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THE SCRAMBLE FOR MAASAILAND: AGE, GENDER AND  
CLASS IN THE CASE OF NO PRECEDENTS

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Like most African pastoralists, the Maasai of East Africa held  
natural resources of the range on a communal basis. Access was  
assumed by virtue of membership to a given territory.

In the 1960's however, following the spread of capitalism to the  
region, the government introduced legislation allowing the  
adjudication of the range and allocation of portions to groups and  
individuals for exclusive use. General guidelines were provided  
for subdivision but these were inadequate and unclear. Coupled  
with this was the absence of cultural precedents to provide  
appropriate methods of distribution. Consequently, the allocation  
of land turned into a scramble characterized largely by fraudulence  
and a conflation of indigenous categories of age and gender aided  
by the emergent class structure.

This paper examines the process in historical perspective and  
discusses; a) the rationale behind the adoption of alternative  
land tenure systems according to official Kenyan State Policies.

b) the limitations of the guidelines in the provision of viable methods of distribution, c) "Cultural" responses to the exercise and their relevance to indigenous categories of age and gender; and d) the significance of the scramble in the concretization of class relations both the within Maasai community and in the wider Kenyan society.

We shall begin by outlining the traditional patterns of land use and distribution prior to significant intervention.

#### The nature of indigenous tenure

With the communal form of tenure, a defined community assumes usufructuary rights to a given territory. Each community knew its boundaries although access to territories belonging to others was mutually negotiated. To this extent women, men and children were independent possessors of their common heritage.

There were rules specifying rights and obligations of all members with respect to land and its productive resources such as pasture, water and salts. This distinguishes this tenure regime with open access, a regime which, according to Hardin (1968) is associated with unrestricted privilege but with no obligations. The latter seems to represent the breakdown of rules governing group management of common property resources (Migot-Adholla et al 1991: 159).

While clear guidelines governed access for use rights, disposal or transfers of land to non-members was non-existent. In the same vein, no particular individual, family, clan or group could totally and permanently exclude others from any part of common territory. The flexibility of the communal system of tenure allows seasonal movement of rotation, hence a continuous availability of pasture. This guarantees survival of herds even for those in marginal areas. The control mechanisms were aimed at preserving the resources of the territory for the benefit of future generations. It is for this that alienation of the range or any of its resources was unknown.

Access to the resources of the range varied depending on the needs of a particular group or member. Thus in the Maasai case, young, old and sick stock were guaranteed access to pasture near the homesteads and these were in effect enclosed for their exclusive use. The same applied to dry season pasture during the wet season. They were preserved for when the need arose, and all were expected to abide by such management measures.

Thus social authority and convention obtained in most cases, and these ensured both access as well as sustainability of the resources through sound environmental protection techniques. Such patterns of use should not however be interpreted as containing seeds of privatization, but purely as sound management measures.

In Kenya, the transformation of this communal form of land use came about with colonialism as well as through deliberate policy by subsequent governments following the plan in 1954 to replace African tenure institutions with English forms of tenure. Such a decision was predicted on the assumption that indigenous tenure systems were the primary cause of stagnation in African peasant economies (Okoth-Ogendo 1976, 1979:4).

Indigenous tenure systems are generally commonly criticised as inefficient and appropriate only for subsistence agriculture. Since sale of land and mortgaging were usually not practised or generally discouraged by those tenure systems, they were considered unsuitable for the development of modern capitalist agriculture.

Some authors (Dormer 1972; World Bank (1974), Harrison (1987), Johnson (1972) and many others, see the indigenous tenure systems as a constraint on agricultural production and development since it provides insufficient tenure security to induce farmers to make necessary improvement and investment on the land. The argument is that the individual without secure private rights to the land may not be able to claim fully the returns on his/her investment. To the extent that investments are required for conservation purposes, indigenous tenure arrangements will also potentially promote land degradation.

It is further asserted that, because land is an integral part of

the social systems and legitimate use is determined by birth, affinity, common residence, and social status or some combination of these, transactions are limited to the members of the lineage. This encumbers the emergence of market transactions in land in which access would be determined by supply and demand factors and entrepreneurial ability. Contrasted to this picture is the idea that "modern" (implicitly "western") property rights systems should be founded on principles and contractual laws and economic efficiency.

The alternative tenure reforms sponsored by government and bilateral agencies (e.g. the World Bank) sought to replace indigenous tenure with tenure-models from western capitalists states. The objective of the change in tenure arrangements was to curb fragmentation and concentrate land in the hands of the most efficient producers (Swynnerton 1954).

The land reform systems besides helping to create a stable African middle class would also increase security of tenure; reduce costs of litigation; encourage agricultural investment, control land transfers hence ensuring an economic size of holding and reduce fragmentation resulting from inheritance.

Thus beginning in mid 1950's Kenya legislated an individualization reform with a systematic demarcation and survey of all holdings, converting them to individual ownership and having them registered.

Land reform was late in getting to the Maasai districts of Narok and Kajiado in Kenya. Reform was legislated through the Group Representative Act of 1968 which led to the formation of 51 group ranches.

#### Limitations of official guidelines for distribution

The impetus to register Maasailand as group ranches was made urgent by the fact that a few enlightened individuals had already started to enclose some areas (e.g. demonstration schemes) as private portions. These were better watered areas. Their action posed a threat to communities at large that they might be left landless. Group ranches were then accepted by the community as a compromise and the World Bank facilitated the adjudication process.

Whatever the objectives of the Act, it was soon interpreted as providing pastoral peoples with a framework for the joint management of animals on a commercial basis (Okoth-Ogendo, 1979:6). One of the most significant elements introduced by this Act was that it narrowed the management of the range to smaller (and supposedly more manageable) group boundaries. It also created a more concrete (and less amorphous?) management and decision-making structure known as group representatives. These were supposed to be less than three and no more than ten, and they were all usually middle-aged men. A charter was to determine the nature of membership and excluded outsiders (Land Group Representative) Act, chapter 287.

Herders are known customarily to negotiate access cross section boundaries in times of need. These were some of the benefits to be forfeited upon land subdivision. Group ranches tended to delineate boundaries without catering for the necessary access, nor ensuring an ecological balance variability within each ranch. This is why internal movement persisted without the necessary ecological rationale (see Galaty, 1980).

Legislation under the Land Act seems to have provided a clear definition of land rights, in a typically Western legal sense, but it was narrowly focused such that it made it difficult to include the complex set of rights associated with certain territories in the land adjudication process. The charter of group ranches failed to provide for the interests of all parties in the distribution of the common resource.

Other problems constrained the operation of group ranches. One critical problem is one of obtaining credit. Although some banks have accepted titled land as collateral and auctioned it off in cases of default, in some cases purchasers were not able to take occupation of the land for fear of reprisals. Thus, rather than stimulating a land market in which more efficient farmers acquired land, this situation had created a market in land titles which were often used to secure loans for non-agricultural investment (Okoth-Ogendo 1986) . But this development has been complicated even further by recent legislative amendments which require that

disputes over land be referred to elders in the first instance - a condition which underlies official ambivalence with respect to full implementation of the provisions of the Registered Land Act for fear of promoting dispossessions of poor and indigent peasants by their richer neighbours (Okoth-Ogendo, *ibid*)

While many group ranches were hampered by their inability to organize themselves enough to borrow loans and inject development ideas into their ranches, others found themselves in a bind for having done so. Oldoinyio-Onyokie offers a good example. It has 68,656 hectares and 360 registered members. Half of their land is arable, nance can produce a variety of crops as well as pasture.

As a development impetus, the ranch decided to take a loan of K.Sh. 600,000 from the agricultural Finance Corporation to develop a water project. In due course the group failed to repay the loan on time until it accumulated interest up to K.Sh. 1.5 million. As a solution to the problem, the committee proposed that 600 acres of the ranch be sold to clear the loan. Other members started clamouring for subdivision to escape from the collective burden of which they were not responsible. Most blame has been placed on the committee for its failure to advice members accordingly. But perhaps they too were unaware of the intricacies of taking loans. It seems then, that the complexities of capitalism have equally hampered progress in otherwise progressive minded "communes". Lack of knowledge on how to borrow and repay loans and on how to come up



with viable development projects are issues where orientation is required.

Group ranches also created a vacuum of authority by undermining traditional norms governing access, management and use without replacing them with any viable ones. At the same time while the institutional framework was specific about the exclusion of non-members, it created no mechanisms for restriction.

Although group ranches were meant to act as an alternative to individual tenure and a surety against landlessness, their formulation was such that they have proven ineffective and their organization inoperational. It does not prevent subdivision and sale, it does not control land use practices that are deleterious to the land/or people, or the environment. Traditional dispute - settling mechanisms were designed to deal with most types of conflicts in the past, but are unable to cope with new violations or conflicts (Kituyi & Kipuri, 1991).

This resulted in the exclusion of holders of certain rights and conferring on others certain rights than they are entitled under customary law. The limitations of official guidelines for land distribution are demonstrated by contradictions, inconsistencies and fraudulence in the registration and subdivision process.

Cultural responses to subdivision and their relevance to age and

## gender

By endorsing private tenure, the governments of the Eastern Africa region have encouraged people to obtain titles to land for individual economic gain. Inevitably, higher potential land has attracted most attention and the economic value of such land has risen. The people who are aware of the potential value of such land acquired title deeds for it. This has had various social, political and ecological implications.

With the fast changing land tenure systems, there has been great pressure on laws and customs which have in the past assured pastoralists' land rights. Such pressure can create a climate of uncertainty which may have undesirable effects on both equitable land access and output. Having to define property rights in one individual's name appeared to force families to deal with conflicting interests that were handled in a more subtle way under customary tenure.

The nature of land tenure changes that have been effected among the pastoral Maasai have never had clear definition and qualification of access rights by different age and gender categories. Group rights deriving from individual registration as a member of a corporate entity like a group ranch contain different dynamics from traditional rights deriving from common property rights. The difference is manifest when one examines inter-generational

transfers of rights among group ranch members with different family sizes and composition. The varied appeal to tradition and vested interests have affected the nature of inter-generational transfer or rights in land and the extinction of some assumed rights.

While in the scramble for Maasailand was first associated with Europeans at the turn of the century and with other Kenyans since independence, it has now become a scramble by Maasai themselves against other Maasai; particularly juniors and women. As we shall show, the scramble has had no rules or precedents to go by, people make the rules as they go along depending on their persuasion.

In the early stages of group ranch adjudication, all adult men and widows were registered as members. This included those who no longer resided in the area such as urban migrants who spent most of their time away from home. Members were registered as families and juniors and women were assumed to be part owners in the same way they had been benefitting from family resources before.

However, there was no specification on what was to happen to unmarried, separated or divorced women. Elders were being propped up as resource managers, and since there was no officially-defined cut-off age for defining group ranch membership, exclusion was quite arbitrary and was determined by the elders designated ranch committee members on the basis of age-group and grade.

In the decade that followed adjudication, as land shortage intensified, those who had been absent for long were conveniently left out, and their residual rights extinguished. In some cases, junior men were pushed to more marginal areas of the range as the elders assigned themselves the better watered part;

The registration of new members is always shrowded with mixed feelings from all sides. Elders try to resist the idea because it might mean a reduction of their parcels upon subdivision. But at the same time, others might prefer early subdivision so that their own sons would <sup>act</sup> their own portions from the collectivity instead of having to further reduce the portions belonging to their fathers.

Similarly, while most young men are aware that subdivision means worse portions for them they also know that the longer they wait the smaller and the worse their pieces will be since a new age-group will claim its rightful share.

But while every means was used to differentiate juniors from elders in land distribution, no "culturally" derived justification seems to have been necessary to totally exclude them from some legitimate share of the land.

The case of women on the other hand was different. Widows continued to assume the same unqualified rights as elders. But those among them who had daughters but no sons were hesitant to

register their unmarried daughters to inherit their land rights. Since girls were presumed to eventually get married, and in the absence of knowledge of single women inheriting land in any part of Kenya, there was apprehension that such daughters would either be denied rights to land in due course by the male officials of group ranches, or would transfer those rights out of the community when they married. Hence across the society, there was always fear that giving land to girls was the easiest way of disposing the land to outsiders.

The question of whether or not the girls later got married also created another uncertainty. Should the girl get married and leave the land unclaimed, it would revert to the collectivity and be totally lost to the widow's family. To avoid any unintended eventuality therefore, widows with only daughters decided not to register their daughters, but instead transmitted their land rights to their male relatives by having them registered as inheritors.

The result has been a practice where the only women with any independent access to land are those widowed by land-owning husbands or those who were already widows at adjudication. Single women who never married or have been divorced are cut off from land ownership.

Beyond the generalized disparity coming from uncertain transfer procedures, is the reality that most victims are women. This has

been demonstrated in many cases.

One of the most positive aspects of the group ranching system was that it guaranteed access to resources to all members, and in so doing it offered protection to men and women alike against adverse social inequality. Although women were not represented in the group ranch committees, this fact did not in the initial stages directly affect women per se in an economic sense. Women continued to assume the same use-rights to all resources.

It is during the registration of group ranch members that young men and the majority of women found themselves actually disinherited. The group ranch officials together with the adjudication committee made the decision on whom to be included and who to be left out. Their decisions were a direct reflection of the structure, management and the decision making process of group ranches. The exclusion of women created the suggestion that whatever traditional rights accruing to women toward movable or immovable property, when it comes to land (as opposed to mere pasture) it is the men in the elder age-groups who will control it. And they did so selfishly at the expense of others.

Had there been a female member and a man from the junior age-sets in the original group ranch committees, would the same procedures have been followed or would there have been a more sympathetic, less insensitive view to eventual landlessness? It is hard to say,

although the latter alternative is the more probable.

Another discriminatory aspect about group ranches is that although they were also intended to deliver and administer development loans to interested and needy members, the availability of credit facilities to poor members, including all the women became a problem. This was so even though women continued to contribute to family labour in maintaining the stock and the family units. Any benefits accruing to women were obtained not in their own right, but only by virtue of their husbands being members. It is not clear whether women actually sought loans using group titles as collateral or whether they were assumed not to dare.

Whatever the case, the idea was inculcated in everyone's mind that when it comes to the commercialization of the common land, women were destined to become indirect beneficiaries if at all, certainly as wives (as long as they remain so) and possibly, but most unlikely, as daughters. And this trend was carried over to govern land held on an individual basis, except of course in a few cases of widows who are technically able to acquire loans in their own right.

Although this trend may have been set in motion in other parts of the country, it was assumed that the same would obtain elsewhere. In the case of the Maasai, even though there existed no concept of land ownership, it was assumed that elders were to become exclusive

owners of commonly held lands. The allocation process is elaborated by the experiences of owners of individual holdings. Such cases indicate that different interpretations have been derived at depending on one's persuasion.

In the case of individual holdings, a survey conducted in mid 1980's showed that men used their own discretion in allocations. It must be remembered however that some of the first men who obtained individual holdings were usually educated and that their own perceptions were largely influenced by events outside Maasai society. Some of these men subdivided their land equally among all their unmarried sons and daughters; others among their sons only, yet others assumed that it should go to their eldest son only. Each of these methods of resource transfer could be deduced from some broad interpretations of traditional mechanisms for the distribution of other productive resources.

The first option takes care of everyone, but assumes that married women either stay married, or that they are guaranteed natural rights to land. The second option also takes for granted the position of unmarried daughters; that is, assume that they will in due course get married and be entitled to inalienable rights.

The allocation of land by a man to his eldest son could be said to be consistent with the method of inheritance where a man leaves his



unallotted herd to his eldest son. The only difference is that, some livestock is also allotted to the younger sons during their father's lifetime. This point is disregarded by the allocation of all the land to one son. At the same time, giving all the land to one son deprives the rest of the children of their inalienable rights and also places them in a dependent relationship vis-a-vis the eldest son. The fact that the man totally controls the allocation to his progeny, of course leaves the wife as perpetually dependent on both her husband and her children, disregarding her previous autonomous position in the allocation of livestock for inheritance. In this way inequity by age and gender became a reality within the household.

But why have women found themselves disinherited? Without delving into any serious theorizing, we shall examine in brief outline some of the historical and cultural circumstances that might shed some light to events of this transition.

#### Justification for the exclusion of women in land ownership

Within the wider context of Kenyan society within which some Maasai have found themselves, we might say that the process of exclusion from land ownership, was not direct, but was justified from several ideological positions: from the position of women as deduced from the rank women came to occupy in colonized society and perpetuated through colonized men, and from a particular interpretation of and or conflation of "traditions". Both positions accomplished the

same ends.

The pre-colonial as well as the post-colonial state used different strategies to transform men into owners of the resources of their communities. In doing so it set clear precedents that were to govern all land transactions, as well as influence the relationship with other productive resources.

Land became delineated as "family property" and placed under the jurisdiction of one exclusive owner. This is how men became owners while women became non-owners. Once the precedent had been set in motion in other parts of the country, it was assumed that the same will obtain elsewhere. In the case of the Maasai, following stiff competition for this scarce resource, it has become necessary to exclude some social categories, and these were provided by the traditional age and gender structures.

Nevertheless, while the state set certain precedents and general outlines that were emulated in land distribution and were influential in the exclusion of women, it is necessary to explain the ease with which this ideology was accepted and elaborated in the actual allocation.

It is often assumed that men ended up owning the land because they also owned livestock, and in this case any discrimination of women must be blamed on the culture itself. Yet, we are all aware that

rights to livestock were quite dispersed such that it would be incorrect to argue for a direct correlation between ownership of livestock and ownership of land or (to be specific to pastoralism) ownership of pasture. We may also recall that the family livestock was usually allocated to the offspring by both the husband and the wife, and in the event that one dies early, the father's unallotted herd goes to the eldest son and the mother's goes to her youngest son, or an equivalent. The number and sex of the stock allotted to women was prescribed by custom and it remained technically inalienable and by dispersing rights to their progeny as they grow and age, it ensured the reproduction of the social system. But more importantly, it prevented abject poverty like the one we are now witnessing.

The majority of daughters, were, however, assumed to get married and because of this assumption they were allotted a minimal and, largely, a symbolic number of livestock from their natal homes. The bulk of the herds to which they had jurisdiction over was obtained from their marriage.

The question then is how to interpret and translate such dispersed but also defined rights to livestock into rights to any other possibly productive but non-reproductive resource such as land. This question was never tackled by our wise leaders in the midst of the scramble. Furthermore, how does one treat the situation of daughters who choose to stay unmarried and women who are separated

or divorced from their husbands? These were categories that did not previously exist but which are emerging and they provide a challenge to the so-called traditionality of Maasai society. Serious consequences have resulted from the marginalization of women in the distribution of land.

#### Consequences of exclusion of women in land ownership

Following the recent discriminatory methods of land subdivision many women have found themselves in fragile conditions of existence. Unlike widows, women who are single, or divorced or separated from their husbands have found themselves in rather desperate situations. Many have been evicted by their fathers, brothers or husbands from settlements they had always known as home. Many have moved to peri-urban slums in search of income from any means they can find. Their living conditions have indicated that their children are viewed as competitors and a threat to their male kin, rather than valuable additions to the family unit.

Despite the fact that women have found themselves disinherited, they have nevertheless retained the traditional responsibility of provisioning subsistence to the household. Following adjudication and subdivision of land, the production of the staple diet, milk, has become a major problem. At the same time, the generation of cash for the purchase of alternative subsistence needs has become critical. But rather than passively sit back and let their children starve, women have explored almost all possible options,

even though not all of them have proven viable. Almost all the income women obtain from whatever means is expended on their children's food, clothing and even school fees. Some of these include the adoption of agriculture; the making of artifacts for the tourist industry; the brewing of liquor and prostitution.

As for the agricultural option, the climate and soils of the districts, do not always permit reliable and sustainable agricultural productivity and these constraints will persist as long as the present low technological level remains. The viability of the option would largely depend on the successful introduction of drought resistant crops.

The supply of Maasai Handicrafts to the tourist industry has been a popular income generating activity. But this option is constrained by the high cost of imported beads and lack of marketing facilities. Serious constraints are similarly experienced in the beer brewing activity, including police harrassment. Prostitution becomes an option at the ultimate stage of desperation.

#### The scramble in the perspective of social class

Current land policies in most African countries where change in tenure though registration and titling is taking place are based on the belief that titling registration will increase productivity through efficient land use. It is further argued that such a

process allows land transfers, or adoption of new technologies by providing collateral for access to production credits. By both improving the collateral base and broadening the pool of eligible borrowers, private land tenure programmes were seen as leading to a more efficient utilization of available resources.

The available empirical evidence is that these beliefs are not always true. Examples from Kenya in both pastoralist and cultivating communities show that the said processes have only created new and complex problems, uncertainties for people in rural areas and new opportunities for the "elite" (Atwood 1990:669). As Swallow (1989:32-34), observes, "the expansion of private property is likely to have negative consequences for the poorest segment of the population. Those who register private titles are likely to be the most wealthy, educated and politically powerful households in the country".

Often the poorest households suffer more when land titling and registration is effected because their traditional usufruct rights are extinguished by private adjudication. Secondly, their customary social institutions of cushioning the impoverished deteriorate and kin-oriented support from the wealthier and stronger households to the poor declines steadily. For example, the system of "distribution" of livestock through associateships which offered temporary respite to the poor becomes difficult to effect under regimes of rigid territorial boundaries.

The alienation of family members from their rights to land under customary law has been one of the harshest criticisms of reform. Since only the possessor of a registered title had the right to sell land or use it for collateral, disputes, ensued between family members.

The trend toward privatization of land has facilitated the emergence of class factions among pastoralists. Seasonal variations in returns from investment are institutionalized by conversion into a relatively permanent resource. Wealthy and more powerful non-pastoralists have also benefitted from the privatization of common lands. The more vulnerable people are the less influential, less educated, mostly younger men, widows and single women. From users of collectively held resources, some pastoralists have become transformed into landless people.

Individuals who had accumulated large individual holdings before land reform used government positions, political power and earlier and better knowledge of the land reform procedures to acquire larger registered holdings during the reform process.

Allocation of rights to land by the state invites corrupt practices. The greater potential for skewed distribution and landlessness lies with the market or in the manipulation of state control over access to land by political elites.

Recent cases in the subdivision of group ranches indicate that the officials of the state were corrupt and unscrupulous. The same is true with group representatives who put personal interests above those of the community.

Indeed, the demands for the sub-division of group ranches have primarily been necessitated by the unscrupulous behaviour of the group ranch officials. An example of official corruption, was shown in the allocation of over 52,000 acres to 31 government officials were allocated to outsiders without the knowledge of other members, in exchange for cash and favours. The state had to eventually nullify the allocation following massive irregularities by senior civil servant including the minister of land himself (Kenya Times 15/5/91).

Thus alliances between the aggrieved parties and politicians as well as between group ranch officials and politicians is common phenomenon and makes solving group ranch disputes very difficult. Most of the disputes are pending in courts because efforts by local leaders and the administration to solve their problem has been betrayed by their vested interests in group ranches.

### Conclusion

So far the experience with tenure reform in Maasai society, as in most of sub-Saharan Africa has been problematic. The state has not been able to achieve its objectives and reforms have often produced



unanticipated problems. One of the most obvious unanticipated consequences of the reforms has been to weaken women's access to land.

The objective of this brief presentation has been to point out the subtle trends in the subdivision of Maasai land, and to draw attention to the gender element in the whole process. It suggests that while the impact of the scramble has been felt by all the Maasai, the situation of women has been quite critical. The grievances emerging from the scramble for Maasailand can no longer be generalized or blamed on outsiders since women and men are not boiling on the same pot vis-a-vis land.

Land legislation seems to have simply provided a mechanism for transfer of wealth to those with better social or economic positions, thereby creating tenure insecurity for less influential persons.

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