

Between “strong institutions” and the “political marketplace”: layers of land conflicts in Northern Kenya



Fenced land in Northern Kenya

Issues:

- ***Central and local governance***
- ***Land acquisition by investors***
- ***Conflicting laws***
- ***Communal land rights***

The Kenya Vision 2030, launched by President Mwai Kibaki in 2008, aims to rapidly transform Kenya into an industrialised middle-income country. In 2018, the chairman of the Lamu Port and Lamu-Southern Sudan-Ethiopia Transport Corridor (LAPSSET) summarised the achievements ten years into the Vision 2030 as follows: “Kenyan are now saving time and costs through modernized transport infrastructure, the once-regarded marginalized Northern frontier is opening up to investors’ wealth as tarmacked roads express places like Lodwar, Mararal, Moyale and Marsabit.”

Lodwar is the capital of Turkana County, a dryland area where pastoralists move with cattle, camels, goats and sheep in search of pastures and water depending on seasonal availability. Road building and oil production by the Irish company Tullow Oil have led to significant land use change since 2010. A field visit in the county in March 2019 in the context of the research project “Violent futures? Contestations along the frontier” provided insights into the interplay of land conflicts with the planning and implementation of large-scale economic projects, which may shed light on the causes of violence and its prevention.

“Opening up the marginalised Northern frontier” was the perspective that officers of the National Government of Kenya shared when talking about Turkana County. The perception of land as undeveloped or empty encourages attitudes, activities and behaviour towards the local population and their way of life that can be characterised

as a “frontier habitus.” This habitus usually involves violence as on the one hand, agents pushing the frontier often involve armed forces and, on the other hand, those living on the land that becomes contested due to the frontier imagination will resist. A recent incidence in Turkana County illustrates this pattern.

Phases from conflict to peace

1 Phase 1 | 2017: Local Development Plans clash with national interests

The incidence appears in a different light when considered from the perspective of the County Government. In accordance with the 2010 Constitution, which stipulates the obligation of the devolved county governments to establish their own development plans, the Turkana County Government had prepared an Integrated Strategic Urban Development Plan. The intended compulsory land acquisition by the NLC clashes with this plan.

According to Article 6 of the Community Land Act (CLA) of 2016, the County Government holds in trust all unregistered community land on behalf of the communities. Due to ambiguities in the CLA, the Council of the Governors (the elected representatives of the counties) and the Cabinet Secretary for Lands had suspended the operation of six sections of the CLA in 2017. These sections contained rules for the compulsory acquisition of community land for public purposes and specified cases in which the national and county government laws superseded community rights. The contentious issues are the requirement for consultation between the National and County Government authorities and the participation of the communities before compulsory land acquisition takes place.



Key message

Land conflicts between central and local government, investors and local communities may be resolved at court, but the dimension of power conflicts go beyond court decisions



2 Phase 2 | February 2019: Violence due to compulsory acquisition of land

A team of Tullow Oil and the LAPSET Development Authority visited Turkana East in February 2019 in order to inform the local community about the plans of establishing oil and gas blocks and building the development corridor containing pipeline, road and railway. Staff of the Kenya Police Service was present to protect the participants. However, the meeting escalated into turmoil; gun shots terrified the assembly and the Member of the County Assembly (MCA) closed the meeting before it had even started. The visitors were evacuated.

Subsequently the Turkana County Government filed a petition to the Kitale Environment and Lands Court demanding from the Attorney General to disclose the details of the drilling arrangement between the National Government of Kenya and Tullow Kenya B.V. and to provide full information on the plans and course of the LAPSET corridor.

The reason for the turmoil and the break-up of the meeting was the publication of two gazette notices, in which the National Land Commission (NLC) announced the compulsory acquisition of land in South and East Turkana.

In the notice of 8 February, 2019, the NLC informed the public about the intended acquisition of 6,348 hectares of land with oil deposits on behalf of the Ministry of Petroleum and Mining under the heading “Upstream Development, South Lokichar Basin Oil Project, NLC.” On 15 February, 2019, the NLC indicated the imminent acquisition of 20,618 hectares of land for the construction of the LAPSET corridor project and ancillary facilities.

The local population was shocked. Neither the elected County Government nor the affected communities had been consulted before the land was gazetted. The response was spontaneous violence.

3 *Phase 3* *The conflict is taken to court*

The conflict culminated in the Turkana County Government’s petition at the court stating that no agreement was reached between the National and the County Government about the intention to acquire land from Turkana County.

The petition asks why the NLC gazetted land for the LAPSET corridor project without consulting the Turkana County Government and community. The County Government claims all contracts and documents that have been made between Tullow Oil and the national government. The County Government also demands an official declaration that all land in Turkana County that is not adjudicated is community land according to Article 6 of the CLA and hence, cannot be compulsorily acquired by the NLC. Tullow Oil stopped its activities on the disputed land waiting for the court hearing.

Success factors and limitations

It was a success of the process that land acquisition has been stopped temporarily and solutions are sought at court.

Although this case reveals that justice institutions highly matter in northern Kenya, there are a number of limitations to peaceful conflict settlements. The conflict is less about land used for oil production or infrastructure

building than an escalation of a power struggle between the authorities of the National Government of Kenya and the County Government of Turkana.

The institutional reforms accompanying devolution have led to two parallel executive and legislative government structures that are in the process of striking the balance between their roles. Attempts by National Government authorities of circumventing institutions of the County Government should not only be seen in the light of a frontier habitus, but also as a deliberate strategy of testing the limits of side-lining perceived rivals. Consulting the judiciary thus has to be considered as one tier of this power struggle.

Parallel to this, the patronage system that has been shaping Kenya’s politics for many decades is still thriving. The means by which patrons carry out their power struggles are mobilising followers, arming some groups and inciting organised attacks to intimidate opposing groups, and making use of – or appropriating – resources including land to maintain their followers. Playing the tribal card has remained substantial. This appears like a counter-current to the use of institutions in conflict settlement. Some of its manifestations are outlined below.

On the other hand, the procedure disclosed a typical frontier habitus in which a National Government authority (the NLC) considered itself as superior and able to act in favour of the population that it regarded as ignorant and not in need to be consulted and treated on equal footing. With the same attitude, the office of the County Commissioner (the National Government representative in Turkana County) explained the incidence as the result of “misinformation of illiterates by opinion leaders telling them that they were not consulted ... the shooters were hooligans, bandits ...” This formulation expresses a high degree of disrespect of the concerns of the local population and a self-image of being superior over the “illiterates” that harbour violent “hooligans” and “bandits”.

The Turkana people consider themselves as one community moving throughout the county. Article 2 of the CLA defines a community as “a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes:

- (a) common ancestry;
- (b) similar culture or unique mode of livelihood;



Success factors contributing to conflict prevention

- **Strong role of the judiciary system**
- **Involvement of public institutions in conflict settlement**
- **Laws strengthening the rights of local communities**

- (c) socio-economic or other similar common interest;
- (d) geographical space;
- (e) ecological space; or
- (f) ethnicity.”

The right to register community land is anchored in Article 63 (2) of the Kenyan constitution. Customary rights of occupancy are protected through Article 14 of the CLA. On this legal basis, inhabitants of South and East Turkana currently discuss hotly about the distribution of the five % of oil revenues that should benefit the communities affected by the oil production (20 % will be taken by the county government and 75 % by the national government).

The revenue sharing formula linked to the CLA community definition consolidates the tribal identity concept among the Turkana people, which distinguishes them from immigrants and neighbouring tribes the Turkana tend to perceive as rivals. The Pokot in the neighbouring

Tiaty constituency (East Pokot) in Baringo County and in West Pokot County, also pastoralists, are developing a strong identity, as well, fuelled by political leaders striving to get access to oil revenues. Livestock raids across county boundaries between the Turkana and Pokot have acquired features of politically induced ethnic cleansing, aiming to shift the boundaries based on claims that the area is inhabited only by Pokot.

Favourable conditions for conflict prevention

The Kenyan case shows that it is a long way to achieve community participation and consultation of devolved elected government institutions when it comes to national interests in land acquisition for large-scale investment. Interests stemming from the prevailing patronage systems supersede and contradict institutionalised procedures of gaining rights and justice.

Author



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