

# The Modern Motility of Pastoral Land Rights: Tenure Transitions and Land-Grabbing in East Africa

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**THE MODERN MOTILITY OF PASTORAL LAND RIGHTS:**

**TENURE TRANSITIONS AND LAND-GRABBING IN EAST AFRICA**

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**Introduction**

The major challenges to pastoralism are not the demands of modernity, which most pastoralists are fully willing to embrace, nor the cultural lure of education – since the educated pastoralist is not an oxymoron but an increasing reality. Pastoralism is most critically challenged by the appropriation of rangelands by a variety of actors who use political means to achieve what would normally be socially and economically impossible. “Land grabbing”, which has become an idiom of African politics as salient as the “politics of the belly”, is not limited to the semi-arid and arid lands but is especially compelling in dryland locales because of the scale with which it is pursued. Within the large setting of African modernity and political economic change, this paper will examine how moments of vulnerability provided by transitions in land tenure – most importantly the assertion of rights over land by the state and the privatization process – has enabled the opportunistic seizure of pastoral lands by a variety of actors, including the politically well-positioned, entrepreneurs, commercial farmers, speculators, conservationists, tour operators, miners, and so on.

For reasons intrinsic to drylands and herding, pastoral lands are vulnerable to being grabbed. The first agents of appropriating territories held by herders were colonial administrators and white settlers at the turn of the 20<sup>th</sup> c., subsequently African elites and bureaucrats in the decades following independence, and in recent years those I will call ‘environmental imperialists’, who either promise to use the land better than its African residents or to protect its wildlife and natural resources from them. On a scale never before envisioned, the most valued pastoral lands are being acquired through state allocation or purchase by two major groups: agro-industrial companies or foreign states promising to use it for highly efficient commercial agriculture, or by conservation groups and entrepreneurs who vow to protect wildlife and at the same time propagate high-end lucrative tourist ventures. This paper will examine the phenomena of large-scale land acquisitions in East Africa that have taken place over the last two decades and are taking place now, with the aim of identifying factors that make pastoral land holding vulnerable and motives and strategies used by those practicing these new forms of land grabbing.

The fragmentation of rangelands has proven a global phenomenon with important impacts on dryland ecology, patterns of land use, and the livelihoods of resident communities (Galvin et al. 2009). The concept of ‘fragmentation’ captures the visual impression of variegated landscapes differentiated by sharp edges that previously presented more continuous forms of ecological variation. But though an ecological outcome, fragmentation is essentially a political process that proceeds as forms of rangeland property have changed in tandem with land use. Formal shifts in tenure have proven critically important in making land vulnerable, but also at work have been more

informal factors initiated by population growth and land scarcity that have led enterprising individuals to move to land-holding frontiers, building on networks, friendships or opportunities to gain slivers of land, sometimes by leasing or purchasing small farms, or by simply squatting in areas seen as “under-utilized”. But what are seen as “encroachments” by residents do not take place in a legal or political vacuum, but become opportunities, from one perspective, or vulnerabilities, from another perspective, given a climate of tolerance, facilitation, or impunity regarding land rights.

The notion of pastoral land rights was considered an oxymoron during the early colonial period when the requirement of “productively transforming” the land -- a residue of Lockean thought -- meant that cultivators were granted rights that hunters and foragers and pastoralists were not, territories of latter largely being deemed Crown-lands or state holdings. But if we consider “tenure”, though legally a modern notion, to derive from historical “holdings”, then pastoralists clearly gained rights -- like imperialists -- through force of arms, and --as is witnessed throughout the literature on pastoralism -- maintained what they now assert as their holdings in the same way, defense backed by the threat of violence. If we were to grant what many find contestable, that the coming of the State did -- often ruthlessly -- bring greater peace and order to pastoral regions, still there is a historical irony, pointed out to me in the 1990s by an early leader of pastoral civil society, that a virtue of continuing Somali violence is that they still have their land! In contrast, the best pastoral citizens -- probably the Maasai and the Samburu -- are paying for the peace and quiet they usually enjoy with their land.

The martial qualities of pastoralists, recognized around the world, do not stem so much from their tenacity at defending borders as their necessary skill at protecting their

domestic animals, which being a very mobile form of wealth are vulnerable to theft. Since most herders are equally proficient at defending their herds and stealing others', the reciprocal dynamic of husbandry entrains in herders the need to defend their property. But while pastoralists claim and recognize pastoral territories, access has usually been social mediated through a relatively inclusive process of management, others being welcomed or at least tolerated, especially in times of stress. Herders rarely felt themselves constrained to remain in their core territories when drought demanded that they find pastures elsewhere. The motility of the herding process reflects the unpredictability of rainfall and the spatial dispersion of pastures in drylands, and the opportunism and spontaneity shown by herders, given that herding decisions are made by households or cooperative groups operating at very local levels. In the pastoral imaginary, terrain is primarily constituted of pasture and water and the people and livestock who inhabit it, rather than land as such, and is seen less as a two-dimensional and bounded "plane" geometric space than a linear geometry of pathways connecting key sites and resources that represent vectors of movement. The perspectives built on flexible pastoral land use, adaptive in guiding herders in making the best use of dispersed and scarce pasture resources, have proven a liability only when terrain has come under the formal constraints imposed by the State. Arguably, the demarcation of boundaries – first around 'tribal' entities, then districts, then pastoral sections, then groups, then individuals – has been a crucial instrument of state-making, designed both to create land as a knowable and manageable and to circumscribe the people who reside on it (Anderson 1983; Mitchell 1988; Scott 1998). But if the cultural talents of herding communities have not fit well with cadastrally-defined notions of territory, they have nonetheless provided

them with strategies for systematically contravening formal expectations of how land should be viewed and property valued, in this way challenging the precepts of formal entitlement, sometimes to their own benefit!

Pastoral vulnerability to losing land can be attributed to their own practices and attitudes, or those of the land seekers. I have just described aspects of pastoral land use and practices that may underpin their systematic refusal to embrace a bounded, alienable and exclusionary notion of landed property. There is a long history of stereotypic views of pastoralists that have served to disarm them in debates over how rangeland should be held and used: that they are traditionalists, keep livestock for cultural rather than economic reasons, maintain herds as customary wealth rather than instrumental reasons, tend to overgraze and thus degrade land, and refuse to market their animals (Galaty 2002). This is not the place to address these misconceptions, except to point out that several decades of research on pastoral land use (Scoones 1995), herding strategies and development (Sandford 1983), and livestock marketing (McPeak and Little 2006; who else provides meat to millions of urban dwellers?) should have dispelled these notions. Yet they persist in public perception and in policy-makers' minds, partly because these narratives have a certain coherence (Roe 1994), partly because they are curiously convincing for administrators and developers who are empowered by such notions to take direct action through initiating projects in the rangelands (Chambers 1997) and for settlers, ranchers, entrepreneurs and conservationists who have an interest in taking pastoral lands for themselves.

What follows is an examination of three forms of land-grabbing experienced in East Africa in recent decades: loss of Maasai land in Kenya via what I call "legal theft"

during the privatization process; the appropriation of enormous amounts of fertile land through “agrarian colonialism” by States and commercial agro-businesses; and the acquisition of wildlife-rich range areas by entrepreneurs practicing a sort of “environmental imperialism” to create private game parks and high-end tourist attractions. How have the perpetrators of this extraordinary heist of some of Africa’s most valuable land managed to convince political leaders and investors that it could be done, and how have they in fact done it, and for what aims? And how have the legitimate residents of these lands been progressively dispossessed, both practically and legally, as they’ve been stripped not just of land but of rights?

### **The New Agrarian Colonialism in Ethiopia**

“Farmland in sub-Saharan Africa is giving 25% returns a year and new technology can treble crop yields in short time frames,” said Susan Payne, chief executive of Emergent Asset Management, a UK investment fund seeking to spend \$50-million on African land, which, she said, was attracting governments, corporations, multinationals and other investors. “Agricultural development is not only sustainable, it is our future. If we do not pay great care and attention now to increase food production by over 50% before 2050, we will face serious food shortages globally,” she said. □ □ “But many of the deals are widely condemned by both Western non-government groups and nationals as ‘new colonialism’, driving people off the land and taking scarce resources away from people.” □

In the last five years Africa has experienced an unprecedented acquisition of land by international agro-businesses, many intending to enhance the food security

of their own countries by developing land elsewhere. One estimate proposes that 20 m hectares have been acquired in Africa in the three year period from 2006 to 2009! The sudden jump in the prices of food in 2007 and 2008 stimulated increase in land acquisitions and the expansion of land dedicated to agricultural growth abroad, mainly by European and Asian interests. Of special note are large acquisitions in Mali, Madagascar and Ethiopia: 100,000 ha for irrigation development in Mali, 452,500 ha for a biofuel project in Madagascar, and a 150,000 ha livestock project in Ethiopia (IIED 2009). While the total amount still represents a small proportion of total land (e.g. 1% in Ethiopia) (Graham et al., 2009:10), the lands taken are in many cases among the countries' most fertile areas, representing crucial dry-season refuges in the rangelands.

A recent article in *Fortune* (Asfaw 2011:30), dated March 20, 2011, notes that the Ministry of Agriculture “has identified and added 1.9 million hectares to its land bank, which it plans to lease out for development”. The “land banking procedure” involves identifying arable land with the aim of holding onto it “until such time as it is profitable for the land to be developed” (Ibid.). “The government has been especially active adding more arable plots from arable plots from hot and arid (kolla) areas of the country”. The total land area in the government land bank has now reached 3.6 m ha, of which 342,099 ht have been leased to local and foreign investors, especially those intending to grow “priority produce”. However, “the investments will be designed in a way that will not harm local communities or the environment”, according to a code of practice.

The countries involved are often wealthy but lacking abundant agricultural land (e.g. Saudi Arabia) or have very large populations to feed (e.g. China). But more general



agricultural markets have stimulated this sort of “outsourcing” of agrarian production, both for foodstuffs and for agrofuels, subsidies for which have created what appears to be an “artificial demand” that is moving land from food to fuel production (Ibid: 20). But the tragedy is that this expansion of food production is done at the expense of African countries that themselves are often food insecure and under the misconception that the land being acquired is unused in regions that in fact are experiencing land scarcity!

Most importantly for our purposes is the process by which these acquisitions are taking place. The form of tenure would normally define how it is transmitted to commercial land-holders. Rangelands occupied by pastoralists are held under customary rights, under private title, or by the State. Some acquisitions occur through purchase of titles or leaseholds, or lands are allocated directly by the state. But the mediation of the state is invariably central to land acquisitions.

Often customary rights are not codified in law, and though locally recognized have little status in courts. Most importantly, customary systems often regulate rights of access and use over lands formally held by the State, which often guards the right of allocation. After decades of colonial rule, and shifts in tenurial systems, customary rights are often embedded in forms of legal pluralism which both empower land users who can evoke precedents and undermine recognition of their claims, leading to conflict. Graham et al. (2009:24) point out that “even in countries and cases where communities have clearly enforceable rights to their lands, rural communities are facing expropriation and forced evictions without proper compensation when foreign investors target their land”. Pressures on existing landholders and pastoralists by the state to acquiesce in their own displacement, regardless of the status of their land holding, shows that ‘security’ of tenure

offers no certain protection against appropriation, except where effective court systems operate. As a result, “focusing primarily on formal aspects of tenure security as a response to land grabbing is not sufficient” (Ibid.), although the nature of land rights is invariably a key plank in protests and conflicts that do arise. But for Ethiopia, the government maintained that when it was pastureland that was allocated to international investors, “pastoralists who used this land would not be compensated, as ‘they should go somewhere else’” (Graham et al. 2009: 46).

In economic terms, the rise in food prices mentioned above must be placed in the context of formal or informal land markets, such as they exist. Transfers of land usually are determined by assessments of local value, ideally underpinned by the worth of the good produced on the land. In this sense, rangelands usually have relatively low value per hectare, dependent on the livestock products that are “offtake” from pastures. But the perception by investors that price of land in much of Africa is low is based on inter-regional comparisons predicated on the land being ‘grabbed’ being available for comparable use! This ‘internationalization’ of African land values renders few local producers competitive, given the local stage in which their goods are bought and sold. Furthermore, given the demand added by international companies, the anticipated rise in the value of African land has created a speculator’s market, where lands are acquired not necessarily to be put under immediate production but anticipating future turn-over or use.

In Ethiopia, it is reported that there are 1,300 foreign investors (the majority from India, China, Europe and the Middle East) with licenses for commercial farms, with promises to make up to 3 m ha available to them (Graham et al. 2009:44). One example is the investment of \$40m by agricultural development company to acquire 200,000 ha to

grow export crops, with the aim of expanding its holdings to 500,000 ha over the next decade ((Cotula et al., 2009). There is a perception that Africa has abundant land, much of it underused and very cheap (Ibid.: 59), but such a generalization demonstrates little for concrete cases. Often companies and host governments take advantage of the lack of tenure formalization in localities where customary systems are in force. In Ethiopia, companies first gain a license from the Ethiopian Investment Commission then seek out land to acquire, which often leads to negotiations with local leaders who may not be empowered to enter into agreements that bind their communities! After the capital to be invested is confirmed and a feasibility study prepared, a lease-hold is signed with a regional office, sometimes with the agreement of local elders, after which land is acquired (Cotula et al. 2009:67).

Without implying that foreign investment is intrinsically undesirable or that foreign firms should play no role in stimulating growth in the agricultural economy, it is important to point out the derelictions of process that would prevent investment to be carried out at the expense of landholders for whom land is scarce and indispensable for local food security. On continent where most land is not held under formal title, whether by individuals or collectivities, land holding is remarkably stable since it rests on customary systems of rights, underpinned by relatively transparent recognition of rights holders by neighbors who share boundaries. Where rights are ambiguous or overlap, negotiations and compromises, in the face of local authorities, end up forging solutions that mitigate conflicts. In some countries, including many formerly under socialist systems of governance, the state is seen to be the land-holder of last resort. But just as elders have claimed individual titles for clan lands for which they held collective

responsibility at moments of privatization, so states too often claims the unilateral right to allocate land only nominally under their authority, ignoring all but perfunctory local consent and compensation, since indeed local land-holders – especially mobile herders – are often completely unaware their lands are being acquired or their rights to maintain them or receive compensation. What inducements are received by leaders to invite foreign investors to acquire lands that are occupied and utilized by local land-holders, and what sense of authority leads government officials to claim a prerogative on allocating lands that are already under use? In many cases, we must assume that the motivations are not just to achieve national agricultural growth.

### **Environmental Imperialism in Tanzania.**

In Tanzania, the intention was to put land under the management of Villages, which shortly after the Arusha Declaration in 1967 became the foundational unit of socialist administration and resource management. But it was realized by the State that were this done there would be no additional land available to it for national projects and allocation. In the 1980s, government allocated land, unilaterally, to the National Breweries, which alerted leaders to the dangers of community lands being lost to local purposes. Arusha Regional authorities encouraged people and investors to pursue agriculture in Loliondo; 100 requests for land in the Loliondo Division in 1985 became 264 claims in 1989, claiming up to 140% of Loliondo as a whole (an area of 5,755 Km<sup>2</sup>, over 575,000 Ha), creating great insecurity regarding Maasai land rights (TNRF 2011:11).

The first pastoral NGO, KIPOC, was instrumental in urging Ngorongoro District to undertake to “register” village lands in Loliondo with the express purpose of making land in this well-watered highland area less susceptible to appropriation, and this was accomplished in the early 1990s. One drawback was that, at that time, the receipt of title deeds essentially meant that ownership passed to village governments, whose answerability to Village Assemblies or communities was unclear (Ibid.:12). But in 1992 it was with surprise and controversy that the entire Loliondo hunting block was leased to an army officer from Dubai, part of the United Arab Emirates, through the Ortello Business Corporation (TNR 2011: 16). Villagers felt they had not been consulted, nor had given their permission, though the area M.P. was suddenly sporting a new safari vehicle, which suggested that ‘someone’ had given his acquiescence. It was considered not by chance that the President of the day was from Zanzibar, which to the chagrin of many mainlanders had joined the Arab League. The ‘Loiondogate’ scandal was heightened by reports of shooting of rare animals from helicopters, failure to provide promised local assistance, and attempts to eject herders from the hunting block, which occupied most of the dry season pastures of the Loliondo Maasai. The Shivji Commission on Land Matters (1994) described the Loliondo arrangement with the Arab consortium as a dubious land deal that undermined local land rights and their legitimate livelihood pursuits. Numerous conflicts have occurred between the company and both the villages and the government, in particular over continuing range use by pastoralists and the environmental destruction perpetuated by the company in its hunting pursuits (TNR 2011: 17). The OBC has, however, guaranteed a continuous flow of revenues to government (US\$560,000 to the central government, \$109,000 to Ngorongoro District

Council, \$150,000 to villages per year), as well as support for anti-poaching and local development projects, mainly in health and education (Ibid.:18).

Ecosystem and photographic tourist initiatives that villages entered into were originally encouraged by government as this advanced community conservation ties, but the OBC has objected to these village-level leases and on occasion has forced tour companies to leave the area, depriving villages of the considerable revenues they had been receiving (Ibid.: 19). Loliondo (together with the neighboring Sale Division) had been declared a Game Controlled Area (GCA) since the colonial period, creating an overlap between the GCA and Village lands. Notwithstanding its status as a registered village, the Wildlife Conservation Act of 2009 prohibited all agriculture and animal husbandry within a GCA, in principle bringing the “village” as such into direct conflict with the GCA administration, were the prohibition to be enforced. This eventuality in fact occurred when in July, 2009, government forces evicted Loliondo residents from the OBC hunting area that has served as dry season grazing for Loliondo villages. Hundreds of homesteads were reported burned, affecting up to 20,000 residence with 50,000 head of cattle, ejected from their grazing and water resources at a time that a very serious drought was affecting the entire region (Ibid.: 20). This military operation was justified on environmental grounds, since the region has indeed been affected by the combination of drought conditions and grazing, but no more than is normal during drought.

It might be thought that, given payments made by the OBC for privileged hunting rights to this large sector of land immediately adjacent to the Serengeti National Park, there are good economic reasons to suppress the use of these villages for photographic safaris and livestock production. But figures demonstrate the opposite. In 2007, the

annual per Kilometre revenues realized from the OBC Hunting Concession was \$546, while photographic safaris brought in \$240 Km<sup>2</sup> to six Loliondo villages, potential expansion of Serengeti National Park revenues could be expected to generate \$1,418 Km<sup>2</sup>, while actual livestock revenues generate \$2,010 per Km<sup>2</sup>! In short, in the absence of the hunting concession, Loliondo could combine livestock production with enhanced earnings both from ecotourist and photographic tourism to generate over six times as much revenue for the Tanzanian nation as OBC provides (Ibid.: 25). The TNRF report concludes:

The policy implication from these calculations is that any land use planning processes for Loliondo should maximize the area of land designated for livestock production- in other words, maintain livestock as the predominant form of land use across all of Loliondo. Since various forms of wildlife tourism have co-existed with livestock production for many years, it is logical to maintain livestock as the primary form of land use, and develop tourism or tourist hunting as secondary forms of land use that can be integrated within pastoralist managed landscapes (Ibid.: 26).

Were village and conservation activities to be integrated through the option of creating a Wildlife Management Area (WMA), tourism, pastoralism and wildlife conservation could coexist with a combination of investments being pursued, ensuring continuing access to grazing while supporting the development of non-hunting tourism.

Exactly the opposite strategy has been pursued on the western side of the Serengeti National Park, where a major investor, American financier and environmental philanthropist, Paul Tudor Jones, created Grumeti Reserves in 2003. The Grumeti concession was created out of Ikorongo Game Reserve, Grumeti Game Reserve and Fort Ikoma Open Area, a total of 140,000 Ha. These reserves were originally created as multi-use protected areas to provide catchment areas for wildlife from the Serengeti National Park, with cooperation between the goals of conservation and local livelihoods.

By granting a concession over this vast area to an outside investor, Tanzania essentially privatized not only a significant national reserve of wildlife but also land held by several groups of Tanzanians (including Sukuma, Ikoma and Maasai) that had been ceded with the understanding that continuing productive use could be made of the region. Several very elegant lodges have been construction in the area, through which the Wildebeest migration route passes, to capture the high-end tourist market. The Grumeti Reserve has established a partnership with the Singita Tourist Group, which is known for creating some of the “best” hotels in the world, several near Kruger National Park in South Africa.

Brockington et al. (2008: 577) observe that the investment project of Grumeti Reserves Limited “draws on deeply held western notions about what these landscapes should look like, and who can rightfully use them. First they have to be cleansed of people. The Tanzanian Government evicted people from the Grumeti and Ikorongo Game Reserves in 1994 (before Jones began working there). In addition, Grumeti Reserves Ltd. is also attempting to negotiate a compensation package that would relocate an entire village.” A Website article distributed on behalf of Grumeti Reserves out of Arusha (PRnewswire 2011) draws attention to the community service provided by the Grumeti Reserves, which “has also done a great deal of work for its neighboring community, establishing the Grumeti Community & Wildlife Conservation Fund (the “Grumeti Fund”), which has invested heavily in the region. Among the projects undertaken by the Fund is the planned reintroduction of 25 Black Rhino to the Serengeti eco-system.” It states that “The mission of Grumeti Reserves is to rehabilitate and improve the indigenous biodiversity of the western Serengeti-Mara system to the benefit of local communities and districts, as well as national, and international stakeholders,



through practices that are financially sustainable, environmentally and culturally responsible, and politically acceptable.” Yet local officials do not seem to concur that it’s activities are “to the benefit of local communities”, nor that they are “culturally responsible and politically acceptable”: “The council land, natural resources and environment official, Ms Dinna Rweyemamu, observed that the villagers were not involved when the reserve was handed over to the investor. The villagers used the game reserve buffer zone to graze their livestock, said the official, arguing that an alternative grazing area ought to have been sought before the area was handed over to the investor” (Mayunga 2009).

In considering who and why investors have been able to gain such enormous amounts of land in Tanzania, we must consider the country’s political background. While developing a system of economic management and political governance informed by the socialist experiment may have provided Tanzania with a system of administrative organization and a humanitarian ethos, it also left a legacy of centralized decision-making, a philosophical denigration of the capacities and rights of the peasantry, and a ruling party that feels it has both the responsibility and the privilege of unilaterally determining policies that affect every local community. Out of the combination of a dominant ruling party and the onset of market liberalization has emerged a nervousness about ceding too much power to localities and sense of entitlement, that government and party deserve to benefit from the liberalized economy, which in the absence of real growth means to the flow of foreign investment. So in considering why lands should be allocated at such a large scale to outside investors, even for non-competitive returns, we must consider that flows of foreign investment provide “rents” for officials. Perhaps the

key factor to be considered is that a critical amount of the hunting concession revenues from Loliondo and tourist revenues from Grumeti are received by the central government, which finds itself now in competition with its own citizens for sources of revenue. Given a certain amount of statutory devolution to villages of rights over certain tourist activities, the federal government finds its most direct access to revenues come from leasing land to foreigners, land that is appropriated from local Tanzanians. There has been a paradoxical process by which state sovereignty is asserted over pastoral lands in Tanzania and Ethiopia and is then used to (neo) liberally allocate land to private interests, much of it to foreign hands. Since conservation is rightfully seen one of the central challenges of our time, observers tend to excuse the transgression of another major challenge of today, to mitigate world poverty, by investors who claim the emblem of environmental protection. It seems short-sighted to close off the experiments in community conservation, which aim to reconcile the needs of wildlife and the livelihood needs of local land-holders, in an expansion of wildlife fortresses that try to recreate landscapes of wildlife herds absent of people to the profit of officials and investors.

### **The Logic of Rangeland Privatization: Insecurity and Land Loss in Kenya**

The lands held by Maa-speakers from central to southern Kenya and northern to central Tanzania are especially illustrative of pastoral land loss, given the sheer diversity and inventiveness of means by which territory has been and is being seized. Privatization of rangelands, as elsewhere, has been carried out under the spurious rubric of making land-holding secure, while in fact it has done the opposite: destabilized local systems of tenure, opened the door to corruption and speculators, and stripped land from pastoralists

while implying that they weren't using the land well and so deserved to lose it. Land grabbing has occurred at every juncture of this long and sorry forty-year process. First, when private ranches were acquired by "progressive" Maasai, when the residue was turned into Group Ranches, second when up-and-coming Maasai illicitly gouged private holdings out of groups through influencing local leaders, thirdly when the influential class (often wittily called the "politically correct", whether Maasai or not, had themselves inserted on registration lists of Group Ranches where they were not resident, fourthly when the moment of sub-dividing Group Ranches saw the inclusion of politicians, civil servants from the Ministry of Lands (including drivers!), and friends and relatives of land committee members given allotments of often hundreds of acres while legitimate residents were excluded (perhaps for not being able or willing to pay a bribe cum fee). When land titles were received, and often before, the stream of sales began, as illiterate and land-poor pastoralists entertained buyers, and when the government tried to shut down the process of approving land sales the District Officer who chaired the Land Control Board only opened up for business surreptitiously on Saturdays, and approved sales for a tacit fee.

I do not intend to recite a history that has been written about already (Galaty 1994; Mwangi 2008; Lesorogol 2009), including land scandals in Lodariak, Mosiro and Ilkisumeti that should be an embarrassment to every Kenyan, were the country not now beyond embarrassment. Land loss in Maasailand has been a progressive hemorrhage of 10, 20, 50, 100 to 1,000 acres at a time, either accumulated by richer herders from poorer, or transferred to outsiders. Outsiders, often completely unaware of where land that they have grabbed actually lies, often seek the title-deed rather than the relatively dry land

itself, to use as collateral for loans that are often never repaid, or as a long-term investors. So until the fateful day when all obligations are called in, many Maasai both have the money and the land to use. What I will present here is a remarkable case that may anticipate future ventures in land grabbing at a scale not previously witnessed, and that perhaps can only be understood in light of the cases of environmental imperialism just reviewed for Tanzania. What is at stake is not an allocation of a portion of land out of a Group Ranch but two Group Ranches in their entirety, ordered sold through auction by the courts!

On 15 July, 2010, the Kenyan newspapers included a notice given by Njoka & Njoka (K) Ltd. regarding the “Proclamation of Attachment and Sale of Immovable Property”, that declared that the Ol Kiramatian and Shompole Group Ranches would be sold at auction at noon on 27<sup>th</sup> August, 2010 (12 days later) at the Kajiado District Land Registry. Ol Kiramatian Group Ranch comprises 20,531 Ha, and Shompole 64,989 Ha. The two parcels were to be sold to recover a fine of Kshs 5 m against members of the Group Ranch for trespassing on another adjacent land parcel (variously called the Komorora or Nguruman Limited). When interest and fees were added, the total came to came to Kshs 18.7 m, or approximately US \$235,000. At the judicial proceedings when the case was finally heard, the counsel for the defendants (two Group Ranches) were not present, nor did they forward the judgment of 2<sup>nd</sup> December, 2009, to the Group Ranches they were representing. In fact, the final hearing had been moved to a distant court at Kitale, far from the site in Narok where the case originated, and was quickly completed. Only when the auction was announced in the press did leaders of the Groups Ranches hear about the finalization of the case, the unpaid fine, and the upcoming auction.

Panicked by having only 12 days before the auction, they contacted friends and supporters and approached a judge to have the orders stayed.

This case had been running for 20 years since the purported offences had occurred! The original plaint had been registered in 1991, concerning the entry of members of Shompole and Olkiramatian Group Ranches into properties of the Nguruman Limited on “diverse days of December 1990, notably 4<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 27<sup>th</sup> days of December 1990”. That had been a drought year, and the trespass (which to my knowledge had never been denied) was carried out by herders seeking to use what had always been part of their dry season grazing, high up on the Nguruman Escarpment, part of the western Rift Valley escarpment that divides Kajiado from Narok District, and the Lodokilani section of Maasai from the Loita section. The trespass was on an area that was originally constituted as a Group Ranch, called Kamorora, which in 1973 had been registered in the name of the 14 members of the adjudication committee. None were in a strict sense resident on the land, but saw an opportunity to intervene to claim the land before the larger adjudication process that would create two Group Ranches in the area proceeded. Of the fourteen, 5 were from the Transmara region, 2 from Kajiado Central (i.e. Lodokilani), 6 from Loita, and 1 from Tanzania. The members were primarily civil servants, then serving in government in diverse positions, including provincial range manager, Clerk of the County Council, two Councillors (one from Narok, one from Kajiado), and a member of the Presidential Security Service. It appears that the original Nguruman/Kamorora Group Ranch included 6,970 Ha when the original Land Certificate was received in 1975, but that area was strangely enlarged to include 26,993 Ha when the title was received in 1984.

Lodokilani had been declared an adjudication section in 1969, with the aim of sub-dividing the section into 9 Group Ranches, though in the end only 7 Group Ranches were created since two irrigation schemes were incorporated into Shompole and Olkiramatian Group Ranches, with new boundaries taking this change into account being declared in 1970. At that time, there was no mention of a Kamorora Group Ranch, and the land in question was included in the Group Ranches just mentioned. The Nguruman/Kamorora Group Ranch received title in 1984, the same year that a certain Mr. Hermus Philipus Steyn changed the name of the Rift Valley Seed Company to Nguruman Ltd. In 1986, the Group Ranch was dissolved and its title and all of its assets transferred to Nguruman Ltd., with its members becoming shareholders in the company, along with Steyn. Steyn being the investor, and main source of capital for the company, over time he bought out most of the other members as they proved unable to provide the capital they would have owed as shareholders. Steyn built up a tourist camp, under a 20 year lease, which he claimed incurred serious losses at the time of the Maasai trespass, since he maintained that clients refused to visit while Maasai herders were living in the area.

In the meantime, in 2006 a suit was brought forward by the two Group Ranches challenging the ownership of the Kamorora lands, first by the Nguruman/Kamorora Group Ranch, subsequently by Nguruman Ltd. In effect, Shompole and Olkiramatian were questioning whether trespass can obtain on lands that they claim belonged to them anyway! Their argument was that the original adjudication of Nguruman/Kamorora was carried out without the knowledge or permission of the residents of Shompole and Olkiramatian to which the land had originally been allocated. Attestations maintain that

the 14, led by a former Chief of Lodokilani, aimed to defraud locals, some of whom were settled on the land in question. The former Chief, “who was not even entitled to own a portion of the disputed land, used his position as a local Chief, and an elite of the community to grab the community’s land behind their back” (Njoroge to Kamau, 2003). They were said to have fraudulently obtained a title deed on the basis of disputed documents, on the strength of which the area was leased to the investor. It was, however, the decision of Steyn to bring suit against the two Group Ranches, so we must question what his motives and strategy were.

If the two Group Ranches were auctioned, for amounts that will far exceed the amount due to the court, who will acquire it? One must suspect that the same investment group will, directly or indirectly, end up with extensive lands of the two GR’s, thus considerably expanding the zone given over the conservation and high-end tourism. The 2009 census reports that in Shompole there were 8,226 people in 1,629 families, and in Olkirmatian there were 7,947 people in 1,755 families, all of whom would be seriously affected were the ranches to be auctioned. It was estimated that, if eviction were to be carried out, numerous security personnel would be needed (200 General Service Unit Officers, 200 Policemen, 100 Administration Policemen, and 100 anti-stock theft personnel), and that the exercise “would cause a lot of bloodshed and destruction of property as the people on the ground feel that their land has been taken unjustly and thus are not willing to vacate without putting up a fight” (Njoroge to Attorney General 2003). In interviews carried out in late February, 2011, residents of Olkiramatian reacted with dismay and apprehension at the prospect of their lands being auctioned and themselves

being evicted: where would we go, what would our children do, what would happen to our livestock?

The legal issues at stake cannot be addressed here, but I must ask how the purported trespass by individuals from two Group Ranches on the Nguruman/Kamorora land could have resulted in charges being brought against the entire group ranch? How could the lands of a collectivity be used against the offenses of a few individuals? One suspects that court cases brought for what in the end are minor trespasses always had a larger aim, to grab the land of the defendants. Once in the Kenyan courts, unfortunately, the end result would be subject to politics and bribery, which would give the richer individual an advantage over time. It may have taken 20 years, but from the perspective of the foreign investor, the cases achieved the aim of legally challenging the right of an entire community, of some 16,000 people, in nearly 3,400 families, to inhabit the land in which their ancestors had settled hundreds of years before. The 2008-09 drought demonstrated that the pastoral virtues of flexibility of mobility and negotiability in occupying land are still practiced, by necessity. Land grabbing in Maasailand is often justified by the economics of competing land use, but advantages given to outside investors who wish to pursue a particular commercial pursuit merely undermine the local opportunities to combine livelihoods and forms of land use in optimum combinations. In Olkiramatian and Shompole today, households combine animal husbandry, cultivation and wildlife conservation and tourism. The aim of the Karomoro case is not just to eliminate trespassing on the Karomoro land but to eliminate competition in the form of community pursuits of conservation and tourism. But at what a cost!



## **Conclusion**

The cases of land grabbing we have reviewed occur under several tenure conditions: in Kenya in the setting of rangeland privatization, in Tanzania where land is held by villages but radical title by the State, and in Ethiopia where the state asserts rights to allocate lands over the Kebele neighborhoods and Regions. While the corrupt nature of some land-grabbing is indicated by its covert and surreptitious nature, some is carried out under the progressivist and triumphant banners of development, national progress, the preservation of natural resources, conservation, regional diversification, anti-traditionalism, anti-conservatism, and what have you. Land grabbing is strategized and justified, in discourse and policy, on the basis of capital that will be invested to the ends of more productive agriculture and more effective wildlife conservation, but these justifications underestimate the effectiveness of local land users who could accomplish the same ends as foreign investors claim. Almost always underestimated is the importance of productive use of rangelands by pastoralists/ranchers, where opportunistic and mobile livestock husbandry has long defined the most effective strategy for extracting value out from otherwise marginal lands, and in so doing feed growing millions. The impact of Land Grabbing on rangeland societies is potentially very serious, as pastoralists are increasingly squeezed into smaller territories, and their reputation for innovatory husbandry is put into question by those who look not at what they accomplish but what other would like to attempt on the same land. Pastoralists in East Africa thrive on a firm base of animal husbandry, which they now combine with other more diversified livelihoods including serious initiatives in community wildlife conservation and tourism. States in the region should demonstrate greater confidence in their people's ingenuity by

seeing them as the agents of arid and semi-arid land change and potentially enhanced prosperity, rather than looking elsewhere for eager hands of investors in which to place the land of the future.

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