they can be enforced, and how they evolve in line with changing economic conditions. Apart, therefore, from supplying enforcement, registration, survey, and titles within a market-based framework of institutional change, the State directly influences change through its policy choices (ibid, Mwangi, 2007).

The question of property rights to land entails not only land as an asset in itself, but also concerns over consensus between people about how land should be held, used, and exchanged. Moreover, property rights to land are not static, but evolve in response to changes in the economic and social environment (Deininger, 2007; Mwangi, 2007). Clearly, the nature and

characteristics of rights and enforcement institutions together define the perceived security of property rights to land, and it is this security that will affect decisions about land use, land-related investments, and the willingness to engage in land transfers.

The state as a catalyst for institutional change also plays an important role in the establishment of the necessary infrastructure and tools (maps, registers, title deeds, etc.) both to physically demarcate and delineate rights to land and in the provisioning of relevant information about the assignment of property rights to land for informed decision-making. Further, the state through the judicial system endeavors to enhance and enforce the rule of law to guarantee property rights to land. Legal and institutional issues are critical in attempts to establish and secure property rights to land. Proper legislation in the definition of property rights to land would ensure that the ways of acquiring them are clear and equitable, in line with practice on the ground. The nature of institutions that govern property rights to land influences accessibility, level of efficiency in service delivery and associated costs. According to the theory, social groups adopt property rights because the benefits from doing so exceed the costs, implying that society will always gain, for failure to develop property right institutions will lead to conflict and resource dissipation (Deininger, 2003 p.7).

Since land rights are not only a key element of the social fabric of most societies, but also a critical determinant of investment, and thus of economic growth, the existence of clear and well-defined property rights to land is paramount to minimizing the likelihood of dissipation of valuable economic resources in attempts to secure and define such rights by individuals and equally for the sustenance of social order. This institutionalization and enforcement of property rights by the state, especially in the eyes of the World Bank, it is argued, will generally provide ‘high benefits to the poor and vulnerable’. But this role of the state as an agent of development, protector of human rights and distributor of public resources, especially land, has been questioned. Jean-Francois Bayart (1993 p.60) argues that the very process of development promoted by the state is the root cause of inequalities in Africa and in States elsewhere. There are many cases where the desired effect wasn’t achieved and instead conflict has arisen. The value of institutional design in ensuring effective local organizations for common property management has equally been underscored (Ostrom, 1994 in Knox et al., 2002).

Since the research study focuses on the intersection of communal land ownership and private/individual land tenure in the context of pastoralism and associated notions of corruption, a brief overview of the anthropology of corruption is essential.

Anthropological Interest in Corruption:

The overall interest of the research study may not necessarily be on the study of the phenomenon of Corruption per se, but rather how actions of the various social actors in their effort to stake their rights and claims over land during the land subdivision processes may be interpreted as such, and how the same actions impact on local livelihoods. Corruption as a subject of inquiry is an emotive issue. But the need to study it is unquestionable since, in the words of an Austrian journalist and poet Karl Kraus (1874 – 1936), “Corruption is worse than prostitution. The latter endangers the individual’s morals; the former endangers an entire country’s morals”.² Activities perceived to be corrupt range between the dimensions of exchange and extortion, giving rise to processes involving the informal redistribution of public resources and of forms of power and authority, often generating mechanism of inequality and exclusion in terms of access to these resources (Blundo et al., 2006 p.6).

Certain perceived attributes of the phenomenon of corruption make its study and subsequent understanding in society critical. When corruption does occur, there is no doubt that it affects society, is more pervasive than thought, goes largely unreported and under-prosecuted, and often breeds impunity (Harris, 2005). Corruption permeates both developed and developing countries and a host of other institutions from religious, private corporations and non-profit groups to individual families (ibid). According to an editorial carried in *The Standard* Newspaper, for example, private companies spend an astonishing Kenya Shillings 3 trillion (US\$40 billion) annually to corrupt politicians and government officials in developing nations.

The Global Corruption Report (GCR, 2009) also reveals that about half of the international business executives believe corruption raises company costs by at least 10 per cent (The Standard – September 24th 2009). The 2009 GCR posits that no country or region can claim to be immune to corruption or exhibit consistently superior performance in tracking the vice. In fact the report holds that the supply of corruption often comes from wealthier countries, making the problem global. It is therefore not a problem restricted to poor or developing countries of the

² *The Standard* Newspaper, 8th September 2009.

world, as is often portrayed. But, overall, some of the most troubled and poorest countries continue having the gravest problems with corruption. The difference therefore across countries of the world is not necessarily in the absence of corruption per se but in the nature of institutions and social methods developed to combat the vice.

Thus, understanding of corruption and its effects on social actors in the context of land subdivision is essential if its negative impacts are to be minimized. However, an inquiry into the dynamics of corruption is not a simple matter. The complex and convoluted nature of corruption is partly reflected by the diverse terms and phrases often used to express/describe dimensions/aspects of it – bribery, conspiracy, embezzlement, fraud, racketeering, theft, treason, deception, clientalism, patrimonialism, prebendalism, nepotism and tribalism to mention just a few. Capturing this diffused and universal nature of corruption, Harris notes that, “Corruption does not wear a name tag and has no home address” (ibid p.20).

Corruption is illegal everywhere and in most places illegitimate. It may be tolerated and widespread but it is still at odds with legislative and regulatory systems, and is condemned by numerous social and political actors (Blundo et al., 2006 p.8; Harris, 2005). There is a vast literature which associates corruption with socially shared values or norms that are characteristics of certain political cultures: the norms of solidarity within social networks, the dialectic between strategies for the accumulation of and the duty to redistribute wealth and reciprocate in the exchange of gifts (Blundo et al., 2006 p.26). Thus, there are differences in diverse accepted norms of behaviour. For example, often the ingenuity of corrupt individuals is admired in some quarters, albeit secretly. In this sense embarrassment is the worst the victim will suffer, and laughter the best reward to be earned.

It has also been argued that corruption seems to occur in incremental steps. Either problem overwhelms those responsible, who see no way out other than to cheat, deeming the chance of detection so low that the risk is worth the reward. Often times the growth of corruption has been associated with emergence of the state, the money economy and perceived erosion of social values, with some studies associating corruption with the links between the onset of democratic processes and the crisis in redistributive clientelist systems that follow (Harris, 2005, p.20 - 22). This line of thinking gives rise to three broad discursive arguments on corruption namely: materialist, cultural relativist/evolutionist, and moralists.

Blundo et al (2006) presents a fascinating analysis of existing literature on corruption pointing at two broad emerging discourses on corruption in Africa – the continuists and rupturists. The ‘continuists’ claim that corrupt behaviors in Africa are endogenous in nature, while the ‘rupturists’ confirm the exteriority or foreignness of these practices, which they identify as definitely modern, coinciding with the importation of the colonial state in Africa (ibid p.26). The rupturists argue that corruption in Africa arises from the clash of old customs, attitudes and traditional values with the new forms of government based on neoliberal ideologies while the continuists - heavily influenced by the theories of modernization and associated teleological evolutionist ideas - argue that pressures of tradition which render the actor a ‘victim of an ethnic group’ perpetuate a negative legacy of the past that modernity will hasten to eliminate (Nembot, 2000:314 - 316; Blundo et al., 2006).

One such argument focuses on the relation between corruption and the emergence of the state in Africa. The emergence or imposition of the concept of the state in Africa, as elsewhere, has been linked with entrenchment of corruption. The argument follows that the State’s attempts to foster ‘development’ often results in inequality (Bayart, 1993, p.60). Bayart argues that the greatest loser in this exploitation associated with States’ goals of development is the rural areas “... which have often been thought to have subsidized the growth of the towns or agro-industrial investment” (ibid, p.64).

He points at the colonial ideology of ‘divide and rule’ as the initial moment in which the system of ‘inequality and domination’ was installed. Independence and subsequent national integration constitute other moments in this process of social stratification (ibid. p. 62). While the relationship of power to social stratification isn’t entirely new in Africa, its contemporary integration with the capitalist economy has had the effect of valuing personal wealth above communal wealth. Through the indigenous intermediaries which the colonial administration appointed to serve as auxiliaries of the system, corruption, in Bayart’s view, was then made ‘an organic part of indirect rule’, a situation which laid the foundation for establishment of patrimonies, especially since chiefs were legally entitled to retain a percentage of the taxes they collected, and so benefitted from various other payments (Bayart, 1993, p.70 -71).

This school of thought also associates corruption with the larger discourse of dependency theory, analyzing the transition to democracy and the free market economy, which argued that the study of corruption is nothing new. The theory posits that corruption is merely a specific

form of the 'general movement of social mobility which invents and is invented by African societies' (Copan, 2001:23; Mamadou Diouf, 2002). Copan (2003) holds that corruption enables the study of 'the public systems from below' and therefore constitutes 'a subtle means of revisiting the formation of political actors from below' (ibid, p.74).

In these processes of state formation, it is argued, informal systems of clientelism and patrimonialism often emerge to stifle popular participation, subverting the rule of law, fostering corruption, distorting the delivery of public services, discouraging investment and undermining economic progress. The informal, non-acknowledged clientalistic networks that emerge are often both difficult to detect and to remove – forming veiled sources of power and influence as opposed to democratic governance and rational-legal bureaucratic systems (Arthur and Derick, 2002).

This situation gives rise to the contradictory nature of the African state, in which the process of bureaucratization coexisted with the patrimonial management of public resources (Jean-Francois Medard, 1990:29 in Blundo et al., 2006. p.21). While Medard (2003) holds that it is the failure of the institutionalization of the state in Africa that contributes to the growth of amorphous networks, for Bayart the 'rot and inanity' of the formal state structures "masks the vitality of the rhizome state, which is pervaded by battles of position and factional conflicts". In Terray's observation, these conflicts only trigger a crisis when they produce an unequal distribution of jobs and wealth; otherwise the State remains as a useful mode of domination and exploitation (Terray, 1987:19).

Bayart goes a step further to attribute the 'mediocrity for accumulation' in Africa to weak institutions associated with weak demographic pressure, pointing at the Western experience which had resulted in the intensification of economic exploitation and political domination, a situation which necessitated establishment of institutions according to the Weberian ideal of the bureaucratic state (Bayart, 1993 p.264). The development of social struggle, including the social phenomenon that corruption is, is therefore essential to the nature of the future state. Corruption then, it is argued, arises from the clash of uncertified activity operating within the lawful realm of democratic politics and bureaucratic administration, resulting in a duality of government systems - formal and informal systems.

Blundo et al. (2006) described it as "generalized informal functioning of the state ... or generalized dysfunction in relation to the laws and regulations in force, and the expectations of

the users of the state services” (p.4). This makes it difficult to distinguish between favouritism, clientelism and acts deserving monetary compensation, and legitimate commissions and tips. The existence of overlap between corrupt practices and all of the ‘real’ everyday practices of the State services makes the inquiry all the more difficult (ibid. p.5). This institutional dualism has its roots in the historical evolution of social relations between rulers and the ruled, from tribal chieftaincies, to kingdoms and empires, to feudalism and the emergence of the nation-state. Informal systems reflect socio-cultural norms and routines, and underlying patterns of interactions among socioeconomic classes and ethnic groups, associated either with kinship ties and responsibilities, or the colonial experience of domination and the practice of divide and rule.

Weber (1947) coined the phrase patrimonialism to describe situations where the administrative apparatus is appointed by and responsible to the top leader. The ruler’s deputies are delegated jurisdiction over certain domains, and given wide leeway regarding how to act. Patrimonial administration is closely associated with clientelistic politics, for administrative jobs are among the choicest plums a boss or patron can offer his protégés. Clientelism is often linked with ethnicity and an absence of collective class identity. Democratic rule may make identity politics and patronage grow more pronounced (Lemarchand, 1972 cited in: USAID, 2002). As politicians on the one hand devise ways to reward followers and exclude non-supporters in efforts to overcome the competition, on the other hand low-income voters may mobilize into ethnic blocs as a strategy for maximizing their chances of obtaining individualized benefits available from the state. This may entrench negative ethnicity.

Weber argued that patrimonial systems are inferior to capitalist development because they are subjective and changeable. By contrast, the adjudication and administration of laws under bureaucratic rule are ‘calculable,’ in Weber’s terms, leading to governance that creates a better investment climate and encourages economic development. ‘Rational-legal bureaucracy’ also has the advantage of being less discriminatory than systems founded on personalized exchange relationships.

Clientelism and Patrimonialism, then, creates ‘a complex chain of personal bonds’ between political patrons or bosses and their individual clients or followers - founded on mutual material advantage. This constitutes the materialist argument on Corruption. The poor and marginalized members of society out of necessity are drawn into these ‘problem-solving networks’ as a pragmatic means to find solutions to their everyday concerns, mostly because

they have limited access to formal sources of assistance (Auyero, 2000 cited in: USAID, 2002). This form of corruption is rife under conditions of political and economic instability, and is integral to the ‘politics of survival’ for both patrons and clients (Migdal, 1988 cited in: USAID, 2002). Further, clientelistic links rest on a rational economic calculus more than on blind or reflexive personal loyalty or ‘instrumental friendship’ in which the poor are exploited by their patrons.

The theory holds that most underground or quasi-legal governance practices such as political patronage are neither good nor bad in themselves, depending on their outcomes. In fact, they are essential for any governance system to operate effectively. Hence, a delicate balance between the ‘bad’ informal practices and ‘good’ formal ones is necessary. Informal practices may be run largely for private rather than public ends, but often make the latter possible. They may contribute to peaceful development by playing down divisive, collective issues. Corruption acts as “emollient, softening conflict and reducing friction” (McMullan, 1961:196 cited in Blundo et al., 2006 p.18). Another hidden or unintentional advantage of *de facto* governance can be to set up as a buffer between society and an impersonal state. It is this hidden, beneficial dimension of political machines that explains their durability, despite widespread disapproval. Patron-client networks play an ambiguous role in the fight against poverty.

But, while clientelism can bring benefits to some of the poor, it breeds inequity because it excludes individuals who have no assets with which to negotiate (USAID, 1999). Contemporary thinking, however, suggests that dishonest dealings in government usually do far more harm than good (Elliott, 1997 cited in: USAID, 2002). It is the concerns over this type of corruption that drives the rhetoric on good governance reforms promoted by the Bretton Woods institutions in developing countries, including Kenya (Banfield and Wilson, 1963, cited in: USAID, 2002, p.10).

Corruption and reciprocity

The cultural relativist interpretation of the complex of corruption has often been associated with the concept of reciprocity. From a relativist perspective, ‘corruption’ stems from social norms that emphasize gift giving and that put loyalty to family or clan above the legal code. The relativist nature of corruption suggests that what may be considered to be a corrupt act by one person may not necessarily be corrupt to another (Harris, 2005 p.19). Thus corruption is

subjective and culturally defined. But others have criticized this line of reasoning, asserting that it tends to rationalize criminality and exploitation, despite a general consensus within the bureaucratic state against disposing of state property and the taking of bribes.

According to Karl Polanyi (1968) reciprocity is one of the three principles determining exchange: first, market principles (capitalist economy, based on maximizing profits dependent on the law of supply and demand); second, redistribution in which goods ‘move from the local to the center’ (and vice versa), as in the case of chiefdoms. The third principle, the concept of reciprocity, is linked with principles of resource (re)distribution amongst social equals based on kinship ties observed in the more ‘egalitarian’ societies (foragers, cultivators, and pastoralists).

Of the three types of reciprocity – generalized, balanced and negative – the so-called egalitarian societies exhibit more generalized and balanced categories of reciprocities (Conrad, 2005; p443-445). Generalized and balanced reciprocity are based on trust and social ties while negative reciprocity involves the attempt to get something for as little as possible. The argument seems to suggest that there is a general decrease in acts of general reciprocity as societies progressed from foraging, pastoralism, horticultural practices and, finally, industry; this suggestion mirrors that of transformation of property rights to land, from communal/common to private and individual property rights. This typology assumes an evolutionary progression between forms of production, but one might suggest that these are ‘adaptations’ to particular political and ecological niches, for example, pastoralism to aridity and the existence of pasture not well-suited to intensive agriculture, and this may also be the case with systems of exchange. Bayart suggests caution regarding the tendency to idealize the concept of reciprocity within African society, asserting that its “intimate character is in no sense ... a reduction of domination and inequality” (1993, p.228).

The personal relations (clan or age group) that characterize reciprocity, instead of fostering egalitarianism, exert pressure upon those in positions of influence to redistribute or share the spoils of power across those in their social network. Where this sharing isn’t attained, “... social disapproval and ostracism and, in extreme cases, a death sentence may at times be awarded” (Bayart, 1993, p.233). Hence, the personal relationship on which redistribution is supposed to depend is by definition highly inegalitarian and hierarchical. In Bayart’s view, all social actors, rich or poor, subjects or leaders alike participate in this social struggle for survival

through their world of networks with the ultimate prize being individual accumulation of wealth and power.

Thus, “corruption is a method of social struggle ... which rests squarely upon a lively political consciousness of inequality” (ibid. p.236). Contrary to the popular image of the innocent masses, “corruption and predatoriness are not found exclusively amongst the powerful; rather they are modes of social and political behaviour shared by a plurality of actors on a more or else great scale” (ibid., p. 239). The continued quest for economic advancement goes beyond the concern for morality. Even in the context of the construction of the state in Africa, Bayart asserts that it is “hybridization rather than incompatibility between native and non-native logics that took place”. According to his reading, corruption is one of those things considered to be banal manifestation of ‘the politics of the belly’ (Bayart, 1993, p.241). But how does this argument on corruption and reciprocity relate to the Maasai pastoral practice of resource distribution and sharing, the key decision to subdivide commonly held land, and the method of allocating land among members and non-members?

Maasai Pastoralists and Reciprocity

Maasai pastoralists have been more associated with the concept of reciprocity and egalitarian practices in resource distribution and less with the inequalities reflected in class formation characteristic of market based societies. The resources shared within pastoral societies include access to pastures and watering, and cattle, regulated through three social institutions - territorial section, *Olosho*, clan/lineage, *Olgilata*, and age-set, *Olporror* (Galaty, 1981).

Being mostly livestock keepers, the form of reciprocity witnessed here centers on distribution of livestock, especially cattle. This argument of a practice of a predominantly generalized form of reciprocity has since been challenged. Galaty (1981), for example, while agreeing in principle with the association of Maasai pastoralists with the generalized form of reciprocity, reckons that this has since changed. Galaty asserts that with the increase in power and influence of the state, increase in population pressure, the spread of education, agricultural encroachment, commercial ranching, annexation of land for wildlife conservation, individuation of pastoral landholdings and subsequent land sales, pressure is exerted on the hitherto livestock based gifts and exchange mode of resource distribution.

Further, other scholars have argued that inequality had always characterised Maasai pastoral resource sharing. According to Jenkins (2002), prior to the penetration of merchant capital and, later, formal colonisation, a combination of harsh environmental conditions and social processes inevitably led to the emergence of ‘poor’ and ‘rich’ classes of pastoralists. In fact indigenous social formations were not egalitarian in the first place, as exploitation was inherent to their social reproduction, which involved the appropriation of surplus value by male elders from male juniors and all women. It is argued that, even without the global expansion of capitalism, imperialism and colonialism, these societies would have inevitably have become class societies, with the inevitable formation of states (ibid., Rigby, 1992).

While Galaty agrees with Jenkins on the count that cattle serves as the basis for social differentiation of various classes, including those distinguished by wealth, he avers that no account of the individual ‘ownership’ of the means of pastoral production is possible in Maasai society. Additionally, since pasture is internally indivisible, it cannot serve as a factor of intra-group class discrimination or inequality. Thus, although, “the exchange of livestock is basic to the process of capital accumulation, the social relations so established act as a continuous check on and leveler of inequalities in livestock holdings” (Galaty, 1981, p.71). Galaty also observes the increasingly central role land plays as a key resource influencing inequality in the Maasai pastoral context. The question of how class interacts with culture and other exogenous forces of change to influence social actions of actors in resource (especially land) distribution, ownership and exchange is central to this thesis.

Corruption: the Kenyan Context

Corruption in Kenya has dominated public debate and discourse for slightly over two decades now. The debate has had strong links with the clamour for political and legal reforms around good governance, including accountability, transparency, and the rule of law, which commenced in earnest in the 1990s. Kenya is acknowledged as one of the most unequal societies in the world – a state accentuated by economic growth (Sunday Nation, August 23rd, 2009). According to Michela Wrong, in her book *Its our Turn to Eat: The Story of a Kenyan Whistle Blower*, the absence of large scale civil war and or external invasion in Kenya's political history points at corruption as perhaps the reason why Kenya lags so far behind the developed world. The country wallowed “in a system of corruption and patronage so ingrained, so greedy it was gradually throttling the life from the country” (Wrong, 2009, p.41).

This analysis was echoed in the anti-graft organization Transparency International's corruption indices in which Kenya routinely trailed near the bottom in the 1990s, second only to Nigeria in the African context. Despite Kenya's impressive infrastructure by sub-Saharan African standards, the country lags behind in attracting foreign direct investment due to corruption. Corruption has since remained in most political parties' manifestos as a major campaign platform upon which to seek for elective political position in government. NARC in 2002, for example, rode on this wave by condemning the 24-year KANU reign as being characterised by and being synonymous with corruption (Wrong, 2009). Civil Society Organizations (CSOs) in the country were also not left out in this quest to address corruption. Most of their programmes centered on governance and citizen participation.³

Despite all the reforms in the country - political and legal – initiated from the mid-1990s, to date corruption still persists. Some have argued that corruption in the country doesn't go away but rather simply ‘mutates’ and ‘migrates’ with reforms (Wrong, 2009, p.42). Corruption at the national level is often associated with negative ethnicity and historical and regional inequalities dating back to the colonial encounter. Thus, “the various forms of graft cannot be separated from the peoples' vision of existence as a merciless contest, in which only ethnic preference offers hope of survival”, elsewhere described as ‘Kenya's dislocated notions of themselves’ (ibid; Daily nation, 13th August, 2009). The contest is aptly captured in a Daily nation editorial in

³ Daily nation, 13th August 2009

which the writer posits that “the economic strength of the GEMA⁴ ethnic communities is ‘evidence’ of unjust historical advantage they have had vis-a-vis other Kenyan communities” (ibid).

Specifically, the questions of corruption associated with land has its roots in the biased land laws established during the colonial rule (discussed earlier in this paper) - including the decree that any ‘waste and unoccupied land’ belonged to the Crown and the subsequent leases (99 – and – 999 year) to settlers (Rutten, 1992). These laws laid the foundation for the dispossession of the poor masses by the elite ruling class in the postcolonial state. The colonial regime had to devise a mechanism through which they could ‘legally’ dispossess indigenous landowners. The situation was aggravated by the soaring African population and taxes levied on them. Through the creation of the native reserves (a residue left when Africans had been dispossessed of their lands in favor of white settlers), that established divide and rule, and the translation of the Bible by Missionaries into local dialects, hitherto ‘negotiable ethnicity’ was converted into competitive tribalism, making tribalism more of an invented phenomenon than an inherited one in African social formations (Wrong, 2009, p.50).

At independence, the logic of patriotism was dealt a serious blow when individuals thought to be loyalist home guards and collaborators took over the reins of power, land, the economy and most positions of influence, pushing those who fought for independence in the country, including the Mau Mau fighters, to the periphery. While those who took over the reins of power at independence were not all necessarily loyalists and collaborators, the few educated and experienced freedom fighters who joined the leadership elitist club became intoxicated with the fruits political power; often forgetting the inspiration behind the struggle for liberation.

This outcome established the political foundation for endemic corruption in the country – at least at the National level (Bayart, 1993; Southall, 2005; Daily nation, 13th August, 2009). A significant portion of studies of corruption associated with land in the country has focused at ‘grand’ corruption at the national level and rarely at the rural and/local community level. Land at the national level was lost mostly through presidential decree(s) and flouting of established legal procedures. The beneficiaries were mainly not landless Kenyans but, by and large, people with

⁴ Gikuyu, Embu, Meru and Akamba (GEMA) a pseudo-political and economic outfit/platform for major Highland Bantu speaking ethnic groups in the Country, often mobilized by politicians affiliated to the constituent ethnic groups during electioneering periods.

more land than they needed.⁵ The establishment of a number of Commissions⁶ to look into the land question in the country and the constitutional and legislative reforms being implemented is testimony to the central place corruption related to land plays in the country. The report of the Ndungu Commission on Illegal and Irregular Allocation of Public Land, for example, asserts:

Land was no longer allocated for development purposes but as political reward and for speculation purposes ... 'land grabbing' became part and parcel of official grand corruption through which land meant for public purposes ... has been acquired by individuals and corporations (p.8).

The central place land occupies as a public and individual resource in the life of all Kenyans cannot be overemphasized, for, as noted by the same Commission report (p.xvii):

Land retains a focal point in Kenya's history. It was the basis upon which the struggle for independence was waged. It has traditionally dictated the pulse of our nationhood. It continues to command a pivotal position in the country's social, economic, political and legal relations.

The report details the systematic way in which established procedures, designed to protect the public interest, were perverted to serve private and political ends (Southall, 2005). The Commission found that “most illegal allocations of public land took place before or soon after the multiparty general elections of 1992, 1997 and 2002”, reinforcing its view that public land was allocated “as political reward or patronage” (p.83).

Instead of playing their role as custodians of public resources including land, county and municipal councils have posed the greatest danger to these resources ... the most pronounced land grabbers in these areas were the councillors them-selves...The corruption within central government has been replicated at the local level through the activities and omissions of county and municipal councillors (Ndungu Land Commission, GoK, 2004: 147).

Finally, my attention has been drawn to land-related graft in the context of pastoralism because current research on corruption often dwells on comparative macroeconomic analyses of its

⁵ Sunday Nation – August 23, 2009 (Nation media group editorial)

⁶ 1) GoK (2002) Report of the Commission of Inquiry into the Land Law System of Kenya on Principles of a National Land Policy Framework, Constitutional Position C. Njonjo; 2) Commission of inquiry into Illegal and Irregular Allocations of Public Lands (2003/2004) ('Ndungu Land Commission').

causes and effects, mostly based on ‘survey’ type quantitative data on perceptions of corruption (Lambsdorff, 1998; Mauro, 1996 in: Blundo et al., 2006 p.9). If public land-related graft at the national level is driven by ethnic inequalities arising from both historical injustices and postcolonial continuities, including political patronage, what then drives corruption in the context of community land and within group ranches often comprised of members from one ethnic group? The anthropologist’s interest in corruption attempts to provide a local and contextualized representation of corrupt practices through participant observation and other qualitative methods by setting the complex phenomena of corruption in a wider social context. The need for example to understand why and how ordinary people participate in the social reproduction of corruption despite being its main victims inspires this inquiry.

It is also important to mention here that any study of corruption is also a study of practices that exist beyond corruption, but are functionally, structurally or culturally closely related to it. The corrupt exchange is not separable from other similar or closely related forms of exchange involving social capital as opposed to economic capital (Blundo et al., 2006 p.15). Therefore, understanding corruption represents an initial step towards a better understanding of the state, at both central and local levels, a better understanding of administration, of local authorities, development projects, communities at the local level and even civil society and associations.

Further, the Transparency International (TI) Corruption Perception Index is primarily an instrument for exerting political pressure which often remains silent on the forms taken by the corruption in given contexts, on its actors and their strategies and on the factors that contribute to its reproduction or decline and its long evolution. This is one of the possible contributions of this case study.

Research Design and Methods

The research project was carried out over a one-year period (August 2009 – August 2010). During this period, the first four months were dedicated to intensive field study and the rest of the period for writing and periodic field visits in response to emerging gaps and trends. My research methodology is grounded in integrated qualitative (both descriptive and interpretative) methods of research, including participant observation, focus group discussions and semi-

structured interviews applied in respect to the specific needs and social set-up of my research environment.

It is important here to mention that the study was carried out in a GR in which I am a member. Prior to my new role as researcher in the project site, I was actively involved in agitating for redress of GR concerns over land subdivision as a registered GR member, NGO-human rights activist and one of the few local educated elites. In a sense, my role here, as noted by Russel (1995), was that of an ‘observing participant’, besides just being a ‘participating observer’. Being a Maasai from the local community, member of the GR and considered to be one of the educated elites within the locality presented both opportunities and challenges in the course of my research. It equally didn’t help matters that I was one of the faces associated with one of the many (2001 - 2005) struggles to improve management of GR affairs, from natural resource to political governance.

Shared cultural background, including my knowledge of the local Maa language, familiarity with local geographical and political dynamics, and extensive contacts and kin relations within the GR, were factors critical in focusing my research questions in a culturally sensitive manner and in making an appropriate selection of key informants and research assistants. The privilege of drawing from existing social networks and directly engaging with the community and respondents contributed to a relatively shorter time spent in the field for data collection and, I trust, the acquisition of high quality data. Besides formal scheduled data collection sessions with members of the community, my daily livelihood activities generally provided opportunities for further learning and data generation. Many challenges were also associated with the fore-mentioned advantages.

This research study also benefited immensely from the on-going collaborative research project on Pastoral Property and Poverty conducted by a team of researchers from Canada (mostly affiliated to McGill University) under the supervision of Prof. Galaty, and coordinated through local CSOs in which I was a part. The said research had just concluded an extensive and intensive research study across nine group ranches in Maasailand⁷ in which substantive data relevant to my study area was generated.

⁷ Elangata Wuas, Kilonito, Torosei, Oltepesi, Olchorro-onyori, Olkiramatian, Ewuaso Kedong in Kajiado district, and Enosupukia and Maji moto in Narok district, Kenya

The research activities undertaken in the larger study included; Site reports, Land tenure history reports; Market reports; Election violence reports; Household surveys; Family case studies and Mobility interviews. In total, approximately 15% of homesteads, comprising 653 husbands and 891 wives were surveyed over variety of topics. *Inkang'itie* (homesteads) surveyed in the project site were arrived at through computer generated randomized sampling covering 30 homesteads of which primary respondents were 76 males and 121 females. Broadly the study looked at the following questions: why tenure choices are made and how these choices matter for rural livelihoods, the security of food systems, allocation, conservation, and use of environmental resources, and the social organization of and institutional relations through which local governance occurs.⁸

My challenge was always how to 'detach and step out' from my own culture and ensure the 'objectivity' of my final research findings. Familiarity with the project site and the local community's way of life may make it difficult for me to perceive trends or events that may in fact be unique since they might appear normal to me, with the possibility of this influencing the more nuanced analysis of research findings. Occasionally, respondents would remind me that I should know as much as they do (if not more) with regard to my subject of inquiry. This perception threatened the amount and quality of data I was able to collect. Other challenges in the course of study related to corruption as an area of inquiry.

Corruption has often been an emotive topic. Since corruption broadly entails a denial of others' perceived rights and/or opportunities as provided both by societal norms or bureaucratic State law, individuals implicated in corrupt activities and victims alike often tend to be personal in their discussions around the topic. Individuals who may perceive themselves as victims of corruption may be bitter and assertive, while alleged beneficiaries may be defensive and distancing. This scenario creates tensions in social relations, and when situations are aggravated may result in conflict and ultimately physical and psychological harm.

The research project recognized this inherent potential risk and took deliberate measures to avert any aggravation of community social relations around the topic of inquiry. In order to minimize possible negative effects of the factors stated above, a combination of several data collection methods, tools and strategies of implementation were employed. Participants in the research study were recruited through informed consent, information and documents obtained

⁸ Research proposal - Pastoral Property and Poverty 2007

were confidentially managed and confidential coding of participants' names was undertaken to conceal their identities.

In order to both enrich and counter-check historical narratives gathered through interviews and participant-observation, time was taken to glean through Ministry of Lands and GR official records and other relevant policy and legal documents. These provided data on land subdivision processes with a specific focus on contested land transactions activities. The Maji moto GR files containing minutes on members' resolutions, records of land subdivision processes and associated disputes, all of which I studied, provided invaluable data. These records were useful in painting not only a historical time-line of the GR by providing glimpses of key moments and events over time, but also in isolating contested issues.

It was particularly illuminating to study and analyse the enormous amount of correspondence available in the Touch of Love Integrated Development Program's (TOLIDP⁹) offices, detailing the intricate interaction of all social actors during the peak of the land subdivision struggle years (2001 – 2005). The records which were mostly in the form of letters and correspondence were particularly beneficial in shedding some light on the interest of the various players and the strategies employed by the actors to advance and protect these interests in an ever fluid and dynamic social, political and economic environment.

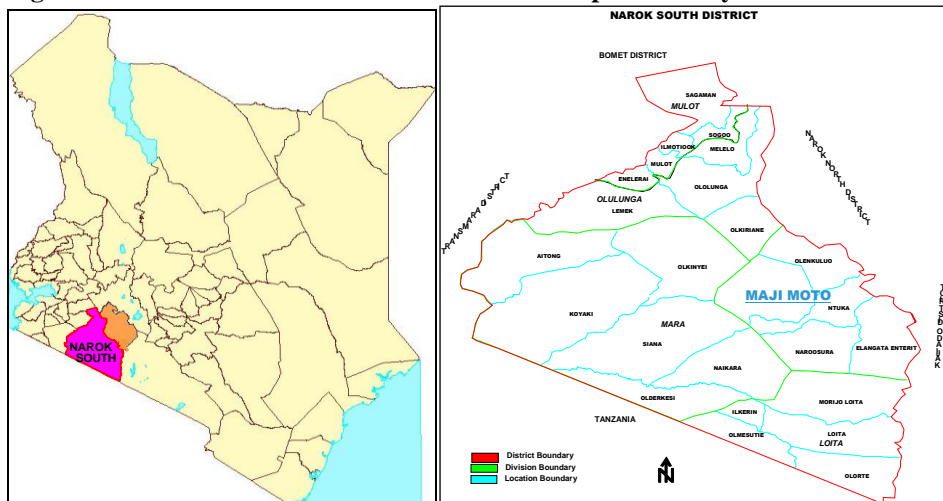
In addition to the data collected under the Pastoral Property and Poverty project household surveys, more data was collected through in-depth interviews involving a total of 50 household heads, of which 15 were females and 35 were males. 30 of the interviews were conducted on Maji moto sub-location side of the GR and the rest from Enkiu sub-location. Key informant interviews were also carried out involving leaders of CSOs, GR, and government officers. The interviews focused on the historical process on land subdivision specifically related to corrupt activities.

Focus group discussion was another method employed. Focus group discussion sessions around specific questions of my study were conducted, both aimed at generating direct data for the research, as well as help in the formulation of some of my research questions for the structured interviews and for dissemination of information about the research project. In constituting these groups, due consideration was given to social-cultural realities of the Maasai

⁹ A Local Community Based Organization registered with the Ministry of Culture and Social Services with its origins from the project site.

Project site

Figure 1: Relative location of Research site with respect to Kenya and Narok south district



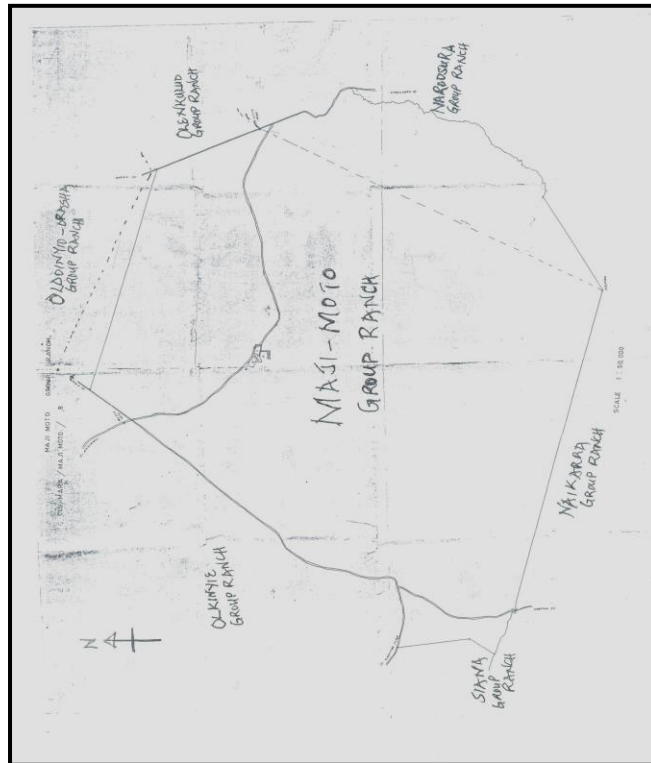
The Loita plains are estimated to cover about 60% of the total area of the group ranch. Further south and up the Loita hills, one encounters woodlands and rugged hills, which roughly fall within Enkiu sub-location. The southern border is shared with Siana, Naikarra and Naroosura

¹¹ District Planning Unit, Narok, 2008

group ranches, which adjoin the Masai Mara Game Reserve.¹² About 55 % of the entire GR is considered savannah grasslands, 35% bush/thickets and very small forest cover. The site is home to a rich diversity of flora and fauna including rare species such as the Greater Kudu and includes the *Narok atua*, ‘the place with a dark inside’, the only forested area in the southeastern part of the GR.

¹² See Fig.2 for sketch map of research site indicating neighbouring group ranches (ole Riamit, 2010)

Fig.2: Sketch of Majimoto GR indicating neighboring group ranches



Sources: ole Riamit, 2010

The annual temperature range lies between 17.7°C - 19.9°C, with the coldest months of the year reported to be between June and July, while the hottest months of the year are December - January. Overall, average rainfall in the site is about 600mm per year (GoK, 2000).¹³ The region typically has four seasons, namely the short rains, long rains, short dry spells, and long dry spells corresponding to November – December, March – May, January - February and July – October respectively.

The total land area of the site is 120,607.63 acres (48,929 Ha) / 492.10 km² (See annex 2).¹⁴ According to the current Area Adjudication Map¹⁵, approximately 22, 370 acres have been set aside (theoretically, on paper) as public utility lands. This would include all parcels of land set apart for common community use before individual parcels are demarcated. Such lands includes land for schools, shopping centres and markets, health facilities, churches, water points

¹³GoK, Ministry of Agriculture, PRA report 2000

¹⁴ Annex 2 - 'Green Card' pre-cursor of Title Deed Maji moto group ranch: NAROK/CIS-MARA/8, April 2010

¹⁵ See Annex. 3 for Survey map indicating parcels distribution in size and locations, May 2010

and routes to access these resources. Another 110 acres have been set aside for tourism and wildlife conservation purposes. This portion of land is leased out to a private developer, who in return pays the GR a given sum of money as leasehold fees. Another 836 acres have also been hived off for agricultural use.¹⁶ These are irrigation plots set aside for agropastoral use.

Figure 3: Irrigation plots on the background and (on the right) harvesting of corn



Source: ole Twala J., 2010

The GR common water sources for domestic and animal use include permanent springs (the Maji moto hot spring and *Enkoyiankalani*), water pans, shallow wells, seasonal springs and rivers. The main water source in the GR is the hot spring. The spring also provides water for irrigation that supports subsistence agro-pastoral activity through a gravity-fed irrigation scheme.

Salt licks are the other resources critical for pastoral production within the region. Some of the salt licks sites within the GR include *Emparkutet* and *Emboliei*; while others - *Oloolng'anayio* and *Oloolmotonyi* - are located along shared boundaries of neighbouring group ranches hence are often shared across the ranches – the first two with southward GRs and the latter two with Oldoinyio Orasha and Olenkuluo (See fig. 2). The GR also boasts of one of the richest deposits of sand in the region. Prime sites for sand harvesting in the GR include: *Enkutoto ole Nanyoe*, *Entiang'asirr* and *Olchorro Dapash* along the seasonal rivers.

The rangelands have witnessed an increase in drought frequency and intensity, often leading to enormous losses in pastoral livestock that threaten local livelihoods. The livestock losses reported in the project site in a few drought periods cited is telling; the worst losses

¹⁶ Annex 4 - Demarcation Map for irrigation plots along Maji moto hot spring

observed were in the 1999/2000 drought, in which 60 per cent of the herds were lost, and about 20 per cent in the 2004/2005 drought.

Demographic Characteristics

Demographically, the site has a population of about 10,000 persons.¹⁷ This population is spread over the range, roughly nucleated into 120 *Inkang'itie* (homesteads),¹⁸ each of which will typically contain 6 *Inkajijik*, houses (Enkaji, Singular, Inkajijik, plural). The site is predominantly settled by Maasai pastoralists, most of whom are of the Purko section of the Maasai. Only a few representatives of other Kenyan ethnic groups or non-Maasai are found within the group ranch, mainly serving as civil servants within local schools (both primary and secondary) and as casual labourers in the irrigation plots and small kiosk/shops operators.

The urban/shopping or trading centres within the site are few, far apart and with minimal business activity going on. Maji moto centre is the oldest and serves as the 'headquarters' of the location – at least administratively. It has the highest concentration of the population with about 2,000 persons. The permanent source of water, presence of the oldest primary school, a girl's secondary school, the church and the dispensary make the centre very attractive. There are no commercial lodgings and hence business operators reside in near-by villages, farming encampments and/or within the shops.

Figure 4: Maji moto Shopping center



Sources: Twala J. (2010)

¹⁷ GoK Census 2009*

¹⁸ See, Annex 5 for sketch map of settlement patterns in the GR.

Ngosuani, at the other end of the group (Enkiu sub-location), is a new and up-coming centre. Located along the busy Narok –Maasai Mara/Sekenani gate route, and overlapping with *Olkinyiei* shopping centre (the neighbouring group ranch) and the weekly livestock market, this center is very strategic for business activities. The establishment of a mission hospital and a church in 2008, in proximity to *Olarro Camp* which draws a significant portion of its unskilled and semi-skilled labour force from the locality, sand-harvesting and make-shift gas/re-fuelling station and its role as a major stop-over en-route to Loita and Naikarra, has made Ngosuani possibly more attractive business-wise than Maji moto centre. In particular, the establishment of a weekly livestock market in the area has boosted both business volume and population. Other emerging small centres are *Inchaishi* and *Enkiu*. Here, the presence of schools, excellent pastureland for livestock due to sparse population, is partly the reason for emergence of these centres.

Economic livelihoods Characteristics

The economic activities observed and reported in Maji moto centre on pastoralism (95%), with minimal agropastoral activity, mostly around Maji moto and experimental plots around homesteads during the long rains period. Opportunities for wage labour have been reported around the agricultural irrigation plots, in herding livestock, in the transport sector, in the small-scale trading or Kiosk-retailing, and in sand-harvesting.

The most common types of domestic cattle reared in the site are the East African shorthorn or Zebu, Sahiwal and a narrow variety of cross-breeds (see fig. 5). The population of livestock in the site was placed at 14,871 cattle, Goats at 17,250, Sheep at 18, 202, and 98 donkeys.¹⁹ The most common breeds of goats include the East African Small goat (98%), Gala goat and Cross-breeds. The sheep mostly constitute the Red Maasai (95%), Dorpas, Black headed Persian and others.

The most vibrant livestock market in the site is Ngosuani in which an average of 1000 Cattle, 2,000 goats and 500 sheep are sold per market day.²⁰ This market, the nerve centre of livestock trade activities south of *Ewuaso Ngiro*, serves the greater Loita and most of the Mara

¹⁹ Narok District, Drought Management Office report 2008

²⁰ Interviews with Ole Taek, resident and leader at Ngosuani – September 2009

divisions. A minimal level of livestock trading is also reported at the Maji moto market, with an average of 10 Cattle and 20 goats and sheep sold per weekly market day.

Figure 5: Pastoralism remains a key livelihood activity



Sources: TOLIDP (2006)

About 60 per cent of agricultural activities in the project site are geared towards subsistence consumption while the rest is sold in local markets. A significant portion of the agricultural produce for the market is consumed within Narok district with minimal spill-over to the national market. The types of crops being grown for subsistence use include: maize, beans, vegetables (sukuma/kales, cabbage), peas and potatoes and, for local markets, tomatoes, onions and maize, beans, and vegetable (sukuma/kales, cabbage, peas) surpluses. Occasionally tomatoes and onions reach the national market.

Private companies at the site are minimal: Simoco Security firm (for car tracking) and a Private developer in the tourism sector, with an established tourist lodge. There is currently no main power supply grid on the site, hence, woodfuel is the main source of energy for household use. There are, however, a few homes and the secondary school utilizing solar power as their source of energy.

Social Characteristics

The site currently has three full primary public schools and one Girls secondary school - Enkare Nairowua, Enkiu and Inchaishi - all supported by the government with several upcoming early childhood development centres. On school participation, the site reported approximately 60% of children (aged 6-14) enrolled in primary school and approximately 25% of children (aged 15-20)

enrolled in secondary school, while 30% of adults (aged 20 and above) have at some point attended school.²¹ There are two clinics in the project site - Maji moto dispensary and Ngosuani clinic – located at Maji moto and Ngosuani centres respectively.

In terms of religion, the majority of the residents were reported to be practicing the Maasai African traditional religion, with notable recent increase in local participation in church based activities. Perhaps the growing numbers of churches (in numbers and in denominations) is a reflection of this trend. The oldest and most familiar denominations are the Pentecostal Assemblies of God (PAG) with branches at Nchaishi and Maji moto centre; African Gospel Church (AGC) at Ngosuani; Christian Church International (CCI) at Nchaishi; and most recently Full Gospel Church at Maji moto centre. There is a minimal CSO activity within the project site, with Touch of Love Integrated Development Program (TOLIDP), and African Hope Society, being the most visible CSOs. Others such as World Concern, Mainyoito Pastoralist Integrated Development Organization (MPIDO), Pillar of Hope and Taasa occasionally undertake activities in this community. The issues addressed relate mainly to land rights, citizen participation in governance, gender in development, water provisioning and health issues.

²¹ Schools official records, December 2007, as shared by the Principle of Maji moto Primary, Nov. 2009.

CHAPTER 2

HISTORY OF THE MAASAI PASTORAL COMMONS

The Evolution of Land Rights in Kenya:

Land is Kenya's obsession, as order is Germany's and self-sufficiency is Israel's (Leo, 1984:81, cited in Rutten, 1992:88).

The foundation and philosophy around which property rights to land are held in contemporary Kenya and specifically in Maasailand has its roots in the colonial encounter and its continuation during post-independence governments. Scholarly literature reviewed on this subject suggests that initial colonial efforts to govern African communities according to their local customs were complicated by a contested understanding of African social realities. In many instances this compelled the colonial administration to develop strategies aimed at acquiring knowledge and understanding of 'Native' customs. Some of the strategies employed included enlisting Africans as informants and commissioning anthropologists to help sort out 'authentic' customs from invented ones. Land ownership was one primary area in which this contestation was played out (Juma and Ojwang, 1996: Rutten, 1992).

Before the colonial encounter, land in Kenya was to a greater extent owned communally and governed by customary law. A whole community owned the land with each individual having a right to till it, graze animals on it or use it in a manner generally acceptable to others. Land was therefore not owned to the exclusion of anyone else. The choice of collective ownership and control over land over individual ownership was partly in response to environmental determinism and the hostile historical development stage which suggested that group activity and effort bore better results in productive work (Juma and Ojwang 1996). Thus total individual autonomy in land matters was alien to pre-colonial tenure.

Juma and Ojwang (1996) observe that indigenous resource management systems reflected the fact that communities did organize their lives within the constraints of the environment in which they lived. Decision-making institutions focused on utilizing and managing environmental resources based on the knowledge of the community acquired over time, in addition to the immediate experiences of the users as well as scouts and travelers.

Decision-making and governance processes were regulated by the indigenous communities' ethics, norms and beliefs. Additionally, traditional institutions were part of the community, and the resource users and decision-makers were therefore in very close proximity, if not one and the same. Indigenous knowledge of the environment allowed classification of soil and vegetation types, prediction of resource availability and planning of use strategies. This knowledge enabled communities to avoid over-utilizing an area through monitoring its status and adjusting their resource use patterns (ibid).

Besides the utilization of norms, beliefs and customs to regulate resource use, building reciprocal relations among families, communities, lineages and ages-set systems was equally central in this endeavour. These social structures were strengthened through livestock sharing, trade, marriage and other shared symbolic bonds. The relationships so established redistributed risks and strengthened social obligations to be utilized during times of drought, pestilence or war. The land was generally held by the community with fairly clearly defined spatial and temporal allocation of resources to its members. These tenure regimes were rarely static, and showed a notable degree of change over time in response to social economic changes, new technologies, natural calamities, migration and population changes, subordination and war. They therefore often provided high levels of tenure security (ibid; Mwangi and Dehorn, 2008). This perception of a functioning and beneficial customary land tenure system was only shared among indigenous communities while the colonial policy makers were more inclined towards individual and private land tenure system, except in the context of GRs in Maasai land by the mid-1960s.

Further spontaneous development of indigenous land tenure system was mediated by the establishment of colonialism, and its subsequent introduction of an alien form of land tenure in the then British East Africa Protectorate, now Kenya. From the time it was decided that the East African Protectorate would become a white settlement colony, it became necessary to introduce a land tenure system similar to that existing in Britain so that the European settlers would be motivated to settle in the colony as well as to invest their financial resources without restraint (Rutten, 1992).

Thus, the initial colonial approach to development was driven by political and economic imperatives in which the natural environment was seen as a free good and therefore the preoccupation of the colonial administration was centred on how to control as much as possible of it for their own economic benefit (Mwangi, 2007). It was then found necessary to use colonial

administrative power to penetrate the local production systems and either co-opt or remove indigenous populations. The colonial government progressively alienated land from the indigenous population for European settlement, and then entrenched European private property rights as a buffer against the impending African rule. The African sector of the colonial economy was systematically exploited and underdeveloped in order to support the settler sector (Juma and Ojwang 1996 p.19). The process of alienating land from indigenous communities for colonial use wasn't always unanimous amongst colonial administrators. There was conflict within the administration between those who wished to fully support the settlers and those who felt that 'native interests' should be paramount. The reason for the 'native reserves' was to establish enduring rights to that land for communities.

The Colonial Encounter

Rutten suggests that the construction of the 'Kenya-Uganda Railway' (1896 – 1901) and its associated costs (5,550,000 sterling pounds) was a critical factor in both alienation of more African land for the rail line itself – one mile radius on both sides of the railway - and for acquisition of more fertile agricultural land to be set aside for white-settler farmers to recoup costs (1992:173). The question then arose on how to establish a legal framework to facilitate the transfer of especially arable land for agriculture and commercial ranching to White settlers, aimed at making Kenya a 'white man's country'. The establishment of the first Crown Ordinance Act 1902, which proclaimed all 'unoccupied' land 'Crown land' subject to the control of His Majesty also provided that land could only be sold to Europeans. The Act provided the legal grounds for the ninety-nine year leases between the government and settlers. As fate would have it, a greater portion of the railway line traversed Maasai land and much of the arable lands considered 'unoccupied' by the colonial administration fell in Maasailand (Hughes, 2007; Mwangi, 2007).

African indigenous communities were not consulted in the identification and disposal process of the so-called 'waste and unoccupied land' (Mwangi, 2007; Rutten, 1992; Wrong, 2009). This decision was the prerogative of the Commissioner and his officials who alienated land already held under customary tenure. The case of the Maasai and the 1904/19011 Treaties between the Maasai community and the British Crown, exemplifies this dispossession.

The Case of the Pastoral Maasai Community in Kenya

Although often projected by the colonial administration as Treaties among equals – the two Maasai ‘moves’, as they have come to be popularly referred to, according to Hughes (2007) and Rutten (1992), were forceful evictions perpetrated by the British colonial administration. The moves facilitated the displacement of the Maasai pastoral community from its favorite grazing grounds in the central Rift into two reserves – initially one to the north and one further south of the railway line - in order to make way for white settlement.

The 1904 Maasai Treaty provided that the Maasai could keep the reserve areas for ‘so long as the Maasai as a race shall exist’. But, by 1911 the British administration was at it again, this time around, moving the ‘northern’ Maasai, at gunpoint, from Laikipia to an extended Southern Maasai Reserve. According to Hughes (2007) and Rutten (1992) upwards of 20,000 people and at least 2.5 million livestock were moved between 1911 and 1913. While the official reason advanced by the colonial administration to justify the second eviction was to consolidate the Maasai in one reserve, in fact it was used to facilitate White settlement of the Laikipia highlands and facilitate administration and taxation of mobile pastoral communities, whose livestock was believed to pose a disease threat to imported ‘superior’ settler stocks was the other undeclared grounds (Broch-Due, 2005).

The second Maasai move was from the very outset and has remained a bone of contention for the Maasai, who both then and now questioned both the conditions under which the ‘agreement’ was signed and the legitimacy of the agreement with respect to individuals purported to have signed the ‘agreement’ on behalf of the Maasai community. In the first count, the Maasai hold that those who signed the treaties did so under heavy duress while some of the personalities, including the son of Lenana (*Olonana*), whom the British accorded the position of ‘Paramount Chief’, had no political mandate to represent the Maasai and was hence illegitimate in the context of the Maasai social-political organization (Hughes, 2006; Hughes, 2007; Rutten, 1992). Often this argument forms the basis for current claims by Maasai politicians and activists for reparations and restitutions for the land lost and associated costs and damages. Literature material reviewed suggests that the Maasai of British East Africa (BEA) lost at least 60 per cent (the Southern Reserves comprise approximately 24,000km² against colonial Kenya Maasai

territory of some 55,000 Km²) of the land they had once utilized (Galaty, 2008; Rutten, 1992; Hughes, 2007) .

Although most of the other ethnic groups in the country experienced alienation of land under the colonial regime, the loss experienced by the Maasai is arguably larger than that of any other community in Kenya (Bernsten, 1979; Galaty, 2005; Mwangi, 2007). According to Rutten (1995), about fifty-six percent of all land alienated for European settlement in Kenya constituted former Maasai lands. In retrospect, the alienated land was not only a quantitative loss but also a qualitative one. The Southern Reserves that the Maasai retained were found to be inferior in terms of increased vulnerability to diseases for both humans and herds, and less watered than the lost highlands. These diseases, which included East Coast Fever, Nagana (brought by Tse-tse fly) were largely unknown or less prevalent before the moves. Besides, water, pastures and salt licks were also in less supply. These features have come to define the current rangelands of both the Southern Kenya Maasai (including the research site) and the northern Tanzania Maasai.

The extent of land alienation by the British colonial regime is not only exemplified by the Anglo-Maasai treaties, but equally gives credence to Charles Eliot's admissions in one of his confidential letters to his colonial superiors in which he stated that: "No doubt on platforms and in reports we declare we have no intentions of *depriving* natives of their *land*, but this has never prevented us from taking whatever land we want" (emphasis added cited in Rutten, 1992:175).

Colonial Regime's Policy Intervention in Pastoral areas

From the outset, colonial governance was at odds with the ecology and politics of subsistence pastoralism. Their subsequent interaction with the 'natives' in the East African colonies reflected this disconnect. The colonialist policy involved either isolation of communities, through fixing boundaries around them, annexation of pastoral land for White settlers, or outright neglect of subsistence pastoralism. Studies of pastoralism in the colonial era were most often undertaken with the purpose of making the transhumant pastoralist 'settle down' so as to bring colonial law and order into their lands and encourage the people to cultivate (Bernsten, 1979; Broch-Due, 2005; Lesch, 1998; Mwangi, 2007).

By 1921, pastoral groups' seasonal migrations in Kenya were contained within newly delineated boundaries and these territories designated 'closed' districts (Galaty, 2005). The boundaries created were inconsistent with the geopolitical realities of the pastoralist; rather they

reflected the capacity of the colonial administration to enforce them. As a consequence, erstwhile fluid political entities became fixed on the colonial tribal map; transient territorial and political identities became confused with – and ratified as – ethnicity (Fratkin, 1998: 47; Gray, 2000:407-409). The ‘closure’ of pastoral districts translated into both economic isolation and disruption of crucial social networks and identities. By decree, access to closed districts was limited to traders who carried a permit from the colonial administration, further limiting livelihood options available for pastoral society.

If what would be called the ‘first phase’ of colonial dealings with property rights to land was characterized by annexation of land from indigenous communities, the second phase was predominantly characterized by intensification of legal mechanism and policy processes to enhance entrenchment of individual and private property rights to lands with the overall goal of freeing land for a market-oriented economy, with far-reaching consequences especially for Maasai pastoral communities.

The interest of the colonialists in Africa was political control, revenue generation and economic development. But beyond this, in the context of East Africa they were interested in establishing control of the headwaters of the Nile (to safeguard their interest in Egypt) and to control trading routes to India (Mwangi, 2007; Rutten, 1992). Historical processes are greatly relevant in shaping the broad direction of current processes of transformation. The laws and policies established by the colonial administration defined if not dictated the general direction of transformation of land rights and associated institutions in Maasailand. Mwangi (2007) underscores the necessity of understanding the historicity of the evolution of property rights by arguing that the self-reinforcing nature of institutions provides continuity between the past and the current decisions. That is, once an institutional path is adopted it often becomes increasingly difficult to deviate from it overtime. Prior to the colonial encounter the territorial boundaries between the Maa-speaking communities and between pastoralists and cultivators in the rift valley region were generally known, though often permeable and in constant flux.

Closing-in the Commons

Historical literature on the pre-colonial extends of the Maasai territory suggests that Maasailand may have amounted to about 10 million acres (Tignor, 1976 cited in Mwangi, 2007). Greater alienation of land in Maasailand was yet to come in the 1940s, with the establishment of the National Parks Ordinance of 1945. Most of the National parks, game reserves and conservation areas established by the colonial administration for both tourism and wildlife conservation were hived off from the now consolidated Masai Reserve. Overall, the Maasai of BEA lost at least 50 per cent of the land they had once utilized (Galaty, 2005; Hughes, 2007; Mwangi, 2007; Juma and Ojwang, 1996; Rutten, 1992).

Several authors argue that the quarantine placed on livestock movement within Maasai land, and with the Maasai districts formally ‘closed’, coupled with the introduction of veterinary medicine, led to significant increase in livestock herds, a situation which came to haunt colonial administrators later (Mwangi, 2007). The large Maasai pastoral herd was blamed for soil erosion and land degradation in the Maasai reserves. The colonial administration interpreted this not in terms of a reduction in grazing rangelands and quality, but rather on what was perceived as the Maasai’s irrational attachment to livestock around the arguments of the ‘Cattle Complex’ advanced by Herskovitz (1926), which is claimed to have led the Maasai to emphasis on livestock quantity over quality.

Mwangi (2007) provides an insightful analysis of the ensuing debate, pitting the veterinary officers, District administrators, and settler farmers against one another, with some recommending forced destocking, withdrawal of water supplies, provision of more grazing land and eventually settling on introduction of market outlets. The results of this debate partly lead to the establishment of the Kenya Land Commission in 1932.²² The Commission recommended destocking for pastoral areas and a land tenure system initially based on customary law to be graduated slowly towards individual holdings. Further, in response to the Maasai demand for restitution over previously alienated land (in 1904/1911), the commission held that the community already had more land than it required and it should, instead, lease land out to cultivators to develop it - a move which in the Commission’s view would also relieve pressure

²² Also known as the Carter Commission, it was mandated to look into broader questions of current and future land needs of African population and to evaluate Indigenous African claims over alienated land and communal ownership against individual tenure and give recommendations (Mwangi, 2007; Rutten, 1992).

on land in other regions of the country. These recommendations were partly to blame for earlier encroachment on Maasailand by cultivators.

By 1915, The Crown Lands Ordinance was expanded to include all land occupied by the natives of the Protectorate as well as all lands reserved for the use of these tribes. In effect, the legislation rendered all communal lands property of the state. The reviewed ordinance also extended the 99 year leases to 999 years. Most legislation related to property rights to land were heavily influenced by the white settler farmers, so often preferring individual and private tenureship (Mwangi, 2007 p.71, Lesorogol, 2008 p.39; Southall, 2005).

Grazing schemes - also an off-shoot of the Kenya Land Commission - were designed to respond to what the colonial administration interpreted to be mismanagement of land by indigenous African communities. Specifically, it was aimed at controlling grazing by providing permanent water supplies in commercial ranch-like units and in the introduction of destocking systems, supplemented by disease control and improved market access (Galaty 1994; Lesorogol, 2008, Mwangi 2007). The schemes were heavily influenced by the prevailing ecologists' argument of *carrying capacity* (Kibwana, 1993:236; Okoth-Ogendo, 1976, 1986). The schemes were managed by committees comprised of government officials and local representatives. Lesorogol (2008) and Mwangi (2007) concur that although the grazing schemes were not entirely successful, they nonetheless had a lasting (negative) impression on the psyche of pastoral communities around land tenure, which would influence their responses to future policies.

These schemes became the precursor of latter day group ranches in Maasailand, introduced to roughly carve up given Maasai sections (*oloshos*). The schemes were also supposed to serve as demonstration sites on the value of a sedentary life as opposed to pastoral mobility. The grazing schemes established in Maasailand between 1954 and 1959 were all in Kajiado district namely: Konza (first demonstration site), Ilkisonko, Loodokilani and Matapato sections (Mwangi, 2007 p.74; Rutten 1992:209). Overall, the schemes' objectives of reducing Maasai stock weren't realized; they instead led to resource depletion. The reasons attributed to their failure ranged from a revolt against an external overbearing regulating authority which often tried to control grazing and livestock numbers by force, occasionally pressuring households to split their herds in order to remain within the allowed quota defined by climatic/environmental

constraints and generally ill-planned top-down approaches (Lesorogol, 2007; Rutten, 1992; Juma and Ojwang, 1996).

Thereafter, the East African Royal Commission of 1952 was established by the colonial regime with the broad goal of exploring possibilities for improvement of agriculture in the country to foster economic growth. Beyond upholding earlier views of the KLCs condemning Maasai pastoralists for irrational attachment to both cattle and indigenous culture, the commission went a step further to recommend abolition of communal tenure to land which they argued was inefficient and should be gradually replaced by ‘commercialization of stock farming’ (Mwangi, 2007 p.75). The commission was of the opinion that customary tenure to land was untenable since it could only support a subsistence and stagnant economy, all because land was not a negotiable asset. According to Mwangi (2007) by 1966 these recommendations for the establishment of individual tenure were adopted as official government policy to land, effectively setting the stage for a grand onslaught aimed at the dissolution of the Maasai pastoral commons (Rutten, 1992).

The recommendations of the East African Royal commission were reinforced by The Swynnerton Plan of 1955²³ which emphasized the need to contribute to the national economy through commercialization of both animal and crop productions, premised on the presumed superiority of individual property rights to land over communal land tenure, especially within the Kikuyu reserve (Kanyinga, 1997; Mwangi 2007). For the livestock sector, the plan recommended expansion and intensification of the previously experimental grazing schemes to be enhanced through improvement in the areas of market access, disease control, regulated grazing and water supply. Although most of the grazing schemes up to this point were managed as individual ranches, concerns over their efficacy specifically with regards to security of tenure had mounted. These concerns ranged from inequality and corruption to landlessness arising from land sales. The beneficiaries of the individual ranches, for example, were by and large elites – wealthy and influential Maasai men in society (Galaty, 1994; Mwangi 2007). These concerns culminated in the idea of establishing *group ranches* within pastoral areas. In order to guarantee success of the proposed schemes and individual ranches, the government was to provide support in terms of improved access to water and veterinary services, enhanced environmental

²³ A report in 1954 by the then Deputy Director of Agriculture, R. J.M Swynnerton, on how to *Intensify the Development of African Agriculture in Kenya*, inspired the reform (Kanyinga, 1997).

conservation services including pasture management typically exemplified through promotion of rotational grazing. The plan was later to become the blue print for Kenya's development policy around land use and agricultural practice (Lesorogol, 2008; Mwangi, 2007; Rutten, 1992). The elite social actors who stood to benefit from the individual ranches scheme opposed the idea of collective rights to land as envisioned in the new concept of the group ranch.

Rutten (1992), provides an illuminating analysis of how the increasing pressure on land in central areas of Kikuyuland pushed some of the inhabitants out in search of extra land for cultivation, most of whom settled and farmed in parts of Maasailand, predominantly in Kajiado (Ngong, Loitokitok, Namanga, and Ngururman) and in the northern part of Narok . These areas were well-watered dry-season grazing areas for the pastoral communities. The postcolonial independence governments in East Africa simply adopted and perfected the policies crafted by the respective colonial administrations. The policy was geared towards a gradual replacement of the pastoral livelihood with commercial agriculture or ranching schemes through forced sedentarization and periodic confiscation of livestock and punitive campaigns (Fratkin, 1998; Gray, 2000:410; Ojwang and Juma, 1996).

Group Ranches

Early experiments with land tenure reforms in Kenya's rangelands were group ranches in Maasai territories commencing in the mid-1960s. By the late 1970s, Kenya's dry lands became the focus of international attention in order to improve the quality of life of their inhabitants. Isolated time bound policies geared at destocking, land conservation and quarantine regulations were now replaced by an integrated approach (Rutten, 1992). The concept of Group ranches was partly an outcome of a proposal submitted to the World Bank by the Kenyan government in late 1965.

Overall, the project was targeted at commercialization of livestock keeping, control environmental degradation and increased herd productivity within pastoral areas. The United Nations Development Programme (UNDP) and the Food and Agricultural Organization of the United Nations (FAO) agreed to support aspects of the project. Security of land tenure was advocated as a key instrument in promoting the development of the pastoral rangelands (GoK, 1974). These initial efforts at privatization sought to maintain legally titled group-held units, in keeping with the Maasai communal socio-cultural structure. However, by mid-1980s

individuation of group ranches began in earnest and continues to date (Galaty, 1980; Mwangi, 2007; Rutten, 1992).

This new approach to pastoral rangelands entailed adjudication of formerly Trustlands into 'ranches' with freehold title deeds held by groups. A GR is a delineated piece of land legally allocated to a group of members, theoretically defined as all of those adult males with legitimate claim to land in the area, who together hold a single joint title. The collective group of owners may correspond to a tribe, clan, territorial section or family. A register of all members with legitimate claim to land is prepared and provides the basis for exclusion of non-members (Mwangi, 2007). And, each member shall be deemed to share in the ownership of the GR in undivided shares.²⁴ The day-to-day management of assets of the GR is the responsibility of ten elected and incorporated²⁵ official representatives of the group. But the supreme decision-making organ of the GR is the Annual General Meeting (AGM) comprised of at least two-thirds of all legally registered members. This is where decisions are supposed to be made concerning all matters of resource allocation and other rights and entitlements of members.

The concept of group ranches represented the first attempt to radically transform a nomadic subsistence production system into a sedentary, commercially oriented system. The arrangement called for major changes in Maasai social and political organization and livestock management strategies. The plan, for example, entailed allocation of grazing quotas to members to limit animal numbers to the carrying capacity of the ranches and the development of shared ranch infrastructure, such as water points, dips, stock handling facilities and firebreaks, using loans. Members would pay user fees and be collectively responsible for loan repayments. Additionally, members were expected to manage their own livestock and would be able to obtain loans for purchasing breeding stock and cattle for fattening.

It was envisioned that the elected GR officials would manage all GR affairs including: overseeing infrastructural development and loan repayments; enforcing grazing quotas and grazing management; and, maintaining the integrity of the GR boundary. The proposal included provision for a hired ranch manager and government extension services to assist the GR committee. The first phase of the group ranches was implemented in Kajiado district and thereafter within other Maasai pastoral areas including Maji moto GR (project site) in the late

²⁴ Land (Group Representatives) Act CAP 287, of 1970 (GoK).

²⁵ The ten elected officials are given a certificate of incorporation lodged in the Registrar of Group ranches.

1970s in the larger Narok district. It is the intention of the author to provide reflections from the research site on the extent to which the theoretical ideal functioning of the GR corresponds to or deviates from the reality on the ground.

CHAPTER 3

EXERCISING GROUP RANCHING: THE MAJI MOTO CASE

Tracing the Trail

The long and treacherous (if not torturous) journey towards privatization of land in Maji moto GR was triggered by activities around the neighboring ranches. The declaration of Naroosura as an adjudication section essentially outlined the south-eastern boundaries of what was to become Maji moto GR six years later.²⁶ Maji moto was declared an adjudication section on 24th May 1977, when a Declaration of an ‘adjudication notice’ was offered by then Land Adjudication officer, Narok district.²⁷ This was to be followed by registration of all individuals claiming rights and interests in land within the adjudication section in accordance with the Land Adjudication Act, Cap. 284 of the Laws of Kenya. The declaration notice offered a deadline for members’ registration three months from the date of notice. But the struggle for delineating rights to land by registration of individuals continues to the present. It was 18 years later that the GR was dissolved by a resolution of the majority of the registered members in a general meeting held on 9th November 1995. Thereafter, the GR obtained Land Control Board consent and sub-division of the same started in 1999. Subdivision of Maji moto GR has not been completed to date.

Over the last 20 years or so, the GR has witnessed a number of committees (both the GR incorporated officials for management and the land demarcation committee) come and go; some turning over through natural processes of old age and retirement but most on account of alleged corruption malpractices and leadership irregularities. The first committee was constituted in the early 1970s. Nobody seems to remember how its members came into office. This partly demonstrates the aloofness with which GR issues were considered by the majority of members during these early stages. The committee, which was led mostly by men of *Ilterito* and *Ilnyangusi* age-sets, was chaired by Karuka ole Sayialel, who retired from office by the early 1980s.²⁸

Initially, the members of *Ilterito* age-set had refused and condemned the idea of land subdivision, notably Kuntai ole Sankale who became a paramount Chief under the colonial

²⁶ See Annex 8 for, Declaration notice for Naroosura adjudication section (LA/9/4/20, 1970).

²⁷ See Annex 9 for, Declaration notice Maji moto adjudication section (LA/5/1/82/5, 1977).

²⁸ Ref. Annex 6 for age-set chart for Purko Maasai section.

regime. This committee is remembered for having conducted the first registration of members of the group ranch. In this registration, a total of 937 members were registered. It was later discovered that more than one half of this figure (593) were absentee members – the so-called *acceptees*. A closer look at these names indicates closer relations between each of them and some member of the GR committee.

The first procedurally (according to the Land (Group representatives Act CAP 287) elected committee officials included the Chairman Kirkuya ole Naisho, Vice Chairman, Mayone Kilekon, and Kimeria ole Sankale, serving as the group secretary. Although the elected GR secretary was Moses ole Sankale (the half-brother of the one mentioned here before), he had fallen from grace with the two seniors. These men shared certain distinct experiences including exposure to commerce through the livestock trade (like the Chairman), previous encounters with market forces and the agricultural communities (like the Vice Chairman), or through formal education, as in the case of the group secretary, who was a diploma holder and a son of a former prominent local traditional and later colonial paramount chief. Little is remembered of this committee, other than the fact that it was held responsible for handling revenues accrued from *Olkunyiele* mining sites. It was under this committee's tenure in office that commercial wheat cultivation was attempted within the group ranch. Around this time, the Vice-Chairman of the GR was nominated to the seat of the local town council in the greater Narok district and his vacant position was taken by one, Raen Ole Kiok.

By November 1987, a small reshuffle of the committee was undertaken within the leadership cycle. The reshuffle in the eyes of the committee was undertaken to achieve two objectives; one to fill the vacant position of the Vice chairman; and two, to replace the secretary who didn't seem to have good rapport with the Chairman and Vice chairman. Peter Leintoi, a class seven graduate was brought on board as Secretary. The Treasurer – Mr. Mpelesi Siololo - was also replaced on allegation of misappropriation of Kshs. 370 and was replaced by Mr. Nankai ole Kunkuru. Once again the changes were made without consulting the GR members. This committee had also to contend with emerging boundary disputes originating from two of the neighboring group ranches. These were Naroosura to the Southeast and Oldoinyio-orasha to the north of the group ranch.

Administratively, Maji moto and Naroosura were managed as one location headquartered at Naroosura. By then, Naroosura hosted not only the most influential Chief in the region but

also a larger pool of elites within the locality. The boundary remains under dispute to the present. After a long protracted battle which involved a court process, the Oldoinyo-orasha boundary dispute was settled through a court order executed by the then Director of Lands and Settlement. A landmark boundary using a tractor was put in place.

Around this time, Maji moto GR was hived off of Naroosura as a new independent administrative unit (location), thereby creating a vacancy for the position of ‘full Chief’. The then GR chairman successfully applied for this position, leaving the group Chairman’s position vacant. The area nominated councilor was elected within two years as Councilor representing Maji moto ward, giving him much clout and political leverage. Group elections became inevitable.

Third Committee

The third committee was ushered into office in 1995. The immediate former group Vice chairman was voted in as Chair, and the formerly acting secretary was also confirmed as secretary. This was the first GR committee which demonstrated a determined effort to subdivide the land. In the process, two major concerns emerged – the push by some influential members of the ruling class to register their children as members and the problem of the 593 outsiders (‘acceptees’) already in the register. It soon emerged that exclusion of the acceptees from the register, and by extension denying them the right to own land, was not going to be an easy route to take. The concern here was the legal protection provided under the principle of the so called ‘first registration’.²⁹

When information on the plan to register ‘minors’ leaked to the rest of the members of the group ranch, an uproar ensued with the ultimate resolution being that all male children born to already registered GR members be also registered as members except those of the ‘acceptees’.³⁰ This was in response to both the problem of officials wanting to register their own children to the exclusion of the rest but also to use the children as a bargaining chip to acquire

²⁹ Under the Registered Lands Act (CAP 300 p.67); Revised Edition 2010 (1989), art. 143 &144. The principles applies in the context of private land tenure-ship in which it seeks to protect the sanctity of land title deeds once and in whatever way (legal or otherwise) it is acquired by the first title holder. The principle is often expanded to apply in the context of GRs, when viewed as private collectives with initial membership entry to the GR register equated with first title holders under the cited act.

³⁰ The notion of ‘acceptee’ was originally understood to mean someone from another ethnic group who was ‘accepted’ by the Maasai community to become a member, with rights; this interpretation has in this context been expanded to include members of the Maasai community not resident in Maji moto GR but granted the same rights.

more land than the acceptees. The decision to register children was given impetus and validated when the District Lands adjudication officer approved the proposal.

The 19% Commission to Group Ranches

Things within the GR were further complicated when Maji moto was recognized by the Narok County Council as one of the eight group ranches adjacent to the Maasai Mara Game Reserve (MMGR) entitled to receive a share of the 19% compensation fee for hosting wildlife as a dispersal area (See Annex 7 for GR's benefitting from 19%). Under this arrangement, each of the benefitting group ranches would receive an average of 4 million in Kenya shillings annually, depending on tourism level and revenues, specifically gate fee collection in the MMGR.

From 1998 when the 19% funds started flowing in, the area councilor, who was very instrumental in arguing the case for Maji moto inclusion on the list of beneficiaries, was solely responsible for the management of all these funds with the GR secretary doubling up as secretary to the said funds. Considering the amount involved and the absence of any community projects to show for the use of these monies, there was growing discontent among group members that the funds were only benefitting a few.

Additionally, talks of a private developer intending to lease land from the GR with a plan to pay annual leasehold fees were in advance stages. All of a sudden the stakes became very high in the group ranch. This development coincided with other changing trends within the political arena in Narok south constituency, Narok district and the country generally.

The 1997 General Elections were just around the corner and one of the sons of a prominent and wealthy Maasai elder had declared his interest in the Narok south constituency Parliamentary seat. It was an open secret that the said son had the blessing and backing of the then President on account of a long close association between the candidate's father and the President. The incumbent Narok south MP (Hon. S. Tuya) was the force behind the local councilor. In the bigger political scheme of things, the political fortunes of the sitting MP had started dwindling, and he eventually lost his seat in the 1997 general election.

Administratively, the district had just received a new district commissioner, who had managed to endear himself to the public in his previous postings as a reformer, independent minded and anticorruption officer. It didn't help matters that the sitting councilor had already served for 25 years uninterrupted within the ward, GR and now Maji moto location. On account

of age alone, some of the members felt it was about time for both the councilor and the group chairman (who both belonged to the *Iseuri* age-set) to step down in order to pave the way for more youthful leaders.

The area councilor had become so powerful and influential that he often overshadowed other elected leaders in the location. It was difficult to tell who, between the GR chairman and his committee, and the area councilor, was running the affairs of the group ranch. Young and mostly educated people and ex-police officers capitalized on these factors, benefitting from the general disquiet among members of the GR, to push for both the disbandment of GR committee and the election of a new councilor. The leaders of this movement demanding change ran on a campaign platform that promised members a direct share of the 19% funds and registration of all their children, anticorruption and transparency.

Fourth Committee

By April 7th, 1997 in a meeting attended by the new district commissioner (DC) at the invitation of the complainants, the old committee was sent packing. An interesting incident transpired at this meeting. One of the leaders offered to give a 'goat' to the DC as a sign of goodwill and welcome gesture to the location. Characteristic of him, the DC randomly picked one of the attendees in the meeting and, after saying thank you to the leadership who donated the goat, he proceeded to give him the goat. The political class and members sympathetic to their position were overheard lamenting, '*this is a bad man*' a man who doesn't receive gifts! It was difficult to tell whether the leader's gesture was an act of sheer generosity, an act of reciprocity for the DC's visit or a bribe meant to influence the DC's decision in their favor. An election however was held and a new committee was sworn into office.

The new chairman was an ex-police officer and one of the earlier treasurers also found his way back to the committee. The three key positions in this new committee went to members of the *Ilkisaruni* age-set. The committee was populist in nature. The first tranche of monies received from the private developer by the committee was distributed in the form of cash to members. It didn't take long before members raised concerns over the likelihood of funds being misused under this new arrangement. A resolution was made to utilize the funds accruing from the leasehold of land held by the private developer within the group for subdivision purposes. The committee then had to refund a total of Kshs, 850,000 to members of the GR who had

previously contributed survey fees.³¹ It was during the fourth committee's tenure in office that new members were added to the GR register, including 600 minors and 770 adults. This committee had the shortest term in office, a situation attributable to numerous factors, but perhaps the most important being the sudden increase in availability of funds (the 19% and the leasehold fees from the private investor), and the previous committee's seeking revenge after the long-serving councilor was ousted, upping the stakes. This paved the way for a fifth new committee.

The Fifth Committee

The fifth committee turned out to be the longest serving ever in the history of the group ranch. The Chairman, who was of the same age-set as the immediately former Chairman, had had good exposure outside the local community as an industrious livestock trader. Money for subdivision was by now not a limiting factor in the exercise. With a private surveyor hired, all was set for the final home stretch towards dissolution of the Maji moto pastoral commons.

The establishment of the private lodge along the boundaries on the south-western side of GR drew the interest of the adjacent GR (Siana). Matters were complicated when the private developer embarked on another project aimed at drilling water for the use in the lodge and for bottling water for the market. After several months of a protracted struggle in which the GR used untold sums of money to finance activities purported to settle boundary disputes with Siana GR, the dispute was finally settled in favour of Maji moto.

After two years of little to show for their activities and for the funds utilized by the committee, the group members started questioning both the ability and intentions of the officials to carry the process to its logical conclusion. After 5 years of a long drawn-out contest over the process and resources of subdivision (a detailed analysis of contentious issues are discussed later in this paper), pitting the entire group leadership and a greater section of the GR members against the committee, the committee was eventually replaced. This, however, was not going to be the end to the protracted battles over the land subdivision process and resource distribution within the group ranch.

³¹ Prior to the arrival of the private developer, members had started contributing an agreed figure of Kshs.4,500 each towards the costs of land demarcation.

The Sixth Committee

Despite high optimism and anticipation that effective delivery of service through the popular participation of members would be facilitated by the new committee, concerns soon emerged over similar issues. By March 2010, it had emerged that a new Lease agreement had been secretly entered into between the GR representatives and the private developer to extend the prevailing lease agreement for an extra 25 years, effective from its anticipated expiry period (2030). The new leasehold agreement would now end in 2055. The group members interviewed expressed their dissatisfaction with their lack of involvement in such a pertinent and binding decision with far-reaching consequences for the group's livelihood options for generations to come. For their part, the group officials argued that they were pressurized by the need to secure funds to facilitate the pending land subdivision process, especially given the reality that the immediately prior committee had milked the GR account dry. The request from the GR officials to the developer for release of funds in advance coincided with on-going negotiations between the original leaseholder and an incoming one.

The private developer³², on the other hand, saw an opportunity to secure his interests through a much longer contract period than previously contemplated and to possibly secure a better deal in the impending transfer of leasehold rights on the same count. Further, the developer argued that the incoming partner was a high profile investor from the US who was ready to invest heavily in the tourism industry and therefore needed long-term security of tenure. The group officials therefore secured an advance payment on behalf of the GR amounting to Kshs. 5 million (for the period 2007/11), ostensibly to finalize the pending land subdivision processes.

A second argument advanced by the group officials in defense of their not involving the majority of members was that they had already been given the mandate to lead and consequently make decisions on behalf of GR members. It wasn't therefore necessary (in the group officials view) to keep consulting with members for whatever decision. Still, others were of the opinion that they had to look for a way to "*reward the shepherds/herders who deserve to benefit from the*

³² The Private Developer is a firm managed by an investor of Italian origin, who is purported to have previously conducted similar tourism related business activities in Maasailand in northern Tanzania, and was allegedly forced out of the country under unclear circumstances.

milk and meat of cows they shepherded".³³ The few officials who differed questioned their mandate to make a decision with such far-reaching repercussions, especially in recognition of the fact that they may not have control over other dynamics in play in the land subdivision process, including for example existing inter-boundary disputes, which depended on the cooperation of other concerned group ranches and Ministry of Lands officials.

Besides the pressure from the majority of GR officials who supported the idea, customary sanctions were also invoked to silence the dissenting voices. The more elderly members of the committee, especially those of the *olpiron* (fires-stick elders) age-group, prevailed upon the dissenting junior members to comply with the position of the majority. Some officials, it was reported, floated the idea of 'incentivizing' the GR officials by allocating one-fifth of the advance payment to the *Olchekut* ('shepherds'). Although the new lease agreement did not affect all aspects of the terms of the previous agreement (such as bed occupancy rates and water harvesting rates), a compromise was made to raise the land leasehold fees from the then 1 million Kenya shillings annually progressively to 1.5 million in Kenya shillings by 2010. If these were the only concerns, things could have been a little better.

Alongside concerns about non-consultation over the extension of the existing leasehold, further evidence emerged on advance negotiations between the GR officials and the new private developer to set aside extra portions of GR land for the establishment of a wildlife conservancy under a different leasehold agreement. While GR members in principle did not mind the idea of a conservancy project, concerns abounded with regard to the non-participatory approach employed and certain specific provisions of the draft leasehold agreement. The lease agreement was scheduled to commence on 1st May 2010 for a total term of 15 years, broken into three terms of 5 years each.

The proposed conservancy area was to cover approximately 4,157 hectares, (10,392.5 acres). In addition to the current 43.71 hectares (approx. 110 acres) described as 'Lodge Land' under the old lease agreement, further land was to be delineated: 'Camp site land', 43 hectares; and a New Water Factory site, 1.62 hectares. The Private Developer was to establish 'tourist related activities', including services such as horse riding, guided walks, game viewing and the introduction of wild dogs, greater kudu, roan antelope and the black rhino.³⁴ Additionally, the

³³ Personal communication, former GR official

³⁴ Draft Conservancy Lease on Portion of Title Number: NAROK/CIS-MARA/8, April 2010.

Developer was to construct and maintain a fence around the conservancy to secure the area – never mind that the proposed fencing had the potential of cutting of the natural flow of wildlife (in and out) from Masai Mara and the neighbouring ranches with real consequence of undermining the goals of the conservancy. The Developer was to be granted rights to prevent poaching of animals and wood-cutting, and would be empowered to enforce trespass prohibitions “unless under express consent of the tenant”. Of all contentious clauses, 5.2, which states in part “To ensure that all the Maasai homesteads ... and all other third party occupiers within the Conservancy are vacated and removed from the Conservancy within four weeks from the date of this Lease at the *sole cost of the Landlord*”³⁵, solicited the harshest of reactions. The tussle that ensued saw the removal from office of the GR officials involved and the halting of the Conservancy negotiations, at least up to the present.

Contested issues

Maji moto GR has been a GR in transition (from communal land ownership to individual) for close to three decades (1978 – 2010)³⁶. As such it’s being administered under both the Land (Group Representative) Act cap 287 and the Land Adjudication Act Cap 284 and tending towards coming under a privatized-individual tenure system to be administered under the Registered Lands Act Cap 300. The controversies over land subdivision of the GR broadly relate to concerns over the process itself, members’ access to timely and accurate information from GR records, participation in decision-making, management and distribution of group resources and the integrity of the GR records. These concerns seem to have grown in both intensity and complexity from the time Maji moto was declared an adjudication section to date. A closer look at some of the contentious issues would help illustrate the point.

Access to GR information

One of the recurring challenges and catalysts for the changes witnessed in the project site is related to access to GR records. The GR as a formal collective in which resources are pooled together under the stewardship of the representative committee means that official records

³⁵ *ibid*

³⁶ It should be noted that the Group Ranches are registered under freehold title, so though communally held and managed are technically ‘private property’.

pertaining to land and other associated resources are maintained as a unit. Records whose access has serious bearing on members' ability to monitor and thereby positively influence GR affairs include (though are not limited to): the GR Constitution, the Area demarcation map, the Members register, the GR title deed, Contracts (if any) with third parties such as private developers, Minutes of recorded members' resolutions, Records of disputes (if any including Court and tribunal rulings), Financial records and other process related documents such as Declaration notices and Consent forms.³⁷

The said records are maintained at three different levels. The primary records are generated and kept with the representatives committee officials at the GR level. At the second level is the District Lands Adjudication Office (District level), while at the third national level is the Office of the Registrar of Group Representatives. Occasionally, a parallel arrangement is available through the Provincial Land Adjudication office and Director of Lands and Settlements office, in which adjudication maps are archived.

Information regarding any changes of GR status is ideally supposed to be transmitted upwards from the GR to the national level, to ensure consistency of records at all levels. However, the rate at which records are updated and harmonized across the three levels to reflect changing realities at the GR level was also of concern to members. A look at the number of registered members in January 2005, at the three levels of record keeping, illustrates this point: the number of registered members corresponding to entries at the Group chairman's, District Land Adjudication and the Registrar's of Lands offices was 2,341, 2,293 and 2,301, respectively. There was also noted discrepancy between the number of registered members and the number of parcels on demarcation maps. Comparing the number of parcels demarcated on the area map corresponds with 2,293, reflecting a difference of 52 parcels short of the number of registered members as per the Group chairman's register (which should be the primary register).³⁸

While the Land (Group Representatives) and the Land Adjudication Acts provide for free access to the said records by legitimate members of the GR, in reality this has often not been the case. Factors contributing to the noted low level of accessibility of these essential records range from physical inaccessibility, literacy levels, cost, ignorance of the functioning of the GR, to outright manipulation and exclusion of members by those in power.

³⁷ Evidence adduced from GR members Interviews, focused group discussion and a study of the rich collection of correspondence during the course of the struggle over the last 20 years or so.

³⁸ Maji moto GR Register and Area demarcation map September, 2009

The physical barriers take different forms. To begin with, the group representative officials have never had any physical address or office where records could be kept in safe custody and where interested members could possibly visit and get updates and feedback on GR issues. This predicament was exemplified during the struggle to hold the fifth Representative committee accountable for funds and activities that members were dissatisfied with during their tenure in office. Challenged to produce authentic account records for funds alleged to have been misappropriated, the then Chairman responded “*Oyie emikiarierie emodai. Eimina apa irisiiti atii nkishu to Ldoinyio*” (Fellows, do not punish me on account of my ignorance. I lost the receipts while herding Cattle at the hills). In the absence of an office structure in which records could be safely kept, the group officials are left with no option but to keep the GR records in their traditional Maasai huts or worse still carry the records around in their ‘brief cases’. This has often been used by group officials as ‘genuine’ grounds for lack of accountability - at least as it relates to the physical integrity and safe keeping of GR records. This limitation should ideally affect not just the members’ freedom to access the relevant information when they need to, but rather where they could access the records and the physical state of the documents. The situation becomes complicated when GR officials do not cooperate with members in their endeavor to access information.

In such a situation, the law {the Land (Group Representatives Act Cap 287)} provides that the same GR information should be accessible to the public at the other two levels, within the State bureaucracy:

“... any person may inspect at the office of the registrar the register and any documents relating to any group lodged with the registrar under this Act, and may obtain from the registrar a copy of or an extract from such register or document” (Art. 25)

Again, despite this clear legal provision regarding access to group records, it took the complainant members of Maji moto GR not less than four years to collect and or extract sufficient information to build a strong case with which to oust the fifth committee from office.³⁹

It is important to add here that the lack of cooperation or outright sabotage by Ministry of Lands officials equally affects the ability and the efficiency with which the GR officials

³⁹ Letter by complainant GR members to the District Lands Adjudication Officer (DLASO) chronicling failed attempts at accessing GR records (from 20th June 200 to February 2005) is entitled ‘Justice Delayed is Justice Denied’, dated 24th February 2005.

and/members discharge their duties and responsibilities. The boundary disputes mentioned earlier between Maji moto GR and the neighboring group ranches is a case in mind. The lack of support from the state bureaucracy, especially the Ministry of Lands officials, comes in different shades – delayed response to members concerns, mysterious disappearance of records from files such as records of the Court ruling regarding the 1992 case between Oldoinyio Orasha and Maji moto GRs, frequent transfer of officers, and reported incidents of purported demands for bribes or inducement, through gifts or other strategies.

Beside the alleged reluctance of State officials to facilitate the acquisition of the needed information, costs associated with the physical distance from the GR in question to the relevant state offices (District or national) also inhibits ready access to information. A return trip, for example, from Maji moto GR to Narok town, where the District Lands Adjudication office is located, costs about Kshs. 400 per person.⁴⁰ The Maji moto experience has shown that trips of this nature once commenced are rarely few, but rather multiply over time, few being resolved in the short run. A trip to the national office - Nairobi – roughly triples these costs. It doesn't take long, therefore, before group members seeking redress over certain matters of concern give up and resign themselves to their fate. However, even in a hypothetical situation in which all physical barriers hindering access to GR records were eliminated or were non-existent, questions of literacy levels come to the fore.

Survey data from the GR indicates there are very low literacy levels within the group ranch. Of all male adults surveyed of age 21 – 40 years, the average years of schooling completed was reported at 2.9. This is far below the average (4.44) reported for the nine group ranches surveyed⁴¹ and only slightly higher than that of the other site with the lowest educational standing, Kilonito GR, at 2.7 years. As expected the low level of literacy increases with age, implying less ability to read and understand GR records amongst elderly GR members. All GR records are written in English. For a community accustomed to sharing information through oral narratives and *Ilkiushin*⁴², the new 'paper' oriented regime was both alien and alienating. The language of communication in the State offices and the recording of this information in modes unfamiliar to the GR members therefore created another hurdle in gaining access to information.

⁴⁰ Transport market rates as at March 2010

⁴¹ (Maji Moto, Elangata Wuas, Kilonito, Torosei, Oltepesi, Ochorro-onyori, Olkiramatian, Ewuaso Kedong, and Enoosupukia) – PPP Survey 2008

⁴² Open public meetings, where participants (often men) have an equal chance of contributing to the deliberations. An example of this was provided in the first pages.

The value of timely access to information related to GR activities cannot be gainsaid. It influences members' perception of the significance of ownership of land, the subdivision processes, the response time to perceived irregularities, GR institutional memory, the integrity of the records kept and threats to the security of land tenure. The means by which this information is to be accessed is clarified in GR legal provisions. Illiteracy in the context of Western form-based record keeping systems disempowers both individual citizens and collective or community's agency.

Participation in GR governance: Annual general meeting(s)

Ideally, individual GR members are free to seek information and access records at all levels. Beyond this, the Annual General Meeting (AGM) is the recognized collective avenue for arriving at binding group decisions. The AGM is the top decision making organ of the GR. In some instances, in the last 30 years of Maji moto GR, seven years (1997 – 2005) elapsed without an AGM being convened. All the while, decisions such as the entering into a 33 years-long leasehold agreement with a private developer were being negotiated, made and implemented by GR officials, unbeknownst to members.

The AGM is the avenue through which GR members exercise their collective and individual right to participate in the governance of the GR. According to the Land (Group Representatives) Act, "... an annual general meeting (s) of a group shall be held *every year* in a month prescribed for the annual general meeting in the group constitution" {art. 15 (2), emphasis added}. Additionally, the Third Schedule of the Act (Group Constitution) states in part:

"the group shall in *each year* hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such ... not more than *fifteen months* shall elapse between the date of one annual general meeting of the group and the next" (Par. 3, emphasis added).

The problems that arise after failure to hold AGMs as stipulated in law are not just problems of deliberate omission by GR officials intent on excluding majority of members from decision making processes, and the failure of members to demand that one be held, but equally that of ordinary members' ignorance of due process. Interview results indicate a very low level of awareness among GR members of the functioning of GRs, with most having never had the

chance to see the GR constitution. This minimal participation of members in GR governance had a downward spiraling effect on attainment of group objectives, including subdivision.

Firstly, this affected the integrity of data entered and maintained in the GR register. From the inception of the GR in 1978 to date, the register has been updated thrice. On each of the three occasions, questions have been raised regarding particular entries. The first registration, for example, saw the inclusion of 593 names into the register, which the majority of the members in retrospect felt were not deserving. At the same time, several other cases considered deserving and genuine were left out.

In total not less than 30 individuals representing households considered genuine and deserving were found missing from the current⁴³ GR register. Three particular cases are worth mentioning. The four *Ilmareita*, families – *Meitiaki*, *Mengoriki*, *Meleji* and *Megeli*⁴⁴ - all come from Enkiu sub-location within the GR. *Meitiaki* is a family of two senior brothers of *Ilkitoip* age-set with seven sons eligible for registration at the time of the last registration in 1998. Of the two seniors, only one is registered while all the sons are not. The second family of *Mengoriki* is headed by an elder of *Iseuri* age-set and had six sons eligible for registration, but only the household head was registered. The *Meleji* family comprised of one *Olkitoipi*, one *Olkisarui* and one *Olmeshuki* who were sons of an *Olteritoi* - none of them is registered. The *Megeli* family resides in Iletukunyi and represents a case in which sons of one co-wife were registered and those of the other left out (GR official pers. comm. 2010).⁴⁵

The reasons given for alleged exclusion of *bonafide* members from the GR register were varied. Some were cases in which the elders, especially of *Ilterito* age set, initially questioned the rationale of having to be registered in their own ancestral land, and hence declined to be registered. But this anomaly should have been corrected in subsequent registration. Still others pointed to the role of individual agency and the influence of personal wealth like the case of the two brothers in which one was registered and the other left out, as the key factor. Others were denied or themselves missed registration on account of seasonal migration across the rangelands. But all said, members interviewed felt that these were anomalies that could easily be rectified under a committed, transparent and accountable GR leadership.

⁴³ Maji moto GR register, September, 2009.

⁴⁴ The source is anonymized,

⁴⁵ One of the GR officials directly involved in the reading of the GR register to members, June, 2006.

Besides the omissions, several other individuals (deserving of a single requisite share) were entered in multiples or at least more than once. Data adduced from the GR register indicated, for example, that at least 15 entries were entered twice and one entry thrice. Additionally, at least 5 male adults considered genuine cases for membership were found missing.⁴⁶ Since each entry into the register ideally translates to an equal share of land upon subdivision, an extra entry under the same name means an extra allocation of a parcel of land and a corresponding proportionate reduction in size(s) allocated to other members. A closer look at the names entered more than once show there is a correlation with individuals from influential families.

Of concern too is the management of inheritance of membership upon death. On this count there was noted disinheritance of deceased members' beneficiaries by non-relatives who should have been non-beneficiaries. Members who were the rightful beneficiaries felt that they had been dispossessed and short-changed by the actions of former GR officials. Records reviewed indicated no fewer than 26 cases in the register reported as dead had no indicated or known inheritors and one case (no. 400) was reported dead yet was alive. Because the GR register is rarely (if ever) read to the members, families affected rarely get the opportunity to confirm the membership status of themselves or their kin.

Registration of Minors⁴⁷ is another contentious issue. The third official registration of members involved registration of 599 'members' below the age of 18 years. While official records of the GR indicate this was a resolution of GR members, many of the children, especially of the poor and the less influential members, remain unregistered. Members falling under this category have expressed fear that should the GR remain un-subdivided for a longer while and another wave of registration is allowed, there is no guarantee that this anomaly will ever be addressed. In fact, the most likely scenario is one in which they are further disadvantaged. The question of registration of minors is critical, in the sense that unlike other group ranches in the country which chose to register a limited number of male children per household/family, Maji moto instead chose to register as many minors as were born at the time of the last registration. Under this arrangement those with large families, who more often than not would represent

⁴⁶ Maji moto GR register (2005 p. 40732 – 40771); no official records indicating amendment to the register were accessed.

⁴⁷ Land (Group Representatives) (Prescribed Information) Regulations (1970 p.3) defines minors as those registered members below the age of 18 who must then be represented by a guardian (a form of 'disability').

wealthy households within the GR, would stand to benefit. In some specific cases the committee members are accused of having registered unborn children at the time of registration, in anticipation of their birth, an illicit privilege not allowed to non-committee members.

GR ranch survey records were equally problematic. In the absence of AGMs, dealings with the private surveyor remained the preserve of a few GR officials. At some point, the committee insisted that land subdivision was completed and title deeds ready for distribution; most members of the GR had paid the total survey fee but parcel allocation remained an illusion. At the time of GR land subdivision processes, the role of the 15 member demarcation committee is often usurped by the incorporated GR officials. According to the Group Representative Act, the GR committee (otherwise known as group representatives) comprised of 3 – 10 elected members is charged with the responsibility for managing GR affairs and resources whilst under collective ownership. This team constitutes the legal ‘representatives’ of a given GR. The demarcation committee, on the other hand, is a team of 10 – 15 persons resident within an adjudication section, which is appointed by the Adjudication officer in consultation with the District Commissioner of the district. They are supposed to guide the surveyor in the process of land demarcation so as to minimize disruption of existing settlement patterns of members, preempt conflicts and secure common community utilities.⁴⁸ The adjudication committee primarily facilitates the land subdivision process by providing the on-the-ground dynamics to the technical officers from the Ministry of lands who are meant to steer this process. Within the project site, a trend has emerged that every time a GR management committee is elected into or voted out of office, the land demarcation/adjudication committee leaves office or continues with it; the latter playing second fiddle to the former.

Because of the peripheral role played by this committee, fears abound that common utilities such as water points, salt-licks, and grazing access routes may have been allocated to individuals. These are common community utilities especially critical to the pastoral livelihood production system, and certainly not for individuals’ exclusive use. The physical evidence of subdivision is established by concrete landmarks placed at the four corners of the land parcel (beacons). Despite recent claims (by GR officials) that the land subdivision process has been completed and survey fees settled, less than 5% of the entire land is in fact beaconed. In the

⁴⁸ The Land Adjudication Act CAP, 284 (GoK, 1970. Art.6, p.7).

absence of area demarcation maps, it becomes extremely difficult to ascertain the validity of some of the claims being made.

Management of GR financial resources appears to be the area of greatest contestation. By the time members passed a resolution to use the leasehold funds from the private developer for land subdivision related activities in 1996, for example, a total of about 14 million Kenya shillings was purported by a section of GR members to have been either misappropriated or unaccounted for in the following period (1997 – 2005).⁴⁹ Related to this question of transparency and accountability, the dealing of GR officials with external private developers interested in investing in the GR has often been an area fraught with suspicion. The incident in which the existing contract was revised downwards, from about 1.7 million annually to 1 million Kenya shillings, slashing it by a whopping 40% for a 25 year period, with all the initial benefits to the developer intact, without GR members' consultation, is one such case. The matter becomes complicated when one considers the fact that often all local leadership structures (civic leaders, GR and provincial administration) within the community participate in this. There seems to be a tacit agreement among leaders across local institutions to evade community oversight and/or effective participation in the management of collective resources, especially land.

The two cross-border boundary disputes mentioned earlier are as old as the GR. Numerous committees started sub-division of the land before ascertaining what the genuine or actual boundaries were along the border between Oldoinyio-orasha and Naroosura group ranches. The precise boundary ideally should affect the eventual size of individual parcels, so demarcating borderlands without knowing where the border ran provides fertile grounds for conflicts over land ownership in future. Some have argued that the settlement of the two boundary disputes has not been in the interest of the successive GR committees because ambiguity provides an avenue through which funds could more easily be misappropriated. In the case of the fifth committee, for example, about 800,000 Kenya shillings was claimed to have been used in efforts to settle boundary disputes (Pers. comm. GR chairman, 2004)

Concerns over equity and fairness in land allocation procedure:

The GR topographical orientation is approximately fifty-fifty hills and plains, and resources vital for pastoral production are scarce in space and time across the two ecological zones. The Loita

⁴⁹ Annual leasehold fees at the rate of Kshs. 1.5 million for 8 years; Water harvesting fees at kshs. 240,000 x 3 years and bed-occupancy at kshs. 30,000 per month for the same period.

hills on the southern half of the GR sharply falls northerly forming the Loita plains. The distribution of natural resources across the two ecological zones differs remarkably. The Loita plains for example, provide excellent grounds for pastureland and saltlicks, human settlement and, to a little extent, agropastoral practice. Grazing, on the other hand, along the steep-rocky, rugged and bushy Loita hills is a challenge. But at the same time the Loita hills serve as dry season grazing, fall-back grazing to avoid *malignant catarrh fever (MCF)*⁵⁰, and the community's reservoir and source of firewood, construction materials and wild fruits that serve as nutritional supplements.

A description offered by one of the respondents sheds some light on this issue: "In the hills, there are wild animals and also sheep are small and can get lost. Especially because sheep shelter from the sun, often many stay behind simply because they are hiding under bushes and one may not see them; also the vegetation is not good, since the long grass is often of low nutritional value" (pers. comm. Ole Koila, 2009). This ecological interrelatedness and interdependence between the plains and the hilly sections of the GR is critical for a delicate balance of scarce resources distributed across space and time within the rangelands.

In one of the earlier discussions around the question of the distribution of land parcels upon completion of subdivision, one of the GR officials used the following euphemism: "when God made a Cow, he made it with horns and hooves; should the owner hate the horns of the Cow, there is nothing he can do about it" (Personal comm. Koimug, March, 2004). The land, it was presumably agreed, would be subdivided indiscriminately into 'equal parcels' irrespective of the physical state of land on the ground or its actual productive value (See Annex 3, for Area demarcation map). Individuals allocated land that is rocky or in the hills might find it difficult to make use of. Members fear that this is a time-bomb waiting to explode once allocation of parcels commences. GR members are therefore jostling to establish permanent settlement on sites considered 'good' (Annex 5, for sketch on human settlement patterns). "Sometimes they asked money from people, promising a site of their choice. To me that is not good because then the advantage will be with the rich. In that way, the poor will get the worse of the places/sites within the GR. Members who turned down advances by certain committee members for cash bribes in exchange for allocation of better parcels/sites upon completion of land subdivision would most

⁵⁰ A disease transmitted to livestock through the wildebeest afterbirth, during their in-calving season at the Loita Hills.

likely be disadvantaged in actual future parcel allocation” (Pers. comm. GR member, Nov. 2009).

Staking Claims: Exercising agency

Social actors in the GR – ordinary members and those in positions of influence alike - in asserting their claims and rights over land and GR resources employed a wide array of strategies. The members drew from a repertoire of claims to human rights and justice, democracy, popular participation and the rule of law exercised through an intricate web of social networks. In the endeavor to keep a hold on and widen their social networks to secure their interests, members laid claim to multiple and overlapping identities ranging from GR membership, citizenship, universalism of human rights, existing CSO networks and partnership, exposure associated with western education and/or market forces, or to communitarian ties. Solidarity for action within diverse social networks was highlighted through public discussion forums, public litigation, mass action, training and advocacy, petitions, and publicity through mainstream mass media.

Community meetings

Of all the strategies utilized by local social actors, *Ilkiushin*, holding of community meetings, was the most common. *Olkiu* (*ilkiushin*, plural) is a traditional conclave of usually men, gathered together to deliberate over matters of common concern in society. Ordinarily, the matters for consideration in such forums would range from settlement of *enyamu*, theft of livestock, *enkaputi*, marriage disputes, *nkirro*, blood-wealth for murder of a fellow Maasai, conflicts over grazing and watering rights, insecurity and most recently disputes over land rights within the group ranch. Under normal circumstances, the elders affected by or closely affiliated to the agenda in question would be the conveners of the meeting and other community members are invited through word of mouth disseminated through youths. In a typical traditional Maasai setting, passing the message would be relatively easier, due to the nature of settlement in which several *inkajijik* houses are enclosed together under one fence to form an *enkang* kraal or settlement, and several *inkang’itie* pull together to form an *Elatia* village or neighborhood.

Although, these meetings ordinarily would not have requirements for quorums, the presence of particular individuals perceived to be influential due to their level of wealth, recognized fairness and wisdom in settling disputes, traditional age-set leadership and other

opinion leaders, including the concerned parties, would signal readiness to commence deliberations. In the quest for customary and traditional legitimacy in the land rights struggle, indigenous social organizations and institutions provide the requisite links to mobilize social actors for action. Individuals and groups will, for example, invoke the age-mates' spirit of solidarity to make peace and amends and use elders to bless and curse in the same breath. For matters pertaining to personal concerns such as a marriage gone sour, the concerned parties would mobilize their kinsmen to attend the meeting. Mobilizing social actors to attend community meetings to demand accountability and responsive leadership during the land subdivision process in Maji moto GR did not appear to follow this script. The struggle was mostly led by young men among GR members- 'exposed' to the larger society through education, livestock trade and civil service - as opposed to elders within the community.

Decision making in such meetings is often through consensus, which implies several meetings could be held before agreement over a given matter is reached. The location or venue for setting up the meetings must be easily accessible and open to all men. Several such meetings were held in the struggle over land rights in Maji moto, including the one cited at the beginning of this paper. To a greater extent, discussions in the said meetings were exhaustive in their deliberation, open to all GR members, participatory, full of tension, inclusive but orderly. This is the strategy most accessible, familiar and friendly to a greater number of the GR members who are illiterate and least informed about the functioning of the modern state bureaucracy. The desperate effort to look for local solutions is reflected in the attempted vote of no confidence in the entire leadership, as cited before. In addition to the foregoing, members of the GR also asserted their claims over land rights by demanding redress from the state as citizens.

Rights as Citizens

As citizens, the members of Maji moto GR reached out to the various state agencies, ministries, and administrative institutions relevant to GR administration, calling on them to rise to the occasion and discharge their duties fairly and expeditiously. The Ministry of Lands (MoL), the provincial administration, local authorities and the national anti-corruption agency were some of the state bureaucratic institutions engaged. GR members explored these options once the local strategies they were familiar with proved insufficient in themselves to deliver justice. In doing

so, a number of actions were employed namely: petitions, direct actions in the form of peaceful demonstrations and face-to-face discussions, and public litigation.

Engagement with the MoL at all levels (divisional, district and national) particularly stands out. As would be expected, aggrieved GR members and the implicated GR officials and their sympathizers each engaged with relevant state agencies and ministries for different reasons. The GR members' demands presented to numerous officials across the ranks within the MoL ranged from the need to access GR records hitherto inaccessible or missing at the GR level, facilitation of the audit of the GR books of accounts, to convening of GR annual general meeting, and possibly officiating in elections of new GR representatives.⁵¹ GR officials on their part engaged with the same institutions to protect the status quo – their continued stay in office as the GR leadership, non-disclosure and legitimatization of the very process and records being queried. Those in positions of power employed multiple strategies to protect and advance their interests. Some of the tactics, for example, included: last minute change of previously scheduled meetings by a day or so, targeting days that were technically near impossible for most members such as markets days or school opening days, was rarely coincidental. A case in hand is the meeting originally set for Sunday, 9th March 2003, which was instead re-scheduled to Monday, 10th March 2003.⁵² Complainants faced geographical challenges when mobilizing members to attend meetings targeted at achieving the mandatory quorum of 60% at short notice. Official working days during the week were also targeted for meetings by GR officials to lock out GR members GR in formal employment.

The District Lands Adjudication Office (DLASO) and the District Surveyor's offices at the district level, the Registrar of GRs, Director of Lands and Settlement office and the Minister for Lands at the national level were some of the key offices engaged at one point or another in the course of the struggle. As the complainant GR members failed to get redress at the devolved community and district offices, it progressively became necessary to seek help from the upper hierarchies of the bureaucracy both within the line ministry and outside.

In one of the initial pieces of correspondences between the dissatisfied members of the GR and the Land officials, the Registrar of Group Representatives, writing to the GR chairman,

⁵¹ Complainants letters dated: 17th, August 200 (Letter to the DLASO); 24th, February 2005 (Letter to the DLASO; 4th, March 2003 (Letter to the District Commissioner, Narok); 29th, June 2005 (letter to the Director Lands Adjudication and Settlement).

⁵² Complainants' letter dated 10th March 2003.

states: “the purpose of this letter is to inform you a few members have complained ... please deal with those *complainants* carefully and sought out their problems as *individuals* ... (emphasis added)”.⁵³ It is instructive to note the choice of words in this letter. The emphasis on ‘complainants’ as opposed to the complaints and ‘individuals’ as against community concerns points to how officials interpreted the problem presented to them, as being personal or individual and further suggesting that the land disputes arising in Maji moto do not involve collective group rights, hence individual and private property rights to land should apply in dealing with the contestation in question. Or perhaps the experience of the office in group dynamics within the group ranches context had brought to the fore the often intricate and long protracted struggles over land rights, leading land officers to seek the easiest route out without getting entangled and thereby trying to avoid confronting the real issues. The country’s judiciary system was another state institution involved.

The history of the country’s judicial system in dealing with land related disputes has not been particularly positive in the general public’s reading. The often indeterminate nature of cases taken over by the courts, the inhibitive costs associated with the litigation process (legal fees, and logistical costs), the technicalities involved and rampant corruption, all contribute to the low regard with which the country’s judicial system is held. Once a matter is brought before the court, GR members felt, their agency is surrendered to the same courts and they lose control of the entire process. Nonetheless, the fact that the entire local leadership (GR officials, Directors of the 19% fund, Chiefs, Councilor and MP) took the same position - to not only disregard but outrightly refute the complaints from the dissatisfied GR members - the situation became desperate. And, as the old adage goes, desperate situations calls for desperate measures, so the concerned members took the matter to court. But, as a strategic choice, instead of taking the GR officials to court and thereby transform the problem into a legal tussle far removed from their control, a different section of leadership (directors of the 19% fund), perceived to be financiers of the GR officials, was taken to court. In their prayers before the court, members demanded a freezing of the bank accounts and auditing of the GR's 19% funds accounts.⁵⁴ The move to seek for legal redress from the courts is partly a direct outcome of the networks created by educated members

⁵³ Letter from the Registrar of GR to the Maji moto GR chairman – ref: GoK, GR.4/248/6 (21ST October 2000).

⁵⁴ Letter of request by Complainants members of the GR to the Narok County Council calling for Freezing of the 19% Maji moto GR bank account pending investigation - dated 3rd June 2003.

of the GR and local community based organizations and GR members' desperate efforts to seek for justice in the land subdivision process.

This engagement with state agencies involved a multi-pronged approach. While, for example, the court case went on, engagement with the District Commissioners office at the district level proceeded at the same time. These engagements took the form of face-to-face discussions, petition letters and demonstrations conducted at different times before different DCs who came and left the district during the years of the struggle. The DC's office, which falls under the Office of the President, is in charge of security. The DC serves as chairman of the District Security team and supervisor of all other government sponsored development projects in the district. This officer also serves as the Chairman of the Land Control Board.

Aware of these multiple roles of the DC's office, GR members sought to benefit from them. At the peak (between 2002 and 2005) of the struggle over land rights in Maji moto GR, the dissatisfied members brought pressure to bear on this office.⁵⁵ As a result of the heightened tension at the GR level, numerous letters of complaint and a number of 'peaceful' demonstrations, at least three different DCs were compelled to visit the GR at different times. Specifically, since the DLASO reports to the DC at the district level, members requested the office to instruct the DLASO to go to the ground and oversee peaceful election of a new committee. But, these were not the only state institutions engaged.

Other state agencies

The local authority - Narok County Council – was another critical institution in the GR struggle for accountability both of funds and the subdivision processes. The local authority serves as custodian of the 19% funds (which were then utilized in the land subdivision process) and trustee of the negotiations between the GR and the private developer investing in the GR. Additionally, the Council as collector of local revenue for community development remained an interested party whenever the presence of the investor in the GR was threatened. Therefore, members' demands to the Council included: holding back further disbursements of the 19% funds due to the GR, which members felt were being utilized to buy favors from various state offices, and instituting an audit process for funds already disbursed to the GR. Further, arising from the attempted vote of no confidence alluded to in the early chapters of this study (in which the area

⁵⁵ Members Letter District Commissioner, Narok dated; 4th March 2003.

Councilor was one of the local leaders GR members had lost trust in), petitions signed by not less than 800 members were submitted both to the Clerk of the Council and the office of the Minister for Local Authorities at the national level.⁵⁶ In addition to the institutions directly involved in land administration and resources associated to land management, state agencies charged with the responsibility for addressing the problem of corruption in the country were also engaged.

In this case, the Kenya Anti-Corruption Commission (KACC) came to mind. Besides specific petitions to the authority by the complainant members, most of the other correspondence to other state offices already discussed was also copied to the anti-corruption body. The request was direct, that the authority should live up to its national mandate of fighting corruption by investigating and prosecuting what was in GR members' views rampant corruption around the land subdivision process within the GR. KACC also received letters from other relevant government ministries including the Commissioner of Lands office, asking it to tackle alleged corruption activities within the GR based on members demands. These engagements with various state institutions and agencies did not bear immediate or satisfactory results.⁵⁷

Non-state actors and networks

In addition to seeking redress as GR members within customary and national institutions, tapping into community-based social networks, acting as citizens from the concerned state bureaucracy, social actors also appealed to the emerging vibrant network of non-state actors who shared the same concerns or whose interests overlapped with those of GR members. These networks included non-governmental organizations, research institutions and the media. The presence of Touch of Love Integral Development Program (TOLIDP)⁵⁸, a community based organization operating within the project site, played a key role in linking the GR with the national civil society movement and the media.

The history of TOLIDP is embedded in the history of the land rights struggle of Maji moto GR.⁵⁹ It could be argued the community based organization (CBO) was partly a product of the struggle. In the course of the struggle, the founders of the organization (including the

⁵⁶ GR members petition to the Ministry of Local authorities and Clerk to the County Council.

⁵⁷ GR complainants members' letter to the District Lands Adjudication Officer (Narok) :*Justice Delayed is Justice Denied*, dated 24th February 2005.

⁵⁸ TOLIDP was registered as a community based organization in October 17th 2001. Reg. no.3660

⁵⁹ Interview comments from one of TOLIDP's staff members and the organization's website: www.touchoflovekenya.org.

researcher), who were all members of Maji moto GR, came to represent the face of the struggle over land rights. One of the program managers opines that the organization was born out of the exigencies of the struggle over land rights in a bid to broaden its constituency and legitimacy, and to tap into larger social networks and identities hitherto inaccessible to both founding members as individuals and the community as a collective. In some quarters the struggle was locally dubbed '*olarrabal loo-lmushieni*', the struggle of the missionaries (pers. comm. Omah Naisho 2009). This religious connotation is also reflected in the faith-based nature of the organization. TOLIDP therefore became the point of connection between GR activities related to the land rights struggle and other social and institutional networks outside the GR.

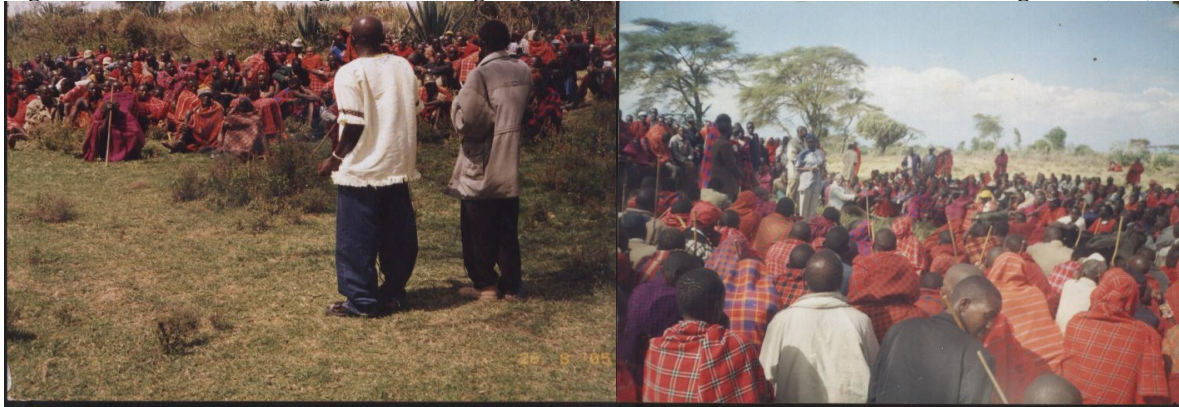
One of the first NGOs to partner with TOLIDP (and by extension with the GR) was Mainyoito Pastoralist Integrated Development Organization (MPIDO), and thereafter the Kenya Human Rights Commissions (KHRC) also came on board. MPIDO is non-profit Non-Governmental Organization for Human Rights and Social Development working among Kenya's Pastoralists communities to address their most urgent needs and problems with its office headquarters in the Karen area of Nairobi. KHRC is a national NGO registered in Kenya whose stated vision is: 'a Kenya that respects, protects and promotes human rights and democratic values'.⁶⁰ Clearly the two organizations share a common programmatic interest in the area of recognition, promotion and protection of human rights, including land rights. The two institutions provided technical and financial support to mobilize the community to build up political pressure on relevant state agencies to take corrective action, and on the local duty bearers (read GR officials and other local leadership) to deliver on their mandate. They, for example, provided financial resources for meeting the costs of legal fees, exposure trips, publicity, and training of GR members on land rights. In addition to this, the NGOs participated in solidarity building activities such as peaceful demonstration against the private investor (See fig.5). Specifically, KHRC supplemented the GR petitions with letters to other state agencies such as the Commissioner of Lands, the Registrar of Group Representatives, Kenya Anti-corruption commissions and GR officials.⁶¹ These activities contributed to improving GR members' general understanding of the bureaucratic functioning of the state and relevant legal

⁶⁰ Kenya Human Rights Commission (KHRC) official Website: <http://www.khrc.or.ke/>

⁶¹ KHRC letter to the 19% funds directors (May 19th, 2003); KHRC letter to Ag. Director Kenyan Anti-corruption Commission (April 2nd, 2004); KHRC letter to the Commissioner of Lands (April 5th, 2004); KHRC letter to Chairman Maji moto GR (May 19th, 2003).

and policy processes related to land. The legal case supported by the civil society organizations put pressure on the GR leadership to share more information/GR records; but was also a means by which the participating national civil society organizations would realize their programmatic goals of civic awareness for human rights and good governance.

Figure 6: KHRC Officer (right) discussing land rights issues with GR members & GR Registrar (left)



Sources: Touch of Love Integrated Dev. Program (TOLIDP), 2005

CHAPTER 4

COMMERCIALIZATION OF PASTORAL HOLDINGS

Commercial interests have sacrificed local livelihoods and environments in order to obtain raw materials, transform them into commodities, market them and dispose of wastes (The Ecologist, 1993, p.74)

Monetization of pastoral holdings appeared in the view of most respondents to be the catalyst at the centre of most of the contests around leadership, governance and resource distribution on the GR. The contests ranged from concerns over alleged misappropriation of group funds, land subdivision processes, access to information regarding the process, to manipulation of the members during electioneering processes for individual gain. The fundamental ideologies on which such tensions emerge relate to: the philosophy and practice of Maasai indigenous leadership in comparison with the modern State bureaucracy and associated democratic ideals; and traditional resource distribution practices based on reciprocity and communal rights, contrasted with market and individual property rights oriented regimes. This monetization of the local Maasai pastoral economy is reflected in struggles over land subdivision, which radically transformed the indigenous value systems and practices guiding distribution of resources and associated corrective mechanism for behavior considered contrary to Maasai societal norms. Further, it is argued that the place of livestock as a symbol of communal wealth, social status and medium of exchange was radically challenged by the entry of money as a mode of personal wealth, medium of exchange and store of investment.

Increasingly, money is taking the centre stage as one of the key factors determining who has a chance to exercise leadership, reasons for seeking leadership positions and the subsequent nature of conflicts that emerge over the distribution of land and other resources. The researcher put the following question to one of the GR officials: What would leadership be like in the absence of money? In his response the official stated: “it would not be leadership, because contemporary GR leadership connotes a boss with hand-outs to dish out. My initial experience as a local leader was punishing as people streamed in for cash hand-outs. When they soon discovered I had nothing to dish-out, they came to the conclusion that I wasn’t in the seat of power nor was I true leader”! (pers. comm. former GR official, 2010). It is argued that the link

between monetization and patrimonialism in this context emerges from a structure of personalistic leadership relations that fashions leaders as ‘distributors of goodies’ (especially money) as opposed to service providers and facilitators of the factors of production for the improvement of livelihoods in the interest of the common good.

The gradual but sure enhancement of a market and money oriented mode of exchange and resource distribution, mediated by the state bureaucracy in the project site, has not only influenced local perception of leaders and leadership in general, but has equally affected the tempo and direction of the land subdivision process. Ultimately, the GR leadership’s value system and orientation in the context of individuation and privatization of land tenure has direct bearing on the outcome of these processes. This state of affairs has resulted in the emergence of two dialectic viewpoints amongst GR members with regard to leadership and land subdivision.

On the one hand, GR members appear to have given up hope of the possibility of equity and fairness in collective resource distribution within the GR. Perhaps the experience of one former senior GR official at the hands of certain GR members with regard to his performance would illustrate this point. The incident happened at a time when most GR members were determined to push one of the many GR committees out of office.

The official states:

“I was harassed for an entire day by people who thought they cared for me and therefore concerned over my ‘failure’ as leader”. Citing examples of previous GR leaders who (in the members view) had looted public resources and are now considered symbols of wealth and affluence in the community; they reminded me *etesheta kulikae imuatata, nereuta igarrin, nimiaata iyie enitaasa*, others (GR officials) have expanded their sheep pens and others driving vehicles and you did nothing. *Emiyiolo iyie ajo ejing oshi taata iltung’anak erikore pee epuo adaa*, are you forgetting the reality that people take-up contemporary leadership position to feed themselves”?

According to this school of thought, ‘corruption’ of those in leadership positions possibly provides the only feasible avenue through which individual GR officials could raise themselves and their kin out of poverty. Out of desperation over unaccountable and non-transparent leadership, actions previously considered antithetical to strongly held societal moral values against greed and misuse of communal resources (including land) are now embraced or at least

tolerated much less because of a deliberate change of societal values than for a utilitarian and pragmatic choice made for basic survival. A successful leader therefore becomes one who accumulates the most during his tenure as leader. The allegory of *Olchekut* (Shepherd) and *Olainosani* (the accumulator) was previously cited. On the other hand, a significant section of the members keep fighting with the hope that fairness and justice will happen someday.

Exerting External Pressure on the Commons

Mining activities at *Olkunyielei*,

The first awareness that resources might flow to the community (as a collective) besides the traditional pastoral livestock came with mining activities in the GR. The mining activities were associated with a businessman of Asian origins (*Muindi*) who was reported to mine ‘gold-like’ stones at *Olkunyielei* area on the south-eastern border of the GR with Naroosura GR using tractors. But, most of the people interviewed viewed this endeavour at *Olkunyielei* as a ‘leaders’ project’. The rest of the community members were little aware of let alone benefiting in any way from the project revenues. In fact, there weren’t any structures for managing revenues from the site. “*Ore apa iltunganak nena katitin, nemeitaakisha kulie baa neme ine ramatare oo nkishu*” (people those days were skeptical and least concerned with any livelihood activities outside of pastoralism).⁶² Since the time the *Muindi* left, nothing has happened at the site up to date. The site has since been transformed to a water pan of sorts.

Irrigation and Commercial plots: Individual property rights, Markets and Profits

The first farming activities along the Maji moto spring was traced back to *Olmushieni*⁶³ in the early nineteen seventies. The farmer who had a Kikuyu background was the first person to carve out a small piece of land at *olng’arua*, (the papyrus reeds) along the banks of the spring to start farming. He had found his way to Maji moto from *Siyaapei* through his work as a civil servant (teacher at the local primary school). *Siyaapei* was the first and only African Inland Church (AIC) Christian missionary station in the entire Maasailand. One of the first local residents to

⁶² Interview with one of the former GR officials Nov. 2010.

⁶³ *Olmushieni* – is a corruption of the term ‘missionary’, associated with first Africa Inland Church Christian missionary station in Maasai land, loosely translated to mean ‘Christian convert’.

attempt farming in the locality recalls the genesis of the ‘new’ idea: “I had come from ‘*enkutuk entim*’ (literally meaning ‘mouth’ of the forest, located at northern highlands of Mao Narok). I then requested the group officials to allocate me a portion of land for farming”, he recollects. But the idea of individual plots for irrigation purposes was initiated by *Olairemoni** whom respondents claim to have had a Merian background (the Meru being one of the other Bantu speaking farming communities in the country), and soon thereafter other GR members followed suit.

Individuals associated with the new idea of crop-farming were immigrants, temporary workers originally from farming communities or local Maasai who were former workers on White-settler farms north of Narok district. During these early moments of experimentation with farming, most of the activities went largely unnoticed by the larger pastoral community in the region, since land, water, pastures and supplies of livestock were in abundance. Hence, other than the amusement farming activities elicited amongst some pastoralists, few of them got really interested in farming as a livelihood option. To demonstrate the level of amusement; one of the respondents had this to say: “*Farming those days was like cinema or movie that people came to watch*”.⁶⁴

Minimal farming activities were therefore undertaken around the Maji moto hot spring. Some of the individuals who introduced farming in the area found their names in the GR register during the first registration.⁶⁵ It didn’t take long before the group leadership started hiring some paid labor for their own agricultural production activities along the stream. In these early stages of experimentation with farming there was no specific procedure to be utilized for plot allocation since the idea of farming was not a priority. By the mid-1990s, there was a rush for irrigation plots but it soon became clear that only a few could benefit from the new livelihood activity, mostly those residing around the spring.

A total of 418 parcels were allocated to specific families. The allocated parcels roughly stretch for about 1.5 km from the source of the spring to the point at which the waters of the spring disappear under ground. Only 3 members from outside Maji moto sub-location (Enkiu sub-location) benefitted from the irrigation plots. The then leadership of the GR decided to set

⁶⁴ Ole Tong’oyo: one of the first group of local Maasai residents to experiment with irrigation farming

⁶⁵ They are part of the 593 ‘acceptees’ – Outsiders (non-resident in Maji moto GR) who benefitted from the first registration of members.

*Anonymized

aside 208 parcels, each equivalent to 2 acres, at *Narok atua* (the only forested area in the south eastern part of the GR) as a consolation for the lost opportunity experienced by members who missed out when the irrigation plots were allocated. The second reason for this allocation was to secure GR interests against external exploitation of the forest from the neighbouring GR – Naikarra. The overall goal of allocating the individual irrigation plots was twofold. Firstly, beneficiaries were supposed to utilize the waters from the Maji moto hot spring to undertake subsistence farming based on gravity-fed irrigation. Secondly, the surplus produce should then be disposed through the market to supplement incomes and diversify the livelihood support system.

Experimenting with Commercial farming on the pastoral rangelands (Loita Plains)

Another attempt to introduce large scale-commercial farming, and subsequently expand revenue streams to the GR, came in 1991/2. A farmer of Kikuyu origins, whom the locals only recall by the name of *Kaime*, is strongly associated with this project. From the information adduced, there was no collective group decision to engage in the project. Rather, the then area councilor (who has since deceased) and a few committee members were the initiators of the project. Under this arrangement the private developer was to lease an unspecified number of acres of GR land for commercial wheat farming on selected swaths of land within the Loita plains. The first area councilor was himself already exposed to and familiar with wheat farming, having recently migrated from the northern side of the district (Mao Narok) where large scale commercial wheat and barley farming was already thriving.

The project went for two seasons, before the large number of wildlife and the erratic rainfall proved difficult to overcome. Of particular concern to local pastoralists was the fact that the new farming area stood right across the livestock route to the most popular salt lick in the region – *Olare lol doinyio Orasha*. The majority of GR members came to learn of the project much later, when cultivation of land begun. Although the project is believed to have benefited those in GR leadership positions and a few casual laborers hired as guards, the research could not conclusively establish whether there were any collective benefits to GR members. In fact, besides the harsh environmental conditions and the large wildlife (herbivore) herds, it was the members' opposition to the project that dealt it a death blow. The areas previously under wheat farming came to bear the name *oloturo* - the tilled ground – by which it is known up to the

present day. The struggle between individuals to access monetary benefits accrued from the farming activities intensified tensions within the GR. The enormous influence exerted on the local pastoral commons by external market forces and money as a medium of exchange was yet to result in a more structured partnership between the GR officials and private investors.

Private Investors' Interests: Private Conservancy

As discussed elsewhere in this paper, Maji moto GR is one of the wildlife dispersal community ranches on the periphery of the world-renowned Maasai Mara Game Reserve (MMGR). And, ever since the ban on additional physical investments within the protected area, there has been a notable increase in the number of private investors establishing community based conservancies with accommodation and game-viewing facilities - tented campsites, lodges, walking safaris and private wildlife sanctuaries - within ranches adjacent to the park. Some of the well-established Conservancies around MMGR include: Koyiaki, Olchorro-oirowua, Olkinyiei and Siana. Located about 60 Kms to the Park, Maji moto was not to be an exception.

In 1997, a private developer entered into a leasehold agreement with Maji moto GR to initially lease 110 acres of land to develop tourist-related activities, including establishment of an exclusive lodge.⁶⁶ In this leasehold agreement, the developer was to pay an annual leasehold fee of Kshs. 1.5 m with a fixed annual increase of 5% for an initial period of 33 years. Additionally, the group was also to benefit from payments based on bed occupancy and game watching fees at a flat rate of Kshs. 30,000 per month. Establishment of other joint community projects was also part of the bargain the community was to expect from the private developer, though no specifics were provided on this front.

Members interviewed contend that, to a greater extent, most of the struggles over land subdivision processes observed from the late-90s to the present relate to the dealings between the GR officials and the management of the private investment. Specifically, the nature and terms of contracts entered (size of land, rates, duration, indemnity...); the use of the funds accrued and the threat to security of land tenure (especially as it relates to pastoralism as a land use system) were central. The general feeling of the GR members in relation to this very significant investment in the GR is that the project, while contributing an appreciable sum of money to the GR, has ironically remained both an impediment to the realization of the individuation of communal

⁶⁶ Ref. Annex 10 for Ministry of Land: Maji moto GR 'Green Card' precursor of GR Title Deed (17th Sept. 1997).

landholdings while at the same time disrupting retention of collective land use practices, at least for the time being. The expansionist (more land and profits) tendencies of the investor and purported self-aggrandizement of GR officials through financial inducements and subsequent embezzlement has jeopardized common community interest in enhancing the security of land tenure. A few examples may shed some light on this.

The first lease contract was heavily skewed in favor of the developer. One of the contentious provisions in the agreement is that which disallows entry into the GR by any other potential developer interested in tourism related activities. The clause hitherto unknown to most members came to the fore when an agreement to allow the use of part of the GR for a '*Rhino charge*⁶⁷' activities hit a snag. The GR lost an opportunity to make about Kshs. 6m in six days (an amount equivalent to 4 years of leasehold revenues at the current rates).

From its inception to date, the said lease agreement has undergone three reviews, all of which (in the eyes of GR members outside the leadership) were largely orchestrated by the developer who often shaped outcomes that were in his favor. Often, the (re)negotiations of the agreement bypassed established GR decision-making structures. For example, under circumstances unfamiliar to most GR members, in 1998 an additional 46 acres were added to the original 110 acres to make it a total of 156 acres of land. The extra acres were approved by the GR officials, allegedly to provide ground for drilling of mineral water for commercial purposes. In return, the community was to receive an additional Kshs. 240,000 per year (20,000 per month), independent of the actual revenues accrued from the sale of bottled water and without any additional leasehold fees paid to the GR for the extra forty-six acres allocated to the developer. The second review came in 2000 when the developer manipulated the GR officials under conditions in which members allege that inducements were given to officials to slash the leasehold fees from 1.6m to 1 million, the justification being a 'low tourism season' (personal comm. GR official, 2000).

⁶⁷ The Rhino Charge is an annual off road motorsport competition that has been held in Kenya since 1989. It is a unique and exciting competition that requires bravery and a high level of skill in off-road driving and navigation. The event, organized by The Rhino Ark Charitable Trust, is held to raise funds for a very noble cause – conservation of Kenya's Aberdare Ecosystem. Source: <http://www.rhinocharge.co.ke/>

Land surveyors

Once a GR chooses the path of individuation and privatization of the GR commons, they must then decide on land survey services. This is a technical service often requiring the services of trained professionals - surveyors and cartographers. Individual GRs have a choice between engaging a government or private surveyor. Anecdotal evidence from GRs in Narok South district indicates an emerging trend of preference for private surveyors over government surveyors. This is despite the fact that each district has a dedicated government surveyor. Maji moto was no exception to this trend. The reasons for this are varied. Concerned at the constraints presented under the state bureaucracy, GR members often opt to borrow from the private sector which is thought to be both more efficient and less corrupt since it is ideally driven by market forces. Maji moto GR is being subdivided by a private surveyor – Geodata Land surveyors and Consultants. The services in principle provided by surveyors include: implementing the GR vision by providing technical advice on access routes, setting aside common utilities and ensuring equity in land subdivision to forestall conflict. The longer the process, the higher the business prospects for the private player and the higher the costs for members. The question of equity, which underpins all land related struggles within the GR, arises from the desire to ensure each member is allocated an equal share, that takes into account the constraints of ecological differentiation in land based resources including access to water, schools, health facilities and shopping centres.

The surveyor currently engaged by the GR has seen three different GR committees come and go. Each of the committees claims to have paid some sum of the survey fee to the same surveyor. One case stands out in which the fourth committee claims to have paid a whopping Kshs. 9 million to the surveyors but with very little to show on the ground. In a situation in which the legality, fairness and authenticity of the work undertaken by the paid surveyor is questioned by the majority of GR members, the likelihood of losing the sum already paid is not farfetched. This is especially so when the scarce water points – *Nkimba, Entiangasirr, Oloolera, Olobobo lo loirien, Olchorro le Meikwaya, Olchorro Onyokie, Parburush and Oloolua* - are not clearly set apart for communal use.⁶⁸ The story is not any different for commercial plots in the GR. The plots delineated for members at Ng'osuani, for which members paid the requisite fee

⁶⁸ These are mostly wells containing water for (at least domestic consumption) most of the year, except Entiang'asirr which is a permanent river.

and received receipts, remains highly contentious. At the time of collecting data for this research, blames and counter blames between the surveyor and committee officials were rife. The applicants demanded allocation of the parcels they had paid for, the GR officials claiming to have paid the surveyor all their dues and the surveyor for his part denying receiving full payment.

The commercial plots, farming, mining and conservation activities do not only introduce competing land use practices to pastoralism, but the anticipated monetary returns accrued from these additional revenue streams contributed to heightened individual competition for benefit streams with the consequence being an erosion of collective resource distribution ideals and mechanisms, instead entrenching individual property rights and personal aggrandisement.

Money and leadership: The Domain of Ideological Contestation

Although the interviewed members of the GR had varied views on and interpretations of the roles and duties of the GR committee(s), there was general consensus that the main duties of the GR committee(s) were to delineate external GR boundaries, subdivide land and eventually distribute the parcels to individual members. Often respondents gave the impression that, once elected, group officials have unfettered power to make decisions relating to group resources with little or no consultation at all with the rest of the GR members. The GR decisions relate to determination of group membership, mediation between the GR and other external institutions (other GRs, state or market oriented) to secure group members' interests, and to manage and distribute group resources. Singularly, the committee chairman is perceived to have sweeping powers, often presumed to override those of ordinary group members and fellow committee members.

This relatively high 'trust' in, regard for, or perhaps 'fear' of the local leadership are observed between the general public and other leadership structures within the project site. For example, most respondents argued that both the Chief (provincial administration) and local councilor (civic representative) had a key role to play in the management of GR affairs, which legally they do not have. This situation often creates tensions in decision-making processes around group resource allocation. Contests over political supremacy are often played out with each local leader jostling for power and influence, drawing from the diverse and fluid identities within the GR. The result of this has often been a compromise coalition between the various

leadership offices (group ranch, provincial administration, local authorities and member(s) of parliament), making members' demands for accountability over GR matters complicated, if not impossible. The high regard for GR officials by members has not often translated into excellent delivery of services as would be expected.

The disconnect between the leaders' theoretical responsibilities, the general public expectations of leaders and actual delivery of services, including means of addressing emerging tensions, cannot be delinked from the whole process of how leaders come into office, how decisions are made once in office, effectively available and accessible avenues for information dissemination and peoples' participation. The generally high regard for elected leaders and leadership by GR members has its roots in the indigenous Maasai relationship between leaders and the general public, especially within the age-set based leadership system. It is argued that the fundamental differences inherent in the traditional age-set based leadership system and bureaucratic institutions of the state provides the ideological point of departure giving rise to tensions and subsequent practices thought to be corrupt. A brief overview of the age-set system would help elaborate this point.

Leadership selection processes: Community nomination and self-identification

The age-set system is one of the most central structures of social and political organization among the Maasai. In short, age-sets organize men into cohorts of age-mates who pass through various stages of their lives together through ritual promotion. A new age group is opened approximately every seven years with the circumcision of young boys, ritually transforming them into *ilmurran* (loosely translated as warriors). On a fourteen year cycle, successive pairs of age groups (identified as the left and right hand) merge together to form a single age-set and graduate together to become junior elders. From junior elders they will graduate to senior elders and eventually to wise retired elders. Age-set leaders had power and authority to lead not only their age-set and age mates but also the community at large. They inculcated discipline among their age-set cohorts and dealt with issues around distribution of livestock, external threats and livestock theft. Unless in rare instance where gross abuse of office is reported and in-built institutional corrective mechanism have failed, age set leaders were leaders for life, and often believed to possess certain supernatural powers.

The process of appointing an age-set leader across Maasai land is solemn and sombre. It is complex, highly secretive and full of symbolism, all with the aim of possibly pre-empting concerns over abuse of office in the future life of the would-be leader. To begin with, the timing of initiating this rigorous process of identifying potential candidates is a guarded secret known only amongst select elders of the *Olpiron* (Fire-stick elders) age group and the candidate's age mates. "*Mmeitoningi olmarei, olgilat anaa ilchoreta*"⁶⁹, the plan is always hidden from the potential candidate's family, clan and friends. "*Mme kepuo aaingoru erikore; olosho otonie enkop aaing'oru. Nemeinyangu, keibungi anaa olapurroni, neishiri*"⁷⁰, they do not seek for leadership position; it is the community - elders and age mates - that secretly searches for the right candidate; candidates do not buy their way into leadership. In fact once a decision on a preferred candidate is reached, an *empikas* (delegation) is organized and send out to secretly track the candidate of choice, 'like a thief'. Kamakei ole Sinti, giving his personal experience reckons: "*Too nkeenta apa aaibungaki*" (I was held by force using leather straps). But why would one be held with force using straps, if leadership opportunities conferred positions of honour, power and influence? I asked the elder.

"Had I or any of my relatives known in advance; I would have run away into hiding, until an alternative candidate is found. This (leadership) is a heavy burden which I wouldn't have attempted carrying. In fact, if they (delegation) didn't hold me firmly I could have actually beaten someone"! (Pers. Comm. Ole Sinti, 2009).

Perhaps in resonance with this perception of leadership as 'a heavy burden', the family from which the new leader hails from instead of celebrating the new leader mourns. "*Etiu apa tenegeluni iyiook anaa enkan natua oltung'ani; bata kitipikaki tenikigeluni*" (the news of the nomination to this office was equated with the news of death, because nomination exposes the candidate to enormous danger) (ibid).

Once a candidate is successfully identified and nominated, several rituals are performed by elders and *Oloiboni* (the chief seer or diviner, a ritual leader) to solemnize the process. The mostly symbolic undertakings include giving certain objects to the new leader: *Orinka orok*, a black club; two heifers; *entakeita* (Curved Buffalo's horn); *enkila pus* (a black robe); *enaisho oo lotorok* (honey); *imporro* (ceremonial beaded-necklace); and *Olkiteng sidai* (a beautiful oxen).

⁶⁹ Kamakei Ole Sinti is an age set leader of Iseuri Age group

⁷⁰ Ibid

The *Orinka orok* (black club) is a sceptre of leadership. This black club is accompanied by one heifer given to the new leader and another heifer to appease the family. The Buffalo's horn is symbolic of power, courage and bravery. The honey symbolises peace and relationship building, and the ceremonial necklace symbolises life and continuity. "*Ore hoo duo nemetii olmushaara; ekegelakini enkiteng olosho tenegeli olosho*" (though there was/is no salary for the job, occasionally livestock is donated to the leader (pers. comm. Ole Sinit, 2010))

The age set leaders are chosen at boyhood, just prior to initiation.⁷¹ There are benefits and risks inherent in this practice of choosing leaders at a tender age. Firstly, other than inherited traits of leadership (if any) and the gains from apprenticeship and discipline of parental upbringing, it would be difficult to appreciably assess the leadership qualities of a youngster by the age of 15. The converse argument of these thoughts is that it would be easier to inculcate new values and rigour on leadership philosophy before negative influences are learned, internalized and translated into behaviour and individual beliefs are acquired.

The process of bringing contemporary GR leaders into office is significantly different from the traditional one discussed here. In the case of GR, leaders are put into office according to democratic principles through which interested members offer themselves for election, usually preceded by aggressive campaigns aimed at promoting their development agendas. It follows that those able to mount the most elaborate and successful campaign (especially in the context of high poverty levels) often are more likely to be elected. The contemporary commercialized approach to leadership was aptly captured in a recent Standard Newspaper editorial entitled: *Handouts culture in election time is an assault on democracy*.⁷² The writer posited that "... the amount of 'gift' that an aspirant paid to voters was directly related to his or her electability". The basis therefore upon which decisions/choices are made regarding political leaders (including GR) by voters increasingly emphasizes individual leadership qualities less and financial ability (and corresponding 'generosity') of candidates more. Because of the noted differences in leadership selection processes, subsequent leadership outcomes emerging from the two systems are equally dissimilar. In addition to the more community centred leadership selection process, and the rich symbolism that connects leaders with the community and the supernatural, the age-set system is

⁷¹ Usually during the ceremony of *enkipaata or emowuo olkiteng*, the initial age set inauguration ceremony.

⁷² The Standard, Newspaper November 21, 2010.

also checked and supported by a complex network of indigenous institutions and traditional beliefs in the form of social sanctions and associated taboos.

Holding leaders accountable: Disconnects between Social Sanctions and Judicial Systems

In pointing out what they considered to be an increase in the incidence of actions considered corrupt in the process of land subdivision, respondents repeatedly lamented a perceived disregard of social sanctions and taboos that initially regulated behavior of social actors in Maasai society. The social sanctions, enforced for example through curses, restrained people from acts of immorality and injustice. Since the nature of the curse is rarely defined, this opens up many possibilities for interpreting events and incidences seen to be negative occurring in individuals' lives as such. This makes the use of curses as a mechanism for regulating behavior among social actors highly potent.

The undefined nature of a curse, it is argued, served as a deterrent to deviant behavior. In the words of one GR member: "the curse will catch either the actual perpetrator of acts considered deviant, his/her child may die, he may run crazy or the wife may stop conceiving, wild animals may attack the cattle of the victim (often several times) and many other problems may arise amongst their children". Curses also carry with them very great social stigma, often diminishing a social actor's standing in society. It is believed by members of the society that when a purported victim comes to his senses (linking his misfortunes with a possible curse), he would then consult an *Oloiboni*. The *Oloiboni* may interpret or reveal possible evil acts underlying the curse, and thereafter prescribe remedies that would often entail payment of a fine to appease the village elders or the person wronged, in exchange for a blessing or cleansing from the alleged evil-doer. The cleansing act restores the person's standing in society, and contributes to a diminished social stigma associated with the previous deviant behavior.

One member recalls how one very prominent leader during the colonial times at the project site was fond of exploiting local clients by overpricing goods and manipulating weighing scales in his local kiosk selling maize flour, beads and red ochre. On account of this perceived corrupt practice, a curse was pronounced over his shop. It is claimed that worms infested sacks of stock (maize flour), and several decades later no one who attempts doing business in the said shop ever succeeds. A blessing has yet to be done. Respondents emphasized their conviction that members of the community in the contemporary setting displayed a diminished regard for such

social sanctions. Shame associated with abuse of public interest has fizzled out. “Previous leaders felt a big shame whenever they were caught misusing communal resources but today a leader feels nothing; this is an indication that things are not going well”, lamented one elderly man (pers. Comm. Ole Tompoi, Nov. 2009). The absence of the social shame entrenches corruption. Social sanctions were therefore central to the effective functioning of the Maasai traditional age-set based leadership system.

At the time of the age-set leaders’ appointment and ordination, the black scepter given to them is blessed and cursed (at the same time) by the elders and the *oloiboni*. The curses and blessings were believed to go either way. When a leader, for example, is unfairly treated or disrespected by the members of the community, the leader had the power to ‘*point a finger*’ at the person and the person pointed at (it is generally believed) would die within an estimated time period. At the same time, when the same leader abuses his office or authority, the same curse returns to the leader. Hence the proverb ‘*E kepi nkaloli pokira Oljipet*’ (Sharp are both ends of a skewer); interpreted to mean neither the leader nor the led had absolute power or authority to either abuse or disregard the other. Thus mutual respect and consultative decision making is encouraged and protected under this indigenous leadership system.

Beyond the social sanctions inherent in the age-set leadership system enforced through curses, the system is further strengthened by synergies created with other social institutions in the society. In the words of one age-set leader of the Iseuri age group: *Keeta apa ake Olaiguanani emurt enye, naa ilaiguanak oo lang ninye; o tii Ilmoruak, o Imurran, O loiboni* (the age set leader usually had his ‘neck’, men who could often be wiser and strategic than the Age set spokesperson himself, who included Elders, Warriors and Oloboini). The ‘neck’, as it were, supported the head, in that the age-set Spokesman had to consult with the ‘neck’ whenever he was confronted with matters of great significance in society, before ultimately communicating his decision/position to the public. The ‘neck’ was often comprised of refined personalities, in integrity, wisdom and courage, with the ability to counsel the Spokesman to rescind decisions considered to be contrary to the greater common good. Additionally, in extreme circumstances when a leader proved reluctant to provide guidance and disregards the checks and balances at his disposal, the last option is for a select team of personalities to snatch the black sceptre from him. This act is literally equivalent to a vote of no confidence and a disgraceful removal from office, and as such rarely happens. It is evident from the foregoing that the public’s participation in

leadership is contemplated, provided and protected under the Maasai indigenous leadership system.

The GR leadership system significantly departs from this indigenous leadership practice and belief system. GR officials ideally elected into office through universal suffrage not only bypasses the rigorous traditional system of prior consultation and community nomination, but also avoids the rich symbolic emblems of leadership that provide the initial grounds for social sanctions and subsequent curses meant to regulate social actors' behaviors. Further, while the GRs legal and administrative structure doesn't preclude consultation or integration with existing informal indigenous leadership structures in the community, in practice, data collected in the course of this study indicates persistent disregard of such institutions. In the contemporary GR setting, only the country's judicial system and the Ministry of Lands' administrative structures provide alternative avenues for redress beyond GR officials and annual general meetings.

The frustration of GR members at the hands of the state bureaucracy in their endeavor to seek redress over land subdivision and resource distribution concerns is epitomized by the scenario described in the initial pages of this study. In the cited case, a vote of no confidence in the entire local leadership, though strongly agreed to by more than two-thirds members' majority (surpassing the GRs constitutional and legal threshold), would not see the light of day simply for the fact that it was not backed-up by the relevant state agencies and legal system. In essence, although responsibility to deliver services at the local level rests with elected local leaders, legitimacy to govern emanates from both the electorate and the state bureaucracy. But, in the context of an electorate less familiar with functioning of the state and less capable of engaging with it, the state bureaucracy retains an upper hand.

As indicated elsewhere in this study, decisions under the traditional leadership system were made collectively and arrived at through consensus. The proverb: *Tipika Olkiu embata enkoitoi pee enya ilooruko* (set your meeting by the highway to benefit from the wisdom of passers-by) alludes to this principle of inclusivity and non-discrimination in members' participation in governance. In the words of Kadipo ole Kirokorr, "those days things were done in truth and in light not like today where things are being done secretly". It is argued that this scenario points at ways by which indigenous leadership practices not only address the challenges of physical distance and cost that prohibit most members' active engagement with GR leadership structures and leaders' ability to deliver, but, more importantly, the ideological distance related

to the functioning of indigenous leadership systems in contrast with the GR system. Members are now in doubt whether social sanctions should still be applicable to individuals who are not products of the same system.

The Concept of Corruption in the Maasai traditional value system

Defining the word corruption in the context of the indigenous Maasai worldview proved to be a herculean task. ‘Corruption’ in the contemporary world is a loaded and conflicted word. It was for example difficult to separate a corrupt act from an act of reciprocity. The distribution of resources (mostly cattle and rarely land) among the Maasai is enacted within age-set and clan relations. In order to shed some light on these practices of resource distribution and hopefully generate some reflections on corruption associated with land, I will present here a few examples within the age set system.

In the words of one elder, *‘Ilmugeti loo lewa erinyi* (It is the good deeds of men that we repay). Among this pastoral community, reciprocity is the order of life. An elder, for example, could request a group of warriors to herd his livestock for a day or two or take the livestock to water, and in appreciation the elder may give one steer to the warriors for a meat-feast. Neither of the two parties in this case is necessarily obliged to undertake the acts they did. In more general terms, appreciation for acts of kindness and respect may take the form of *enkiteng nasipa anaa enaju* (a ‘furless or furry Cow’ – implying a girl for marriage). Oftentimes, the duration, or even whether the act would be reciprocated by whatever means may actually not be communicated to the would-be beneficiary. Reciprocation for an act of kindness may be immediate, within one’s life-time or after several generations.

Enkashe o-entito olomishira kupes (a heifer and a girl for marriage to an Age set Spokesman) – As indicated earlier in this study, these are mandatory gifts to the age-set leader. The age set spokesperson is customarily expected to lead his cohort throughout the rites of passage, including marriage, hence the girl given as a wife (Ole Marima, Pers. Comm. Oct. 2009). The livestock gifts to the Age-set leaders do not follow a fixed timetable but may often correspond with age-set graduation rites and community ceremonial moments.⁷³

⁷³ In Purko section of Maasai these ceremonies include: *Emanyata oo ngusidin* (graduation to junior elders & receive blessings from Fire-stick elders for livelihoods activities); *Eunoto/Enkang oo lorikan* (combining of the left and right hand age-sets into one age-group; and graduation to senior elders) all enacted within the age set system.

Nkishu empiris (cattle for acts of kindness) – These are cattle given to reciprocate outstanding service to the community. Examples cited include: a woman giving birth as a visitor to a given *enkang/olmarei* or a patient seriously taken ill is expected to be attended to. Oftentimes in cases like these one's failure to provide necessary care (when one has capacity to) may lead a society to enforce sanctions through '*eoshoto oo nkishu*' (a fine of livestock) in the course of one's lifetime. The livestock collected as a fine is paid to the age group, including the age set spokesman.

Nkishu oolpayiani loo ntaasa (cattle offered with respect to specialized services rendered especially in traditional ceremonial functions). The nature of a service to be compensated for and the number and nature of livestock to be given are known long before the service is rendered. It does not operate under the principles of a market-based economy. For example, the mode of compensation is independent of the supply of elders or urgency in demand for the service in question. This arrangement therefore helps minimize instances of abuse of the compensation demanded by the service provider(s) or a denial of the compensation once a service is rendered.

Iropeta: These are cattle for pardon, given for propitiation for ills committed, especially towards the elders of the society. In efforts to mitigate possible abuse of this provision, the decision on what and how much of a fine to pay is not the prerogative of the person against whom the purported wrong is committed; rather a council of elders determine this. According to ole Marima: "*Mmerop oltungani kitok oloti*" (an elder could not plead for pardon from his junior). In instances in which an elder is proven to have mistreated a junior member of society, the community has different ways of punishing or correcting the elder but within the circle of elders, never in presence of his juniors. This is in order to promote respect and establish authority.

Nkishu oloiboni (Cattle for the seer//diviner/ritual leader/medicineman): The traditional seer/Witchdoctor is often consulted over various issues. The warriors for example consult the Oloboini before they went for any cattle raids. The cattle given, as it were, serve as a 'consultation fee' on account of his counsel on possible dangers ahead and for the protective charms provided to the raiders.

Also during *Ilamala* (*Olamal*, singular and *Ilamala*, plural), ceremonial delegations set up to collect livestock for specified community causes. (Pers. Comm. Ole Wotuni, 2011).

Nkishu naa-dekenu (Cattle demanded under threat of a curse): The age-set leaders or elders may abuse their power by demanding an unspecified number of cattle from their age-set or kinsmen for various reasons. They may gain no respect for the act; in fact their social standing in society would be negatively affected. This is one category of ‘cattle gifts’ or compensation in which the concept of corruption as we know it today resonates.

Enyamu: (Theft of livestock) – It is not uncommon within the Maasai society for warriors and teenage boys to occasionally steal small stock from their Maasai neighbors. The penalties for this are usually punitive and prohibitive. The rates of repayment corresponding to size, condition and type of livestock stolen are clearly defined and known by adult members of the community (especially men). Whenever suspected ‘thieves’ refuse to cooperate, the elders invoke curses often timed to correspond with the rites of passage of the juniors.

Nkishu Enjore olorora – Cattle from raids to boost the warriors’ family and the general community’s livestock. Except on very rare occasions the main target of cattle raids is other livestock keeping communities in East Africa, and the overall goal is to replenish/restock livestock, usually after devastation by droughts and famines. There was always a certain pride and status associated with a warrior’s successful raid, and, of course, in subsequent livestock accumulation. Although in practice actual cattle raids have dramatically reduced in contemporary Maasai society since the imposition of the state, and specifically within the research site, the psychological orientation of adult males towards accumulation of cattle wealth may not necessarily be ruled out. A number of respondents went to the extent of suggesting a possible correlation between contemporary acts of corruption involving accumulation of livestock through misappropriation of public resources (including land) to these deeply entrenched notions supportive of cattle raids.

The rampant cases of alleged misappropriation of public resources across all levels of leadership within the GR/location and the consistent re-election of some leaders despite corruption allegations leveled against them may corroborate this argument. Several examples of ways of accumulating wealth may reinforce the argument: indirectly, community resources accrued through taxes collected through state machinery, money as a form of communal wealth from the leaseholds and members’ contribution and accumulation of livestock as stores of wealth from monies acquired through means considered illegal. To a greater extent GR wealth (besides land) comes in the form of money; for local communities, it has proven difficult to connect with

and to monitor the use of monies as a common resource. In the reverse case, cattle wealth accumulated by perceived beneficiaries of corrupt practices fall within the domain of a local exchange economy (based on livestock) subject to the practice of reciprocity. Thus, in this context, the concept of reciprocity is utilized to justify acts that could elsewhere be described as corrupt. The statement “*Ore doi Nkishu natii enda ang, naa nkunaang, amu nalo eeitu enkiteng Esotua*” (the cows in that home belong to all of us, because a cow to a friend goes to come back)⁷⁴ made by one of the respondents is informed by this thinking. The exchange of livestock within the confines of reciprocity was aptly captured by Galaty when he stated that ‘the exchange of livestock is basic to the process of capital accumulation, but the social relations so established act as a continuous check on and leveler of inequalities in livestock holdings ... the variable ratio of cattle to people is maintained within certain limits (1981, p.71). While all local leadership structures may not be immune to these dynamics, the situation of GR officials is much more vulnerable.

The local civic leader, the Chiefs (under the provincial administration) and the defunct 19% fund directors were each entitled to some form of financial compensation, be it a monthly wage or in the form of commissions for services rendered to the community. On their part, the GR officials (at least in the context of the research site) do not receive any official compensation or remuneration for their time and skills. And, while the initiators of the GRs concept of collective management of land and associated resources envisioned the running of the ranches as profitable companies with paid management staff, this goal was rarely realized. Although the committee’s operation and administrative costs are expected to be catered for through GR budgeted expenses, the leadership is in reality ‘voluntary’ in nature. Additionally, since they are not products of the indigenous age-set based leadership system, they do not benefit from the livestock ‘gifts’ from age-mates or from the general public.

An expanded spectrum of development ‘goods’ and services (school fees, modern housing, need for convenient means of transport, etcetera) considered essential for progressive persons (especially those in leadership positions) exerts pressure on individuals to seek means and ways to live up to these new societal expectations. The prevailing confusion about or overlapping roles of the (10) GR incorporated officials and the (15) member demarcation committee complicates the equation. The bloated combined 25 member GR leadership structure

⁷⁴ Contributor, focused group discussions (Nov. 2009).

makes any attempts at monetary compensation for the leadership (in the context of meager GR resources) unattractive and perhaps untenable. This therefore not only discriminates against but also disadvantages the critical body of leadership in charge of the most central resource - land - in the context of pastoralism. Hence the import of the argument presented by leaders, cited earlier in this study, that ‘shepherds must drink of the milk from the flock they shepherded’.

CHAPTER 5

POLICY AND LEGAL ENVIRONMENT: STATE BUREAUCRACY

New Policies and Constitutional Dispensation

Under the old constitution the management of land issues was highly centralized and bureaucratic, resulting in complex legalistic procedures characterised by minimal citizen participation often giving rise to unaccountable, non-transparent and inequitable outcomes. The goal of the on-going policy and legal reforms in the land sector therefore has been geared towards promotion of efficient, equitable and cost-effective services based on a sound institutional framework cushioned from interference from the executive, strengthened through enhanced and expanded citizen participation.

Kenya has been implementing legal and constitutional reforms for the last few years and, in 2010, most of the anticipated reforms came to fruition. The country's political governance structures, principles of governance and resource distribution, plus overall citizen participation in governance processes, including respect for human rights, have changed dramatically. The promulgation of the new constitution on August 4th 2010 encapsulates the momentous gains in the legal and policy arena, especially with regard to pastoralists and/or marginalized communities. The new constitution cements the gains already entrenched in the National Land Policy of 2009 with regard to indigenous and customary rights to land under collective/communal ownership.

The National Land Policy recognizes how individuation and privatization of title under former land regimes (Registered Lands Act) affected customary tenure by undermining traditional resource management institutions and ignoring customary land rights not deemed to amount to ownership, such as family interest and communal rights to clan land (such as rights to *inkutot* land among the Maasai). In addition, the National Land Policy recognizes pastoralism as a legitimate land-use production system and emphasizes the need to secure the land rights of vulnerable groups, including pastoralists and hunter-gatherers. The Policy asserts that successive governments in Kenya have been 'poor stewards' of government/public and trust land, resulting in the illegal allocation to private individuals of essential public and communal lands and destruction of critical natural resources such as forests and water catchments areas, often perpetuating historical

injustices. The Policy establishes a mechanism by which claims relating to land and historical injustices can be defined and, hopefully, addressed.⁷⁵

While the adoption of the new land policy marks a significant step forward, it still needs to be translated into effective functioning and protection on the ground for Kenya's most marginalized groups, especially pastoralist communities. Most of the positive provisions contained in the land policy have found their way into the country's new constitution. Kenya's new constitution⁷⁶ is a clean break with the past and provides several avenues for the pursuit and strengthening of Indigenous peoples' personal and collective rights. To begin with, the new constitution (for the first time) defines marginalization in language very close to that of the UNDRIP.⁷⁷ It defines a 'marginalized community' as one that:

*...out of need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social economic life of Kenya as a whole, or an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or pastoral persons and communities whether they are nomadic or a settled community that because of its relative geographic isolation has experienced only marginal participation in the integrated social and economic life of Kenya as a whole. (emphasis in italics added).*⁷⁸

Further, the Constitution obliges the state to provide for adequate representation of 'marginalized groups' at all levels of government, execute affirmative action on behalf of those groups, and promote the use of indigenous languages and the free expression of traditional cultures. From the above, the new Constitution not only gives credence to indigeneity on the basis of hunter-gatherer and pastoral lifestyles but also links these aspects to marginalization, in line with the 2003 report of the African Commission on Human and Peoples' Rights.⁷⁹ The new Constitution also recognizes the concept of self-determination, as enshrined in the UNDRIP, by recognizing the need or desire of these communities to preserve their unique cultures and identities. The following articles from the new Constitution are of key importance to indigenous peoples and

⁷⁵ GoK Sessional Paper No. 3 of 2009 on National Land Policy: art.. 3.3.1.2; 3.6.2 and 3.6.3

⁷⁶ The Constitution of Kenya, Laws of Kenya 2010

⁷⁷ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

⁷⁸ Constitution of Kenya, 2010, Article 260.

⁷⁹ *Report of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights*. Copenhagen: IWGIA, 2003

would have a bearing on land and natural resources management:

The Constitution obligates the state to recognize the role of indigenous technologies in the development of the nation. Not only shall the state promote the intellectual property rights of the people of Kenya, but parliament is also required to enact legislation which will ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage and which will recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by communities.

Representation of Marginalized Groups: Article 100 is intended to complete the provisions of Article 56 by allowing Parliament to pass an act which will provide clear recognition and promote and protect the interests of minority/marginalized groups. This act will create specific domains in which minorities will be given affirmative action and will specify how minority/marginalised groups' representatives shall be elected/nominated.

Citizenship: the new Constitution recognizes dual citizenship and this will benefit indigenous communities, such as the Maasai, who live across borders and possibly reduce conflicts arising through livestock mobility across inter-state boundaries.

Bill of Rights: Chapter Four (Articles 19-59) provides for a plethora of rights and freedoms. Article 56 specifically provides for affirmative action for minorities and marginalized groups through programmes designed to ensure that they participate and are represented in governance and other spheres of life, and are provided with special educational and economic opportunities, access to employment, programmes to develop their cultural values, languages and practices, and reasonable access to water, health services and infrastructure.

Land and resources: Chapter Five of the new Constitution classifies land ownership into three categories - public, communal and private. As provided by Article 63, community land shall be vested in and be held by communities identified on the basis of ethnicity, culture or a similar community of interest. Community lands include those lands lawfully held in the name of group representatives (group ranches), lands lawfully transferred to a specific community and any other land declared to be community land by an Act of Parliament. It will also include lands lawfully held, managed or used by specific communities as community forests, grazing areas or shrines and ancestral lands and lands traditionally occupied by hunter-gatherer communities. The Constitution (Art. 67e) under the National Land Commission provides for avenues to address historical injustices.

The National Land Commission (NLC) is an autonomous and independent constitutional office cushioned against ‘presidential orders/decrees and Minister of Lands’ directives’ only accountable to Parliament. The NLC is charged with the responsibility of providing overall leadership in development and implementation of national land use policy including a coordination and capacity building role for the District and Community Lands Board under the new devolved structures.

On environment and natural resources the Constitution obliges the state to ensure the sustainable exploitation, utilization, management and conservation of the environment and natural resources and to ensure equitable sharing of natural resources. The state shall also encourage public participation in the management, protection and conservation of the environment.

Governance: The system of governance will be devolved, with the country divided into 47 Counties under governors elected by the people. Pastoralist will make up a significant portion of the population in certain Counties, and this will enable them to make decisions and establish policy interventions that will shape their destiny. In the Counties where indigenous peoples will be minorities, special provisions have been made to accommodate their interests. Further, the Kenyan Constitution (GoK, 2010) provides for equity in resource ownership across gender nationally and within households, giving women a right to inheritance that was hitherto denied under customary resource tenure. The greatest achievement for women under the new Constitution is the right to political representation. Each County assembly will elect a female member of parliament (MP), essentially guaranteeing a minimum of 47 female MPs in the National Assembly. Additionally, the constitution demands that representation of either gender in all public offices shall not be more than two-thirds, including -I presume- composition of the GR land management committee.

The policy and legal gains enshrined in the new Constitution is a testimony to indigenous peoples’ and or local communities’ determined and unrelenting efforts and their growing influence to champion their own course often enacted through civil society organizations. It also reflects a gradually changing perspective on the part of the policy makers with respect to human rights in general and in particular a recognition and appreciation of glaring geographical, gender, intergenerational and ethnic inequalities in the provision of basic services by the state.

Policy Action and Disconnects

From the community perspective, in instances where management of natural resources are contested between GR members and officials, the State bureaucracy is often seen to privilege (if not protect) the status quo – read, those in positions of leadership. Those in support of this view cite the committee's privileged-knowledge of the system and possible inducement of the state officials through cash 'tokens' (popularly known as 'Chai' or 'Tea') or allocation of parcels of GR land as some of the reasons this is so. One respondent put it blatantly that "the government is corrupt. We have carried-out a number of peaceful demonstrations and submitted numerous petitions to compel government to take action against GR officials whom we believed were manipulating the land subdivision processes to the advantage of few, with no avail".

GR members' level of awareness of both existing policies and functioning of state bureaucracy is generally low. A significant portion of respondents reported that they occasionally saw 'government coming into the GR whenever one of the many committees was being disbanded'. Government intervention in addressing community concerns was often reactionary in nature and only accessible to elites – political leaders, the educated and the wealthy. Expressing his disappointment regarding their experiences with government, one elder commented 'Ees oshi taata iltunganak intabo nemeeta enaas sirkali' (people nowadays do abominable acts and government does nothing). While the forms of representative democracy (informed by Western democracy models) taking shape in the GR context are intended to solve the problem of democratic input into governance in large, complex systems - making it possible to achieve collective action that is otherwise impossible with large populations - a combination of the ideals of capitalism/market based economy and a citizenry ill-informed of their rights and functioning of the state bureaucracy may facilitate the privileging of individual agency over communal interests and collective action.. The legal and judicial system that is supposed to enforce law and order, regularize behaviour is alien, inaccessible and riddled with corruption. Ordinary members of the community therefore feel helpless under such circumstances.

The adoption of the new Constitution in Kenya provides a turning point in the country's chequered history of struggle for legal, constitutional and institutional reforms for posterity. While the current policy and legal environment with respect to land and natural resources management is progressive in terms of recognition of previous policy shortcomings (such as marginalization of pastoralists and pastoralism), the value of indigenous knowledge systems and

practices, expanded and strengthened human rights space and affirmative actions in political representation and resource distribution, the bigger and real challenge remains how to translate the good text and spirit of the new Constitution into concrete livelihoods gains for Kenyans, guaranteeing sustainable development.

CHAPTER 6

THE PRIVATIZATION DILEMMA: DIFFICULT PRESENT, UNCERTAIN FUTURE

Pastoralism remains the main source of livelihoods within the GR, albeit with increasing pressure to diversify. As noted before in this study, ‘mobility interviews’ was one of the key activities carried out in the GR under the Pastoral Property and Poverty project implemented by a McGill led research team. The mobility interviews targeted Seven Case study families purposefully selected to reflect and capture unique characteristics of livelihoods activities observable within the GR. In the context of the 2008-09 drought, a total of 13 interviews on this topic were conducted with the aim of understanding how mobility (a key strategy in utilizing the rangelands) has changed over time, and whether land use strategies have been influenced by changes in land tenure. Results from the interviews indicate that for local pastoral community livestock mobility remains a key strategy for utilizing rangeland resources. In the words of one respondent: “Now it’s harder, climatic trends are becoming increasingly unpredictable with more frequent and elongated droughts periods. We have never migrated that far. Land subdivision has even complicated and worsened our situation” (pers. Comm. Group ranch member, Nov. 2009).

The pressure to dissolve the local Maasai pastoral commons is mounting by the day, and the question as to what viable options are accessible to the community remains a mystery. The pressure from agricultural encroachment, a general increase in human population, fluctuating livestock and wildlife populations, intensified negative impacts of climate change (droughts and floods), shrinking availability of domestic pastoral labor, impacts of the western form of education, and other competing land use options such as exclusive tourism activities, all contribute to this pastoralist predicament. The problem is compounded by the current land fragmentation and privatization processes which is riddled with activities interpreted to be corrupt. Maji moto GR’s responses on the question of attitude towards subdivision, reflects this dilemma with an interesting response rate of 59% for both male and females preferring subdivision over continuation of the pastoral commons, a rate slightly below the reported average of 68% and 58% respectively for male and females for the nine GRs surveyed.⁸⁰

⁸⁰ Household survey Pastoral Property and Poverty research - 2008.

On the question of attitudes towards subdivision, both endogenous and exogenous factors are cited as reasons providing the push towards, pull away or delay of land subdivision and privatization. Specifically for Maji moto GR, members not only feel the process has taken too long, and under heightened tension, but it has equally been an expensive process. From the payment of membership registration fees, fees for allocation of irrigation plots, and most recently parcels for commercial use, to over ten years of lost opportunities for investment in terms of leasehold funds accrued from the private developer that have been directed towards the subdivision rather than other targets of development, all with little to show. On account of desperation arising from this perceived endless, financially and emotionally draining process, a section of the membership are calling for an end to this struggle through finalization of the land subdivision and privatization process. Perhaps fatigued by the incessant wrangles over the land subdivision processes, there are those who think a subdivided and privatized GR would be more peaceful and settled, than the evidently difficult present collective holding.

Lost and shrinking opportunities for pastoralism

The current settlement pattern within the GR is another big concern negatively influencing utilization of the rangelands in a typical pastoral mode of production. Previously large homesteads such as the researcher's village located at Inchaishi have been scattered into individual *ilmareita*, families dotted all over the previously expansive rangelands. The said village initially was composed of five *ilmareita* families and thirty *inkajjik*, houses.⁸¹ Ole Nakula, one of the few educated members of the GR and pastoralist had this to say about livestock grazing dynamics in the context of dispersed *Inkang'itie*, settlements:

"It has changed, before people discussed where to live within the *elatia*, neighborhood so as to leave places empty to recover. Unlike now: people settle anywhere because they want to have it allocated to them when the land is subdivided. Before, people respected elders if they said not to graze somewhere. Now people just go (pers. comm. Ole Nakula, Nov. 2009)

Beyond the now common trend of scattering homesteads across formerly grazing areas, establishment of individual homesteads is increasingly associated with enlarged fencing beyond

⁸¹ Ibid. – *ilmareita*, large families sharing common and immediate kinship relation (Kiok, Naisho, Ololdapash, Ololkijape, Riamit and Kisaika); male adults from each of the *Ilmareita* would end up with several wives each with her own *enkaji*, hence the large number of houses.

the homestead enclosure. “Nowadays there are many members who have already fenced some areas and yet members have not been shown their parcels”, lamented one elderly respondent. Survey results in the site indicate a total of 145 parcels (25%) of households surveyed having erected one form of fencing or another.⁸² Often the portions fenced-out constitute areas considered to be the best grazing sites. Members therefore construct permanent structures near water sources, roads and schools, health facilities to stake their claims to these prime sites. This new trend often more noticeable among relatively wealthy GR members has not only excluded portions of land from use as public utilities such as common grazing and salt-lick sites, but has equally restricted mobility within the rangelands and disrupted collective pasture management all together. Wealthy individuals, who remain part of the larger GR, still enjoy unlimited access to other unsettled and unfenced sections of the GR.

Pressure to subdivide land also arises from the lost livelihoods opportunities (in the context of pastoralism) as a consequence of subdivision of other adjacent group ranches. The subdivision of *Oldoinyo orasha*⁸³ is one such case. One of the main salt licks previously shared by pastoral communities resident in both group ranches has since been privatized, despite earlier attempts to set it apart as shared communal resource. With restrictions enforced by the new individual owner(s), members of Maji moto community members are left with no choice but to go for the commercial mineral supplements (salts). This increases the cost of pastoral production. While restriction is enforced by private landholders within neighboring GRs, against livestock trespass (especially during the wet season), since it is still held as an undivided common holding, Maji moto GR remains largely accessible to livestock owners from as far away as Narok north district. Some have attributed this trend to the fact that Maji moto is still largely managed as a commons within a weakened customary governance system.

This latest development has added impetus for land subdivision at the project site. Many agropastoral communities in the agriculturally rich areas of Narok north district are increasingly under pressure to open-up and free more land for farming activities. In yet another case of monetization of the pastoral economy through farming, Narok north is recognized as a significant wheat belt in the country. As a result the region has subsequently witnessed reduction in grazing land for pastoral communities, as commercial wheat farming takes over formerly

⁸² Property and Poverty baseline study findings May 2008.

⁸³ Former GR now privatized to the north of Maji moto GR.

pastoral grazing land. The pastoralist there have then developed a strategy in which they team up with individuals within group ranches in the south (such as Maji moto) to negotiate for grazing land in exchange for cash, food crops (often maize) and to a minimal extent crop residues for livestock after harvest during dry seasons.

The strategy works perfectly well for the northerners, whose livestock will graze during the wet season (crop growing season) in southern rangelands still under group tenure and fall back to postharvest crop residues during the dry season. Meanwhile, the pressure is exerted on the rangelands in the south as benefits are accrued to a few individuals. One incident is reported within the project site at *Nchaishi* village where young men prepared for battle approached the homestead of one such host and a near scuffle ensued in which the elder ended up pronouncing a curse on the youths who had by then forced the hosted livestock out of his home and driven them out of the area (eye witness, pers. comm. Lenkok, 2009). The other side of this sort of negotiated arrangement is that it works best between individuals as opposed to the customary *elatia/enkang* (neighborhood or homestead). It thus becomes one more pull factor for members to disengage from *elatia* settlement arrangement and instead set up individual homes.

The exploitation of GR resources within pastoral rangelands that are still under GR landholdings has been extended to encompass other resources besides pastures. Individuals within the GR, for example, are harvesting forest products, especially cedars in the form of split-wood and poles and sand for construction. The harvested forest products come from Enkiu and Iletukinyi regions within the GR. The harvested GR resources are sold as far away as Olare orok in Maasai Mara in addition to the adjacent GRs (Naroosura, Olkinyiei and Siana). Although there is currently a government ban on timber harvesting, Chiefs have been accused of complicity with harvesters.

The timber business is mostly run by women. The absence of a reliable road network (facilitating bulk movement of forest products) and the small amount of money involved makes the business a women's preserve. It is the women who transport the posts on their backs to the nearby Ngosuani market. Sand-harvesting, on the other hand, is predominantly operated by youthful men outside of school. The two main sites for sand-harvesting in the GR are *Olchorro onyokie* and *Ngosuani* along the semi-permanent rivers such as *Entiangasirr*. The sharing of pastures and other pastoral resources though integral to the pastoral system has acquired a new

twist. Under customary tenure, this sharing was often enacted in the context of principles of reciprocity, where benefits accrued are distributed to a broader section of the community.

The respondents were also alive to the reality that not everyone will be lucky enough to be allocated land where they presently resided, when and if land is ever completely subdivided and allocated. Data on human settlements within the GR indicates nucleated settlements around areas where the determinant factors tend to converge (See Annex 5). The criterion anticipated to be used in making decisions on priority of allocation will be based on ‘permanency’ of the type of physical investments established by the occupiers of a given site. Those who have built permanent structures - wells/dams, brick houses, fences – would hopefully be allowed to take that land. The idea of first occupiers at a given site comes second. This is another situation in which the poor lacking sufficient resources to establish the so-called ‘permanent structures’ will remain disadvantaged.

Land sales and diminished livelihoods options

The fear of eventually losing allocated land through sales to outsiders by male titleholders was of particular concern especially among elders and women. Women, especially widows and those in polygamous families, expressed fear over the security of land tenure under privatized ownership. The reasons for this are varied; they do not participate in GR decision-making processes; they are not joint titleholders with their husbands; and there is a strong likelihood of sale of land to outsiders. Women hardly have a chance to participate in decision-making around land issues. They are not registered as GR members nor allowed to attend public discussions on land issues. The intergenerational concerns are of particular concern to women. Their fear is for both the elderly who have nowhere else to go and the unborn. If livestock are decimated by subsequent droughts, they fear that the young generation will sell the land. Women are particularly passionate about this, since as traditional caretakers of children within the household/family unit and with fewer options for alternative livelihoods, ownership and secure access to land becomes critical. One elderly (Iterekeyaian age-set) lady reckons that, fearing an impending likelihood of landlessness due to expected land sales, women contend that government policy makers should make provision for joint titles between husband and wife. The process should begin with their inclusion in the group register and subsequent participation in meetings and decision-making processes. But this is an assault on a traditionally male domain.

Research findings on this question of possible land sales vindicate this position.

Although the 2007/2008 household survey reported no land sales cases to outsiders as no individual titles had been issued by then, a closer look at the happenings on the ground revealed a different story. The reported land sales in the GR were in three categories: irrigation plots, commercial plots and shares of GR inheritance. At least 10 parcels of the 418 irrigation plots were reported sold or bought, while about 40% of all commercial plots at Ngosuari were equally sold (GR official pers. comm. 3rd Oct. 2010). A total of about 600 parcels of land were surveyed and hived off for establishment of urban centres for members' development. The sites are at Ngosuari, Maji moto centre and Junction on the main road. Of the total 1583 land parcels reported sold in the eight GR surveyed, only 31% was sold to Maasai from the local community and outside, while a significant 59% was sold to non-Maasai. The problems associated with sale of land are of particular concern because they translate not only into loss of the main source of livelihoods but also a higher likelihood of a diminished opportunity for local community political representation and socio-cultural erosion. Fears therefore abound over future political domination through lands sales. "Other communities will overpower us because they will buy our land with their funds. Land sub-division should be stopped to allow freedom of movement and not to allow land sale from the poor families" (Pers. comm. 2009).⁸⁴

One case was also reported in which a member sold his anticipated share on the GR register. This is a transaction based on 'trust' between the two parties often documented in the presence of a private legal practitioner. The buyer simply inherits the corresponding entry number to the register or jointly shares the entry's rights. The GR officials may or may not be involved in the transaction. In the case of a neighboring subdivided GR, the GR officials participate in the deal with a fee to facilitate not only the replacement in the register but also the selection of an 'appropriate site' depending on the buyers' profile. This is not only an illegal undertaking by GR officials but also one that spells double tragedy for vulnerable (poor, elderly, women, youth and least informed) members of the GR.

To begin with, GR officials arrogate to themselves exclusive rights to allocate individual land parcels, often at expense of bonafide members. Ordinary GR members are not only denied the right of involvement/participation in the land distribution processes but also that of fair play and due diligence with the ultimate result of dispossession and entrenchment of inequality in terms of absolute land ownership and in the quantity and quality of land owned. The practice in

⁸⁴ Noolmejooli Nkoitai (interviews Aug. 2009).

effect, makes the very custodian/stewards - GR officials - of communal land in the context of group ranching the greatest threat to land tenure. This daunting reality is perhaps in the author's view the greatest force fuelling the impetus for heightened demands for dissolution of the pastoral commons. In essence, this is corruption per excellence.

CHAPTER 7

CONCLUSION AND RECOMMENDATIONS

Pastoralism remains the dominant livelihood system within the project site with increasing attempts at varied forms of diversification. While the practice of traditional pastoralism - characterised by collective decision making in pasture and water management, joint management of herds, pooling of household labour and sharing of indigenous knowledge regulated within customary institutions - is increasingly threatened, community members and groups are devising innovative ways of sustaining the system by adapting it to the emerging challenges, including, for example an increasingly enlarging of flocks of the smaller stock - goats and sheep. But, despite the innovativeness in attempts at diversification aimed at complementing, supplementing and sustaining the pastoral livelihood system, results from this study suggests that the decision to individualize and privatize pastoral collective landholdings is gaining momentum by the day, driven by a multiplicity of factors.

The multiplicity of factors providing the push and pull towards land fragmentation and privatization in Maji moto GR interact and overlap in complex ways making any efforts to attribute particular events and emerging trends to any single variable/factor difficult and simplistic. Burgeoning private sector driven wildlife conservation efforts within the site and across the southern rangelands adjacent to the MMGR, proliferation of subsistence farming activities in the south and large-scale commercial wheat farming in the northern parts of Narok district (which have rendered unavailable previously expansive dry-season grazing areas), perceived superiority of private land tenure over common/collective and customary tenure, expanded and improving market terms for land sales and lack of trust in the existing GR leadership systems, are some of the many forces driving this change. This seemingly unstoppable onslaught on the commons is given impetus by a scattering of human settlement within GRs still under collective tenure in apparent anticipation of the impending privatization and associated enclosures.

But this inquiry specifically explores emerging and increasing incidence of practices and activities that could generally be described as ‘corrupt’ in the process of subdivision and privatization of pastoral landholdings, by looking at how these processes unfold, how social

actors (individually and/collectively) stake their claims, and the nature of the mediation role played by institutions (formal and informal) within the GR, situated within its historical context.

The study at Maji moto GR broadly corroborates existing literature on rampant corruption occurring during the land privatization processes within the GR context. Corruption activities reported from the Maji moto case study relate to leadership structures and principles, knowledge of the market and state bureaucracy, personal agency and wealth, and a clash and/hybridization of the traditional/indigenous value system and neo-liberal ideologies. Exploring relations between institutions charged with the responsibility for managing access, control, transaction and ownership of land, decision-making processes and outcomes related to land tenure security generated more questions than answers. Of all forces of change mentioned contributing to the phenomena of corruption, decision-making around resource use and the influence of market forces, especially as reflected by conservation and tourism related practices within the project site, were most significant.

It has also become apparent that contemporary corruption activities within the site have a historical connection with colonial leadership and the administrative legacy of a divide and rule governance in which orders from the top were rarely questioned. Corrupt activities feeding on this ideology thrive in social and political environments characterized by limited access to vital information related to land tenure and management, including the nature and functioning of relevant state institutions, knowledge of and access to mechanisms of recourse, including judicial systems. The disadvantaged position (of most social actors at the project site) occasioned by their inability to not only access but equally effectively utilize relevant information is compounded by rising poverty levels amongst GR members. The problem is complicated by the low level of civic awareness of rights and obligation of citizens against the state's role as a service provider and facilitator of development. The outcome is a particular notion of the State (and leaders within it) as distributors of goods and services out of their own benevolence as opposed to acting on delegated responsibility for distributing resources pooled from citizens' contributions (taxes).

The specific functions of government came to operate at different levels, isolated from local resource users and managers. These state institutions drew their models of governance and leadership from western traditions, generally disregarding the value of indigenous knowledge systems, practices and institutions. The resultant divide expanded the ideological and

geographical distance between the resource users at the community level and decision-makers at the state-national level, which hindered the sharing of information and norms. Hence the flow of knowledge and experiences was seriously disrupted. This scenario creates an excellent environment for entrenchment of clientalism and patrimonialism.

The second ideological explanation for perceived rampant corruption at the project site arises from the carry-over of notions of reciprocity into contemporary approaches towards resource sharing and distribution. The multiple and often overlapping social identities of the Maasai society, including family, age-group and fire-stick elder, and kinship (clan and sub-clans) systems, provide avenues for mobilizing social actors to solicit for support and subsequently forms channels and bases for resource distribution.

This study has demonstrated that the contemporary *GR* leadership system significantly departs from pre-existing indigenous leadership practices and belief system concerning land tenure. This difference has had far reaching consequences for access to, use, control and ownership of land and resource distribution at the project site, especially during arbitration of land conflicts. *GR* leadership structures have their roots in, and derive their effective mandate from the state bureaucracy embodied in the Ministry of Lands. It is important here to reiterate that viable common resource use depends on institutions that identify the group rights holders, establish procedures for joint-decision making, define rights to and schedules for resource extraction, and formulate reasonable benefits to be gained and sanctions against defaulters. This clarity over multiple and fluid rights at the local level is often missing in situations where local institutions are disregarded, and the result is incomplete accounting and safeguarding of all interests accruing to the numerous right-holders.

There is a prevailing low level of confidence and trust in local *GR* leadership structures. The intensification and sustained agitation by land right-holders for enhancement of accountable and democratic participation in governance, leading to a high turn-over of *GR* officials, is testimony to this reality. While in theory the *GR* governance philosophy is essentially devolved (local level) and collective by design, in practice this is rarely the case within the project site. Overall, this central pillar of *GR* governance structure has failed. But this failure cannot possibly be viewed in isolation. Exogenous influence of the market through private sector conservation efforts, for example, has often exerted pressure on the *GR* leadership to protect the interests of conservationist/private investors and local elites usually at the expense of local communities. A

combined effect of low level of awareness of the functioning of both GR and the state bureaucracy (Ministry of Lands, the national legal system, the Provincial Administration), a strong involvement of the Ministry of Lands in GR affairs, especially in the process of land adjudication and titling (often negating the group members' collective agency) and outright rent-seeking tendencies by those in position of leadership, exacerbated this scenario. The investors often seek to either enter into long-term contracts giving them rights to acquire exclusive rights over large chunks of formerly pastoral landholdings or to push communities to privatize land which investors can then renegotiate with individual land owners for re-collectivization of individual parcels for wildlife conservation and eco-tourism use.

Exogenous forces are often given currency by local elites and entrepreneurs working in cahoots with market players whose interests remain predominantly personal aggrandisement. In this context the immediate and evident struggle by GR members is targeted at securing individual and family claims against appropriation by influential individuals from within the community. This competition for personal gain as opposed to common and collective interest is exacerbated by the mounting pressure (especially on local leaders) to accumulate and acquire goods that are symbols of *maendeleo*, development, resulting from the commoditization and commercialization of pastoral landholdings. Commoditization and commercialization of the pastoral landholdings has had negative bearing on the Maasai indigenous value and belief system, which were critical in the management and distribution of communal resources, including land. Specifically for the GR situation, the lack of official salaries or stipends as accepted tokens of appreciation for services rendered increases the motivation to earn additional income through corrupt activities.

An added inducement to corrupt behavior within the project site is the often low risk of being caught and subsequently held to account. Most natural resource exploitation takes place far from public view, in remote regions where monitoring and media scrutiny are low. The areas at issue may be physically vast and sparsely populated. Even if one is caught in the act, the penalties are commonly minimal relative to the potential returns. The numerous GR committees that were bundled out office, on account of alleged plunder or misappropriation of community resources and general abuse of office always went scot-free with no legal prosecution and possibly minimal social stigma (if at all). This in effect has entrenched corruption as a norm.

The not so rare re-election of a number of GR officials previously labelled as corrupt also attests to this point.

In conclusion, a combination of economic, social, and administrative factors have created favorable conditions for corruption. Corrupt practices associated with land emerge from attempts by social actors to secure and legitimize access to, control over and ownership of land and other resources. This legitimization could occur through any combination of market channels, formal and legal systems legitimized by the state, enforced and defended through judicial processes, or customary law, including social conventions and norms. It is this complex and lively tension between markets, social sanctions and formal legal institutions, seen in attempts to clarify the nature of tenure rights, which underpin debates around corruption.

Institutional arrangements - formal and/or informal - shape and influence the processes of social change, mediating access to and control over land and associated resources, including land subdivision and privatization processes. Corruption is therefore fuelled by social, economic and political inequality in which those in position of greatest influence seek to solidify and enhance their positions (often at the expense of others) while those in positions of least influence also seek to improve their lot. Those who provide bribes are frequently not simply victims of greedy officials, but active partners in the fraud. Land subdivision and privatization provide a liminal stage within which these social struggles are heightened.

It appears that the quest for economic advancement (material and capital accumulation) goes beyond individual and societal concern with morality, which is the ideological basis for negative notions associated to corruption. Whether it is high-profile embezzlement or a low-level bribe to a petty bureaucrat, corruption is a major force undermining environmental equity and exerting pressure on ecosystems. It is also the epitome of bad governance. Because corruption thrives away from public view and enriches only those involved, it naturally subverts the transparency, accountability, and inclusiveness that mark good decision-making. By offering special access to resources and decisions to a select few, it denies access to the wider public.

Natural resources (e.g. land) offer a rich opportunity for corruption. Natural resources often have high commercial value, making them a prime target for plunder. Individual land ownership in Kenya – and the project site - has gained such a high premium that individuals will go to great lengths to accumulate land at any costs. Land and natural resources are often governed by complicated regulations and multi-layered institutions often with overlapping (if not

confusing or conflicting) roles that must be inventoried and accounted for to determine royalties and taxes—all providing entry points for manipulation and corruption. The complexity of government regulations and the amount of discretionary power bureaucrats exercise factor into the corruption equation as well. Where rules are complex, vague, or frequently changing, administrators have more opportunities to use their influence to exact bribes.

Corruption therefore flourishes where the mechanisms of accountability and oversight are weak. These mechanisms can include independent audits, special investigative units or government inspectorates, NGO watchdog groups, a robust press, and vocal political opposition parties. The Maji moto case study demonstrate the critical role grassroots CSOs play - especially within rural areas outside effective and meaningful influence of mainstream press and politics – in exposing graft, linking local communities with broader social networks and building local community's capacities to engage with the state. The state anti-corruption institutions haven't been particularly effective on this front. When institutions of detection and enforcement are lacking or are themselves corrupt, the chances of exposure are slim.

While, by their nature, corruption and environmental crimes are hard to quantify, the case of Maji moto GR makes it clear that the dimensions of land and natural resource corruption are large. It is evident from preceding chapters of this thesis that the process of defining, administering, allocating and securing land rights and associated resources has remained largely contentious. The negative impacts of corruption have far reaching repercussions on society, especially in the context of land and pastoralism, translating to inter and trans-generational inequalities fuelling incessant strife and conflict. Often the most likely victims are the relatively poor, women and youth.

Recommendations

1. The most apparent pressure point influencing land use decision-making and by extension incentives to engage in corruption within GRs adjacent to the MMGR is wildlife related community based conservancies driven by private investors. The interventions provide both opportunities for diversification and threats to tenure security especially to poor households. Further in-depth study on the dynamics of community-based conservancies is hereby recommended.
2. Meaningful integration of customary institutions into the country's new land management and administrative architecture under the new constitutional dispensation is also recommended. The policy and legal environment in Kenya has recognized the value of communal land tenure, customary institutions and indigenous knowledge in land management. It is evident that local communities and indigenous groups in the country would have to strategize and pursue efforts to translate the text of new policies and the Constitution into realities for livelihood security on the ground. This is a challenge given the peripheral place indigenous peoples' issues occupy in the politics of the day, especially in the context of the policy making process, in which acts of parliaments should ideally give effect to constitutional provisions. Devolved governments (County level) equally provide an excellent opportunity for local legislation to establish a pastoralist user-friendly environment, providing, for example, for migratory routes to facilitate livestock mobility and land-use amenable to pastoralism.
3. Efforts to combat corruption involve action on several fronts. Perhaps first and most difficult is the effort to change public expectations. Unless such practices are seen as unacceptable to practitioners and to the public at large, anti-corruption laws and procedural reforms are difficult to implement. Enhanced civic education through local CSOs, press and media and deliberate government efforts is essential. The media, and public advocates are key players in exposing corruption and raising societal norms with regard to bribe-taking and abuse of public resources. Investigative reporting and independent assessments of public performance heighten the visibility of questionable practices and introduce a measure of transparency to the actions of decision-makers. For this reason, press freedoms and reform of overzealous libel laws that can muzzle watchdog groups go hand in hand with corruption reform.

4. Improvements in public administration and natural resource laws are certainly necessary parts of any attempt to reduce systematic corruption. These aim for greater financial transparency through such steps as simplifying procedures for issuing titles and granting concessions, reforming contracting practices for large investors, or mandating independent audits.
5. Appropriate, feasible and sustainable compensation mechanism for GRs officials is recommended in order to minimize the incentive to seek rents by officials. The proposed compensation for example must not necessarily be in monetary terms – for GRs who have chosen the route to individuation and privatization, a land compensation scheme for example could be explored. This could also mean exploring possibilities for reducing GR officials' number from the current bloated figure to 5-7. The role of the demarcation committee and GR incorporated officials should be further clearly clarified and separated in law and enforced.
6. Action against the supply side of corruption is also imperative. The on-going vetting of judges and robust efforts at reforms in the country's judicial system should go a long to address low levels of public trust and confidence in the country's legal system. The said reforms should go beyond national level drivers of corruption and the so-called 'grand' corruption to address local level and 'small fish'- level and aspects of corruption, with particular focus on land related graft as it is the primary resource base upon which local livelihoods are dependent.

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ANNEXES

Annex 1

A Maasai Traditional Prayer offered before official deliberation commences in Public Meetings

Ore taa enatejo ole dukuya meiruko Enkai

May God answer the prayers of the one who went before me

Kijo taa Olkiu metorropilo, metamelono, metoborro, meiimu oshoki enkiteng,

We say let the meeting be Aromatic, Sweet, Calm, and may it pass under the cow's belly

*Ore taa oloitapaashaa ele shani, kitejo imbaabaa, iyiima die, Ore taa oloiba iyiook, mmira taa olalang.
kimpiripirroitie iyie, turubare enkolong*

To anyone who goes contrary to our good intentions; stay a far off from us, pass over there; he who hates us, you do not belong to us. We've shaken you off from our shukas, and, may you go down with the sunset

Tenepuo inkishu aagila nkeek, metanangare eseriani, metapaasha intimi

metapaashare ilowuarak ooju oo losipa, metagolo oishuaak ilchekuti duoo ootosho

When Cattle go out to graze, may they encounter peace, may they avert 'forests' (dangerous wild animals)

Meirukoki intae Enkai enijojo, metutaki intae Enkai enaret o olosho

May God sanction your deliberations, may God direct you to that which will help the society

Entoosh ele shani olikae, enteleku, Entubul, Enchuro, entaa ilkulalang ole Enkai, meibungai enijojo

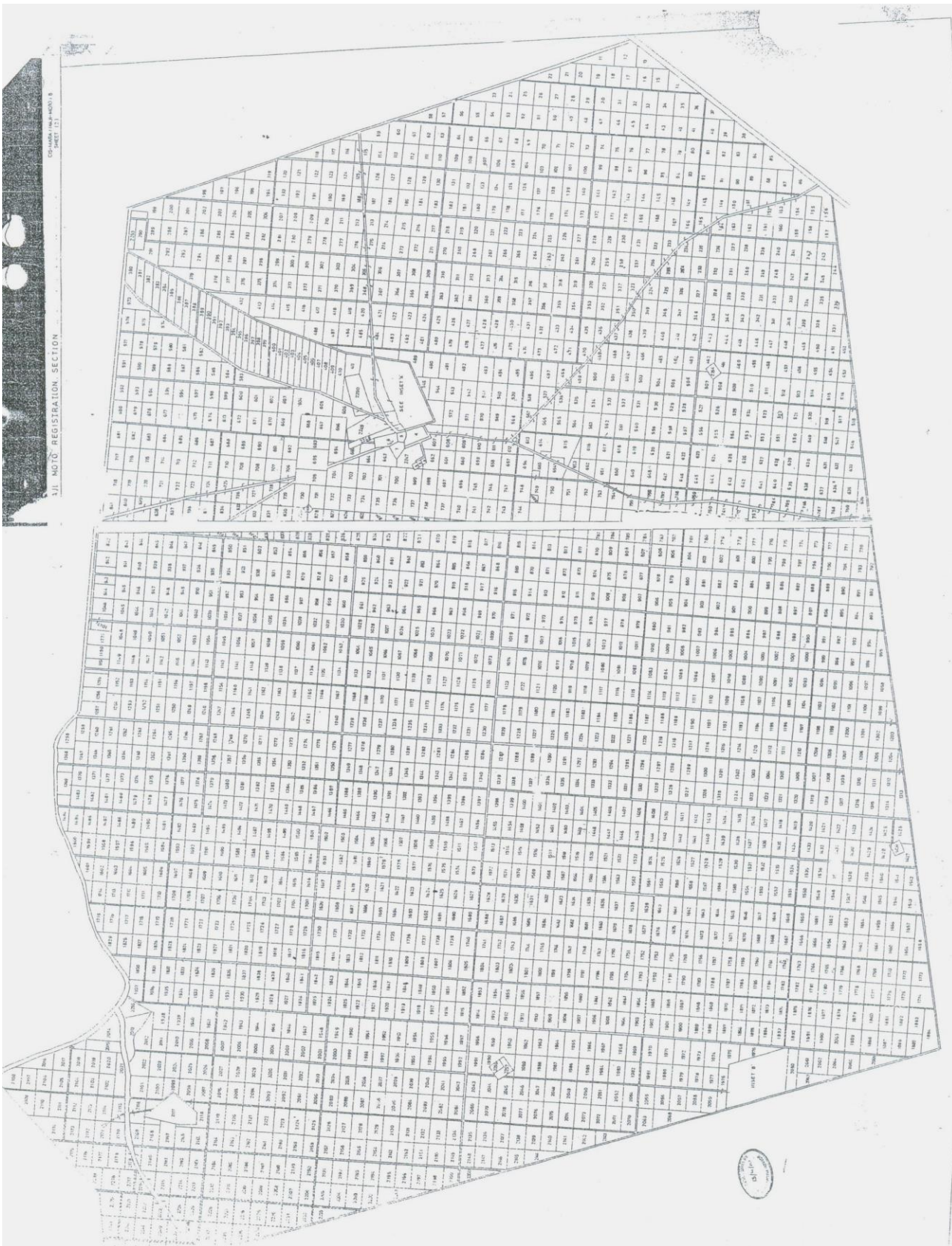
May you hold this meeting, and one other, be spared, multiply, be redeemed, be ours and of God, may what you resolve to do abide

Entaa ilparakuo le nkishu ole tungani

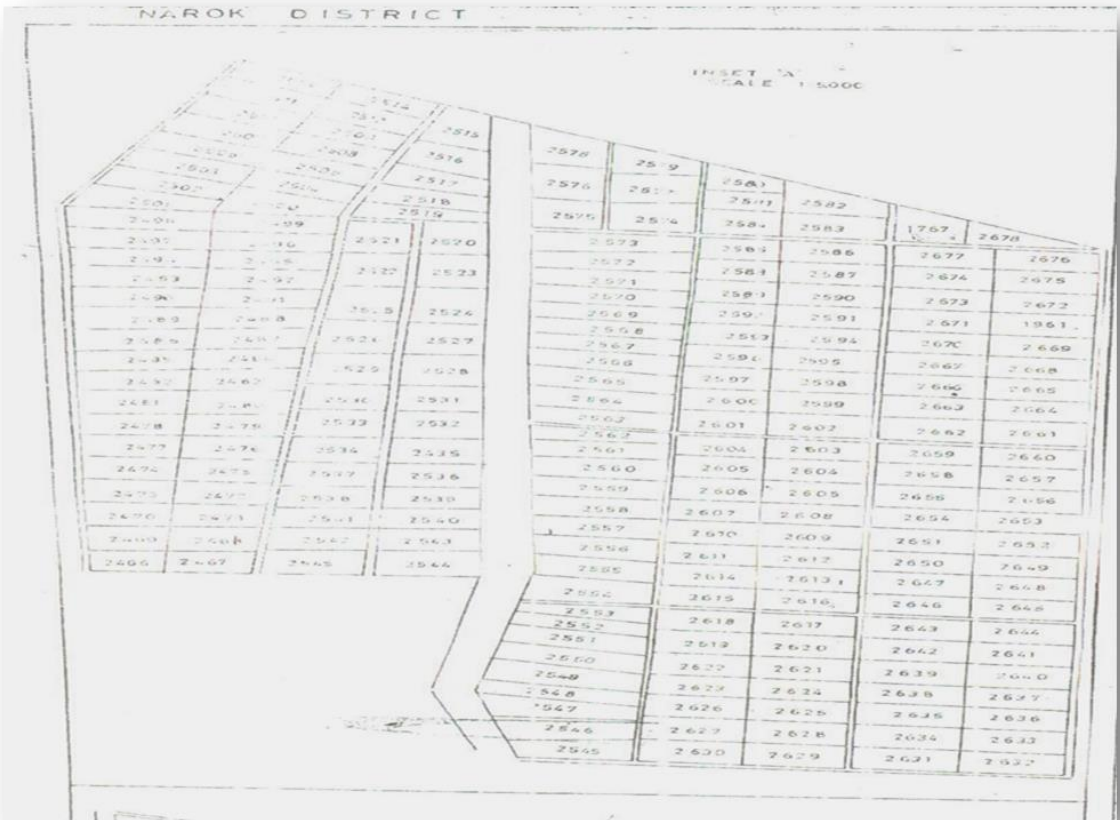
May you remain owners of livestock and people!!

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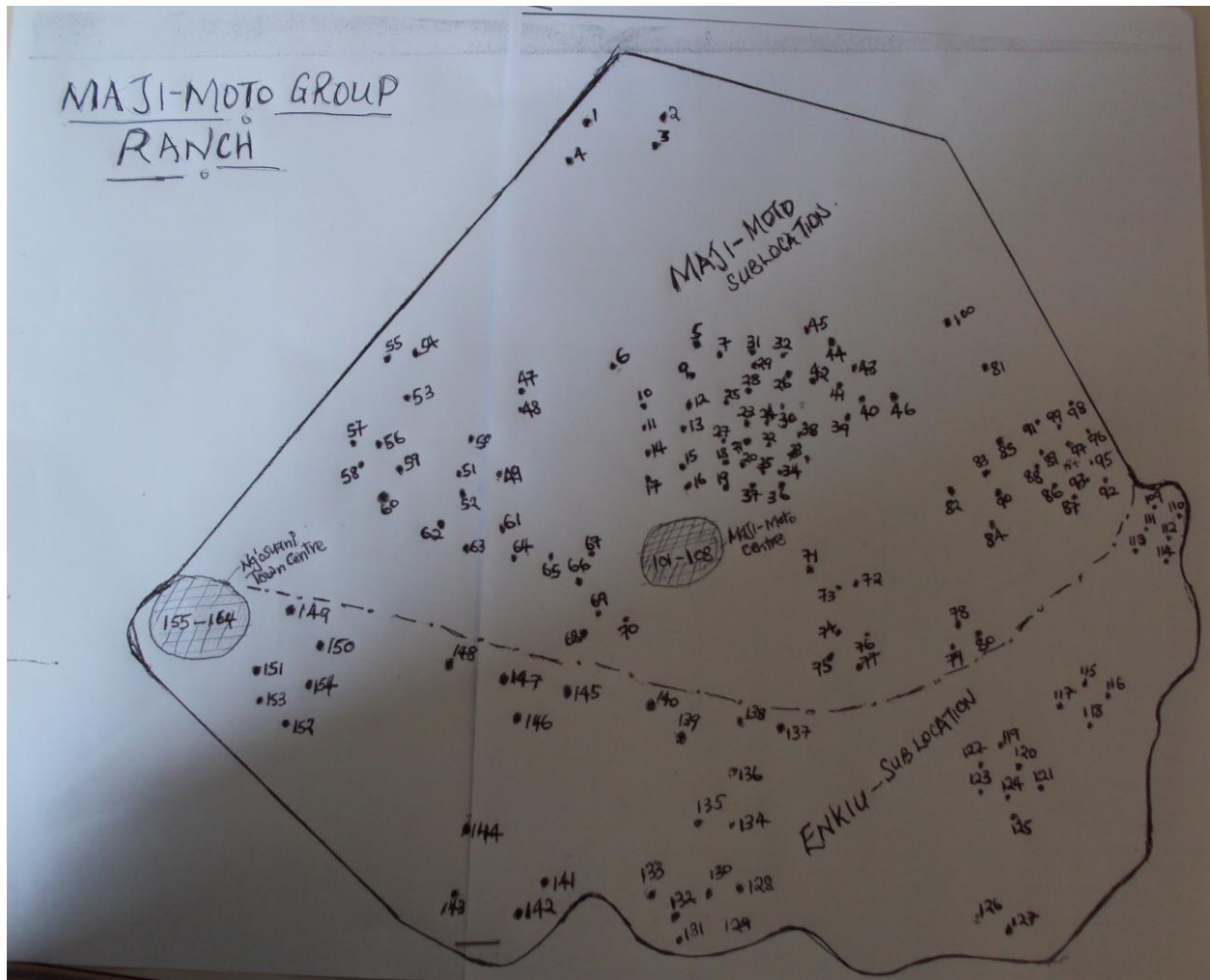
Maji moto GR area demarcation map indicating individual parcels



Map of Agricultural Plots, along Maji moto hot spring



Sketch of Maji Moto Group Ranch Settlement Patterns



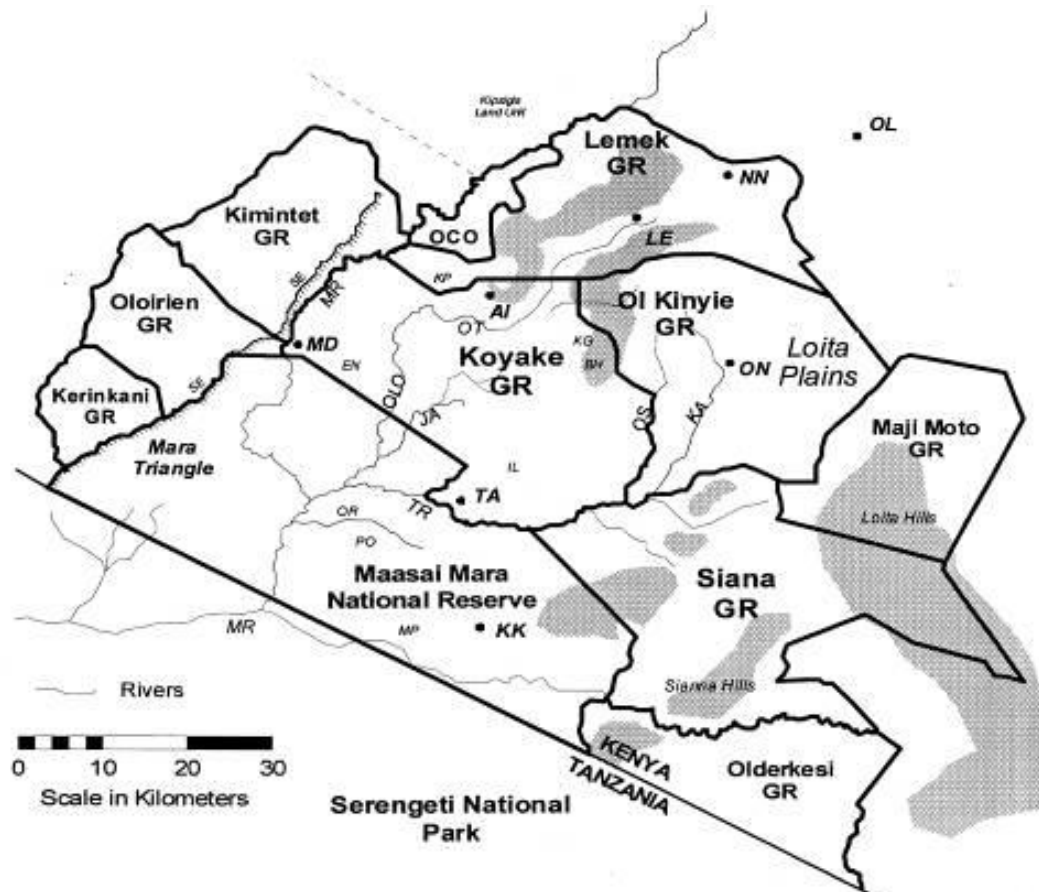
Maasai Age-set Chronology

<u>Age Set</u>	<u>Approximate Dates as Warriors</u>
Ilтийеки	1791 – 1811
Ilmeirishari	1806 – 1826
Ilkidotu	1821 – 1841
Iltuati I	1836 – 1856
Ilnyankusi I	1851 – 1871
Ilaimerr	1866 - 1886
Ilталала (Ilmankuusha & Ilchungen)	1881- 1905
Iltuati II (ilmirisho & Ilemek)	1896 – 1917
Iltareto (ilmeiruturut & Ilkitoip)	1911 – 1929
Ilterito (Ilтийеки & ilng’enchere)	1926 – 1948
Ilnyangusi II (Ilkalikal & olkamaniki)	1942 – 1959
Iseuri (ilterekeyiani & iltiyiogoni)	1957 – 1975
Ilkitoip (Irampaun/ilkeseyia & ilkirupi)	1973 – 1985
Ilkishuru (Ilkisaruni & Ilmejooli)	1984 – 1992
..... Ilmechuki	1996

NB: The age-set chronology is based on the Purko Maasai section as shared by an elder of Iseuri age group - Mr Maranka ole Wotuni and as documented by Mol. 1996 cited in Mwang E. 2007.

Annex 7

Group Ranches benefitting from the 19% Maasai Mara Gate Collection (1997-2002)



Naroosura Group Ranch - Declaration as an Adjudication Section

MINISTRY OF LANDS & SURVEY.
Land Adjudication Department,
P.O. Box 95,
Nairobi.
A.9/3/20. 6th June, 1970.

LAND ADJUDICATION ACT (No. 35 of 1964.)
ORATIOTI GUTU CHOTE KETEMORI LARINTI ENKOTI TE NKUTOTO E NAROSURA
TOLKEBENKE TIE NKI KE NAROK.

Ore anaa enajo entukus e miet o kitanapet natii atua Land Adjudication Act No.35 lolari le nkaiuse nabo oip naudo entomonile asiet e dungoto enkopabalonye ara olkitok le ndungoto e nkep te nkalo e Cis-Mara nchere ketemuri adung enkot te nkutoto e Naroosura to supuko keaku enkop nadungi e Naroosura kean, Olocomoroi to nabo Ntuk- nan iji olkenari ilpolosien:-

Biteru toldonyo le Sarava nelo olpolosie aitorickino erishata e noikuapei o loosnen o Neshoma Nkinba, nelo oparata Lolkunyialei nesujaa ilo yerata lolkunyialei oveshomo Ntuk-nesujaa Ntuka oveshomo olkaju le wuaso ngiro. Neitoki te nkalo e kopikop aa toldonyo lopishot te supuko oirobi o-te nkalo e noikuapei olentoluo te netumore olpolosie loo Loitai ometabai enabo neitumya.

Ore oltungani poeki ota omurua iatua ana kutoto nan keing-orari neigari anaa enaikunari nkitanapet e Land Adjudication Act naa ore oltungani poeki ota entoki nana tatusa ina dungoto enabo ota entoki nayioi neikilikunna na keetr erishata paa areu olkiyioi linyo Oloo nashu Enkitok -onetii olaingeroni lena sial eton etu obaya ntarikini Tomoniuni obo lo lapa le tosha (31/10/1970.).

Ore eton eitu enyerran olkitok le dungoto enkop sailand Adjudication Officer mestas oltungani o'dia sialai olitae asho kutini naidia nininingo orori olpitak enkop tatusa ana kutoto e Naroosura asho o-neidipoya Embulaa naji (Adjudication Register) ena kutoto to nana poeki anaa enaikunari nkitanapet e Land Adjudication Section 29 nina Act.

Dated 6th June, 1970.

(Signature)
ADJUDICATION OFFICER,
NAROK DISTRICT.

PSC/HRK.
c.c.

The Provincial Commissioner - NAROK (Please publish this Notice on your N/W.)
The District Commissioner, Narok District.
The Clerk to the Council - Narok District Council Notice/No.
Chief - Narok District.
All Chiefs Narok District.
The Director of Land Adjudication.
The Provincial Commissioners:
Western Eastern [Send 1st copies to District
Nyanza Coast] Commissioners.
Central North Eastern
The District Commissioners Mt. Valley Province.
The Officer Commanding - The Kenya Army.
The Officer Commanding - The Kenya Air Force.
The Officer Commanding - The Kenya Navy.
The Commissioner of Police.
The Commissioner of Prisons.
The District Commissioner - Nairobi Area.

Maji moto Declaration as Adjudication Site

LA/5/1/82/5. LA 95,
NAROK.

(115)

9/4/15 13 JUL 1977 90

LAND ADJUDICATION ACT, CAP. 284.
DECLARATION OF AN ADJUDICATION SECTION.
MAJI MOTO ADJUDICATION SECTION - CIS-MARA ADJUDICATION AREA
IN NAROK DISTRICT.

In accordance with the provision of Section 5 of the Land Adjudication Act, Cap. 284, I the Land Adjudication Officer, for Narok District, do hereby declare Maji Moto in Cis-Mara Adjudication Area to be an adjudication Section and boundaries of which are as follows:-

'Commencing from the foot of Olooriri hill on Ewaso Ng'iro/Keekorok road the boundary runs Southwesterly on top of Emboliei Manyokie, hill thence on a straight line to Nkoyiangani river. Thence Easterly following the said river until where Nkaseroni Naikara road crosses the same river. Thence the boundary runs Easterly on a straight line to the fixed beacon at Ngimba. Thence it runs Easterly along Narosura/Maji Moto boundary to Olenkuluo/Narosura beacon on Ewaso Ng'iro/Narosura road. Thence Northerly following Ewaso Ng'iro/Narosura road to the fixed beacon just about half mile to reach Oloonganayio river. Thence the boundary runs Westerly on a straight line between Naiborri Sotio and Epabarash hill to Ewaso Ng'iro/Keekorok road. Thence it turns South West along Ewaso Ng'iro/Keekorok road to the foot of Olooriri hill, the place of commencement'.

All rights and interests in land within this Adjudication Section will be ascertain and recorded in accordance with the provisions of the Land Adjudication Act, Cap. 284 and any person claiming any such right or interest is requested to present his/her claim to the Recording Officer either in person or by duly authorized agent not later than 24th October, 1977.

With effect from the date of this notice and in accordance with Section 30 of the Act, except with the prior consent in writing to the Land Adjudication Officer, for Narok District no person shall institute, and no Court shall hear any proceedings whatsoever in which any right or interest in land within this Adjudication Section is called in question, until the Adjudication Register for this Adjudication Section has become final in all aspects under section 29 of the Act.

Dated this 24th day of May, 1977.

(A.K. MUNGAI)
LAND ADJUDICATION OFFICER,
NAROK DISTRICT.

AM/LMK.

c.c	All Provincial Commissioners	-	Central, Eastern, Coast,
	with sufficient copies to the		Nyanza, Western, Nairobi
	D.Cs.		Rift Valley and N/Eastern
	The District Commissioner	-	Narok
	All Chiefs	-	Narok
	Clerk to County Council	-	Narok
	Director of Land Adjudication	-	Nairobi
	Director of Surveys	-	Nairobi
	Provincial Surveyor	-	Nairobi
	All Senior Land Adj. Officers	-	Kenya
	All Land Adjudication Officers	-	Kenya
	All Heads of Departments	-	Narok
	The Officer in Charge	-	Kenya, Kenya, Kenya

[illegible]