

# **Clashing claims: conflict and violence as unintended consequences of tenure transformation at Enosupukia, Kenya**

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## **Introduction**

In recent decades, violent conflict has become a metonym for Africa. Conflicts on the continent have manifested in a variety of forms, from civil wars between armies, as in Sudan, to communal violence between citizens, as in the Rwandan genocide. This prevalence of violence has generated a great deal of scholarly analysis, including a recent volume that asks “Is Violence Inevitable in Africa?” (Chabal, Engel, and Gentili, 2005). Rejecting reductionist explanations of violence in Africa that see the phenomenon as an historically inevitable part of modernization or a manifestation of atavistic tendencies in Africa, Chabal has argued that due to “the Africanisation of politics” (2005:5), through which formal institutions are personalized and circumvented by informal practices, “the present political systems are prone to produce more, rather than less, strife” (Chabal 2005:6).

In Kenya, a relatively peaceful and stable country, periodic eruptions of violent conflict have occurred at the nexus of politics, ethnicity, and land. In three distinct periods, prior to independence in 1961, in the era of political liberalization between 1991 and 1997, and again after the most recent general election in 2007, violent clashes have pitted members of different ethnic groups co-resident on contested lands against one another resulting in death, injury, and displacement. Violence has become institutionalized in political competition (Mueller 2008) and a reigning culture of impunity allows leaders to incite their supporters to carry out violent acts against opposition supporters ahead of elections, leading to death, destruction of property, internal displacement, and electoral victory for those for whom localized violence is a tool in local and national elections (Klopp 2001a).

Understandably, such violence has been characterized as politically-motivated ethnic cleansing (Human Rights Watch 1993; Kenya Human Rights Commission 1996, 1998; Akiwumi 1999; Throup and Hornsby 1998). But the complexities of local conflicts over land and the motivations of local participants to violence have been overlooked as the role and motivations of the elite have been the focus of attention. In this paper, I use one example of this type of violence, an ethno-political clash

over land at Enoosupukia, which took place in October 1993, to examine how tenure insecurity and local conflicts over land rights factor into what has previously been understood as political violence.

While recognizing the important part played by the politicization of difference and incitement by key members of the national elite, I argue that violence at Enoosupukia was a product of the propagation of multiple, incompatible institutions of land and resource governance through which competing claims to land have been voiced. The conflicts underlying violence are not merely a result of the uneasy co-existence of traditional notions of land as territory with modern notions of land as commodity (Klopp 2001b:489; Campbell 1993), but rather an unintended consequence of state-supported efforts to transform tenure, from 'customary' communal tenure to 'modern' private property. While claims to the right to own or control land at Enoosupukia may be made with reference to formal legal frameworks, including individual title and the Trust Lands Act, in fact land rights have been governed through a disorderly tangle of informal practices supported through patrimonial networks that link clients on the ground with patrons in the Kenyan elite who have personalized access to state power. The disjuncture between formal laws and informal practices has been seized as a source of opportunity for manipulation of disorder for personal gain by both patrons and clients; the former to influence the outcome of political competitions, including elections, and to reward supporters, the latter to consolidate access to land or to regain land previously lost.

This paper is divided into four main sections. In the first, I describe the clash at Enoosupukia in the context of other violent incidents that occurred in Kenya around the same time. The wave of violence that swept over Kenya between 1991 and 1997 has been identified as a response to political liberalization, in which members of the entrenched elite sought to maintain their positions and use violence to influence elections. Such analyses recognize the importance of land grievances as a cultural resource for inflammatory rhetoric used by leaders to incite their supporters to violence, but they have tended to overlook the complexity of local conflicts over land, privileging claims voiced in the language of civil rights by those who have been wronged in political violence. In the second section, I briefly discuss the formal institutions governing land in Kenya, and the consequences of their

widespread circumvention by informal practices. In the third section, I develop an ethno-historical account of the processes of tenure transformation that have occurred at Enosupukia since the 1960s to show how shifts toward individual, freehold tenure have been carried out through both formal and informal channels and resulted in a problematic disjuncture between legal frameworks and practices on the ground. In the fourth section, I show how this disjuncture was manipulated to benefit both patron and clients and how this manipulation resulted in community-level violence. This case study of Enosupukia, reflected most in the third and fourth sections of the paper, is based on information I have collected through interviews and informal conversations during more than 18 months of anthropological research carried out at Enosupukia and elsewhere in Kenya between 2003 and 2008.

#### **Land, politics, and violence at Enosupukia and in Kenya**

Enosupukia identifies both an administrative location within Narok District, in Kenya's Rift Valley Province, and a specific locality within that location. The locality is found in the highlands, atop the southern end of the Mau Escarpment, which forms the western wall of the Rift Valley, while the location extends south and east, onto the plains below, to the foot of Mount Suswa, a massive dormant volcano. In the Maa language, Enosupukia refers to a place with an abundance of a certain species of tree that blooms seasonally with clustered white flowers, from which bees produce a very sweet, white honey. Most of those trees, along with the numerous other species that composed the Afro-montane forest atop this portion of the Mau, have been cut down and turned into timber or charcoal, a legacy of the radical social changes for which Enosupukia has been the site over the past forty or more years. Between the 1960s and the 1990s, Enosupukia had been transformed, from the forest home of a small hunter-gatherer community, to a farming enclave with a growing trading center, two primary schools, and a substantial Catholic mission.

If Enosupukia is known at all by Kenyans from other parts of the country, it is known as the site of a violent clash in which Maasai<sup>1</sup> pastoralists fought Kikuyu<sup>2</sup> farmers and chased them off the

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<sup>1</sup> As will be discussed below, Enosupukia is recognized as an ancestral territory of the Dorobo, a hunter-gatherer

land, burning their homes and appropriating their farms. In the pages of Kenyan and international media, the clash at Enoosupukia appeared as a sudden eruption of brutal violence. On Thursday, October 14, 1993, the *Daily Nation* explained that “four people were killed and three others seriously injured yesterday morning in fighting between residents of Enoosupukia area of Narok District. One of the victims had been beheaded and mutilated and the head could not be found” (*Daily Nation* October 14, 1993). With local residents sheltering in churches, a second wave of violence broke a few days later when “attackers, armed with bows, arrows, clubs, and simis (swords), invaded the [Catholic] mission and started beating and slashing [refugees]” (*Daily Nation* October 16, 1993). The Narok District Commissioner was quoted in another article, explaining that the fighting had been “triggered by an attack on a Maasai village by members of the Kikuyu tribe” (*Agence France Press*, October 14 1993), highlighting the ethnic organization of the violence. Violence continued to escalate as Maasai and Kikuyu extracted revenge on one another, through both attacks on humans and thefts of livestock (*AFP* October 17, 1993). On October 20, officials announced that the violence had ceased and calm had returned to the area (*BBC* October 20, 1993). By this time, violence had spread beyond Enoosupukia to other parts of Narok District, leaving more than thirty-five people dead, and many thousands more displaced (Klopp 2001b: 475, 506, f.n. 4)<sup>3</sup>

In the aftermath of the violence, the Member of Parliament for Narok North, in whose constituency Enoosupukia lies, defended the right of the Maasai as indigenous owners of the area to protect their livelihood and ensure their survival by forcibly evicting farmers who had encroached on and destroyed the forest that provided the pastoralists with dry season grazing and a source of water.

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community closely associated with pastoralist Maasai. Depending on the context, the Dorobo community can be either differentiated from or subsumed under Maasai ethnicity. In the remainder of this paper, I will use the term “Maa-speakers” to refer to the larger community that includes pastoralists and hunter-gatherers.

- 2 While the Maa-speakers can be classified, linguistically and culturally, as Nilotes, the Kikuyu are classified as an ethnic group of Bantu origin and are culturally, linguistically, and ethnically distinct from the Maa-speakers. Despite centuries of interaction, Maa and Kikuyu language and culture remain distinct, a testament to the continued salience of the ethnic boundary through which their interactions are mediated.
- 3 The number of people killed at and displaced from Enoosupukia is uncertain. Several sources cite a figure of 30,000 displaced, which may include both Kikuyu and Maa-speakers who fled the violence. This number may include people displaced from other areas, in both related and unrelated clashes. Klopp reports that “approximately ten thousand” refugees from Enoosupukia ended up at Maiella (Klopp 2001b:499), though people I interviewed at Enoosupukia argue that many of those had come from other areas to seek both refuge and resettlement. Official inability or unwillingness to accurately assess the number of displaced and dead makes it impossible to confidently cite specific numbers.

Displaced Kikuyu residents and their supporters argued that they had not encroached but rather “had purchased their land from Dorobo and Maasai groups from the late 1960s and early 1970s and believed they had a right to it” (KHRC 1998:26). Citing peaceful relations with their Maa-speaking neighbours prior to the eruption of violence, the displaced residents argued that they had been targeted for eviction by the local MP, who sought revenge for their disloyalty in the 1992 general election, the first multi-party election in Kenya in decades. The clash was seen as an attack on their rights as Kenyan citizens to enjoy freedom of movement and to own property anywhere within the borders of the country.

The clash at Enosupukia was one in a series of cases of community-level violence that took place between 1991 and 1997 in various areas of Kenya. Approximately 1,500 people lost their lives and upwards of 300,000 became internally displaced in the clashes (HRW 1993; KHRC 1998; Klopp 2001a). In many cases, violence was identified as arising from conflicts and disputes over land ownership between Kalenjin or Maasai, who claimed historical rights to the areas in question, and members of other ethnic groups who had established farming communities after either purchasing land or being allocated plots in government resettlement programs (Klopp 2001b:484-5). While the violent clashes often involved local residents who had their own motivations, there has been near-consensus that the ruling elite benefited most, and that it was they who orchestrated a “series of 'localized' clashes in its struggle to remain in power” (Klopp 2001b:475). Violence in affected communities has thus been explained as a result of instrumental manipulation of disorder by elites (Klopp 2001a; Akiwumi 1999; HRW 1993; KHRC 1996, 1998), with varying emphasis on the role of personal militias controlled by members of an entrenched political elite (HRW 1993; Klopp 2001b:498-9), co-option of administrative and security institutions (Ajulu 2002:265; c.f., Akiwumi 1999) or incitement through manipulation of “existing conducive situations” (Akiwumi 1999:49) by politicians to mobilize support, and, perhaps more importantly, opposition to opposition in the face of political liberalization.

Kenya's wave of violence coincided with a period of increased political competition surrounding

the liberalization of Kenyan democracy and reintroduction of multi-party elections (Klopp 2001a; Atieno-Odhiambo 2002). Under de facto single party rule since the mid-1960s, and constitutionally a single-party state since 1982, Kenya had been subject to the informalization of politics and governance and entrenchment of patrimonial networks, which Chabal has called the “Africanisation of politics” (2005; c.f., Chabal and Daloz 1999), so that the state can hardly be considered to conform to the Weberian ideal of emancipation from society. Vertical connections between members of the elite and their clients have become salient through the redistribution of patronage resources that have included, among others, land (Klopp 2000), the creation of new administrative areas (Waki 2008:30), posts in the civil service and access to state loans (Omolo 2002:220). In the single-party system, inclusion in or exclusion from these patrimonial networks was largely determined through personal connections with those who controlled them from the top. Alliances between elites may have been formed through negotiation and partnerships, while gaining a position in the patrimonial system allowed leaders access to resources that could be distributed amongst their clients along ethnic lines.<sup>4</sup> Contraction of this system to include a close circle around Kenya's second President, Daniel Moi, and exclude the leaders of larger ethnic groups provoked increasing dissent within the country. Political outsiders expertly deployed the rhetoric of democratization, increasingly popular globally at the end of the Cold War, to mobilize support both within Kenya and abroad. This combination of internal and external pressure, which Atieno-Odhiambo has dubbed “the 1990 conjuncture” (Atieno-Odhiambo 2002), created the conditions that would force Moi to liberalize Kenyan politics, and thus to open competition for access to and control over the state institutions and resources that supported the patrimonial system.

While liberalization was an opportunity for those politicians who had lost favour to reclaim their piece of the national cake, it was an obvious threat to the partimonial networks headed by Moi and his

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4 For example, Klopp recounts how Kenya's first President, Jomo Kenyatta, was able to recruit members of the political opposition into the patrimonial structure, through which they gained access to resources for distribution to their clients, and in exchange, the opposition leaders dropped their opposition to government settlement schemes through which members of Kenyatta's ethnic group were expected to overwhelmingly benefit (Klopp 2001b:477)

closest ministers. In response to this threat, members of Moi's inner-circle resurrected pre-colonial political platform that featured demands for the reorganization of the Kenyan state along ethno-territorial lines. Known as *majimboism* and derived from the Kiswahili word for province, ethno-regionalism was not merely a call for devolution of power; rather, majimboism involved a discourse that links political control by larger ethnic groups with land loss and marginalization of smaller groups (Klopp 2001b; Ajulu 2002). Majimboism had prominently featured in the political campaigns and negotiations that preceded independence (Anderson 2005; Ajulu 2002). Majimboism especially appealed to residents of the Rift Valley who had borne the brunt of colonial displacements and lost significant tracts of land. Prior to independence, politicians linked their calls for federalism with fears among their ethnic constituents that Kikuyu, Luo, and Luhya domination of politics in an independent Kenya would formalize and facilitate the acquisition of lands in the Rift Valley by members of those 'outsider' communities, effectively preventing the repatriation of those lands to their historic owners. Incited to action by slogans such as "*Kila mtu Kwao* (every person to his or her own home)" (Ajulu 2002:259), violent clashes began to erupt wherever such 'outsiders' had settled. In the Rift Valley, for example, site of much of the 1991-1997 violence, "the Kikuyu, Luhya and other ethnic groups, which had lived in the area for years, were labelled foreigners, their houses burnt, and the majority of them were rendered refugees" (Ajulu 2002:259).

Beginning in 1991, public rallies were held in ruling-party strongholds in various parts of the Rift Valley, in which key members of cabinet and other political leaders used majimboism as a threat against multi-party activists and the communities presumed to support their movement by virtue of shared ethnicity (Klopp 2001b:483). As in the early 1960s, majimboism found traction in those communities considered to be 'indigenous' to the Rift Valley where discontent simmered due to perceived inequalities in the distribution of lands repatriated from European farmers. Colonial-era boundaries and institutional frameworks for adjudicating rights in land and territory on the basis of ethnicity had been subverted through government settlement schemes and processes of tenure transformation that facilitated internal colonization of the country and perpetuated feelings that not all

Kenyans had benefited from independence. Prior to the 1992 general election, majimbo leaders employed increasingly threatening rhetoric, calling for the removal of 'outsiders' from Kalenjin or Maasai lands in the districts they expected to control, to ethnicize grievances and provoke tensions, leading ultimately to violence.<sup>5</sup> Seen in this light, Kenya's clashes have been understood as “organised political violence predicated on the worst of human instincts: fear and insecurity” (Ajulu 2002:265-6), and thus as an example of top-down intervention through which otherwise peaceful citizens were incited to commit incomprehensible violence (c.f., Bowen 1996).

Understood as political violence orchestrated by members of the elite, recommendations for preventing recurrences have focused on reigning in leaders and ending the culture of impunity that allows them to incite violence through inflammatory statements with minimal personal repercussions. For example, the Akiwumi Commission, appointed by the government of Kenya to investigate the causes of the clashes, argued that “tribal or similar clashes like the ones that traumatized the country [in the 1990s] stand a good chance of being expunged if influential personalities do not take advantage of tribalism and human failings. The ordinary people who comprise the foot soldiers in tribal clashes should learn not to allow themselves to be used to perpetrate violence of any kind” (Akiwumi 1999:56). Impunity in past cases has allowed violence to become institutionalized in political competition, even as it has been personalized and devolved away from impartial state control (Mueller 2008). Members of the political and economic elite continue to incite their supporters to violence when they deem it personally beneficial, and in some cases are alleged to have organized personal militias, hired criminal gangs, or co-opted members of the Kenyan security forces to carry out targeted campaigns of violence for political ends (Mueller 2008; Waki 2008; HRW 1993).

Despite hearing testimonies that presented numerous proximate causes for the clash at Enoosupukia, including escalating community-level violence related to conflicts over access to and

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<sup>5</sup> These sentiments and arguments persist, and they continue to be activated to explain or justify violence when it arises. Majimbo featured again in the 2007 election campaign and was used to both marshal support for the opposition and to spread fear about the prospect of their victory. In the post election violence, long-standing grievances about land were cited as one of the key reasons for the eruption and escalation of fighting (Waki 2008:32).

ownership of land and other resources, the Akiwumi Commission rejected them all, arguing instead that “whatever reason that was later given for the clashes or for the eviction of non-Maasai from Enoosupukia and its neighbouring areas, can only be an excuse to conceal the real reason for the clashes which was political” (Akiwumi 1999:170). The Member of Parliament for Narok North, William Ntimama, had been one of the key drivers of the majimbo agenda, and numerous threats against “outsiders” and the political opposition are attributed to his speeches at rallies in 1991 (Klopp 2001b:489-492). In one particularly ominous statement, Ntimama is alleged to have announced that “if alien communities did not respect the wishes of the Maasai who are their hosts, then the community (Maasai) will have to think twice about continuing to host other tribes in the district after the General Elections” (Akiwumi 1999:167). Diverting attention away from inequalities within the Maasai community, especially between members of the elite and their client constituents, Ntimama employed “exaggerated claims that if the Kikuyu-led opposition were to come to power, all Maasai land would be grabbed” (Klopp 2001b:491). Such statements resonated with Maasai insecurities around land, especially due to land loss at the hands of the colonial and post-colonial governments, through unpopular treaties, demarcation of parks and wildlife reserves, and the functioning of the partimonial system in which land was a common resource. This polarized constituents in Narok North and drove a wedge between Maasai and Kikuyu, especially around land issues.

While the clash at Enoosupukia took place nearly ten months after the general election, Throup and Hornsby connect it directly with Ntimama's pre-election “propaganda war” and argued that fighting was instigated through Ntimama's agitation and designed to fulfill “the twin objectives of securing resources for KANU-supporting communities and of punishing opposition voters” (Throup and Hornsby 1998:542). In her examination of the violent clash at Enoosupukia, Klopp similarly links Ntimama to violence at Enoosupukia, drawing attention to his role in a dispute over land use and ownership:

“Ntimama's rhetoric began to transform into large-scale action after the 1992 general election. The trouble started in Enoosupukia, a thriving hill community of pastoralists, farmers, and traders. By 1977, almost all of Enoosupukia had been subdivided and sold to private owners, both Maasai and Kikuyu. Many of these Maasai, in turn, leased or sold small portions of their relatively large farms to poorer Kikuyu migrants. At the time, Ntimama as Narok County Council Chairman encouraged this privatization process. In August 1993, Ntimama

simply declared the area around Enoosupukia to be trust land, that is, public land under the control of the council. On 28 September 1993, the Narok District Commissioner, Calestous Akello, called a meeting and ordered an estimated thirty thousand people to leave Enoosupukia hills. ... The residents largely resisted leaving unless they were to be given compensation for the land they had bought. They clearly saw their eviction as punishment for voting for the opposition in 1992” (Klopp 2001b:493).<sup>6</sup>

On one hand, Klopp's mention of the eviction of cultivators from Enoosupukia points to a crucial event that further divided Maasai and Kikuyu in the local community and beyond and ultimately triggered fighting. On the other hand, Klopp's portrayal of the land tenure situation prior to the eviction order reduces the problem to one of Ntimama's vindictive use of state power to violate the civil rights of Kikuyu residents of Enoosupukia as property owners.

In fact, the tenure situation at Enoosupukia is far more complex, involving not only multiple legal frameworks for officially distinct areas, but also numerous informal institutions and extralegal practices. While a significant portion of the area within Enoosupukia was in the process of land adjudication and titling, that process remains incomplete even now, more than fifteen years after the clashes. Another portion of the land has never been formally adjudicated and remains under the control of the Narok County Council. Each of these formal institutions has been subject to significant informalization, and while certain claims to land at Enoosupukia may be made with reference to Kenyan law, many of those claims have been established through processes that circumvent official procedures. The complexity of land tenure at Enoosupukia and the informalization of tenure institutions in Kenya more generally have been both the root of the problem, inspiring mistrust and simmering disputes, and a key means through which various actors have sought to bolster their claims, challenge those of their opponents, and exert the influence of patrimonial politics.

### **Land laws and informalization in Kenya**

While its key findings and recommendations with respect to Kenya's violent clashes have centered on the political mobilization of ethnic differences and manipulation of the “existing conducive situation” (Akiwumi 1999:49), the Akiwumi Commission also identified land as a source of tension.

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<sup>6</sup> Rather than further developing this angle, Klopp focuses on information that supports her core argument that the clashes represent a localization of national political competition and the exercise of electoral despotism. Citing a lengthy witness account and investigations carried out by the Catholic Diocese of Nakuru, Klopp states that violence at Enoosupukia was initiated by well-organized raiders, including both local people and “game rangers, police, and army personnel” (Klopp 2001b:498) and links the latter to a personal militia controlled by Ntimama (ibid.:499).

Locating the source of land problems in widespread ignorance about and government disrespect for “legal land rights as enshrined in the Constitution” (Akiwumi 1999:285), the Commission recommended that the government initiate “an ambitious programme to issue title documents to all people who were either allocated land there by Government or who bought the same from previous owners but have not got title, in order to minimize land disputes and conflict in the areas [where they occur]” (Akiwumi 1999:285). Such recommendations are problematic, however, in that they overlook both the continued existence of multiple legal frameworks governing land in Kenya, and the informalization to which those formal systems have been subjected. At Enoosupukia, this multiplicity of formal institutions and prevalence of informal processes for gaining access to and control of land have perpetuated conflict and led to violence; before describing this local history in detail, the next part of this paper looks at the formal institutions and informal practices in play in Kenya more broadly.

The establishment of colonial governance in Kenya initially saw the implementation of a dual framework of land administration. On lands alienated to the British for European settlement, British-style land laws protected individualized property, and set up a system of demarcation and registration of titled lands. On unalienated lands, the colonial administration set up Native Reserves to be held in trust by the Crown. The system of Native Reserves in Kenya demarcated the territories of discrete ethnic groups as defined by the colonial government, and residence in the reserves was predicated on membership in the appropriate group. Reserves were governed by ‘customary’ law, codified through colonial structures, a key feature of which was the vesting of rights in the group or its leader, rather than in individuals, regardless of whether the cultural institutions of the group in a particular reserve conformed to this in reality. Because it was Crown land, land in the reserves was officially inalienable by anyone other than the colonial government.<sup>7</sup> In addition to facilitating Indirect Rule of African colonial subjects and creating labour pools for colonial economic enterprise, maintaining control over land allocation put power over development firmly in European hands, enabling “the state to initiate

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<sup>7</sup> According to Basset, “the common prohibition on freehold tenure in the reserves was typically rationalized on the paternalistic and racist grounds that Africans were incapable of looking out for their own best interests. The state would serve as the Africans’ ‘protector’ to make sure they did not sell off the little that they possessed.” (Basset 1993:7)

resettlement schemes and soil conservation works as well as to expropriate land for settlers for future agricultural and industrial development” (Basset 1993: 7). So-called customary law still obtains in many parts of the country, and more importantly, formal structures designed to codify and govern communal tenure in the form of ethno-territoriality have been incorporated into the post-independence legal framework.

Lands in colonial Native Reserves came under the Trust Lands Act (Cap 288) when the law came into force at independence in 1963. While Trust Lands in Kenya are still subject to communal land tenure, under local ‘customary’ law, the Trust Lands Act provides a nationally harmonized framework for the control, maintenance, and disposition of such lands. Trust Lands represent a continuation of ethnically-defined territorial belonging by maintaining a distinction between ‘insiders’ and ‘outsiders’ such that the right to “occupy, use, control, access, inherit and possess” (KHRC 1997:4) Trust Lands is based on membership in the local community, whether by birth or accepted residence. Additionally, residence in a particular Trust Land upon which one is not ‘ordinarily resident’ constitutes a breach of laws against trespass and unlawful occupation (*ibid.*). The power to administer Trust Lands is vested in County Councils on behalf of the ‘ordinary residents’ who are considered beneficiaries of the trust rather than owners of the land (KHRC 1997; Wanjala 1990). As Trustees, County Councils are expected to regulate land use by and on behalf of residents through the implementation of “sectoral policies and rules governing the exploitation and conservation of natural resources found in the Trust Lands they administer” (KHRC 1997:6), as well as following the land zoning procedures laid out in the Constitution and the Trust Lands Act (*ibid.*). Actual administration of Trust Lands is carried out by Divisional Land Boards, each with jurisdiction over an administrative unit called a Division, which are responsible for setting apart Trust Lands for specific purposes, registration of rights, interests, and other benefits of residents, and compilation and maintenance of a list of individuals and amounts of compensation payable with respect to extinguished rights, interests, and other benefits (KHRC 1997:9-10). In principle, Divisional Land Boards are composed of both local residents and administrative officials. Despite mandated inclusion of community members in decision-

making processes, residents are often excluded as area chiefs and political leaders make decisions to the detriment of local stakeholders. This type of corruption in Trust Lands has been exploited by political elites to facilitate land grabbing and redistribution of resources through patronage networks, which has contributed to the development of ambiguous land rights situations and conflict in places like Enoosupukia.

Just as formal institutions supporting ethnically organized, communal tenure have persisted post-independence, tenure individualization began prior to the attainment of self-rule. Individualization and titling of African lands in Kenya, predicated on both economic and political goals, began to be implemented in the mid-1950s. Economic arguments for privatization date to at least the 1930s, when colonial officials and local elites argued that “only private, freehold arrangements will provide the investment security necessary to make African agriculture more efficient and productive” (Bassett 1993:4).<sup>8</sup> Registration of lands held by African Kenyans began in Kikuyu areas in 1954 under the Swynnerton plan, “an ambitious program of agricultural improvement” designed to create a new class of “‘progressive’ farmers, who would both contribute to economic development by producing commercial crops with improved techniques and exercise a stabilizing influence in rural politics” (Berry 1993:85; c.f., Haugerud 1989; Thurston 1987). Registration proceeded through land adjudication exercises intended to determine and formalize customary rights in land in the Native Reserves, sorting out many overlapping competing claims to land rights, and conferring title on the ‘legitimate’ owner. The program was later expanded through the Native Lands Registration Ordinance (1959), in which the goal was to extinguish all prior rights and interests in land under customary law, replacing those with freehold title. The Ordinance established Land Adjudication Boards to hear and adjudicate claims to specific pieces of land, and the boards “recognized as legitimate claims based on social identity as well as on current use and previous transactions” (Berry 1993:125).

At independence, the Native Lands Registration Ordinance was superseded by the Land

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<sup>8</sup> Such arguments remain popular and influential (de Soto 2000), though the shortcomings of land titling projects in rural areas have been repeatedly pointed out (e.g., Bruce 1993; Mighot-Adholla, et al. 1991).

Adjudication Act (Cap 284), which sets out procedures for transforming communal tenure into individual, private property. Under the Act, land adjudication begins with the declaration of an adjudication section by the Minister of Lands, either when either the county council holding land in trust requests it or when the Minister “considers it expedient that the rights and interests of persons in the land should be ascertained and registered” (CAP 284, I, 3(b)). After the declaration of adjudication, an adjudication officer is appointed who, in consultation with local administrators, then appoints a minimum of ten community members to form an adjudication committee. Once individual claims have been recorded and their boundaries provisionally demarcated, the adjudication committee is expected to verify both the claims and boundaries before approving them. Ideally, titles are to be granted to people who would be considered ‘ordinary residents’ under the Trust Lands Act, thus facilitating a smooth transition from ‘customary’ to ‘modern’ tenure. Only once title deeds have been issued do the recipients gain freehold rights to own, use, and alienate their property.

In practice, tenure transformation has produced a range of unintended consequences, among the most important being, ironically, informalization of the process and resulting tenure regimes. Even where adjudication and titling has been completed, many transactions proceed through extra-legal arrangements, invisible to the regulatory authorities charged with overseeing land markets (Berry 1993:126-7). The proliferation of informal transactions was recognized early on, and, as early as 1962, colonial officials complained that the land register was ceasing to reflect the situation on the ground as people went ahead with transactions outside the formal framework (Berry 1993:126-7). This circumvention of formal institutions has meant that “unregistered dealings will generally be devoid of legal effect, but as long as those involved behave as through they had such validity, customary law will continue to operate de facto, at least until challenged by someone prepared to assert his strict legal rights” (Coldham 1979, in Haugerud 1989:67).<sup>9</sup> In some cases, informal processes not only continued despite tenure formalization, they actually evolved in response to land adjudication.

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<sup>9</sup> While Coldham uses the term “customary” to describe such institutions, it does not adequately describe the novel and hybrid institutions, both functional and dysfunctional, that have emerged through these processes.

Title deeds have a range of uses, including securing rights in land and as collateral for private and government loans, making them attractive for both land-hungry farmers and members of the political and economic elite. Access to land, particularly through manipulation of the adjudication process, has also been a key resource in post-colonial patrimonial networks as patrons expanded the base of their support by facilitating colonization of less populated areas by clients fleeing land scarcity and high population pressure in their home areas. Patrons have used their influence to ensure inclusion of their clients in Trust Lands prior to adjudication or on adjudication registers once the formal process has begun. Thus, corruption of the adjudication process has allowed 'ethnic strangers' to form enclaves outside their 'home' areas, eventually gaining legal title and displacing 'indigenous' residents, thereby furthering expansion of dominant groups at the expense of marginalized populations (Galaty and Munei 1999).

The informalization of tenure transformation has not always been a top-down process; in anticipation of future adjudication, informal land markets have developed that bring together local sellers and non-local buyers in extralegal transactions for future interests in land in adjudication section. Despite general faith in a willing-seller willing-buyer paradigm, neither buyer nor seller is necessarily trustworthy, and either can attempt to manipulate the disorder of informality surrounding tenure transformation for personal gain. For example,

“buyers often illegally approach prospective land holders and purchase futures at less than market price, then can bribe officials to enter the buyer's name rather than the seller's name on the register, thus claiming the entire holding. Also, while awaiting title, prospective land holders may sell a piece of land to several buyers, but then refuse to hand over title since transactions concerning land for which title has not yet been obtained are illegal.” (Galaty and Munei 1999:70)

The adjudication process is thus a high stakes game and involves a great deal of uncertainty, provoking both attempts to manipulate the outcome and anxieties about the impending results. Once title deeds are issued, little can be done to challenge their validity, though land loss, contested transactions, and the presence of a large population of 'outsiders' may perpetuate and aggravate disputes and local conflicts. Thus, in some cases tenure transformation has worsened the very situations it was intended to resolve and produced a fertile context of ongoing grievances about land

that can be manipulated to suit the ends of both the political elite and local residents.

### **Tenure change at Enoosupukia**

As will be shown below, the history of tenure transformation at Enoosupukia provides a case study for how the above processes have unfolded and how they have produced both conflict and violence. Briefly, land at Enoosupukia currently falls under two distinct legal frameworks: one portion remains Trust Land, under the administration of the Narok Country Council, and was officially reclassified as a forest in 1993, leading to the proposed eviction of residents. The other portion of Enoosupukia was officially declared an adjudication area, called Kepise, in 1977. More than thirty-two years later, no one has yet been issued a title deed for land in Kepise. This process has been exceedingly complex, and has created a great deal of uncertainty around land rights. Anticipation of formal adjudication instigated significant transformations in the customary tenure system of the Dorobo community recognized as indigenous to the area, including the informal individualization of landholding and establishment of an extralegal land market. At the same time, notions of territoriality derived from both the colonial institution of Native Reserves and the Trust Lands Act remain available, both formally and informally, to bolster certain claims and challenge others.

Prior to the establishment of the British colonial state, many of Kenya's forests were inhabited and controlled by hunter-gatherers, identified in colonial literature as Dorobo and more recently as Ogiek (Kratz 1980; Blackburn 1996).<sup>10</sup> In the Mau Forest, an extensive area that includes the highlands of Enoosupukia, Ogiek and Dorobo were divided into numerous, inter-related sections, each of which comprised several local groups; the Enoosupukia Dorobo constitute one such local group. Generally, the composition of Dorobo local groups was along patrilineal lines of descent; sons remained resident near their fathers' homes. Dorobo livelihoods at Enoosupukia historically centered on honey collection and hunting in the forest, though seasonal migrations for hunting also led to temporary residence on nearby rangelands each year. The Dorobo tenure system was adapted to suit

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<sup>10</sup> Dorobo is a contested term, both in academic literature (see Klopp 1980; Blackburn 1982, 1996) and in Kenyan identity politics. My use of the term Dorobo to identify the historically hunter-gatherer community at Enoosupukia conforms to local self-identification as Dorobo.

both this economic specialization and the community's social organization.

Forest tenure at Enoosupukia was similar to that in use among other forest hunter-gatherer communities in Kenya (Blackburn 1986; Huntingford 1955; Cronk 1989:225). Such regimes have been described as “interrelated territorial and resource tenure systems” (Blackburn 1986:62), in which family groups (generally brothers and their sons) were recognized as “owners” of tracts of forest. These territories coincided with geographical features, usually ridges and valleys, and were divided into sub-territories under the control of individual men or small numbers of related men. Blackburn identifies these territorial units by the Ogiek-language terms with which his informants referred to them (*koret*, pl. *korosiek*) (1986:66); at Enoosupukia, these areas are described by the Maa-language term *inkidong'i* (literally 'beehives,' or 'apiaries'), and each was identifiable by a locally-known toponym. Blackburn argues that this socially and economically efficient system maximizes access to different forest zones and flowering seasons for honey collection by facilitating intra-territory movement along ridges, and also allows related men to live close together and in proximity with the forests they owned (Blackburn 1986:62).

Forest tenure, however, was not freehold tenure; rather, exclusive rights within territories were limited to usufruct rights to resources, particularly those important for honey production. Blackburn describes a suite of rights to trees used for placing or constructing beehives, and further specifies that an owner has exclusive rights to place hives, harvest honey, or cut trees for making and repairing hives within his territory (Blackburn 1986:66). Information I collected through interviews with Dorobo elders at Enoosupukia corresponds with this assessment, although they reported that rights to placement and harvesting of hives could be extended at the owners' discretion. Non-owners were expected to display appropriate respect toward their hosts and to follow the owner's rules and advice about his territory. Individuals in the community retained rights to move through, hunt on, collect firewood from, and reside in territories that they did not own, both in Enoosupukia and in Blackburn's field sites elsewhere in the Mau Forest.

Work by Blackburn (1996) and Leakey (1977) shows that forest tenure may also have included

limited rights of alienation, though elders with whom I discussed this at Enoosupukia disagree. Among the cases documented by Blackburn (1996), transactions were carried out and ownership of territories transferred both within and between Ogiek local groups as part of marriage arrangements, to accommodate inter-group migration, and as compensation and penalties in dispute resolution. Leakey's historical account of the southern Kikuyu (1977) shows that in some cases, Dorobo were able to alienate their individual or family territories to non-Dorobo, in this case Kikuyu from farther north who saw Dorobo-owned forests as a new source of land for an expanding populations. Evidence of transactions at Enoosupukia is contradictory. In interviews, local elders reported that Dorobo territories were not sold or transferred prior to the development of an informal land market after independence. However, family histories and information on territorial ownership that I collected suggests that individuals did sometimes acquire ownership rights in another family's territory, usually by marrying into the family and taking up residence with their wife's relatives, contrary to patrilocal norms. Further complicating the issue is the presence of a small number of Purko Maasai families who were accepted as residents of the area sometime prior to the 1950s. According to several elders with whom I spoke about this history, these Purko families had been accepted and acquired rights to long-term residence at Enoosupukia through friendships with Dorobo family heads, but they did not gain rights to specific forest territories. While Dorobo livelihoods depended on forest resources, the Purko preferred to graze their livestock in large natural glades, asserting no claims to exclusivity in doing so. This suggests that individuals or families had the right to welcome newcomers into the community and grant them rights to residence on family territories, without implying permanent alienation of land.

The Dorobo tenure regime predominated at Enoosupukia until the mid-1960s, when state efforts to expand late-colonial land titling projects began to influence local practices and concepts. Changes to the established tenure system at Enoosupukia were not brought about solely by top-down implementation of tenure reform, but also through local appropriations of elements of the freehold title regime promoted by the state. Even though formal adjudication did not begin at Enoosupukia until 1977, leaders, including the local administration chief, began promoting individualization shortly after

independence. As neighbouring areas began to be adjudicated, locals were confident that the process would soon come to them, bringing with it the promise of development and prosperity. In anticipation of formal adjudication, community members at Enoosupukia established informal committees around 1965, on the advice of the local chief. These committees consisted of Dorobo and Purko men from the highland area as well as Keekonyokie Maasai who lived in adjacent areas such as Kepise, Range, and Ilkirragarien. The committee members and local residents set about dividing up Enoosupukia amongst themselves and determining the boundaries that would be used to formally demarcate titled lands in the future. These demarcations roughly reflected the Dorobo forest territories at Enoosupukia, though some exchanges were made to consolidate holdings. Reflecting the influence of formal adjudication, boundaries were identified and demarcated by claimants in conjunction with the committees, and key landmarks were identified, agreed upon, and sometimes marked. Redistribution of residences quickly followed demarcation as men began to move their families and build homes on what they expected would become their individual land. Land throughout Enoosupukia would remain in Trust under County Council administration until it was formally declared an adjudication area, and while local residents retained rights to reside on and use the land under the Trust Lands Act, they would not have legal rights to alienation until the completion of the formal adjudication process.

Impending formal adjudication and the potential value of land at Enoosupukia, as both agricultural land and legal property, attracted the interest of both Maa-speakers and Kikuyu farmers, many of whom had lived nearby for decades. Beginning in the 1960s,<sup>11</sup> such outsiders gained access to Enoosupukia through several avenues, including individual friendships and acceptance, activation of relationships based on kinship, clanship, and shared identity as Maa-speakers, and through transactions including renting, leasing, and purchasing. While arrangements were often finalized between individual locals and outsiders, they were sometimes facilitated through patrimonial networks

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<sup>11</sup> Colonial documents report the presence of Kikuyu cultivators in Enoosupukia and other nearby areas in the early 1950s, and recount the forced eviction of these aliens from the forests as part of government operations against Mau Mau (DC/NRK/26 November 1952:2). In interviews I conducted at Enoosupukia, Dorobo elders maintained that Kikuyu immigration did not begin until after independence and increased rapidly in the mid-1970s.

as leaders connected those in search of land with those perceived to possess it in abundance. For Kikuyu displaced in the clashes, these informal agreements and subsequent inclusion in the official adjudication register form the basis for claims to land. Maasai and Dorobo, however, dispute the validity of these transactions and claim that Kikuyu engaged in such agreements in bad faith, claiming to have purchased land when in fact they were clients or tenants, temporarily resident at Enosupukia through the goodwill of their hosts.

By the 1960s, Enosupukia was bordered by Kikuyu enclave communities at both Nairagie Enkare, to the south, and Maiella farm, a European-owned farm outside the boundaries of Narok District of the Maasai Reserve, as well as a growing population to the north at Sakutiek. While Dorobo maintained their hunting and honey collecting livelihood and spent much time in the forest, they also periodically visited neighbouring communities to trade forest products, including honey, and access markets. According to some accounts, it was through trading partners and other friendships developed with residents of these enclaves that Dorobo were connected with Kikuyu who sought land for farming and settlement.<sup>12</sup> Increasing land scarcity in the Kikuyu 'home area' near Mount Kenya and in growing enclaves around the country and the limited impact of post-independence settlement schemes orchestrated by the Kenyatta government drove many of the landless to seek out cheap, fertile land in both forests and sparsely populated pastoral districts (Leo 1981; c.f., Oucho 2002). To access land, Kikuyu newcomers would approach Dorobo at Maiella or Nairagie Enkare and request permission to cultivate a portion of the latter's land in the forest. Taking up residence near the home of their hosts, Kikuyu would set about clearing the land by felling trees and processing them into timber or charcoal, which could be both used locally and sold in nearby markets. Once under cultivation, a host may have been entitled to a portion of the produce, although Dorobo elders at Enosupukia claim that they had little interest in crops for food as their diet continued to consist mainly of meat and honey until the late 1970s.

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<sup>12</sup> Similar processes, involving Kikuyu and Maasai, had been taking place since at least the 1920s to facilitate the development of farming enclaves at Nairagie Enkare and elsewhere in Maasailand (Waller 1993; Galaty 1993; Narok District Annual Report, AR/NRK 1920/21:8).

There are disagreements about the terms of these arrangements. While some Dorobo may have believed, in line with forest tenure and historical precedent, that Kikuyu acceptees into Enoosupukia could be expected to fit into the local community in a complementary way and conform to local tenure norms, Kikuyu may have felt that they were gaining exclusive rights to individually-owned pieces of land by virtue of the application of their labour to clearing and cultivating (Klopp 2001b:489; Lonsdale 2008:306), effectively staking a claim in anticipation of formal adjudication. Some Dorobo now claim that they expected Kikuyu to stay for only a short time before moving on to other lands, and that their Kikuyu clients overstepped their authority as guests by inviting friends and relatives to also take up residence and cultivate the fertile hills.

Many of the Kikuyu displaced from Enoosupukia in 1993 argue that they had purchased land from Dorobo or Maasai owners on a willing-seller willing-buyer basis, and some have produced written documents as evidence.<sup>13</sup> These documents usually identify a buyer and seller, details of the amounts of land and compensation to be transacted, and the names of witnesses to the agreement. In some cases, the names of the transacting parties and witnesses are accompanied by official national identification numbers and signatures or thumbprints. These agreements have been challenged by both Dorobo and Keekonyokie Maasai in interviews I have conducted. In 2008, it was common for people I interviewed to allege that these paper agreements are either fraudulent or outright forgeries. In these stories, Kikuyu entered into verbal agreements to lease or rent land from local owners, but took advantage of their hosts' illiteracy, convincing them to provide thumb prints on written agreements of sale that the latter could neither read nor understand. Strictly speaking, these agreements carry little legal weight, since the land being sold was technically inalienable until the completion of formal adjudication and the process had not even begun on a significant portion of the contested land. This fact was not lost on one particular Dorobo man who explained to me that while the claims of Kikuyu who had been included in the official adjudication register should be respected, those who had only hand-written agreements for unadjudicated lands had effectively bought something that does not exist.

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<sup>13</sup> I obtained copies of a sample of these documents from the offices of the Catholic Diocese of Ngong in August 1993.

These contested transactions reveal one of the deep contradictions that I have encountered in interviews and informal conversation with people at Enoosupukia over the years. When discussing land issues, people frequently made broad allegations that “everyone sold land here” and that “there is no one here who did not sell land,” but there is almost no one who will admit to having sold land. While in many cases these statements are accusations against older men by their younger relatives and sons, I also suspect that this is a way for people who did sell land to acknowledge this fact while avoiding the shame of admitting what is now widely regarded as a mistake made out of ignorance or greed. Given the problems of dispossession, poverty, and violence that extralegal land sales are recognized to have facilitated, it is not surprising that few people will admit to having sold land. Further, while people sometimes admit that land was sold at Enoosupukia because sellers were ignorant of its value and of the implications of land sale – that once it is sold, it is gone for good – it is rare that anyone would admit their own ignorance. During my time at Enoosupukia, I have had only one man explicitly admit that he sold land to outsiders in the past. While his explanation of the reasons he and others sold land could be interpreted to allude to personal greed, the motivations for selling land for money were not unreasonable. As he told me: “we wanted development and we wanted what we had seen the Kikuyu had at Maiella. With money one can buy a suit or build a permanent house with iron sheets and timber. [One Dorobo from Enoosupukia] even bought himself a pickup and drove it around!”

In addition to interpersonal agreements, into which local owners engaged with varying degrees of freedom and information, some people at Enoosupukia have argued that immigration of outsiders, both Kikuyu and Maasai, was facilitated through established patrimonial networks, in which Dorobo forest-dwellers were at the bottom end. According to one key informant, the process would usually involve the local Dorobo headman being summoned to the office of the Keekonyokie chief at Nairagie Enkare. There the headman would be introduced to a prospective settler, normally a client of the local elite or more distant patrons. The Dorobo headman would be asked to assist the client of his superiors to find a willing host so that he could find a place to build a house and clear some land for farming.

Such networks are alleged to have gone far beyond the local area, and patrons are alleged to have included not only the Maasai elite within Narok and influential members of the County Council, but also Members of Parliament and even President Kenyatta. The Dorobo headman and other local residents of Enoosupukia felt that they had no choice but to accept these outsiders, both because they were protected by powerful patronage bosses and because cooperation on this matter could allow Dorobo clients a degree of leverage in future dealings with local leaders.

While claims by Kikuyu smallholders to land at Enoosupukia have been the most highly contested, they were not the only outsiders to gain access to land in the forest, and the process of tenure transformation in the highland facilitated Keekonyokie Maasai expansion into Dorobo territory. While they had historically accessed the forest as a dry season grazing reserve, Keekonyokie tended to have their permanent residences in the rangelands where they were recognized in the formal adjudication process. For pastoralist Keekonyokie, acquisition of titled land in the highlands would guarantee future access in case of severe drought; however, having also seen the benefits of cultivation at places like Nairagie Enkare, some recognized the potential value of Enoosupukia for diversifying their livelihoods and sources of income. But those who gained land in the highlands did not clear forest and break ground themselves; most often, they placed Kikuyu farmers on the land, either as clients or tenants, and some are alleged to have also sold their land. Keekonyokie pastoralists were likely able to attain rights to highland property through a combination of two processes: first, through the patrimonial networks already described, and second, through the activation of social links with the Dorobo, whose autochthony in the forest was widely acknowledged. Despite the importance of livelihood as a diacritica for determining the social boundary between Dorobo and Maasai, features of Maasai social organization, including clanship and age sets, transcend that boundary. Differences between Maasai and Dorobo, in which the former considered the latter inferior, could be overcome as Keekonyokie sought out friends, relatives, or age mates whom

they could count on to support their claim when it was scrutinized in formal land adjudication.<sup>14</sup> Perceived Keekonyokie appropriation of the land adjudication process and expansion into the highlands, in addition to facilitating Kikuyu immigration, exacerbated local political tensions and ultimately influenced the implementation of formal land adjudication, as will be discussed below.

Formal land adjudication at Enoosupukia was initiated on January 14, 1977, when the Ministry of Lands issued a declaration of adjudication identifying the boundaries of the proposed adjudication section. While the whole of Enoosupukia had been informally sub-divided, it was split into two separate areas for formal adjudication. The declaration identified an area of 8,740 hectares to be called Kepise Adjudication Section (Republic of Kenya, Narok DDP 1984:49), including a portion of the highland and stretching into the lowlands toward Suswa. More than thirty years later, when the adjudication phase of titling in Kepise was officially closed on October 16, 2007, the adjudication register included nearly 1,850 registered parcels. With informal adjudication underway since the mid-1960s, and formal adjudication in progress since 1977, it is no wonder that more than 1,000 formal objections were recorded during the official sixty day objection period. As a result, objections are still being heard and adjudicated by the District Lands Principal, and until they have all been resolved, no title deeds will be issued.

The proliferation of claims and claimants at Enoosupukia has had implications for the formal adjudication process beyond influencing which individuals will ultimately receive title deeds once adjudication is finally completed. The finality of title would, in principle, give outsiders permanent rights at Enoosupukia. In a Maasai district, the growth and permanent establishment of a Kikuyu enclave could have significant impacts in the political sphere, and these dynamics would play a role in the violent conflict that wracked the area in 1993. Similar dynamics are behind the fragmentation of Enoosupukia into multiple adjudication sections; while Kepise came under formal adjudication, the

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<sup>14</sup> Similar effects of land adjudication in Kenya have been cited in other areas where loosely-organized and often ignored descent groups began to be formalized in line with claims to rights in land. Berry explains that “of the influence descent groups were able to exert in the process of adjudication, land registration provided an incentive for them to mobilize their members in defense of the interests of the group. ... In some cases, new ‘descent coalitions’ were formed among people who had previously paid scant attention to their possibly common ancestry.” (Berry 1993:126)

upper portion of Enoosupukia has remained a Trust Land, despite being identified in the 1984 Narok District Development Plan as a planned adjudication area (to be officially called Enoosupukia).<sup>15</sup> According to several Dorobo, Purko, and Keekonyokie elders I interviewed in 2007 and 2008, the decision to divide Enoosupukia into two sections was made due to fears amongst Purko claimants that the process would be dominated by Keekonyokie Maasai and that the Purko would be allocated smaller parcels than they deserved. At Enoosupukia, Purko Maasai are a significantly smaller group than Keekonyokie, a reversal of the situation in Narok District as a whole, in which Purko dominate both territorially and politically. Faced with formalization of claims, the Purko tried to exercise political connections to ensure their claims were adequately considered. In an interview in 2008, a former administrative chief told me that, at one point, Purko sought to have the upper portion of Enoosupukia incorporated into a neighbouring Purko-dominated location.

As is currently the case, prior to the clashes at Enoosupukia, land tenure was subject to two distinct legal frameworks, neither of which guaranteed freehold title or permitted alienation of individually-owned land through transactions. The situation on the ground, in which many 'outsiders' believed they had acquired rights in land through the informal but extralegal processes described above, was maintained by virtue of their connection, through patrimonial networks, to patrons who could protect their interests and quell local dissent. In the following section of this paper, I will explain how this complex tenure arrangement was manipulated as a result of the convergence of the interests of the political elite of Narok District and certain Maasai and Dorobo at Enoosupukia. Kikuyu disconnection from former patrons, and the revelation that the formal institutions of land governance would be used in ways favourable to Maasai claimants not only raised the stakes of competing claims to land at Enoosupukia but also necessitated attempts to defend claims through physical presence.

### **Conflict, institutional manipulation, and violence**

By the early 1990s, tenure transformation had brought major changes to Enoosupukia, leading

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<sup>15</sup> Enoosupukia was to be formally declared for adjudication by 1987, and was reported to cover 10,722 hectares (Republic of Kenya, Narok DDP 1984:50). In subsequent District Development Plans, Enoosupukia continues to be listed as a planned adjudication section, although the size of the planned area is indicated as 2,750 hectares, possibly due to a further division of the area into two areas to be adjudicated separately (Republic of Kenya, Narok DDP 1989; 1994).

to the existence of both formal institutional frameworks and informal hybrids. The most visible consequences of this process were deforestation and the establishment of a Kikuyu farming enclave, a visible manifestation of the operation of patrimonial networks through which Kenya had been internally colonized. In the 1980s, the Narok County Council allocated plots in the Trust Land for establishment of a trading center, and schools and churches were built to serve the population of this increasingly prosperous area. As the Kikuyu population grew, they began to exert more influence over social life: local age set ceremonies ceased to occur by the late 1970s and even male circumcisions were being conducted in the evenings by professional nurses or doctors rather than at home in the early morning as according to Maasai custom. Dorobo and Maasai at Enosupukia began to feel marginalized on their ancestral lands as the Kikuyu community began to agitate for representation through administrative and electoral representatives. With the political shifts of the early 1990s, Kikuyu at Enosupukia began to seriously assert their numerical strength, openly supporting opposition candidates for both local and parliamentary positions. Reflecting on these changes in an interview in 2003, one man produced the following narrative:

“I was born here at Enosupukia, and the Kikuyu started coming to settle here when I was [an uncircumcised adolescent, around fourteen years old]. ... When they came here they started looking down on the Maasai community, and they were saying they would only employ the us as casual labourers or guardsmen at their homes, so we developed a very coarse relationship. They stopped us from doing many things here. When this place was declared a town, they refused to give us plots. In the market, we were not given a chance to sell our things. ... When they gained a lot of momentum and security, they declared that we should leave. And we wondered, why should we leave Enosupukia, which is our land.”

Local fears of marginalization resonated with the majimbo rhetoric that had been resurrected by the political elite of the Rift Valley, and the results of the election revealed a rupture between the Kikuyu farming enclave and those in political power (Klopp 2001b:492). Land adjudication at Enosupukia meant that the Kikuyu, who had now become a liability for Maasai politicians in Narok, could potentially gain permanent rights to land in the form of title deeds. A legally recognized Kikuyu community at Enosupukia would be an obstacle to Maasai politicians: in a more liberal democratic environment, power in patrimonial networks depended not only on connections at the top, but also on the number of client votes that a candidate could deliver. Maa-speakers, on the other hand, remained

connected to their patron, Ntimama, and thus to state power. In an effort to address this potentially troublesome situation and reward his supporters by privileging their claims to Enoosupukia, Ntimama used his influential position to manipulate the formal institutions governing Enoosupukia as a Trust Land to override the informal status quo and had the area reclassified as a County Council forest for conservation. The resulting attempts by both Maa-speakers and Kikuyu to assert their claims through physical presence ultimately escalated to become community-wide violence in October 1993.

The government-supported eviction of farmers from Enoosupukia was justified through an environmental discourse that linked agricultural “encroachment” with deforestation and downstream water scarcity. Enoosupukia was the source of several streams, both seasonal and perennial, that both provided water for pastoralists in the rangelands below and fed a newly constructed dam at Lelong'o, which was to supply piped water to the town of Nairagie Enkare (*Weekly Review*, October 29, 1993:15) In a letter to John Sambu, then Minister for Environment and Natural Resources, Ntimama identified “infiltration” by “people from Naivasha” and their destruction of the forest as the primary cause of reduced water levels for downstream users (Ntimama, March 5, 1993). Not surprisingly, his claims echo colonial-era discourse around resource management, territorial control, and the politics of exclusion or inclusion of non-Maasai in the Masai Reserve (Waller 1993). As Klopp has pointed out, the eviction was formally announced in late September by the Narok District Commissioner (Klopp 2001b:493), and it immediately provoked opposition. One of the main arguments against the eviction order for Enoosupukia has been that land was under adjudication and that residents had already established private interests in the land, to which they would be formally entitled once the adjudication process was finished and title deeds issued (e.g., NDEHURIO, August 24, 1993). In fact, while the motives behind the eviction are clearly suspect, the proposed eviction was orchestrated roughly in accordance with the provisions of the Trust Lands Act, which, as has been shown above, still applied to a significant portion of the land settled by Kikuyu newcomers.

Ntimama's letter, dated March 5, 1993, was intended to gain the support of the Ministry for Environment and Natural Resources for the reclassification of Enoosupukia as a forest. The support of

local residents was also necessary, and this was indicated in Ntimama's attachment of two sets of minutes from meetings of "elders and leaders from Enoosupukia location who have sat down and resolved to request the Government to save the forest of Enoosupukia by planting trees and any other relevant environmental activities" (Ntimama, March 5, 1993). The first set of minutes includes the names of forty-four men, identified by research assistants in Enoosupukia as having land and homes in the lowlands, and refers to a request initially put forward in September 1991. The second set of minutes, dated September 1993, contains twenty-seven names, including those of a number of highland residents, and identifies all of the meeting participants, save for the chief and assistant chief, as members of the local KANU committee, a significant fact in light of the ongoing political struggles of the early 1990s. This second set of minutes specifically calls for the nullification of illegal land adjudication being undertaken in the "upper side of Enoosupukia Location" which is identified as "still under Narok County Council" and for the country council to take action to conserve the forest. The matter received the attention of the Narok County Council, which, according to minutes of a council meeting "deliberated on this matter at length and noted that it is the duty of the Council to protect forest and water catchment areas in the district" (NCC, Min 18/93). Citing the suffering of people and livestock in the Suswa plains below Enoosupukia, the council resolved "that Enoosupukia Indigenous Forest which is a water catchment area for Suswa planis is a Council Forest and the Council starts protecting it from destruction immediately" (NCC, Min 18/93).

With the support of a number of Kenyan NGOs, the Kikuyu at Enoosupukia saw the eviction as an infringement of their civil rights and filed for a court injunction to stop the eviction until its legality could be determined in court. Before the petition could be heard, however, violence erupted at Enoosupukia, effectively executing the eviction of not only Kikuyu residents, but also temporarily displacing many of the Maasai and Dorobo inhabitants. The violence that caused mass displacement was the final event in a series of escalating confrontations and fights, each of which can be understood as part of a strategy to use physical presence and force to challenge and defend claims to land.

Faced with potential government action to displace a significant population from Enoosupukia and uncertainty about whose claims might be respected and whose ignored in the process, both Kikuyu and Maasai resorted to displays of what Galaty has called “presence-on-the-ground” (Galaty 2005). One of the first such displays was recounted by Maasai and Dorobo interviewees in 2003, who told me that when Ntimama and Sambu came to tour Enoosupukia to assess the environmental situation ahead of the eviction, their entourage was “pelted with stones by Kikuyu youths.” Later, once the eviction had been officially announced, attempts to assert control through physical presence or intimidation escalated. Two narratives, reproduced below assign blame to different parties, but both explain the clash as an outcome of increasingly violent encounters.

In 2003, a Keekonyokie man told me this story of how the clash broke out:

“The war at Enoosupukia started when some Maasai herders tried to take their livestock to water at one of the streams near the town center. The Maasai had come to the area seeking grazing and water because the lowlands had become very dry as the short rains had not yet fallen. When the Maasai arrived, they found a group of Kikuyu who told them they could not use the water without first paying for access. The Maasai and Kikuyu argued over this, and eventually a fight started. In the fight, the Kikuyu killed and beheaded one old man and told the others that they would make soup with his head. The Maasai fought back and were able to kill some of the Kikuyu and scatter the rest, but the old man's head was never found. The next morning, before dawn, a group of Kikuyu raided a Maasai homestead, to revenge their friends who had been killed. Finding that the family had already fled, the Kikuyu attacked the livestock, killing and slashing more than twenty cows. This outraged the Maasai who prepared for battle and called on other Maasai to help defend the community. The fighting continued for a few days until all the Kikuyu had been chased away from Enoosupukia and the Maasai remained to take control of the land, which is rightfully ours.”<sup>16</sup>

Another variation of the story, written by a Dorobo research assistant in 2005, recounts the genesis of the clash as follows:

“Members of the Maa community started assaulting Kikuyu at Enoosupukia by raiding their homes for livestock in an attempt to frighten them and cause them to voluntarily vacate the area. In that process, some Purko youngsters from Mosiro Location [about 70km south of Enoosupukia] raided a home in Kipuput area, not far from the town, and stole three cattle, fourteen sheep and a goat. Unfortunately there was one old man who had the idea of accompanying these youngsters on the raid and he was caught and killed by an angry mob of Kikuyu who were trying to stop the raiders. Because of their rage, the Kikuyu traced the raiders to a homestead where they had sought refuge. The people in the home ran away, so the Kikuyu maimed about thirteen cattle when they could not find people to fight. After this fight, the Maasai called for help from neighbouring locations, and Purko came from many places to join the war. When the fighting was finished and the Kikuyu had run away, the Purko stayed in Enoosupukia and brought their livestock, and they continued to harass and intimidate people here, including other Maasai and Dorobo.”<sup>17</sup>

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<sup>16</sup> Of note in this account are the beheading of an elderly man and the mutilation of Maasai cattle by Kikuyu fighters. Both of these actions can be considered violations of social order and seen as symbolic attacks on Maasai identity.

<sup>17</sup> Current residents of Enoosupukia allege that non-local herders, who occupy the Trust Land at Enoosupukia during the

Allegations of both Kikuyu demands for payment for access to resources and Maasai attempts to intimidate and threaten Kikuyu residents suggest efforts by both groups to assert their claims through displays of physical presence rather than through formal institutions. The resulting clash led to the redistribution of client populations so that the presence of Maa-speakers and absence of Kikuyu at Enoosupukia mirrored their inclusion or exclusion from the patrimonial networks that linked them to state power.

### **Conclusion**

The competing displays of presence that escalated into violence and the instrumental manipulation of formal institutions governing land that necessitated them are symptoms of the deeper problems surrounding land in Kenya. Despite the existence of formal legal frameworks governing land tenure, these institutions, like many others in Kenya, have been informalized and corrupted, both by members of the elite and ordinary citizens. The disjuncture between formal institutions and informal practices, and uncertainty about which are authoritative, is a key source of conflict, both within and between communities. As Coldham pointed out in the 1970s (cited above), this disjuncture becomes even more problematic when the formal is privileged as authoritative and the informal is negated, or vice versa. For ordinary Kenyans, connection to patrimonial networks can provide access to land through informal channels and protection against attempts to challenge their claims. On the other hand, disconnection from those networks can render previously established claims insecure. Where access to and rights in land depends on patrimonial connection and informal institutions rather than authoritative, formal institutions, shifts in the structure of patrimonial networks, through which former clients are excluded and new clients included, can lead to redistribution of populations as the new shape of these networks is made visible through the presence of current clients on contested lands. At Enoosupukia, like in other parts of the country, these reconfigurations have been carried out through violent conflict, not through elite manipulation of clients, but rather through a convergence of patron

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dry season, sometimes intentionally graze their animals on local crops, steal livestock, and commit burglaries. Locals sometimes allege that these crimes are committed with explicit permission of the Maasai elite seeking to perpetuate instability, prevent agricultural development, and maintain Enoosupukia as a dry season grazing refuge.

and client interests and the intentional destabilization of local order by instrumental manipulation of disorderly institutions.

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