The Ol-karia Power Paradox

“Lighting the Nation, Dimming local Citizen’s Rights, lives and livelihoods”
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Background

Before the colonial encounter in Kenya the area surrounding Lake Naivasha, Mt Long’oionot and the present day Kedong valley was occupied by the pastoralist Masai community. In 1905, through a colonial “agreement” with the Maasai, the Maasai were moved south of the railway line to make way for European settlement in the area. Most of the land around the lake was then settled by Europeans pushing the Indigenous Maasai pastoralist community southward to Ilkarian and beyond.
The predominant Maasai pastoralist group in the area, are the Ilkunono – the blacksmith – so named because of their pioneering knowledge and works with metal works, especially Iron. The Ilkunono have always shared this landscape with their Keekonyokie Maasai territorial section. This Maasai group constitutes part of the remnants of the kedong massacre of November/December 1895. This was one of the earliest and bloodiest recorded encounters between the Maasai and European settlers. The encounter took place around Mt. Longonot (Oloonong’ot) and Naivasha in the kedong valley. Linguistic evidence including words such as: Oloonong’ot (Mountain of valleys), enaiposha (the raging waters) now Naivasha, and Oldoinyio Opuru (the smoking mountain), now Mt. Eburu, to mention but a few; gives further indication as who were/are the original occupiers of the present Olkaria hills and its environs.

Soon after this encounter, the European intruders settled on this land and transformed themselves into ‘legitimate’ landowners and the indigenous communities reduced into squatters in their own ancestral lands. Six decades later, upon attainment of independence and the subsequent departure of the European Settlers, the Olkaria Maasai continued living and grazing their livestock herds around the Mt. Longonot as they’ve done years past.

More recently, from the late 1980s and early 1990s, with introduction of flower farming, establishment of the Hell’s Gate National Park (1987), and initiation of state supported Geothermal power generation plants (1987) communities’ access to resources were transformed dramatically.

While pastoralism is the most dominant land use system supporting security of local Maasai livelihoods within the region, in project documents reviewed, it’s often presented as more of a cultural relic whose practical connection and sustenance through land ownership is not only ignored but extinguished almost all together.
Waves of Land Dispossession

The area experienced major changes in tenure systems during colonial times, but also after independence (1963), when the government sold lands previously in the hands of White settlers to other Kenyan farming communities who hitherto had no historical connection to the region.

These resulted in far reaching land tenure transformation, which influenced the landscape of rights and claims to natural resources to-date.

Customary land tenure systems and norms were for example devalued if not entirely extinguished in favor of formal statutory systems. Equally, the pre-existing pastoral economy on this landscape was systematically constrained and displaced by largescale white settler farming.

Landownership was privatized and legitimatized through paper registration and titling unbeknownst to the indigenous pastoralist communities. This settlement later came to be known as the Kedong ranch.

Government and multilateral capitals colluded under the rubric of public-private sector partnerships (PPPs), Green Economies and Clean technologies to annex more land and push local community members to the periphery. Massive infrastructural development works were undertaken, particularly in the energy sector but with a corresponding downplaying of negative social and environmental impacts on local communities arising from these initiatives.

The Contested land is mainly located West of Mt Longonot and South of Lake Naivasha. Three main land rights claims are recognizable: i) ancestral claims by pastoralist indigenous communities, ii) government trustlands (Hells Gate, Longonot National Parks, Lake Naivasha and land occupied by the Geothermal generating plants- Olkaria) and private “legal claims” by several development actors (Kedong and Longonot ranches; Kongoni, Oserian and Ndabibi farms).

The current population in this area is approximately 50,000 people including other non-original occupiers of the land who now live in the region for over 50 years after migrating to the area.
These groups worked under the colonial settlers and they never went back to their ancestral lands such as the Turkanas, Samburu, Njemps and the Somalia people.

Colonial Settlement (White Settler Farmers)

Following the building of the Uganda railway across the rift valley in 1900, the Maasai were moved south of the Railway to make way for European settlement. Much of the land around lake Naivasha was subsequently settled by the Europeans farmers for mix livestock and agricultural farming. One of the largest of these farms is the Lord Delamere farm, which spurns. While a few of the White Settler farms are still in the hands of the descendants, much of these lands were allocated to non-Maasai by the government at independence.

Fictitious Ranches and farms

Some of the former White Settler large farms were sold to the land buying companies and subsequently divided to the individual shareholders. These were mostly paper-based transactions undertaken in places far removed from the actual ground and knowledge of local communities. Some of the said new landowners are yet to set foot on the allotted lands, decades later.

They were mostly questionable arrangement supported by the state to resettle non-indigenous land owners from central Kenya on the ancestral lands of others. The take-over was facilitated through creation of cooperatives by a section of Kenyan ethnic groups. While the new “paper land owners” were never present on the ground the Olkaria Maasai continued their occupation and use of the land as they’ve done from time immemorial. The ranches include Kedong and Longonot, Large farms such as Kongoni, Oserian and Ndabibi; and land under flower farms: Oserian, Homegrown, Sher, Karuri agancies among others.

Kedong ranch ltd is one of the largest and most contentious parcel of land under this category. The Land LR NO. 8396 is large parcel of land covering some 75,769 acres of land being a leasehold title for a term of 999 years from 1st May 1950.

Part of this land has been acquired by KenGen for the purposes of establishment of the Olkaria IV power station with resident pastoralists communities evicted and relocated. NAROK/MAELLA/ LR parcels no. 8398, 2662 & 1380 totaling about 16000 acres in which Narasha community land land is situated.
Dispossession through Conservation and Tourism Enterprise

The area is also renowned for abundance of wildlife and other natural resources. Two national parks (Hell’s Gate and Longonot Park) were established within the region around 1984. KWS was gifted the Hells Gate conservation area by Sulmac co. limited, which then leased part of the land to KenGen for Geothermal power generation (extractive activities). Ref. NAROK/MAELLA/LR NO.8396 now under Hells Gate National Park.

Wildlife is protected by Kenya Wildlife Service in Hell’s Gate and Mt Longonot National Parks. A private Game Sanctuary is also found on Crescent Island on the main Lake. There are several largescale ranches near the Lake where both wildlife and livestock are maintained within the framework of community wildlife conservation programme. Sport and subsistence hunting of game in the surrounding ranches within the catchment has been reported.

With the establishment of the two parks and the requisite tourism and conservation supportive infrastructures such as hotels and lodges, more and more formerly pastoral grazing lands is being rendered inaccessible to local pastoralists.

Despite the huge and lucrative conservation and tourism related enterprise within and around the Olkaria and lake Naivasha region, there is very little to show in terms of employment and other social amenities among indigenous pastoralists Maasai community resident in the area. Instead what communities were gifted is sustained and expanded displacement without compensation and fencing-off to further curtail pastoral mobility and access to water from the Lake.
Geothermal Power Generation Plants

The Olkaria geothermal field is located 120km northwest of Nairobi, 6km to the south of Lake Naivasha in Kenya’s Rift Valley and occupies a circular area about 68km². Its located to the south of Lake Naivasha in Kedong Ranch.

Exploration for geothermal commenced in 1955, ultimately leading to establishment of four power plants (Olkaria I –IV) with more under consideration. The Kenya Electricity Generating Company (KenGen) endeavors to generate about 2000mw to the national grid by 2018. The ever-increasing demand for more power generation plants at Olkaria is driven by rapid population growth and industrial expansion in the country, and corresponding increase in demand for electricity. Overall, the Ol-Karia Geothermal power plants supplies nearly 15% of Kenya’s energy demand.

In addition, KenGen is pursuing renewable energy projects under the Clean Development Mechanism (now christened “Sustainable Development Mechanism under the Paris Agreement) whose objectives is to supplement income from high project costs through sale of Carbon Emissions Reductions (CERs) and Verified Emissions Reductions (VER) credits. KenGen signed Emissions Reduction Purchase Agreement (ERPAs) with the World Bank under their Community Development Carbon Fund to fast-track development of Olkaria.

These massive investment power generation infrastructures demanded for more land and more resources. Some of the bilateral and multilateral investors contributing to these initiatives included: European Investment Bank, the World Bank, KfW of Germany, AFD of France, JICA and the Government of Kenya through KenGen Ltd.

Total land acquired for the power plant Olkaria V is about 3,610 acres of land part of which is occupied by the local Maasai communities. The proposed geothermal stations often come with a real potential to cause conversion (loss) or degradation of natural habitats within the region, disrupt local livelihoods practices and extinguish local land rights. Most of the evictions targeted at local pastoralists particularly before 2005 have been less consultative, least voluntary often with negligible compensation, (if at all).

Plans for financing Olkaria VI Geothermal Power Plant under the Green asset backed bond arrangement are advanced with financing committed from African Development Bank and the World Bank’s SREP facility.
Lands and Natural Resources Rights
Violations

The Olkaria Community has been claiming land approximately over 40,000 acres but the Maasai in the area claim over 120,000 acres as ancestral land. This land has been in occupation by Maasai since time immemorial though they lived with the settlers before land documents were transfer to underserving land claimants.

The mega infrastructural power generation investment is often touted as a successful venture positively contributing to realization of targets of international climate change policies through generation of renewable energy and is expected to qualify for the provision of carbon credits within the Sustainable Development Mechanism (SDM) of the Paris Agreement.

Despite this glossy picture and the huge investment by government and giant multilateral actors funding development activities within the region, the local communities’ rights to survival and state of basic infrastructure is in pathetic situation - schools, health and communication.

• **Land ownership, access and Control rights**: Right to access and use of the resource according to customary norms or statutory rights, conflicts among primary users. There is also overlapping if not conflicting customary and statutory land tenure rights. The normative situation regarding property rights is unclear, and episodes of land grabbing at the expense of local communities have occurred in the recent past. Landowners with formal titles (e.g. the flower growers and cooperatives) evidently enjoy a much higher level of security than local communities basing their rights on customary rights and on use.
• **Constrained access to water for people and livestock:** Until the early 1990s there were 17 open corridors for accessing lake Naivasha, and these were used by Maasai pastoralists and fisherfolk. Today, 14 out of these corridors have been closed with fences for private uses (mainly by flower farms or tourist targeted hotels and lodges). Livestock grazing and watering for Maasai communities of around 10,000 members is curtailed.

• **Social impacts:** Most if not all the land alienating interventions (farming, conservation, geothermal plants, industrial development and speculative land purchase) seriously impede the right to social and cultural identity, heritage and practices of local pastoral communities. These cultural sites include .... caves, hot springs, olkaria/red ochre .., Maasai for example had to forego their circumcision ritual of dipping into the cold water of the lake in the early hours of the morning and the red-earth that the Ilmuran (Warriors), used to apply in their hair. This cultural practice were interrupted when access to the land containing the red-earth was restricted as part of the establishment of Hell’s Gate national park.

• **Environmental impacts:** Geothermal power generation environmental related concerns were enormous. Overall, environmental related concerns touch on the right to life associated with the right to a clean and healthy environment. This is a constitutional right accorded to all Kenyans.

  — Air pollution - Geothermal wells emit substantial quantities of Hydrogen Sulphide gas. Hydrogen sulphide affects, human health, local flora and fauna – especially long-term exposure to the pollutants. According to Naivasha District Hospital - 2009 heath records, the most prevalent health problem among local population is respiratory diseases related conditions possibly arising from exposure to Hydrogen sulphide which affects the nervous system.

• **Noise Pollution:** several geothermal power exploration and generation activities are associated with noise of rather high and discomforting decibels. Activities such blasting, moving of heavy machinery and engines trigger vibration and earth tremors seriously disturbing essential activities such as learning in schools and other critical livelihoods practices of the community.

• **Physical risks:** In their exploration endeavor, power generating companies often create gullies and pit holes in the area. Some of these pit holes hold water to which children and adults have on occasion fallen into and drowned.

**On-going Tussle:** The expansion of geothermal power generation plants is not about to end, with many more independent power producers joining the fray. KenGen has proposed for the establishment of Olkaria VI at Narasha/ Olomayiana Village, Akiira One plant at Kedong Ranch affecting two villages (Rapland/Suswa), Agil Ltd project at Satellite near Longonot area, GDC project on the slopes of Mt. Suswa among others

Recent conflict witnessed on 26th July 2013 was triggered by KenGen intention to expand power generation by 560MW by negotiating purchase of the contested land from those with “legal paper titles” ownership. Efforts by the local indigenous Maasai inhabitants to resist the takeover, was met with brutal force of the state machinery.

The aftermath of this encounter was several homes and houses/property destroyed totaling to about 8.2M, USD, including 2300 people displaced, 200 sheep, 247 homesteads and total disruption of local livelihoods according to estimates by members of Narasha community.
Applicable Policies and Legislations

The experience and struggles for survival by local pastoralist Maasai community is happening within a unique national and international policy and legal context. There are several policy instruments/legislations, the understanding of which would make the land rights claims much more targeted and hopefully ultimately effective in restoring and restituting the land rights claims.

- **Kenyan Constitution**: The Constitution obligates the state to provide for adequate representation of “marginalized groups” in all levels of government, execute affirmative action on behalf of these groups, and promote the use of indigenous languages and the free expression of traditional cultures. More specifically, hunter-gatherer and pastoral livelihood systems are recognized and are associated with the concept of marginalization in line with the African Commissions on Human and Peoples Rights decision in 2003. The Constitution of Kenya (CoK) 2010 has entrenched rights, which not only recognize the plight of indigenous communities as historically marginalized and disadvantaged but has established a legal framework for robust affirmative action interventions for both political representation and equity in resource allocation. As such, the spirit behind the new devolved county governance structure is a determined effort to ensure enhanced citizen participation in governance and decision-making, and, equitable resource distribution within and across the country and sectors groups.

- **World Bank Safeguards policies**: The World Bank has remained one of the most consistent financial supporters of investment and other infrastructural development within the region. Disregard of WB Policies on Indigenous Peoples, Forceful eviction and Displacement: The World bank Operation Policy 4.12 that encourage meaningful engagement of the project affected person (PAP) regarding resettlement as an alternative. The Bank has one of the relatively robust safeguards polices particularly those related to Indigenous Peoples rights (safeguards standard no. 7 and, the Forceful evictions and Displacement (operational policy 4.12) respectively.
  - At the minimum, these WB policies demand where involuntary displacement and evictions is deemed unavoidable/inevitable full and effective consultation of Project Affected Peoples (PAPs) indigenous Peoples, including through Free Prior Informed Consent (FPIC) be undertaken.
  - Where relocation and resettlement is the remedy, affected
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communities, must be granted land of equal if not higher value to avoid comprising the quality of life. Hence in such cases affected communities are entitled to the requisite social amenities, road, hospital schools, churches guaranteed

- **Environmental and Social Impact Assessment (ESIA):** National government and most international development partners/donor agencies require as good practice and legal condition that environmental and social impact assessments be undertaken prior to commencement of huge development interventions. The overall goal of the ESIA is to provide an objective analysis of the local dynamics including capturing perspectives of the project affected persons and identifying applicable laws and consequently develop a management plan to address emerging environmental and social concerns.
  
  - Ideally, this exercise is a joint venture bringing together the Government - National Environmental Management Authority (NEMA), Implementing Agency (KenGen) Funding agencies and donors for the proposed Olkaria IV Project, Potential Project affected persons (PAPs) and beneficiaries of the project
  
  - The ESIA is critical in establishing census of potentially affected and beneficiaries of the project, identify potential risks and remedies, and design participation and decision-making and range and nature of benefits

- **Existing Grievance Redress Mechanism – the Case of the World Bank’s Inspection Panel:** The World Bank has supported geothermal generation in Kenya since the early 1980s to present. The Narasha community submitted a complaint and request for investigation to the World Bank Inspection Panel related to the Kenya Electricity Expansion Project to be implemented in the Greater Olkaria Geothermal Area in Nakuru County, Kenya Oct. 2014. A similar complaint was also submitted to the European Investment Bank Complaint Mechanism (EIB-CM) which co-funded the project.

- Community complainants with respect to the Olkaria V project broadly related to impoverishment and social tensions. Specifically, the Narasha community complained of; i) exclusion of at least 14 families from receiving houses at the resettlement site among them poor, orphans, and widows, ii) cultural compatibility of the resettlement housing, iii) health impacts due to new drilling in the vicinity of the resettlement site, and, iv) fear of future relocation. The community’s complaints were responded to by the Joint World Bank Inspection Panel with the following recommended corrective actions:
  
  - That Financial support be granted to additional eight persons with disabilities
  
  - At least eight 8 additional former evictees be granted houses in the resettlement area
  
  - A call for World Bank/Kengen to complete other resettlement plan provisions related to governance arrangement around management of community resources and welfare associated to investment, establishment of a robust grievance redress mechanism, and restoration of land and livelihoods. The restoration should be commensurate with the 4200 acres taken from the community. Implementation of some these recommendations is still wanting due to weak mediation team with KenGen having unfair control of actions of the team and with Bank still privileging the voice of KenGen.

- **Public interest litigation** - The Narasha community has also pursued their land rights claims through judicial claims/legal suites in the Kenyan courts. The outcomes of these legal tussles have been mixed. In 1996 and 2000 for example the court ruled in favour of the Narasha community land rights claims, but those charged with the responsibility to enforce court decision, have to a large extent remained reluctant to implement such decisions.

1 Narasha Community Development Group is a community based organization working on the protection and advocating for the rights of indigenous people living in the Olkaria Region in Naivasha
Key Ingredients for a Robust Land Rights Claims – Against Land Grabs from Above and Outside

The nature of the land grabs experienced by the Olkaria Maasai is complex multilayered and multifaceted. Firstly, the unfortunate foundation of the land rights struggle was laid during the colonial encounter and subsequent devaluation if not illegitimization of indigenous/Customary rights to lands and natural resources of the conquered nations.

Its therefore part of the unresolved historical land injustices recognized under the Constitution of Kenya 2010 and the National Policy 2009.

Secondly, the dispossession is compounded by capitalists’ market forces of willing-buyer, willing-seller which thrives in privileged position of power, resources and knowledge of land purchasers on one hand and vulnerable dis-informed situation of indigenous community land owners on the other.

Thirdly, the situation is further complicated by global bilateral and multilateral development and lending agencies such as the World Bank, European Investment Bank among others interested in profits and whose accountability mechanism are both alien and far removed from the reach of local communities.
Fourthly, in the Olkaria case the role of the State as custodian of national common good realized through policies, legislation and development actions appeared to be skewed in favour of macro-level (national) economics and multilateral agencies interests with a corresponding discounting of local land rights claims and interests.

The dispossession and displacement is also driven by prevailing development narratives and approaches such the Public-Private Sector Partnerships (PPPs), Green Economies and associated clean technologies. These meta narratives are often overgeneralized with local level contexts dynamics, voices, interests and rights subsumed if not entirely swept away.

These dispossession and land grabs driven from above and externally, requires integrated, multilayered and intergenerational land rights claims strategies.