Land Grabs & Natural Resources Rights Violations from Within & Below

The Experience of Maji Moto Group Ranch
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Maji moto group ranch is one of the many communal ranches mostly found within Indigenous Pastoral rangelands in northern and southern Kenya. The group ranch is located in Narok South Narok County spreading across the Loita plains and hills. The ranch is home to a rich diversity of flora and fauna and serves as part of the larger communal ranches ecosystems providing a lifeline for the Wildlife conservation around the Maasai Game Reserve.

The ranch is predominantly settled by Maasai pastoralists, with only a few representatives of other Kenyan ethnic groups or non-Maasai found within the group ranch, mainly serving as civil servants within local schools, as casual labourers in the irrigation plots and operators of small retail kiosks/shops.

The GR receives an average 600mm of rainfall per year, effectively making it a predominately savannah grasslands with pastoralism being the most practical land use option and livelihoods support system.

The group ranch has a total land area of approximately 120,607.63 acres (48,929 Ha) with a registered membership of 2,317 and a total ranch population of roughly 15,000 persons. Predominant land-use practices include pastoralism, tourism and wildlife conservation and subsistence Agricultural irrigation plots. Tourism and wildlife conservation related activities are largely driven by external private investors, with negligible locally owned and run eco-cultural tourism activities.

The major livelihoods support system of the local pastoralists in the GR is livestock keeping. Access to, ownership and effective control of land therefore becomes a make or break for Maji moto ranch members.

Figure 1: Relative location of Maji moto GR

Source: GoK, Narok south dev.plan (2008)
The concept of Group ranches was partly an outcome of a proposal submitted to the World Bank by the Kenyan government in late the 1960s. Early experiments with land tenure reforms in Kenya’s rangelands were group ranches in Maasai territories commencing in the mid-1960s.

By the late 1970s, Kenya’s dry lands became the focus of international attention in order to ostensibly improve the quality of life of their inhabitants.

Overall, the project was targeted at commercialization of livestock keeping, control environmental degradation and increased herd productivity within pastoral areas. The United Nations Development Programme (UNDP) and the Food and Agricultural Organization of the United Nations (FAO) agreed to support aspects of the project. Security of land tenure was advocated as a key instrument in promoting the development of the pastoral rangelands.

These initial efforts at privatization sought to maintain legally titled group-held units, in keeping with the Maasai communal socio-cultural structure. However, by mid-1980s individuation of group ranches began in earnest and continues to date.

This new approach to pastoral rangelands entailed adjudication of formerly Trustlands into ‘ranches’ with freehold title deeds held by groups. A Group Ranch (GR) is therefore a delineated piece of land legally allocated to a group of members, theoretically defined as all of those adult males with legitimate claim to land in the area, who together hold a single joint title.

The collective group of owners may correspond to a tribe, clan, territorial section or family. A register of all members with legitimate claim to land is prepared and provides the basis for exclusion of non-members. And, each member shall be deemed to share in the ownership of the GR in undivided shares according to the Land (Group Representatives) Act CAP 287, of 1970 of the laws of Kenya, and now Community Land Act 2016.

The day-to-day management of assets of the GR is the responsibility of ten elected and incorporated1 official representatives of the group. But the supreme decision-making organ of the GR is the Annual General Meeting (AGM) comprised of at least two-thirds of all legally registered members. This is where binding decisions are supposed to be made concerning all matters of resource allocation and other rights and entitlements of members.

The concept of group ranches represented the first attempt to radically transform a nomadic subsistence production system into a sedentary, commercially oriented system. The arrangement called for major changes in Maasai social and political organization and livestock management strategies. The plan, for example, entailed allocation of grazing quotas to members to limit animal numbers to the carrying capacity of the ranches and the development of shared ranch infrastructure, such as water points, dips, stock handling.

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1 The ten elected officials are given a certificate of incorporation lodged in the Registrar of Group ranches.
facilities and firebreaks, using loans. Members would pay user fees and be collectively responsible for loan repayments.

Additionally, members were expected to manage their own livestock and would be able to obtain loans for purchasing breeding stock and cattle for fattening. By and large these aspirations of commercializing collective community landholdings, never saw the light of day.

It was envisioned that the elected GR officials would manage all GR affairs including: overseeing infrastructural development and loan repayments; enforcing grazing quotas and grazing management; and, maintaining the integrity of the GR boundary. The proposal included provision for a hired ranch manager and government extension services to assist the GR committee.

The first phase of the group ranches was implemented in Kajiado district and thereafter within other Maasai pastoral areas including Maji moto GR (project site) in the late 1970s.

Exercising Group Ranching: The Maji Moto Experience

The long and treacherous (if not torturous) journey towards privatization of land in Maji moto GR was triggered when it was declared an adjudication section on 24th May 1977, by then Land Adjudication officer, Narok district.

Registration of all male adults claiming rights and interests in land within the new adjudication section was undertaken in compliance with the Land Adjudication Act, Cap. 284. Since then, the struggle for delineating rights to land by registration of individuals continues to the present. Eighteen-years down the line on November 1995, members resolved to dissolve collective ownership of the ranch and commenced the individuation and privatization process of the commons. Demarcation and subdivision of the land kicked-off in 1999 and now in 2018, is yet to be effectively concluded.

From the moment of declaration of Maji moto GR as an adjudication section (close to 40 years ago), the GR has witnessed a number of committees (both the elected GR officials for management of the ranch and the land demarcation committee) come and go. The grounds for the high turn-over of the leadership regimes, range from natural causes, intergenerational supremacy, opportune political moments, personal agency to predominantly those associated with alleged malpractices and leadership irregularities tending towards land grabs.

The leadership of the GR has gone through a number of age-set/generations of leadership including, the Ilterito and Ilinyangusi, Iseuri, Ilkitoip, Ilkisaruni, Ilmejooli and Ilmeshuki/Ilmancheshi.

These men shared certain distinct experiences and attributes including exposure and familiarity with market forces, agricultural communities, formal education and personal agency. These transition weren’t often transparent and least of all democratic as they were initially dominated by powerful individuals taking advantage of members’ ignorance of the applicable laws and guidelines.

The election of GR officials into office, though devolved, participatory and democratic in paper, has often presented challenges to ordinary GR members. While the land is communally owned, the actual electioneering process is mediated by Ministry of land officials whose interests are elsewhere and subject to manipulation by local elites. The election process is alien to and bypasses indigenous community’s mechanism bringing leaders into office and holding them accountable. Once in office majority of the GR members feel helpless when it comes to holding their leaders accountable.

Theoretically, the ultimate power of entering into binding contracts with external investors touching on land and natural resources of the GR, rests with the AGM of registered members.

However, in practice this crucial control mechanism is often reduced to be a preserve of a section of the ranch officials. The Maji moto GR, for example saw the variation of existing terms of contract(s) with investors in favour of the Investor at the expense of members and the participating officials receiving short-term tokens.
Contestation and Turbulence in the Rangelands

Maji moto GR has been a GR in transition - from communal land ownership to individual - for close to four decades (1978 - 2018). Under this circumstances the laws applicable in the administration of land is confusing.

The controversies surrounding land subdivision in Maji moto broadly relate to concerns over the process itself, timely access to authentic information/GR records, effective participation in decision-making, management and distribution of ranch resources and the integrity of the GR records. These concerns seem to have grown in both intensity and complexity from the time Maji moto was declared an adjudication section to date. A closer look at some of the contentious issues would help illustrate the point.
Access to GR Information and/Records

One of the recurring challenges and catalysts for the high-turnover of leadership regimes, in the GR is related to timely access to GR records or lack of it. The GR as a formal collective in which resources are pooled together under the stewardship of the representative committee, consequently implies that official records pertaining to land and other associated resources of the ranch are maintained as a unit.

Records whose access has serious bearing on members’ ability to monitor and thereby positively influence GR affairs include (though are not limited to): the GR Constitution, the Area demarcation map, the Members register, the area allocation list, the GR title deed, leases and Contracts (if any) with third parties such as private developers, Minutes of recorded members’ resolutions/decisions, records of disputes (if any including Court and tribunal rulings), financial records and other process related documents such as Declaration notices and Consent forms.

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

These records are primarily kept with the Ranch officials; District Land adjudication office and the national Registrar of Group ranches office and are meant to be publicly accessible documents by law. Contestation over access to such information is often the genesis of wrangles within GRs, as in their absence speculation and suspicion among members is heightened. Multiple factors, combine to constrain the requisite access to the said records:

- **Physical barriers** including lack of office space by GR officials for safe keeping of records, costs and time associated with physical distance between community locations and government land offices to access the requisite information, deliberate delays, mysterious disappearance of records and demands for bribes or inducement through gifts and/or other strategies by the office holders.

- **Literacy related constraints** inhibiting capacity to read and comprehend the shared information. Most of the GR members are members of Indigenous pastoral communities with low formal education levels. All GR records are written in English. For a community accustomed to sharing information through oral narratives and Ilkiushin, the new ‘paper’ oriented regime was both alien and alienating. Illiteracy in the context of a Western formal education based record keeping systems, disempowers both individual citizens and collective or community’s agency.

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

3 Open public meetings, where participants (often men) have an equal chance of contributing to the deliberations. An example of this was provided in the first pages.
Participation in GR governance and Decision-making: Annual general meeting(s)

- Ideally, individual GR members are free to seek information and access records at all levels. Beyond this, the Annual General Meeting (AGM) is the legally recognized collective avenue for arriving at binding group decisions. The AGM is also the space for the GR officials to provide updates, disseminate information and consult ranch members. The AGM is the top decision making organ of the GR. In the history of Maji moto GR, often 5-7 years or an entire term of office of a particular leadership regime could elapse without a single AGM being convened, inspite of members agitation and constitutional provisions.

- Weak or failure of members to participate in decision-making and governance arrangement, affects the integrity of data entered and maintained in the GR register including who gets entered into or excluded from the GR register.

- Management of GR financial resources appears to be the area of greatest contestation. There seems to be a tacit agreement among leaders across local institutions to evade community oversight and/or effective participation in the management of collective resources, especially land. Maji moto GR for example accrues appreciable revenue from a number of income streams, including Olarro Conservancy leased land, Olarro Lodge Land, Water factory lease land and Safaricom booster site among others. The total revenue due to the GR annually is not less than t2.5m Kenya Shillings, all with very little to show in terms of meaningful benefits to members. Related to this concern, is the shocking reality that GR officials though undertaking an odious task of managing land and natural resources on behalf of members do not receive any official compensation for their skills and time.
Unclear/Conflicting Roles between Incorporated Officials and Demarcation Committee

The governance arrangement of GRs at the community level is comprised of two closely related yet distinct organs of decision making. The 10 GR officials and the 15 members’ adjudication committee. One of the recurring challenge on roles, responsibilities and accountability mechanism within GRs in the country, arises out of a lack of or misunderstanding of the relationships and functions of these two organs.

In a nutshell, the 10 GR officials’ primary duty is management of joint group ranch resources on behalf, and for the collective interest of the members for as long as the group exists as a legal collective entity. The three executive officials (Chairman, Secretary and Treasurer) also endorse the land transfer forms to individual members for processing of the respective title deed to land based on members’ collective decisions upon a decision to privatize land ownership.

The demarcation committee’s role on their other hand becomes alive once the decision to subdivide and privatize the ranch is made by the members. Their key mandate is to facilitate clear settlement of members’ interests in allocation to individual parcels and delineation of common utilities boundaries including access routes and actual parcels for, water points, salt-licks and for other infrastructure such as Hospitals, schools, commercial centres etc. These demarcation is undertaken before actual Survey and beaconing of land is effected.

However, in practice the story is very different. Often, like the Maji moto case demonstrates, not only is the Demarcation Committee sidelined, forgotten and their duties usurped by the GR officials; but only a small clique of officials beholden to the Chairperson(s) ends up effectively running the show. The culprit of this state of affairs is often accountability, transparency and ultimately justice to the landholders.

Governance structure

AGM (60%)
Nationally GR Registrar
District Land Adjudication Officer
Incorporated GR Officials (10)
GR Demarcation committee (10)
Concerns over Equity and Fairness in land allocation procedure and Actual Sizes

**Process related**

Maji moto GR topographical orientation is approximately fifty-fifty hills and plains, and resources vital for pastoral production are scarce in space and time across these two ecological zones. The distribution of natural resources across the two ecological zones differs remarkably.

The Loita plains for example, provide excellent grounds for pastureland and saltlicks, human settlement and, to a little extent, agro-pastoral practice. Grazing, on the other hand, along the steep-rocky, rugged and bushy Loita hills is a challenge. But at the same time the Loita hills serve as dry season grazing, fallback grazing to avoid iinkati, Malignant Catar Fever (MCF), and the community’s reservoir and source of firewood, construction materials and wild fruits that serve as nutritional supplements.

This ecological interrelatedness and interdependence between the plains and the hilly sections of the GR is critical for a delicate balance of scarce resources distributed across space and time within the rangelands. The land in Maji moto GR, it was presumably agreed, would be subdivided indiscriminately into ‘equal parcels’ irrespective of the physical state of land on the ground or its actual productive value.

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4 A disease transmitted to livestock through the wildebeest afterbirth, during their in-calving season at the Loita Hills.
Ultimately, the land allocation process failed to take into account, existing traditional settlement and land use arrangements and failed to establish practical human and livestock access routes to critical resources and services including water, health facilities, schools and markets. The scenario has entrenched perpetual grievance and bred conflict occasionally leading to violence within a community that has on average enjoyed peaceful co-existence for years before the onset of fragmentation and privatization.

**Actual land ownership and land size related (Land grabs)**

Members of Maji moto GR had collectively agreed that each registered bonafide member will be allocated one single share of equal size, equivalent to 50 acres. In addition, members had designated and set aside a number of land parcels for common use. These public utility land parcels set-aside includes grounds for hospitals, water points, communal enterprise and Schools grounds among others.

The unfolding reality of the results of actual subdivision of the group ranch reveals a rather disturbing situation. Firstly, while the ranch officials hold that the subdivision process is complete and all land effectively and fully allocated to members; it soon emerged that at least 25 genuine and registered ranch members did not benefit in land allocation process – they were basically rendered landless in their own motherland.

Second, upon close scrutiny of the ranch official records at the County Registrar of Titles office, enormous irregularities and illegalities came to the fore. The top three officials of the ranch had apparently allocated themselves and some of their next of kin and cronies disproportionately large and multiple parcels of land at the expense of other members.

Together, the top ranch officials had a combined grabbed land size totaling to about 1,500 acres, with one of the officials holding land 20 times the original rightful share reserved for members. Furthermore, an additional 1000 acres were fraudulently allocated to non-members by the ranch officials, including to fictitious companies.

Third, part of the grabbed ranch parcels included parcels of land set aside for communal/collective ownership and use. Three school grounds, three water points, one hospital ground and two parcels with community investment/enterprise and associated incomes were equally grabbed.

A quick look at the situation of other subdivided/subdividing group ranches in the country indicates a near similar experience, with ranch officials often usurping the power of the collective membership, abrogating to themselves the ultimate power to allocate and deny land rights at will. The result is a section of disillusioned and landless members and an elite landlord few driving the unfortunate land grabbing debacle fueled by impunity.
Consent to Subdivide Vs Dissolution of the Group Ranch

Arising from the rather less participatory, transparent, accountable and least of all fair and just land and resource governance of most group ranches, is a recurring cry and determination by the affected GR members to seek for redress and correct the anomalies, including through change of GR leadership regimes.

Such practical, necessary and legal actions by members have often been fended-off by implicated ranch officials with the tired excuse that once a collective decision has been made by the requisite quorum of GR annual general meeting (AGM) to subdivide the land, and subsequently first titles dispatched, the ranch stands dissolved and members effectively lose the legitimacy to hold the officials accountable. Essentially, this argument implies that the decision to dissolve the GR, surrenders all powers of allocating land rights to the officials, including the right of members to demand corrective actions when anomalies and illegalities are evidently committed.

The reality of the matter is, the subdivision process and ultimate dissolution of the collective is a two phased process. Phase one entails the collective decision by at least 2/3 majority members meeting to dissolve the collective ownership and delegating the supervisory and oversight roles of implementation of the members’ decision to the elected ranch officials and the Demarcation committee. Phase one is essentially a consent to commence subdivision and privatization of former communal landholdings.

Phase two is triggered once verification by ranch members and Registrar of GRs have confirmed that land has been subdivided and allocated as per the collective decision and all registered members have received their rightful share and no complains have been brought forward.

With this ascertainment completed and a request submitted by the respective GR officials, the Registrar of GRs is free to issue a certificate of dissolution of the incorporated 10 officials and after which the officials cease to represent the collective.

Before this effective dissolution of the GR officials, they remain accountable to members of the respective ranches.
Staking Land Rights Claims: Exercising Agency

Policy, legal and institutional Provisions - a promise or illusion?

In giving to themselves the new constitution in 2010, Kenyans had hope to turn a new leaf by departing from a contested and conflicted past with respect to ownership, access to and use of land, to a new dawn characterized by clear and independent institutional mandates, and robust accounting frameworks delivering equity and justice for all. This promise of a new dawn, appears to be an illusion and mirage for most rural communities and poor Kenyans, who primarily depend on land for their daily livelihood provisioning.

To begin with the envisaged land sector management and administrative institutional framework, had put in place radical institutions across all levels - ranging from constitutionally protected Commissions, National Land Commission - to County land boards which are theoretically cushioned from the overbearing power of the Executive arm, often weighed down by competing local interests.

The goal of the land reforms sector was to promote constitutionalism and institutionalism in the sector, enhance citizen agency in land matters, neutralize the very high premium placed on individual and private ownership of land, which was perceived to be at the core of the cut-throat competition over ownership of land and natural resources observed in the sector.

Instead of ushering Kenyans to the Promised Land, what we witness is protracted supremacy battles, often dragging in the country’s judicial system in the ensuing perpetual litigation struggles with the ultimate result of disenfranchising the poor and least-informed citizenry and creating an institutional accountability and impunity supportive lacuna in which land grabs from below and within communities thrive, fueled by elite capture at the expense of local indigenous communities ill-prepared to respond to their onslaught.

The Maji moto GR land rights struggle is a classical example of such land grabs from below and the ensuing GR members efforts to exercise agency in demanding their birth rights.
LAND GRABS & NATURAL RESOURCES RIGHTS VIOLATIONS FROM WITHIN & BELOW
The Maji moto struggle - a learning space

Social actors in the GR – ordinary members and those in positions of influence alike - in asserting their claims and rights over land and GR resources employed a wide array of strategies. The members drew from a repertoire of claims to human rights and justice, democracy, popular participation and the rule of law exercised through an intricate web of social networks.

In the endeavor to keep a hold on and widen their social networks to secure their interests, members laid claim to multiple and overlapping identities ranging from GR membership, citizenship, universalism of human rights, existing CSO networks and partnerships, exposure associated with western form of education and/or market forces, or to communitarian ties.

Solidarity for action within diverse social networks was highlighted through public discussion forums, public litigation, mass action/protests, training and advocacy, targeted petitions, and publicity through mainstream mass media.

In response, the implicated ranch officials often take advantage of their privileged position in terms of access to information, connection with relevant departments and agencies of the state charged with the responsibilities of enforcing the requisite laws and policies; access to technical experts/expertise such as land surveyors, lawyers and judicial systems and land markets to dispossess and violate the land rights of other members not sharing the same privileged positions.

While group ranch members in the case of Maji moto have put up a spirited fight to claim back their grabbed lands, the struggle is often protracted, expensive and dangerous for land rights defenders - as the local elites put into use their ill-acquired land and financial resources and tap into their corrupt networks to protect and perpetuate their rent-seeking and land grabbing behavior at the expense of fellow ranch members.
Key Ingredients for a Robust Land Rights Claim Strategy

- Knowledge of relevant policies & laws
- Community Centred and Driven
- Access to Relevant, Authentic and Certified documents
- Knowledge of Issues of Concern and Necessary
- Clear Assessment of Opportunities and Risks
- Clear documentation of Actions taken
- Knowledge of Relevant Institutions & Actors roles & Interests