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“Rights Are Never Given on a Silver Platter”

Resilience and knowledge in contesting the state: the case of Lemek Group Ranch in Kenya

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Maasai people walking in the Masai Mara Game Reserve, Kenya.

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The question of land tenure rights in most of the Southern part of the world have their root cause in the colonial encounter. The same is true in Kenya, a country with about 45 distinct ethnic and linguistic groups. Among those, the Maasai account for only 3 percent of the entire population. However, at the time of the colonial encounter, due to their highly organized leadership, military and justice system, the Maasai controlled large areas of land and were recognized as a powerful indigenous society.

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Kenya is known for its legacy of ethnic violence. What is less known, however, is that ethnicity and violence has been centred around land and dispossession. When the British Empire established the East Africa Protectorate in 1895, part of which was known as the Kenyan Settler Colony from 1920 onwards, the Highlands, occupied by the Maasai, were regarded as pre-eminently suitable for European settlement and were specifically reserved for that purpose. As early as 1903, the formation of the basis of the White Highlands policy were laid out. Major instruments were the disregard of the existing customary ownership of land and its replacement by the Crown Lands Ordinance as well as the Anglo Maasai Treaties of 1904 and 1911. Manipulated into the first treaty but violently forced to sign the second, the Maasai were evicted from 60 percent of their most fertile land and sources of water. It is worth mentioning that the Maasai contested the Anglo Maasai Treaties in court, yet justice was never done.

The land question continues to underlie tensions and disruptions in Kenyan society to this day. For the Maasai, the point of departure goes back to a court ruling that claimed the Anglo Maasai Treaties were lawful as they were considered to be signed between two independent Nations, the British Empire and the Maasai—in total disregard of the fact that the Maasai were subjects of the Crown. The dream to get back their land, however, has never left their minds and their hearts. It also informs the current contestation over land between the Kenya Air Force and the Lemek Maasai community. The Air Force has its eyes on land owned by the Lemek community as strategically significant to establish a radar surveillance system, and largely disregarded legal processes and procedures that guide the transformation of ownership and use of communal land.

After a long struggle, the Kenyan state acknowledged that the land claims of the Lemek community are justified and need to be resolved. Dorothee Braun, director of the RLS Office in Dar es Salaam, spoke to Kimaren Ole Riamit from the Indigenous Livelihoods Enhancement Partner (ILEPA) about the community's ongoing struggle and their recent victory.

DB: The Maasai, who once controlled major highlands in Kenya, have been victims of struggles over land for generations. It must have come as a surprise to the authorities of the state to be drawn into a conflict between unequal opponents to such an extent that the situation on the ground had to be inspected and a state of urgency acknowledged. The Lemek community in Narok County, situated along the Great Rift Valley, managed not only to bring their issue to the national parliament, but to bring the relevant state agencies, including the armed forces, onto the ground to speak to the people and experience first-hand the stories of the displaced and the dispossessed. What is at stake here?

KR: Conflicts over land are often inter-generational struggles. So is the Lemek case. The ongoing contestation cannot be understood without making reference to prevailing claims on communal land holdings—a few corrections have been made, but many are still outstanding.

In 2018, despite prevailing claims, part of the contested land that the community was seeking to re-distribute to members, who had been dispossessed before, was bought by an outsider. It was identified by the Kenyan Air Force as a strategic location for their surveillance radar system. Land speculation and rent seeking went hand in hand. Of course, land titles had already exchanged hands and the land was sold to the Air Force.

The community went to petition the National Land Commission and the parliament to prevail upon the Kenyan Airforce not to buy this land. The Parliamentary Committee on National Resources was compelled to visit to the site—this is unprecedented—as a response to community actors, who now understand their rights and the critical control points and are speaking for themselves. Speaking of the latter, one of the

members of parliament for Narok County wrote in his capacity as representative of the people an independent letter to the parliamentary committee in solidarity. In addition, the National Environment Management Agency (NEMA) was addressed, as the community not only claimed their right to property against the Kenyan Air Force taking away their land, but also raised social and environmental concerns regarding the establishment of a military site at the heart of their livelihoods.

The land question, to my understanding, is central to the vicious, often accelerating conflicts in Kenya. You defined contestations over land as inter-generational. What do you mean by that?

Contestations over land tenure rights, like in most of the Global South, have their roots in the colonial encounter. With regard to the Maasai the disregard of pre-existing customary ownership of land, the conservation agenda, and integration into the market economy form major pillars of the structural violence instituted over decades that has facilitated high levels of poverty and illiteracy rates.

To cut a long story short, disenfranchisement and dispossession of land happened in four waves. The first wave was due to legislation like the Crown Land Ordinance Act and the Anglo-Maasai Treaties of 1904 and 1911, through which 60 percent of Maasai land was lost.

The second wave of land loss happened in the creation of protected areas. Most popular game reserves, like Samburu, Nairobi, or Amboseli Game Reserve were established on Maasai land.

The third wave was the creation of what were called "ranching schemes". Colonialists regarded the way the pastoralist Maasai used their land as ineffective, environmentally degrading, and wasteful. In addition, the Maasai made massive attempts throughout to resist total assimilation into the market economy. In an attempt to force them into settlement and ranching in what they regarded as the routine way, a few elite Maasai, who were already connected to the system, were allocated huge chunks of land taken from the community. But as the landscape is never in an equilibrium but rather in a state of flux, with moments of abundant pasture, a boom, and moments of collapse, the community did not really learn to settle and adjust itself to the new schemes. You can fragment land into individual plots, but you cannot fragment clouds to rain on each land scheme.

The fourth wave took place in the 1960s. Under the influence of the World Bank and UN Food and Agriculture Organization, group ranches, informed by Garret Hardin's "tragedy of the commons", were established. The government was encouraged to adopt this tenure land arrangement, which is essentially a private collective. A given area of land was marked out based on the grazing extent of the pastoralist households within that space. On average there were between 60,000 to 1500,00 hectares per group ranch. All males were registered as shareholders in these group ranch setups, and they would use that land collectively as a community and apply traditional customary approaches to grazing and use of land.

For a moment, the group ranch arrangement was a middle ground of both customary principles of visions of managing land and a tenure, a titled sort of land, where members and owners were registered as a group. However, in Mosiro and Iloodo-Ariak, for example, we witnessed fragmentation and privatization of land on paper. In the process of establishing these group ranches, external actors took advantage of indigenous community members, subdivided the land, and illicitly acquired the title deeds. The land itself continued to be occupied and utilized by the group ranch communities, while the technocrats involved into the process—who were generally non-Massai, non-pastoralists—used the title deeds in the banks to access credit, with the land serving as collateral.

Beginning in the 1980s the national government pushed towards dissolving and transforming this land tenure arrangement into individual land holdings—the concept of group ranches, which is a collective still managed by customary principles and possessing a form of community spirit, was now pushed to fragmentation. That process was a very liminal process for communities who are unfamiliar with private ownership, unaware of market forces, and unfamiliar with the Ministry of Land bureaucracy. In Lemek, as

we have also seen in other group ranches, the process of subdividing and allocating land to individuals has been fraudulent and afflicted with many irregularities, through which external actors working with land subdivision committees have acquired large proportions of land.

When you talk about the alliance between external actors, technocrats, and group ranch officials, you also point to powerful interests behind the push towards transforming the current land tenure arrangement.

One of the dominant forces behind privatization in my view are conservationists, who find a group ranch governance system difficult to manipulate and negotiate for access to land. Once land is fragmented, negotiations take place with individuals. Ironically, once you negotiate land into conservation you re-collectivize the same land, as conservation objectives are met when applied to large chunks of land being fragmented.

What we experience is that external actors in conservation—those in the tourism sector who want to establish lodges, high-end lodges and tourist spots—come in and manipulate communities to access their land. This takes place alongside insecurities arising from weak governance arrangements, in which the Ministry of Land still holds decision-making powers on group ranches. Even as we speak, bureaucrats are using their powers to their advantage, thereby infringing the rights of ranch members.

I would very much be interested in understanding the incredible resistance communities have shown over decades, keeping up their struggles against continuous attacks and setbacks. The community in Lemek's recent successes counter the whole narrative of disempowerment.

This is very crucial, as communities are neither entirely helpless nor necessarily passive in this struggle. They are not just recipients and submissive to their oppressors. Instead, the communities seek to stake their claims and guard their interests and push back.

But how do they do this? First—and this is one of the roles of our work at ILEPA—comes bridging the knowledge gaps. External and elite actors prey on the lack of information communities have about the market system, about the avenues through which they might be manipulated, such as the functioning of the state, the administrative system, and those critical control points where decisions are made. We as ILEPA conduct community dialogues that include youth, women, and men. We speak the language that the communities understand and attempt to de-mystify and un-pack this animal of the bureaucratic system of land, the legislative system of land, the market forces around land, and the constitutional rights of the community members. You need to understand that the history of the relationship between communities and the state is one of fear, and it didn't change much after independence. This fear of the state makes communities vulnerable.

Secondly, one major weakness of the group ranch land tenure arrangement is that only male adults are registered shareholders and members. Women only have access to land through associations, either through their husbands or through their sons. So, we bring women on board and their perspective onto the table. We already have at least one group ranch in Loita that has appointed women to their leadership structure for the first time. Women are increasingly coming to this dialogue space despite not being registered, but they are saying when land is lost through land grabbing and rent-seeking actions, or sold by their responsible husbands, they are left with the burden of holding the household together and raising the children. They are not willing to be bystanders.

Communities get organized through community dialogue to bridge knowledge and capacity gaps, as these suffocate resistance and manipulate rights. The youth are also very instrumental in this, as they increasingly make use of the opportunity of knowledge provided on IT platforms. We have seen communities mobilizing themselves using WhatsApp, making use of real-time engagement of actors across spaces, linking members who are witnessing decisions on land at the Ministry of Land with their

peers who are not physically present. Information is moving faster. In some cases, communities are mobilizing resources through social media platforms in support of those who are approaching government officials. Technology has actually become a very powerful tool.

Furthermore, communities have been mapping out critical control points in the administrative system of land from the county level to the national level, where land titles are registered, where sub-division records are kept, where conflicts are supposed to be resolved, how ranch elections are to be conducted, and who must be present to ensure legitimacy.

What, in your view, is unique about the success achieved and how do you explain it?

Lemek is one of over 60 group ranches registered in Narok County. As I explained, there have also been waves of land grabbing in Lemek. The first one was in the early times of the group ranches, in the 1980s, in which some community members who were supposed to be registered were not registered. Communities organized themselves and wrote letters of complaint to the relevant authorities, including the ethics and anti-corruption body, which investigates rent-seeking behaviours and takes legal action. They submitted a petition to the Criminal Investigation Department of the County to look into these issues and they submitted letters of complaints to the registrar of lands of Narok County, detailing the names of the members who have not been registered and seeking corrective action. The actors responded—at least on paper. They wrote back to the officials, acknowledging that these anomalies should be corrected. The community has documented all communication. The community organized themselves, but early on very few members within the community understood the critical control points for seeking corrective actions.

The steep learning curve in withstanding state decisions can best be demonstrated by the extent to which the Lemek community engaged one of the mysterious organs to deal with—the armed forces. Pushing parliament to not only acknowledge receipt of the report but actually discuss exemplifies the competencies communities have acquired: to ask the right questions to the relevant institutions, to endure uncertainty and setbacks in the course of the struggle, not giving up without fighting for accountability and respect for their constitutionally enshrined rights despite being intimidated and harassed.

One such setback is the contradictory nature of existing legislation that the community has been confronted with. The National Land Commission stated that the land in question was compulsorily acquired by the state, which means that the right to property and the right to negotiate for commensurate compensation were sacrificed to the state's claim to compulsory acquisition. The state privileged compulsory acquisition over the rights of the members of Lemek community. By addressing the National Environment Management Authority, however, the community won a central point, as the agency admitted that an Environmental Impact Assessment as required by law was still outstanding. The Parliamentary Committee acknowledged not only that an Environmental Impact Assessment has to be conducted, it went further in demanding that the substantive community claims prevailing on that land be resolved. It further made it mandatory that compensation must be agreed upon and paid before the project was rolled out. As a result, the Kenyan Air Force was forced to disclose what resources were available to compensate Project-Affected People. From 5,000 contested acres, only 800 have already been acquired. The remaining 4,000 are still up for contestation despite the military committing to buy the land.

The current contestation is a story of hope. It shows that the power is with the people, while the state has only delegated power. Citizens who know their rights can stand up and be counted. Rights are never given on a silver platter is really what the Lemek story demonstrates. They may not have won all that they wanted, but if you look at almost five decades of a struggle, it demonstrates inherent features of those struggles over land, namely resilience and inter-generational transgression. The Maasai still hope that eventually they will successfully launch their claim for reparations, restitution, and compensation over their outstanding historical land claims and injustices based on the Anglo-Maasai Treaties of 1904 and 1911.

Looking forward, there are some low-hanging fruits, like the call for redressing outstanding claims by the Parliamentary Committee. This is a stepping stone that should not be overlooked. We need to find a way to sustain community mobilization, mapping out critical control points to take advantage of this pronouncement of the parliamentary committee. The acknowledgement by the Environmental Agency that due diligence was not done is another stepping stone to demand accountability and the rights of the community. Supporting the Lemek in their pursuit of justice in land rights claims, which are now acknowledged by state agencies, is critical and necessary. Documenting these struggles and distilling key messages and strategies we believe will go a long way in strengthening the alliances and cross-pollination of ideas and actions across the Group Ranches that are facing the same challenges.