Land Alienation, Land Tenure and Tourism in the Maasailand, Kenya

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Abstract
Land is a primary resource for international tourism development. The relationship of indigenous systems of land tenure, and the history of land alienation to tourism in African nations, however, is problematic. Governments of some African nations are now emphasizing the traditional land rights of indigenous people in determining land use for economic development. Land is a key resource for the local participation of the Kenyan people in development, and indigenous land claims are a volatile political issue. There has been little substantive research on tourism and land tenure in Kenya. This paper examines the history of the problem of land alienation, the nature of traditional land tenure, and the relation of current land use claims to tourist development in Maasailand. Land alienations are tied to modern tourist developments, and issues of land tenure are a central aspect of debate in Maasailand. Suggestions are offered for regional planning for tourism, and local control of tourist development and land use.

Key Words: Kenya, Maasailand, Land alienation, Land tenure, Tourism

Introduction

Land is a primary resource for tourist development, and rapid acquisition of property rights are, from the developer's point of view, essential to planning resorts or other tourist developments (Pearce, 1981). In Kenya, a legacy of past land alienations, and contemporary conflicts between indigenous groups and foreign tourism developers are a serious problem for the future of tourism as a vehicle for meaningful local participation in development.

The need for traditional land holding groups to take a direct role in decisions on tourism development and determining land use for economic development in Kenya has recently been emphasized (Rutten, 1992; Hilman, 1994). However, the creation of state protected national parks and game reserves, and, the establishment of tourism facilities and infrastructure have claimed huge junks of Maasai land, which now they have been excluded from (Ole Kamuaro, 1996; Ole Karia, 1998). The existing literatures emphasize the importance of large areas of pastureland for the Maasai's nomadic pastoral lifestyles (Rutten, 1992; Frantkin, 1994; Lindsay, 1987). The exclusion of pastoral herds from the protected and tourism areas has in the last decades not only caused widespread resentment but also rendered cattle herding a more difficult option for the Maasai to earn a livelihood (Rutten, 1992; Lindsay, 1987).

Government wildlife policies focus narrowly on tourism development without any involvement of the Maasai in the management decisions and utilization of natural resources including land and wildlife (Hilman, 1994; Bruner and Kirshenblatt, 1994). Lack of appreciation for the status of land in local cultures by both the government and foreign tourism investors' has created a situation in which land is a volatile political issue. The potential for conflicts between tourism and wildlife managers, and Maasai livestock owners is evident as the Maasai move into new areas and/or the vicinity of protected areas. Efforts to move them out these areas have often resulted in severe persistent and accelerating conflicts with the tourism industry, which they believe, is responsible for the loss of their land and misery. The situation is worsened by the fact that insignificant amounts of the country's

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tourism receipts trickle down to the Maasai in whose land the tourist attractions and infrastructure are located (Akama, 1999; Ole Karia, 1998; Ole Kamuaro, 1994).

Alienated from their main economic activity, nomadic pastoralism, and disadvantaged from job opportunities by lack of education and, isolated from any information about the tourist industry and its track record that would make effective lobbying or community based innovations possible, the Maasai have been subjected to poverty. Essentially it is this poverty that sustains tourism. This paper examines the history of land alienation in Maasailand, the nature of indigenous land tenure and selected cases of contemporary conflicts over foreign tourist industry investment in land. In conclusion, recommendations are presented for the problem of land claims and planning for local group participation in tourism development.

Maasai: Geographic and Socio-economic Context

The Maasai, who constitute about 3.3% of Kenya's total population of 28 million people (CBS, 1994; 2000), are a semi-nomadic pastoral ethnic minority group living in the arid and semi-arid rangelands of Kenya and northern Tanzania. Traditionally the Maasai enjoyed a reputation for their military prowess over neighbours, which was supported by their having a large territory relative to their numbers. In Kenya they occupied the area in the present Rift Valley Province that stretched from Menengai, eastwards to Laikipia and Kinangop and southwards to Nairobi (the present day capital city of Kenya). However, the appropriation of their ancestral land by the colonial and postcolonial governments confined them to Kajiado and Narok districts, roughly being the area they occupy.

The two districts are categorized as arid and semi-arid zones, which form part of the East African, plateau. The land generally varies between 600 and 200 m above sea level; the forested region of the western escarpment of the Rift Valley averages between 2440 to 3960m while the eastern land averages only 600-1100m above sea level (Jacobs, 1975). The western lands are generally better watered and provide better grazing than the eastern lands which are hot, dry and windy receiving a maximum of only 350 mm of rain per year.

The production systems of the Maasai are based on the acquisition of land, livestock and labour for production groups. Subsistence livestock production has been and is an integral part of Maasai life. Livestock besides providing essential milk and meat (source of food), livestock are also strongly tied to status within the community, satisfaction of social and cultural objectives, and the provision of "capital equity" by virtue of the role of livestock as assets (De Leeuw, 1991; Kerven, 1992; Hilman, 1994). Because of their life sustaining importance cattle numbers are more important than cattle quality and are treated with the same respect accorded to family members (Fratkin, 1994). Being dependent on livestock herding, limited trade and like in other semi-arid rangelands in Africa, tightly restricts their economy.

Along with livestock production, mining and cultivation, wildlife based tourism is increasingly becoming an important sector of economic production. Wildlife, one of the Maasai people's greatest natural assets, is backbone of Kenya's tourism industry. Because of wildlife's role as tourist attraction large areas of Maasai pastureland have been set-aside as conservation areas. Today wildlife preserves form 14% of the total land surface of the Maasai. Wildlife preserves and the remaining communal Maasai lands are sanctuaries for 80% Kenya's wildlife resources (Sindiga, 1999; Western, 2000). The government encourages foreign investment in wildlife tourism in Maasailand because it appears to have several advantages over pastoralism.

History of Land Alienation in Maasailand

Anthropological Studies strongly suggest that the Maasai have inhabited East Africa for more than 6,500 years (Rutten, 1992; Waller, 1976). Up to the 18th century the Maasai territory

stretched from northern part of Kenya to central Tanzania, 700 miles from north to south and 500 miles from east to west. The arrival of the British colonizers and the subsequent displacement of the Maasai people from their traditional lands followed a full-scale war between the British and the Maasai. Through a combination of political maneuvering, introduction of peculiar human and livestock diseases, and superior firepower, the Maasai population was greatly reduced (Rutten, 1992).

Too weak and few to defend their land, the Maasai conceded defeat. It was then that the British began the long process of dispossessing the Maasai of their lands. The first wave of land appropriation occurred in 1902 when the Great Maasai Oloibon (chief) was manipulated into signing a treaty with the colonial government, leasing the community's most fertile arable land to the British (Lindsay, 1987:152). This led to the creation of two Maasai reservations; the northern reserve in the northern part of Kenya and, the southern reserve, along and across the border with Tanzania (Rutten, 1992: 177). The Northern Reserve to which the Maasai were confined was later found to have inadequate pastures in the dry season. In exchange for a slight extension of the Southern Reserve, the entire Northern Reserve was given to the Europeans for settlement.

By 1904, the Maasai had lost two-thirds of their best and richest upland drought refuges and prime seasonal grazing lands that were later dubbed the "Kenya White Highlands". However, with European hunger for more land still strong, a 'Second Maasai Treaty' was negotiated in 1911. Apparently the Maasai chief who accepted the treaty acted out of motivation to reassert control over the southern Maasai, from whom he had been cut in the 1902 treaty. The Maasai sued the colonial government in its own municipal courts for a breach of its 1902 agreement, but the government argued that the agreement had not been a contract but rather a treaty, and that a treaty could not be negotiated in municipal court. When the Maasai went to the British Court of Appeals for Eastern Africa, the British argued the Maasai indeed constituted a sovereign entity, but that their treaty had no validity under international law because it had been made with the British Protectorate government (Asiema and Situma, 1994).

With some minor changes and extensions, the Southern Reserve (now Kajiado and Narok districts) as it stood after the Second Maasai Treaty is the area of Kenya now legally under Maasai jurisdiction. These treaties illustrate a general disregard for Maasai property rights present from the outset of Kenya's modern history. These treaties were to endure 'so long as the Maasai as a group existed, and that Europeans or other settlers would not be allowed to take up land in the Maasai settlements' (Rutten, 1992). That Maasai lands were legally recognized from 1911 but this has not stopped encroachment from land hungry Bantu agricultural groups. Displaced by colonial settlers and a rapidly growing population, many moved illegally or semi-legally into wetter northern regions of present day Narok and Kajiado districts (Rutten, 1992).

The second wave of Maasai land appropriation revolved primarily around habitat and wildlife conservation and tourism development, which took place after the 1940s (Sindiga, 1999). Early conservation policy saw the Maasai as somewhat compatible with wildlife, not excluded from games reserves but removed from national parks. However, with perception that subsistence hunting was decimating wildlife, the Maasai were forbidden to graze their livestock in the protected areas; excluded from certain water resources; prevented from collecting resin in the forests, or using fire as a means of pasture management to the extent they would like (Rutten, 1992; Lindsay, 1987). This latter alienations took away some of the remaining richest lowlands and the last of the drought refuges resulting in a deteriorating level of subsistence for the Maasai.

The third wave of land alienation, which is ongoing, came immediately after independence in 1963 when the national government put an end to the colonial

restrictions on in-migration of people from cultivating groups to the remaining high potential areas of the Maasai rangeland. Such restrictions had been under the colonial government since emergency in the 1950s.This created a *de-facto* open access to Maasai lands, which were rapidly cultivated by in-migrant settlers (Galaty, 1992; Kituyi, 1990). Commercial agriculture, insensitive tourism policies and continued loss of traditional Maasai lands to modern economic development all threaten the survival of the Maasai people as food insecurity bites. This has created a situation in which land disputes are a focal point of intense controversy. Tourism, as it involves foreign investment in land use, is caught in the midst of this issue.

Indigenous Land tenure and Foreign Land Alienations

Formerly, land among the Maasai was in plentiful supply and nothing prevented the free movement of the pastoralists as land was neither enclosed nor under individual ownership as is the case today (Were and Wanjala, 1986; Bernstein, 1977). Traditionally, land was communally owned and primary land rights were vested in a particular family, clan or age group. Land was shared with newcomers after they had obtained the necessary permission from elders, to use its resources including water, pasture and salt licks (Monbiot, 1994). Land tenure systems were highly elastic with a multiplicity of rights to land relative to factors of residence, mode of acquisition, current usage and inheritance (Fratkin, 1994).

Colonial land alienation did not only force the Maasai out of their traditional grazing lands but also restricted them from their natural resource base with little or no support from the government (Yeager and Miller, 1986; Lindsay, 1987; Rigby, 1992). The British were attracted to Maasailand because of its excellent and varied climate, the beauty of the landscape, and the extra-ordinary rich wildlife. Commercial trophy hunting was an added attraction, which popularized Maasai tourism. Even after independence the government failed to provide them with social services such as education and employment. Alienated from their main economic activity and disadvantaged from job opportunities by lack of education and, isolated from any information about the tourist industry and its track record that would make effective lobbying or community based innovations possible, the Maasai were subjected to poverty. Essentially it is this poverty that sustains such tourism.

By 1930s, hunting threatened many wildlife species with extinction, leading to a resolution by the colonial government to establish national parks and game reserves across Maasailand to ensure the survival of wildlife, Kenya's foremost tourist attraction.

In reaction to land tenure insecurity and in order to diversify the Maasai sources of income, reduce excessive dependence on livestock and alleviate some of the problems created by the alienation of land (Kituyi, 1990), the government introduced in the 1960s individual land registration, then group ranches. Central to this programme was the consolidation of land under Maasai holdings into group ranches under the Land (Group representatives) Act, Cap 287 of 1968. The principle behind the formation of group ranches was that a number of families could come together jointly to register title to land. Management of any individual group ranch was vested in a management committee to be elected annually. Once the title had been issued, this could be used to secure loans for improvements in infrastructure geared towards intensification of livestock production on the ranches with the land title being offered as collateral for loans for infrastructure improvement.

Privatization and individualization of land tenure has been an on going process, largely evolving through trial and error. Young and educated Maasai were enthusiastic about securing land title in order to improve rangeland facilities and join the market economy through beef production. However, individual land registration opened up new avenues for exploitation particularly by the

political elites who snapped up pastoral lands and sold them to outsiders at great profit. Also, with each group or family further fragmented and confiined to grazing in their own parcel restricted their seasonal movement, which fitted so well into their ecology. Group ranches proved unsatisfactory and tended towards disintegration into small plots unable to sustain cattle and Maasai families through dry seasons and droughts.

In spite of the rapid marginalization and loss of cultural viability caused by land privatization the government has continued to grant title deeds to new immigrants without consideration of the indigenous people's land use needs. Although the law requires that before such deeds to public land are granted current owners and users are consulted, this is not always the case for pastoral lands. Consequently, large tracts of grabbed land are registered regardless of their questionable status. This scenario has not only affected Maasai socio-cultural organization but also resulted in a deteriorating level of subsistence.

Tourism Developments & Land Speculation

From 1940 to 1980 there were several large-scale tourism industry land speculations in Maasai land by foreign real estate investors. In this period overseas and expatriate interests in international tourism business bought land in the region and, established private wildlife sanctuaries, game lodges and small tourist accommodations with financial assistance from public and private sources. The losses of traditional Maasai lands to tourism threaten the survival of the Maasai people, wildlife and their shared habitat. This highlights the clash between traditional values which give society custodial rights in perpetuity to clans, and tribes based on ancestral occupancy, and those of the innovating, contemporary, monetarized society where land is a commodity, which can be brought and sold for, profit by any individual.

The alienation of Maasai land rights by the colonial administration, foreign development and the political elite demonstrates the process of tourist industry "manipulation" of local people and resources, resulting in a continuing distrust of the Maasai for foreign interest in land. While it is possible to argue that tourism will create new jobs in Maasailand to replace pastoralism, it is unlikely that many of these jobs will be made available to the local residents. The experience of tourism in Maasailand has been that tourism companies do not hire local people for the various skilled jobs except for menial positions such as watchmen and camp cleaners. Therefore, the notion that tourism will bring a windfall of benefits to host Maasai is unlikely at best, particularly given that tourism companies have their own vested interests. Primarily the Maasai view tourism development projects carried out in the national parks and reserves as not being meant to foster their basic needs but rather to shrink their lands for the expansion of tourism facilities such as hotels, and roads and, agribusiness.

Traditionally, the Maasai are not business people. However, due to eroding pastoral modes of production caused by land lost and droughts, there has been a group of Maasai entrepreneurs who have gained interest in the money-oriented sectors such as tourism and agribusiness. Even so, the new Maasai businessmen are unable to invest the tourism industry because the tourism business is absolutely class oriented and therefore very difficult for individuals from pastoral communities to enter. Those who attempt to enter the tourist business cannot acquire loans from lending institutions because lenders want land title deed for collateral, which they do not have. Tourism benefits are dominated and profits are dominated by the ruling class-residents of the global managerial community leading to unequal distribution of wealth and power.

The development of tourism facilities and infrastructure in the Maasai region does not benefit native Maasai at all. This is because the Maasai are not metropolitan dependent; rather they are small-scale subsistence farmers. Much of the Maasai food produced locally, as their diet consists of beef, milk and blood from their livestock. It is evident that the recent road,

luxurious hotels, etc. developments inside the protected areas are maintained just for the betterment of tourism industry- a sector that does not distribute the surplus let alone provide employment to local Maasais.

From the perspectives of the Maasai who are restricted, barred and confined from proximity of their land over which they now apparently have no acknowledged legal rights of access and control, tourism development is a threat to their survival. To add insult to injury most of the land acquired through title deeds is not put into any immediate use but rather held for speculative purposes. When the Maasai see this land, which they are in immediate need of use lying idle, claims and immediate needs come into head on conflicts with the speculative purpose for which this land is being held.

Indigenous Land Use Claims and Tourism

More than 80% of Kenya's wildlife resources, which form the backbone of Kenya's tourism industry, straddle the pastures of, and sites of cultural significance to the Maasai people. However, the tourist business's interest in land in Maasailand has often stirred up old land disputes and land use claims. Both local and foreign tourism investments in Maasailand have transformed previously remote areas into tourist resorts and enclaves bustling with activity mostly carried out by and for the benefit of people from outside the area and Maasai community. Tourism investors and companies have obtained licenses and concessions over huge junks of pastoral lands from government, which the Maasai are prohibited from using. The tourist activities are being carried out parallel to the main land use activity, for which this area is best suited, i.e., livestock production. Tourism has become a competitor rather than a complementary activity to pastoralism and in several cases antagonistic. The tourism industry players have grabbed opportunities available while the Maasai have been marginalized.

The erosion of Maasai traditional land management systems and the recent development of tourism in Maasailand have brought about exploitation, alienation, judgment and discrimination against the native Maasai. For instance, tourism investors have often argued that Maasai traditional land management systems, overgrazing and population growth not only threaten but also are destructive to the ecosystem. These alien powers, unfortunately, are deconstructing the legitimate Maasai land management systems and the rich ecosystem of the Maasai region that has been sustained for centuries.

The Maasai people view these above assertions as inadequate. They argue livestock and wildlife sharing the same territory is not something new and grazing competition between wildlife and livestock was never a problem as grazing pastures, along with the people's and wildlife migration processes, were influenced by nature not by the set of rules made by men as those introduced by the government, land developers, tourism investors and western conservationists. The Maasai have argued further that it is tourism activities such as the creation of national parks and reserves that have not only limited the grazing zones for livestock and the wildlife but also caused damage to their ecosystem.

It is important to make it clear that pastoralism and wildlife (both wildlife and wild plants) are not in conflict with each other, in fact they have coexisted in harmony since time immemorial and a natural balance has existed in resource use. Today, the government's emphasis on mass tourism and top-down approaches to wildlife management involves the establishment and expansion of protected areas and the enactment and enforcement of wildlife legislation. This has accelerated the competitive trends and accentuated the differences between the consumptive and non-consumptive approaches to natural resources and land use.

Land use is thus a source of considerable tension in Maasailand. The combined loss of land and grazing pastures and water rights are two major sources of conflict between the Maasai and the tourism industry. The blocking of stock routes to access other resources, e.g., livestock markets, cattle dipping services, etc.

by the park managers is a serious problem which compounds hardships of the Maasai people. The language is "trespassers" will be prosecuted and the active enforcement of the trespass law has daily implications for the local people. For example, in June 2000 some 64 indigenous Maasai were jailed for invading white farms in Laikipia (Daily Nation, June 14, 2000). Other examples of fines being levied, of cattle being confiscated and of pastoralists being imprisoned abound (Monbiot, 1994). The establishment of protected areas therefore denies the Maasai access to traditional resource areas.

Consequently, the Maasai feel discriminated against on their own soil. They are not only excluded from conservation decision-making process, denied access to natural resources inside the parks and reserves, hardly compensated for losses of property or human life incurred due to wildlife but also, are further denied access to funds (park fees) generated from these areas. In fact, revenues generated from the Maasai soil, particularly parks and reserves is locked behind ranger's booths and shipped to Nairobi for 'appropriate' distribution, while poverty continues to rise. As a result the Maasai are often hostile to the government wildlife conservation policies, which are often seen as valuing wildlife more than human well being.

National Ideology and Customary Land Ownership

Despite a century of purposeful penetration by non-customary tenure ideology, the unregistered, customary land tenure system still persists in Maasailand. It is therefore not surprising that untitled land occupancy claims have come to represent one of the most important "problems" facing land tenure in Maasailand. Perhaps one of the most radical shifts in tenure reform occurring in Kenya is that the state is being forced to accept and recognize customary ideology as legal in its own right and equivalent in the eyes of the national law to the leasehold national ideology. While individual land registration remains indispensable as a founding route to land security, it is no longer tied to individualization.

Customary land is today in Kenya a positively valued popular concept used at the national levels to create national unity and ethnic identity. Both at the national and local levels, however, land ownership are a matter of intense political controversy, because it symbolizes differences between the many local groups and traditions. For instance, a report by Parliamentary Select Committee identified ownership of ancestral land by non-indigenous people (outsiders) as one of the causes for ethnic animosities in Kenya. The Maasai wish to protect their land rights in view of their slow pace of modernization.

There is a continuous tension between the traditional Maasai values and the outside both Western (European) and local investors and developers. The conflict over land between the Maasai people and the tourism industry is a result of these two ideologically divided groups. The outsiders have brought complex ideologies, different from natives' ideologies that were "supposed" to protect the environment and to preserve the wildlife population from extinction. Today the Maasai feel threatened by the Western ideology of land management law, which the Maasai see as an enemy of their relationship to nature. The Maasai understand that the newcomers are attempting to replace the Maasai traditional naturalist ideology and their livelihood of livestock.

On the other hand, the Maasai expect that alienated lands will be returned to the indigenous owners. To decide who such "owners" are, however, is very difficult because people are left to negotiate the precise boundaries of indigenous land in a profoundly changed cultural landscape. This exemplifies the growing conflict between conservationists and pastoralists many of who now claim that they, not the government or tourist companies, are rightful owners of the customary lands now designated as parks, reserves, trustee lands and private ranches.

Conclusion

International tourism in Maasailand is founded on the land alienations of the colonial and postcolonial periods. For, the Maasai land is a basis of their cattle oriented cultural identity and becomes a focal point of local politics. Local and regional tourism planning will require specific strategies in regard to land use and land tenure that directly consider local cultural parameters.

Wide variations in land tenure practices in Maasailand makes a generally applicable land policy based on "indigenous ownnership" unworkable. Specific criteria and procedures for defining local land tenure and allocating land for tourism, by type of tourism and area development plans are possible. Foreign investors must expect the inherent political nature of land decisions in Kenya and respect its peoples and traditions.

All tourism project proposals should be given a thorough review by the community affected for there to begin to be effective local participation. Small projects with community owner/management involvement using moderate-sized properties may alleviate tensions over foreign land use. For foreign projects, land use arrangements require meetings with all land holding group members for agreement on terms of lease duration, rent, permanent structures, and definition of long-term nature of the arrangement. Improved local government administration is needed to raise the capacity for local participation in tourism planning and to realize the local revenues from tourism.

Indigenous systems of land tenure and values attached to place have been central aspects of tourism in Maasailand. Anthropologists should recognize the role of cultural heritage landscape in the evolution and consequences of international tourism.

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