

SHARING THE PIE IN TIMES OF HUNGER: A TANA TALE

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Examining the ongoing dispossession of subsistence agriculturalists in the Tana region of Kenya, Lara Allen suggests that radical new legal mechanisms that work outside of capitalist notions of private property are needed to protect such communities from the present onslaught of land, water, and resource-grabs.

“People are already hungry. They still smile and talk to you, but you can see it in their eyes. Their lips too. The hunger is there now. It will get worse.”

These phrases, uttered during our final conversation by the man who had assisted me daily through two months of field work, return recurrently as I try to make sense of those months. The people concerned are Wardei pastoralists and Pokomo agriculturalists who have subsisted for centuries by following the rains with their livestock or farming in the receding floods of the lower reaches of the Tana River in north-eastern Kenya. How is it that proud and effective farming communities come to be hungry? How is it that this is not a state of exception; that such people have had to rely on food relief for more than fifteen years?

The acute reason for the hunger is the failure of the rains. Again. The Horn of Africa is experiencing its worst drought in 60 years: 12.4 million people



Tana Forests

Photo: courtesy Amber Orozco

are affected, 2.4 in Kenya. Just across the border in Somalia armed conflict has exacerbated the situation such that the United Nations has officially declared a famine. Dadaab – the largest refugee camp in the world with a population of over 400 000 people – is less than 150 kilometers away from Tana.

The chronic reason is that the twice yearly floods that provided Pokomo farmers with the water and nutrients to farm productively no longer occur. Five dams have been constructed upstream on the Tana River; the last was completed in 1989, and a sixth dam is proposed. Together these dams produce over 70% of Kenya’s electricity. In good rainfall years farmers in Tana now plant rain dependent crops such as maize, but invariably waters are released from the dams producing unseasonal floods and these crops are washed away. The people are returned to dependence on insufficient food aid.

In a functioning liberal democracy – which Kenya purportedly aspires to be – with foundations in capitalist notions of property and a legal system

that protects property almost above anything else, this would not be possible. It would not be possible for people’s property to be destroyed year after year without recourse; it would not be possible for people’s means to a livelihood to be taken away without compensation. According to a 1994 study by Lucy Emerton, over a million people depend on the Tana River’s flooding regime for their livelihoods: 200 000 live permanently alongside the River, while 800 000 nomadic pastoralists and their 2.5 million livestock are seasonally dependent.

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The people of Tana have, without recourse or compensation, been dispossessed of their water sources (rain and floods), and therefore of their means to provide themselves with food, but this is not the only dispossession they face. The burning issue – the one that preoccupies local people the most – is land. Subsistence agriculturalists and pastoralists depend directly and exclusively on land; loss of that land means utter impoverishment.

While land ownership in many parts of Kenya was adjudicated shortly after independence, much of the land in the Tana River and Tana Delta Districts is still communally owned: it is held in trust by the County Council on behalf of the people living there. Unfortunately, though, all too often such land is held without trust by County Councils who make deals to the significant detriment to the people living there. Ndera Location is a case in point. Ndera’s present

residents live in the shadow of three land disputes: together these cover 90% of their Location. The people of the neighbouring Location of Gwano are marginally better off: only about 60% of their land is presently vulnerable.

The most high profile land dispute in the area is between the Pokomo people of Gwano and Ndera and Kenya Wildlife Service over the Tana River Primate National Reserve. In response to the 'discovery' by international primatologists of two critically endangered non-human primates (the Tana River red colobus, *Procolobus rufomitratus*, and the Tana River mangabey, *Cercocebus galeritus*), 169-km² of communal trust land in the Locations of Gwano and Ndera was gazetted in 1976 to create the Tana River Primate National Reserve. The intention was to protect the 13 km² of riverine forest patches that constitute the habitat of these primates, and that are now part of the internationally recognized 'east African coastal forests global biodiversity hotspot'. The argument for removing humans from the Reserve is that Pokomo people practice shifting agriculture and therefore are bound ultimately to cut down all the riverine forests in order to devote the forest lands to agriculture. Therefore Pokomo agricultural practices are seen as antithetical to conservation of the primates' habitat. The Tana River colobus and mangabey monkeys are the only mammals exclusively endemic to Kenya, and the Primate Specialist Group of IUCN recognizes both species as endangered, ranking them among the world's top 25 most endangered primates.

Over the past 35 years, however, the populations of both species have been in decline and have gone extinct in some of the forest patches. This period has seen an ongoing struggle between Kenya Wildlife



Drought
Photo: courtesy Amber Orozco

Service, which is intent on removing humans from the Reserve, and Pokomo farmers who do not wish to leave their ancestral lands. The tension escalated during the 1990s when pressure for the people to move was increased under the auspices of a World Bank/GEF conservation project. In response, funded by an international development organisation, the communities filed a law suit against the Government of Kenya in which they asserted that the procedures stipulated by law regarding attainment of consent from community members for the conversion of trust land to public land (which is what the gazettement as a National Reserve entailed) were not followed. The gazettement, contended the communities, had occurred despite widespread and publicly-declared non-consent. In 2007 the High Court of Kenya ruled that the Tana River Primate National Reserve was not established in accordance with the law, and therefore must be de-gazetted.

What happened in response to this landmark ruling was nothing – at least on the surface. Nothing

was done to degazette the Reserve in Parliament. Kenya Wildlife Service remained stationed at their Headquarters and continued to run the Reserve as if the law suit had not occurred (except that all maintenance of infrastructure was put on hold). Nothing was done when community members living within the bounds of the Reserve continued to live there, and no restraints were put on individuals who mis- or over-used forest resources by community leaders, as had been the case prior to 1976 when the communities self-regulated forest resource use.

Under the surface, however, important changes were occurring and strategic re-alliances were being forged. Most positively, pro-conservation community youth groups formed and started mobilising towards their goal of establishing community-run conservation management and eco-tourism projects in the Reserve area. Unfortunately these groups faced opposition from virtually all quarters: many of their community elders rejected any mention of conservation on principle; Kenya Wildlife Service largely declined to support any pro-conservation moves from within the Pokomo communities that had attempted to oust it from the Reserve; national and international conservationists and conservation organizations and funders avoided assisting Pokomo community initiatives, usually citing the premature closure of the World Bank project as their reason for withholding support.

One particular alliance born in the post-court case era brought a second land dispute to the fore. About ten years ago the District of Ijara has notified the Boundary Commission of their claim that the district boundary between Ijara and the Tana River and Tana Delta Districts should be the Tana River itself, as opposed to its present position, which is

three to five miles to the east of the River. The Tana Districts contend that the present boundary is appropriate as it is defined by the edge of the flood plain, which in turn recognises the extent of Pokomo ancestral lands: a traditional system of hereditary land ownership that recognises all flood plain lands as belonging to specific Pokomo clans has been in place since pre-colonial times.

This decade-old boundary dispute took on a new significance for the communities of Ndera and Gwano in the light of an alliance formed in the post 2007 period between Kenya Wildlife Service and a community conservancy in Ijara. The main aim of this conservancy is to provide secure protected habitat for the endangered Hirola antelope (*Beatragus hunteri*). This conservancy is supported by a Trust that runs many well-regarded community conservancies throughout Kenya, funded by international donors. In 2011 this Trust started supporting a conservancy in Ndera. However many people in Gwano and Ndera became concerned that an attempt was being made to dispossess them of the east bank of the Reserve, a fear exacerbated by the patrolling of this area by the Ijara conservancy's scouts. For a few months these fears were somewhat allayed by the Trust's new financial and logistical support of the Ndera conservancy, only to be strongly escalated by a proposed Memorandum of Understanding between the two community conservancies and Kenya Wildlife Service that proposes to give one tourism lodge contractor exclusive use of the most desirable part of the Reserve: the east bank.

The fledgling community conservancy organisation in Ndera is now in an untenable position. Does it refuse to sign this Memorandum and risk losing the funding it has worked so long and hard to get?



Water provision, Baomo Village
Photo: courtesy Lara Allen



Crossing the Tana River
Photo: courtesy Amber Orozco

Or does it sign away half to two thirds of its most viable (perhaps the only viable) tourism site? In the arrangement outlined in the Memorandum, while the land itself is not directly appropriated, the benefits and control of the resources on the land is. Given the history of Pokomo resistance to dispossession, it is unlikely that this arrangement will be accepted. In their attempt to slice up the eco-tourism pie that the Tana forests could represent, and in their bid to take large slices of this relatively small pie to service their own particular interests, ultimately – and most ironically – it could be conservationists who destroy the possibility of the long term survival of the Tana forests and the endangered primates.

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In the third land dispute faced by Ndera residents,

whole Wardei and Pokomo villages find themselves inside a Group Ranch belonging to Orma people from a neighbouring Location. The Group Ranch is a legal mechanism enabling groups to gain title for previously communal trust land. The obvious primary problem with this mechanism – that some residents could gain title while others become dispossessed – has manifested so often, and has caused so much trouble, that Group Ranches are being phased out under the new Constitution. A second problem, and the one that troubles Ndera, is that the surveying of such ranches has often proved a corrupt process such that much larger portions of land are incorporated than initially agreed. Thirdly, once land is alienable, once a title deed exists, it is possible for that land to be sold – usually to the benefit of a few individuals and to the deep disadvantage of everyone else living there. The extent of the dispossession and trauma that this can cause, particularly when international capital becomes involved, is now

becoming devastatingly apparent in the Tana River Delta. Europe's increasing appetite for green energy in order to meet its CO₂ reduction targets is creating a voracious market for biofuels. Kenya's relative geographical proximity to Europe makes it a prime site for biofuel production, with the result that an international biofuels company with the cooperation of the Kenyan government proposes to turn over the whole of the Tana River Delta to sugar cane.

The extent of the environmental degradation and destruction of livelihoods that this green desert would cause is well documented elsewhere, as is the struggle of civil society to protect the Delta. However, one aspect of the struggle for the Delta is pertinent for the people and environment upstream: the biofuels company concerned is reputed to have acquired large swathes of land from the Delta hundreds of kilometres inland by purchasing group ranches, including the group ranch that 'owns' much of Ndera Location. The intention is to convert this land, which presently is predominantly used by nomadic pastoralists, to the farming of *Jatropha curcas*, an oil-rich plant commonly used to produce biofuels in arid places. This issue has not yet been taken up by civil society, and no one has explained what is to become of the 800 000 pastoralists and their 2.5 million livestock. They will become superfluous: waste, in Achille Mbembe's conception. Will they take their new superfluity quietly? Where will they go? What will they do? How will they eat? In this volume Filip De Boeck offers insight into the challenges faced by contemporary African megalopolises: is what is gained nationally by the sale of biofuel to Europe worth the socio-economic pressure created by adding nearly a million destitute pastoralists to the slums of Nairobi or Mombasa? Or perhaps



Ndera residents discussing land and conservation
Photo: courtesy Lara Allen

the people superfluous to the project of making their rangelands more economically productive will find themselves in white tents provided by the UN for internally displaced persons. Perhaps Dadaab will shortly lose its status as the largest refugee camp in the world.

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Apart from the environmental and human disaster that hundreds of square kilometres of *Jatropha* in north eastern Kenya would create, it would seem that the last remaining riverine forest patches outside of the Reserve, which do still constitute important habitat for the Tana's endangered non-human primates, could be sacrificed for biofuels.

What the contests over land and water in Tana reveal

are fundamental deficits between what is claimed and what is enacted in several registers: philosophically and ideologically, legally, and in terms of policy.

At the deepest level, that of the fundamental philosophical and ideological foundations of social life, there would seem to be a mismatch between the egalitarian ideals and basic humanitarian standards enshrined in the new Kenyan Constitution and the treatment of the country's more marginalised peoples. Born in reaction to the horror unleashed by the violence following the elections in 2007, and the ensuing political, economic, and humanitarian crisis, the new Kenyan Constitution generated in many citizens a fresh politics of hope. Many others, however, have reacted with cynical disbelief that the powerful who benefit so much from the status quo will ever let justice prevail, or any sort of meaningful equality manifest.

It would seem that there is a lack of substantive action to address the needs of the poor and marginalised on the part of the country's political and economic elite. This is likely to have two roots: ideological and opportunistic. Ideologically many fall short of adopting what Paul Gilroy in this volume argues formed the core of Franz Fanon's vision for 'redemptive humanism': a fully encompassing humanism that does not produce infra-humans by applying its standards to some people while excluding others. The attitudes and actions of educated elite urbanites all too often reveal that they do not believe that uneducated rural peasants are their equals, and are deserving of the same rights, opportunities and respect as themselves – as humans or citizens. Such hegemonic notions of the inferiority of certain groups of people function to justify and facilitate access to significant material opportunity for the privileged.

In the case of the Tana River's hydro-electric dams, for instance, the livelihoods of a million peasant farmers and pastoralists continue to be sacrificed so that people in urban areas may have access to electricity. The lack of acknowledgement of this fact, let alone redress or compensation, demonstrates that all Kenyans are not equal. In practice, neither citizenship nor the law protects the marginal from dispossession by the more powerful.

The gap between policy and practice is particularly evident in the disconnect between the new Constitution and the law, particularly with regard to land. The three land disputes in the Locations of Gwano and Ndera reveal an underlying ideological struggle between capitalist notions of private property ownership and local traditional systems of land use. Political independence in Kenya did not bring with it a new ideological and legal apparatus that either recognised pre-colonial systems of governance and economics or instituted appropriate post-colonial forms. And the contemporary situation is greatly exacerbated by the onslaught of neocolonial neoliberalism that has structurally readjusted the economies of much of the 'third world' over the past three decades. While the new Kenyan Constitution recognises the validity of traditional forms of governance, and enshrines the right of people to their ancestral land, there is no effective legal mechanism to enable communities to secure their lands from predation by outsiders and to continue to allocate land for use according to customary law. In Gwano Location community leaders believe that attaining a 'block title deed' will protect them, but their efforts to achieve such a deed are being systematically blocked by the County Council. Furthermore, the dangers of a title deed, however defined, have been



An oxbow lake
Photo: courtesy Lara Allen

clearly demonstrated by the problems associated with group ranches. A new legal mechanism is needed: one that works beyond the notion of title deeds and private ownership such that resale would not be an option. The lack of such a mechanism is making it impossible for communities either to move forward with their own development plans or to protect themselves effectively from land grabbing investors.

With regard specifically to the conservation-related land disputes in Tana, the recent turn of events represented by the proposed Memorandum

of Understanding gives credence to the communities' analysis of the fundamental nature of the disagreement. The interpretation widely circulated by the conservation establishment is that the people of Tana are obstructionist anti-conservationists who intend to cut down all the forests in order to farm the riverine lands. In turn local people contend that conservation in its imported form is just a ruse by outsiders to dispossess them of their ancestral lands, and any benefits that might accrue from the resources and opportunities that these lands offer. Community members argue that they are not, and never have been, anti-conservation per say, and have no intention of destroying the forests. Sustainable use of forest resources has been core to Pokomo culture for hundreds of years, and, as they point out, the sustainability of their traditional resource management system is evidenced in the fact that the forests still exist in Pokomo areas, whereas these have disappeared elsewhere. Community members understand that population growth means that individuals cannot use forest resources or lands to the extent that was possible for former generations, but they also understand that there are new and sustainable ways in which their communities could make use of the forests, particularly through the opportunities promised by eco-tourism.

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The communities' analysis suggests that to describe the conflict as 'communities versus conservation',

or ‘monkeys versus people’, is to misrepresent the terms of the debate and obscure the real issue in a manner beneficial to outside interests. The problem is caused by conflicting interests and priorities between people. The people of Tana could live very well with the monkeys. In fact if the interests of the local people and the endangered primates of Tana were the only interests being taken into consideration, it would be relatively easy to achieve a long term sustainable solution that would be mutually beneficial for both groups. The pie that the riverine forests constitute is big enough to sustain both: in fact, using and conserving this pie together would constitute a very productive mutualism. The problem is that other people – non-community members – want this pie, and continue to employ whatever powers they have at their disposal to take what they can of it. It is the past and present attempts of outsiders to exploit the forests for their own benefit that is at the base of the extreme underdevelopment and ineffective conservation that presently characterises the Tana Forests area. This suggests that only when outsiders relinquish their attempts to take what is not rightfully theirs will it be possible to move forward and achieve positive results for both conservation and human development.

Socially just, environmentally sustainable solutions to all the disputes discussed above are possible. But it is going to require significant political will and legal imagination to create, legislate and enact mechanisms that makes it possible for groups of people to share ‘pies’ (whether these be land, water, or eco-tourism opportunities) justly between those – and only between those – to whom each pie should belong. It will probably require a mechanism that works ideologically and materially outside of the

capitalist regime of private property. It’s also going to require unilateral recognition that it is not possible to abscond with the whole pie unnoticed and unchallenged in a time of hunger.

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