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## Moving the Maasai: A Colonial Misadventure

### Book

How to cite:

Hughes, Lotte (2006). Moving the Maasai: A Colonial Misadventure. St Antony's Series. Basingstoke, UK: Palgrave Macmillan.

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Version: Accepted Manuscript

Link(s) to article on publisher's website:

<http://www.palgrave.com/products/Catalogue.aspx?is=140399661X>

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## Chapter 1: Introduction

**[NB: This is a shortened version of the published chapter.]**

I have no desire to protect Masaidom. It is a beastly, bloody system, founded on raiding and immorality, disastrous to both the Masai and their neighbours. The sooner it disappears and is unknown, except in books of anthropology, the better.

Sir Charles Eliot to Lord Lansdowne, 9 April 1904<sup>1</sup>

Maverick colonial servant Dr Norman Leys once lamented that the true story of how the British relieved the Maasai of their land would never come out, despite his best efforts to publicise it. He wrote to his friend, the British MP and Quaker Edmund Harvey: ‘Things aren’t bad enough *yet* to give the chance of a scandal. Ten years more and somebody will write a sensational novel or there will be a native rising or in some other way the British public will get disillusioned’<sup>2</sup>

This is not the novel he hoped for, but its contents are sensational none the less – and more shocking than fiction. It aims to pick up the investigation where Leys left off, frustrated by official obstruction and threats. Using his own unpublished evidence, Maasai and other oral testimony, and archival sources in Britain and Kenya, this study aims to produce new knowledge about the events that cost Leys his career and the Maasai the best part of their land. Though fragments are already known and documented, this book tells a previously untold story of ‘white mischief’ and the making of the so-called White Highlands, carved out of largely Maasai territory. Of course, some will argue that this was not originally Maasai land, that they were marauders who had stolen it from others, and that they cannot claim to be

first comers to this territory. The short answer is that Britain recognised the East African highlands as Maasailand from at least the mid-nineteenth century, and this single word (or simply Masai) is writ large across early maps of the region. But no, the Maasai cannot claim to be first comers; possibly only forest-dwelling hunter-gatherer communities, collectively termed 'Il-Torobo', can claim that distinction.<sup>3</sup> Longer answers will become clear as the story unfolds.

The Maasai people have attracted enormous interest from travellers, traders, missionaries, administrators, historians and anthropologists since the earliest days of their contact with Europeans. Like Zulu warriors, they have almost come to represent Africa for those – largely in the Western world – who know little about the continent. Photographers, researchers, writers, fashion designers and tourists have followed those early adventurers, reproducing images and accounts that have in turn generated a welter of popular interest and representation.<sup>4</sup> In some of this material, exoticisation and demonisation of the Maasai (or who the Maasai are imagined to be) manifest as two sides of the same coin. All in all, the Maasai tend to remain fixed in time and space as archetypal noble savages, embedded in western images of Africa, exploration and wilderness. Some Maasai themselves play up to this, both in order to satisfy tourist appetites and thereby capitalise on Western fantasies, and to invoke the idea of a 'traditional' idyll which has been shattered by modernisation. Public fascination focuses on whether they have 'moved on' at all since the turn of the last century, when Commissioner Charles Eliot dismissed their 'bloody system', or whether they still

adhere to a supposedly timeless, traditional way of life. People are also curious to know whether the Maasai still exist, since news of their imminent extinction has been broadcast since the 1900s, and still abounds today. Some Maasai deliberately invoke this idea when calling for special protection as an indigenous community within the nation state. Little is popularly known or cared about their recent political history.

The ancestors of the Maasai (or more properly Maa-speakers) came to East Africa from southern Sudan sometime during the first millennium AD. They ‘settled’ in what is now Kenya and Tanzania, and continue to live there today, the great swathe of Maasailand broadly following the line of the Rift Valley and fanning out on either side. By the early nineteenth century, at the height of their power, they lived in and on either side of the Rift, occupying an area stretching from Lake Baringo in the north to central Tanzania in the south.<sup>5</sup> This former territory has been described as lying at a latitude of between one degree north of the equator to about six degrees south, and more than 200 km wide in some places.<sup>6</sup> Beyond mentioning some key events, I do not intend to cover their pre-twentieth century history in any detail; this has been ably done by other scholars such as Berntsen, Waller, Galaty and Jacobs.<sup>7</sup> My interest is primarily in the early colonial history of the Maasai in British East Africa (BEA, later Kenya), particularly that of the Purko section, and their relationship with the British from the 1900s. Though some of this period has been thoroughly researched, there are major omissions in the historiography. There is little mention in the published literature of two of the most momentous events in the last hundred years of Maasai history: the forced moves

which robbed the 'Kenyan' Maasai of the greater part of their territory, and resistance to the second move from Laikipia to the Southern Reserve which culminated in a 1913 court case brought by the Maasai, with the assistance of Leys and other Europeans in and outside the colonial service. The few historians who have covered these events fail to analyse fully their significance and effects, or to include a Maasai perspective and direct, attributable quotes. The resistance is typically dismissed as insignificant, largely assumed to end at the court case, and not placed within the context of other African resistance movements.<sup>8</sup> Sorrenson, for instance, writes: 'Their losses of land did not breed in the Masai [*sic*] a spirit of rebellion. Unlike the Kikuyu, they did not attempt to acquire European techniques to settle their grievances. The Masai reacted to the new society by ignoring it. Certainly the Masai court case was an exception but in this the Masai acted on the advice of Leys and Morrison, as a last desperate effort to retain Laikipia'.<sup>9</sup> It was in fact a major exception, which disproves his previous claim. By emphasising the roles of European supporters, Sorrenson downplays African agency. Many gaps remain which need to be filled.

### **Outlining the story**

Briefly, the facts are these. In 1904-05, the British forcibly moved certain sections of the Maasai out of their favourite grazing grounds in the central Rift Valley (Naivasha-Nakuru) into two reserves in order to make way for white settlement. One reserve was on Laikipia in

the north, the other in the south on the border with German East Africa where other Maasai sections already lived. Under a 1904 Maasai Agreement or treaty, these territories were promised to the people for 'so long as the Masai as a race shall exist'. Seven years later, the British went back on their word and moved the 'northern' Maasai again, at gunpoint, from Laikipia to an extended Southern Maasai Reserve. The second move was not completed until 26 March 1913. White settlement of the highlands was the primary reason for the expulsion; other reasons will be discussed later. The second move was sanctioned by a 1911 Agreement, which the Maasai later claimed their leaders signed under duress. This Agreement effectively rendered the first one void.

As a result of these two moves, and later forced moves of communities including the Uas Nkishu Maasai from a reserve at Eldama Ravine to Trans-Mara, and the Momonyot of the Loldaika Hills to the same area, the Maasai of BEA lost at least 50 per cent of the land they had once utilised. (I have not investigated these and other moves of affiliated groups; they will only be referred to where relevant.) Some might inflate this estimate to nearer 70 per cent. It is difficult to come up with an exact figure since land in Maasai use, as opposed to occupation, before 1904 was never surveyed and officially quantified. Today, Maasai point to the fact that many Kenyan place names, including Nairobi, are derived from the Maa language as proof that certain lands were once theirs. Maasai leaders made this point much earlier, in their 1932 memorandum to the Kenya Land Commission (KLC).<sup>10</sup>

The British expected the Maasai to resist violently, as befitted their bloodthirsty reputation. This had partly been created by early coastal traders, and amplified in racy, best-selling accounts by nineteenth century travellers such as the Scottish geologist Joseph Thomson.<sup>11</sup> Administrators were taken aback when a small group of young men hired Mombasa-based British lawyers and took the government to the High Court in 1913 to contest the legality of the second move and demand compensation for stock losses and depreciation in stock values as a result of the move. The plaintiffs tried to regain Laikipia, claiming that the 1911 Agreement was not binding on them and other 'northern' Maasai who had not signed it. They lost on a technicality, went to appeal, and lost again. However, this was a landmark legal action, apparently the first of its kind brought by indigenous people against colonial rulers in East Africa.<sup>12</sup> It was led by illiterate senior warriors, and initially launched by a charismatic age-set spokesman named Parsaloi Ole Gilisho. In an ironic twist of the tongue, the British anglicised his name as Legalishu. The full significance of the case has not been examined before, while Ole Gilisho is barely mentioned in histories of the Maasai or East Africa.

Illiteracy placed the Maasai at a major disadvantage in their battle of wits with the British, and contributed to their losing the court case. They could not write down their version of events, which has left the whole story largely in western hands and archives to this day. They were forced, in their dealings both with government officials and their own lawyers, to depend upon translators and semi-literate mediators whose reliability was questionable. They

could not record the numbers and names of people who allegedly perished on the Mau escarpment in the summer of 1911 during the second move, and so were unable to prove that anyone died at the hands of the British (if indeed anyone did, see Chapter 2). They attempted to enter into the colonial discourse through sophisticated verbal debate, as is evident from the allegedly verbatim accounts of meetings between Maasai leaders and British representatives in the run-up to the moves. Public debate and discourse are cornerstones of Maasai society and customary justice, and Maasai leaders assumed they could negotiate, and achieve justice, by employing similar tactics with Europeans. Certainly, there was plenty of talk. But literacy, and the ability to reflect upon and disseminate a contested text, enables a hegemonic power to out-manoeuvre its illiterate opponent more often than not. Things were about to change, but not fast enough in this case. As Leys said of the growth of literacy: ‘A new air is blowing in the world. Any people who, like the Africans of Kenya, are determined to learn to read will soon be determined to be free’.<sup>13</sup> Maasai desire for self-determination preceded their literacy, but fell at this first hurdle.

### **Approach and timescale**

My main focus is the forced moves, particularly the second; resistance culminating in the 1913 court case; and the repercussions of these events and associated land losses. But important subsidiary themes emerged in the course of investigation. These included

allegations that Maasai leaders and certain white settlers became blood brothers in an oathing ceremony held sometime before 1911 (see Chapter 6). This came out of oral testimony, and is barely mentioned in any written text. Making blood brotherhood was practically *de rigueur* among early European explorers, professional hunters and administrators in the region, as they sought to make treaties with ‘tribes’ and establish the British flag – or in the case of hunters, simply forge useful friendships in dangerous territory. But its significance was completely different in the Maasai context as European settlers sought acceptance from their African neighbours, who in turn sought to make peace with these strange, and potentially threatening, immigrants. It seems the Maasai mistook settlers for government officers and believed that they were, in making blood brotherhood, forging an official contract. Some elders told me they believed the blood brotherhood bond still existed, and evidently set more store by this than the official Agreements. If this ceremony happened, it partly explains why the Maasai did not violently resist European intervention. Even if it did not, stories about it signify important social metaphor.

Other crucial subsidiary themes also jostle for attention. They include the environmental and disease impacts of the forced migration, not only for the migrants but also for other Maasai groups into whose territory they were pushed; the role played by European and African dissidents in challenging colonial policy in this period, and the ways which individual whistle-blowers connected to the broader anti-imperial movement; the link between land grievances and the battle between British forces and Maasai warriors at

Ololulunga, western Narok, in 1918;<sup>14</sup> and the return of significant numbers of Maasai to their former northern pastures after World War One, where many worked for European farmers and went on to re-establish a community. Throughout, I am as interested in exploring people's perceptions of events as in finding out what actually happened.

In order to present the main and subsidiary themes as clearly as possible, the book is divided into three parts. Part I will investigate the moves and what led up to them. Part II will examine the aftermath of the moves, including the court case and environmental impacts. Part III will look at various interpretations, including examining what blood brotherhood represented, and trace the trajectories of Maasai who reversed the exodus from Laikipia to return north. The story is told largely by interweaving and comparing these contested narratives (that is, those of the Maasai, British administrators, dissidents, settlers, scientists and others). There was also contestation within all these categories; for example, there was little or no consensus on administrative policy within British government circles either in BEA or in London. The Maasai also disagreed among themselves about the Agreements, the wisdom of the second move in particular, which leader to follow, how to respond to European intervention, and whether or not to resist. These disagreements continue today, when many Maasai are unable to discuss these events (now popularly linked to long-term underdevelopment, impoverishment and marginalisation) without blaming somebody.

My immediate focus is 1904 to 1918, with the broader frame of reference the last quarter of the nineteenth century to the present day. The story largely features events and

personalities in East Africa, and I shall not dwell upon the British political scene, or individuals and organisations in Britain, in this period. The style of language is deliberately less academic than the doctoral dissertation upon which this book is based. I make no apology for sounding ‘journalistic’; I am also a journalist, and wish to make the story both readable and widely accessible.

### **Sources: oral**

My informants included Maasai elders old enough to have taken part in the second move as small children; many have since died. Interviews were also conducted with members of Ole Gilisho’s family (primarily his sons), and with the descendants of Ole Gilisho’s son-in-law Ole Nchoko, who became first plaintiff in the 1913 case. Their testimony is rich, and touches on many other inter-related subjects. It raises issues that do not appear, or are barely mentioned, in any written text. There are almost no Maasai voices in the existing literature, which weakens an already sparse resource. This deficit also applies to the wider literature; that is, the historiography of the Maasai as a whole, quite apart from accounts of the moves and court case.

The paucity of Maasai voices results in another major omission: little or no sense of Maasai conceptualisation of their colonial experience in general, and of the moves and resistance in particular. Their version of the story has largely been expunged from the

historical record. By listening to and citing oral testimony, one can begin to excavate Maasai conceptualisation and move beyond an appraisal of the material facts (such as who moved, how many stock died, what diseases there were in those days, who said what to whom) to a perceptual realm. Material ‘facts’ dominate the literature, rendering many texts curiously one-dimensional in their pursuit of history as a reconstruction of events. This book attempts to redress the balance. While covering a sequence of events from several perspectives, it aims to add a metaphysical and perceptual dimension to the literature, and allow space for people’s perceptions in the belief that these form a major part of ‘reality’.

Some obvious limitations should be mentioned. My Maasai informants were largely members of the Purko section, which bore the brunt of the second move, together with a sprinkling of interviewees from other sections. They were also overwhelmingly male. Though women have stories to tell about how the moves affected them, and some are included here, they were not – so far as one can tell – party to the political discussions that surrounded the moves and court case and did not, at this time, play a key role in the public political arena. Since this is my primary focus, I make no apology for the gender imbalance that has resulted; this is simply a rather male narrative, and gathering more women’s stories would be another story and a different task.

Maasai oral testimony is augmented by interviews with the descendants of leading settlers, including the current Lord Delamere, their former employees, and other Europeans such as retired veterinary officers.

### **Sources: written**

My other key primary source is a collection of letters written by Norman Leys to British MPs Edmund Harvey and Ramsay MacDonald, which were discovered in a family archive where they had lain unseen since they were written in 1910-14. I shall call them the Harvey Letters, since they were primarily addressed to Harvey. In this correspondence, which was intended to inform parliamentary debate in Britain, Leys championed the Maasai cause in particular, challenged colonial policy towards the Maasai, and heavily criticised other aspects of 'native' administration. They are highly revealing of his motivation and philosophy, and of his clandestine actions to defend African rights through a network of contacts. They augment what is already known about his activities in this period from his letters to Gilbert Murray (to whom a few of the Harvey Letters were copied), J. H. Oldham, the Anti-Slavery Society and others. They also provide answers to some key questions raised by scholars who have studied Leys, and fill crucial gaps in their work.<sup>15</sup> Leys introduced Ole Gilisho to a lawyer friend, Alexander Morrison, after suggesting to Morrison that the Maasai needed legal help. It was officially assumed that Leys had instigated the legal action, and this led to his effective dismissal from service in East Africa by transfer to Nyasaland in 1913. He was not actually sacked, but it amounted to the same thing; his career in the colonial service never recovered, much to his regret.<sup>16</sup>

My main secondary sources for information on the moves, case and administrative context are Sandford, Cashmore (unpublished), Mungeam, Sorrenson and, to a lesser extent, Tignor.<sup>17</sup> If Leys and his friend William McGregor Ross may be counted as historians, they also covered these events in some detail, in a highly partisan fashion.<sup>18</sup> Colonial archives (including government registers, official correspondence, White Papers, district and provincial annual reports and veterinary reports) are an extremely rich source of information, some of it surprisingly candid. Likewise, references to these issues in the memoirs, letters and diaries of early administrators and other players are sometimes full and frank. Sandford was Private Secretary to the Governor when he wrote his so-called 'Blue book'. It was compiled from official papers, so one assumes that the views expressed were not his own, merely a repeat of what his superiors had written. A comparison of this authorised version of events with alternatives, both written and oral, reveals an astonishing tale of administrative bungling, lies and cover-up.

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<sup>1</sup> Eliot to Lansdowne, FO 2/835, British National Archives (NA).

<sup>2</sup> Leys to Harvey, No. 3, 20 May 1911, Harvey Letters, held by the author.

<sup>3</sup> Anglicised as Dorobo and Wanderobo, from a Maa word meaning people without cattle.

One still hears some Kenyans describing themselves as Dorobo, even though it is perjorative.

See Lee Cronk, *From Mukogodo to Maasai: Ethnicity and Cultural Change in Kenya* (Boulder, Colorado: Westview Press, 2004).

<sup>4</sup> Some examples of fashion coverage featuring Maasai include the photoshoot by David Bailey in *Vogue*, British edition, January 2004; *Harpers & Queen*, March 2002; 'Bailey's Africa' and 'Safaris for all Seasons', *Daily Telegraph*, 22 March 2003.

<sup>5</sup> Isaac Sindiga, 'Land and population problems in Kajiado and Narok, Kenya', *African Studies Review*, 27, No. 1 (March 1984), 26; Thomas Spear, Introduction, T. Spear and R. Waller, (eds.) *Being Maasai: Ethnicity and Identity in East Africa* (Oxford: John Currey, 1993).

<sup>6</sup> Marcel Rutten, *Selling Wealth to Buy Poverty: The Process of the Individualization of Landownership Among the Maasai Pastoralists of Kajiado District, Kenya, 1890-1990* (Saarbrücken and Fort Lauderdale: Verlag Breitenbach, 1992), p. 6.

<sup>7</sup> For example, John L. Berntsen, 'Pastoralism, Raiding and Prophets: Maasailand in the Nineteenth Century', Ph.D. thesis, Wisconsin (1979); Richard D. Waller, 'The Lords of East Africa: The Maasai in the mid-Nineteenth Century', Ph.D. thesis, Cambridge (1979); Alan Jacobs, 'The Traditional Political Organisation of the Pastoral Masai', Ph.D. thesis, Oxford (1965); published works by all these authors; John Galaty's chapters in Spear and Waller, *Being Maasai*, and Galaty and P. Bonte (eds.), *Herders, Warriors and Traders: Pastoralism in Africa* (Boulder: Westview, 1991), *et al.*

<sup>8</sup> See my Ph.D. dissertation, University of Oxford, 2002. For length reasons I have cut the section on comparative resistance from this book.

<sup>9</sup> M. P.K. Sorrenson, *Origins of European Settlement in Kenya* (Oxford: OUP, 1968), p. 276.

<sup>10</sup> *KLC Evidence and Memoranda*, Vol. 2 (London: HMSO, 1934), p. 1223. It listed placenames derived from Maa, described by Maasai witnesses as 'conclusive proof of the fact that all these regions were ours and beneficially occupied and populated by us'.

<sup>11</sup> Joseph Thomson, *Through Masai Land: A Journey of Exploration among the Snowclad Volcanic Mountains and Strange Tribes of Eastern Equatorial Africa* (London: Sampson

Low, Marston, Searle and Rivington, 1885). There were several subsequent editions and translations; all quotes will be from the first unless otherwise stated. Thomson's influence is further discussed in my chapter in G. de Vos and L. Romanucci-Ross (eds.), *Ethnic Identity: Problems and prospects for the twenty-first century*, 4<sup>th</sup> edn (Walnut Creek, CA: AltaMira Press, 2005).

<sup>12</sup> There were precedents for East Africans employing European lawyers to pursue high court actions, but these were often defensive. See Justin Willis, 'Killing Bwana: Peasant revenge and political panic in early colonial Ankole', *JAH*, 35 (1994).

<sup>13</sup> Norman Leys, *Kenya* (London: The Hogarth Press, 1924), p. 63 of 2<sup>nd</sup> edn (1925). All quotes will be from the latter unless otherwise stated.

<sup>14</sup> Discussion of this episode was cut from the book manuscript, for space reasons.

<sup>15</sup> Diana S. Wylie, 'Critics of colonial policy in Kenya, with special reference to Norman Leys and W. McGregor Ross', M.Litt. thesis, Edinburgh (1974); Wylie, 'Norman Leys and McGregor Ross: A case study in the conscience of African empire 1900-39', *Journal of Imperial and Commonwealth History*, 5, No. 3 (May 1997); John W. Cell, (ed.), *By Kenya*

*Possessed: The correspondence of Norman Leys and J.H. Oldham 1918-1926* (Chicago: University of Chicago Press, 1976).

<sup>16</sup> In 1930 Leys applied for reinstatement to the colonial service, but was rebuffed. Leys to Secretary of State, 25 July 1930, Murray Papers, Box 32, Bodleian Library, Oxford.

<sup>17</sup> T.H.R. Cashmore, 'Studies in district administration in the East African Protectorate, 1895-1918', Ph.D. thesis, Cambridge (1965); I consulted an earlier draft, see Bibliography. G.H. Mungeam, *British Rule in Kenya 1885-1912* (Oxford: Clarendon Press, 1966). G.R. Sandford, *An Administrative and Political History of the Masai Reserve* (London: Waterlow & Sons, 1919). Sorrenson, *Origins*; Tignor, *Colonial Transformation*, *ibid.*

<sup>18</sup> Leys, *Kenya*; W. McGregor Ross, *Kenya from Within: A short political history* (London: George Allen & Unwin, 1927).

## Conclusion

The time has come for the Maasai community to pause and review, reflect and evaluate their total losses during the horrific removal by the British Imperial Regime from their lands ... It would not be improper or imprudent for the Maasai to demand that they get back part of their pasture lands or be paid compensation...<sup>1</sup>

In evicting the Maasai from the Rift Valley and Laikipia, the British clearly perpetrated a great injustice that has repercussions to this day.<sup>2</sup> After all, Britain made a solemn contract over land and broke its terms just seven years later, under the pretext that the Maasai themselves had asked to be relocated. The numbers of people who died during the first phase of the second move (up to August 1911) cannot be proved and may be negligible; the injustice goes deeper and wider than that. The northern sections lost the greater part of their land, and the wide range of habitat necessary for transhumant pastoralism. The extended Southern Reserve was an inferior substitute for the northern territory. Its western extension lacked sufficient permanent water sources, accessible forests and drought refuges, while disease vectors were more prevalent.

From their own surveys, the British had a good idea of the quality of this reserve before they sent the 'northern' Maasai there, but it was not until Aneurin Lewis's studies of ticks and tsetse in the 1930s that thorough scientific investigations were made and a clear picture emerged of the environmental challenges to which certain Maasai communities were exposed. Any subsequent 'overgrazing' and 'overstocking' were a direct result of increased confinement, overcrowding in certain areas, curtailment of seasonal migration, an almost continuous state of quarantine, and early restrictions on cattle trading, although another contributory factor was improved veterinary services, when they eventually came, which led to larger stockholdings.

Despite enormous losses to disease, overall stock numbers rose, leading to concerns about congestion in the reserve by the 1930s. There is clearly a mismatch here between the reality of herd growth, which signifies health and prosperity, and what is collectively remembered – the demise of Maasai herds and society following the moves. This suggests that stories about disease are partly a social metaphor, representing social fragmentation and Maasai loss of control over their physical environment, which were major end results of the moves and colonial intervention. Another anomaly concerns small stock: complaints about the unsuitability of the Southern Reserve for cattle overshadows the fact that large areas offered excellent pasture and other favourable conditions for sheep and goats, particularly on Loita.

The evidence suggests that those responsible for this injustice were principally local administrators, who privileged the interests of white settlers over those of Africans and Indians. It was not primarily driven by the Foreign or Colonial Offices in London whose officials tended (at least in the early days) to underline the need to respect ‘native’ land rights and balance these against European land claims. The FO and CO were to a large extent kept in the dark by their commissioners and governors in British East Africa (BEA). They were lied to on many occasions over such crucial issues as alleged Maasai acquiescence to both moves, the reason for the second move, and whether or not promises of land in the highlands had been made to European settlers before plans for the second move were hatched. The failure to send Arthur Collyer’s 1910 ‘Report on the Masai Question’ to London amounted to criminal deceit; it was held back for some eighteen months, rendering its recommendations useless. Poor communications by sea between East Africa and London aided the BEA administration in its deception of the home government, particularly under Girouard. However, local officials were by no means united in their sentiments and did not speak with one voice. Dissenters,

including high- and middle-ranking officials who objected to the manner in which the Maasai were dispossessed, though not necessarily to the moves themselves, were over-ruled and sidelined.

As for the Maasai Agreements, it is doubtful whether the Maasai signatories to the first Agreement understood its implications, but no evidence exists to show that it was actually forced upon them. The second Agreement was certainly forced upon largely unwilling signatories, some of whom, notably Ole Gilisho, had received threats from British officials which they took very seriously. The age-set spokesman clearly saw the implications of the second Agreement for the first, likening the latter to ‘a broken weapon which is finished with’.<sup>3</sup> All the available evidence belies Lewis Harcourt’s confident claim to the House of Commons in July 1911 when Secretary of State for the Colonies: ‘The Masai came to a unanimous and even enthusiastic decision to move to the Southern Reserve’.<sup>4</sup> After the 1913 court case, threats to his life reportedly forced Ole Gilisho to cancel his plans to visit Britain to pursue the legal action before the Privy Council – one of many claims made in oral testimony which do not appear anywhere in the written literature. The second Agreement amounted to an abrogation of the first, since the government broke its promise to leave the Maasai undisturbed in Laikipia ‘for so long as the Masai as a race shall exist’. If it was intended to amend the first, it should have been signed by the same people, and not by the minor, 13-year-old Seggi. But by that time, most conveniently for the British, his father Olonana was dead.

Although Olonana’s duplicity was a factor in Girouard’s plans to move the Maasai for a second time, linked to an internal struggle for control within the Purko section, this was not the overriding issue. Diana Wylie has asked: ‘Was the move prompted exclusively by European financial interests, as Leys suggested?’<sup>5</sup> On my evidence, the answer is: ‘No, not

entirely'. Lord Delamere and other leading settlers certainly lobbied hard for land on Laikipia. But other factors behind the move included a desire to reverse a 1904 two-reserve solution to the 'Maasai problem' which clearly had not worked; to corral, control and tax the Maasai more effectively in one area, and through taxation to produce more wage labourers; to prevent them from wandering between the two reserves; to stop the spread of 'native' stock disease to European farms; and to acquire an area for white pastoralists that was reportedly free of ECF. The Governor allegedly wished to support 'traditional' leadership in the form of Olonana and his sons, who already lived in the Southern Reserve, conveniently close to the centre of government, and who favoured a one-reserve policy because their authority was being challenged as a result of the physical division. Girouard believed that government control of the Maasai would be facilitated by this 'special relationship' to Olonana's dynasty; in fact, the relationship fell apart. Finally, there was some official fear of settler aggression towards the Maasai (and their likely retaliation) if the two communities were not fully separated and desirable land not freed up for whites.

There are many legal aspects of the treaties and forced moves, first aired on appeal in 1913, which would not stand up to scrutiny in court today. These will be tested if the Maasai realise plans to bring another legal action – something veteran Maasai politician John Keen threatened in 1962 when he brought to the constitutional, pre-independence talks at Lancaster House, London, his memorandum on the treaties.<sup>6</sup> In 1913, the British government had good reason to believe it would not win the Maasai Case. Private discussions within the CO, as revealed in the National Archives, show that recourse to the Privy Council was considered well before the case even reached court, and the likelihood of having to pay compensation was also anticipated. Furthermore, close examination of the 1911 Agreement, and connections

between it and the granting of a concession to the Magadi Soda Company, suggests that the Company and its successors at Lake Magadi, Kajiado District, probably have no legal right to be there.<sup>7</sup> In the early 1960s, with independence imminent, the British admitted they had a 'moral obligation' to the Maasai as a result of the treaties, but defined this very narrowly. These words are likely to return to haunt them, while National Archives files from 1962 on the future of the Agreements, marked 'Closed: no further action to be taken', may suddenly prove to be of great official interest.

Oral testimonies, albeit problematical, augment and enrich what is already known about these events. By adding Maasai voices to the story it is enriched and amplified, and an imbalance in the literature at least partially redressed. It is acknowledged that interviews with members of other sections would produce a much fuller picture, and add a necessary corrective to predominantly Purko claims, but this is beyond the scope of this particular study.

## **Repercussions**

The repercussions of these events in the short term included distrust and alienation; a Maasai retreat from the colonial state which led to their falling behind in development and education (a situation that still persists in many parts of Maasailand, though this is partly attributable to reactionary attitudes, especially to the education and other rights of girls and women); and considerable stock and human losses in the decade following the second move when resistance had not been developed to diseases such as East Coast fever (ECF) and malaria which were either unknown or not prevalent in the north. Warrior uprisings in 1918, 1922 and 1935 can also be subsumed under repercussions. The significance of the fatal clash between British forces and *il-murran* at Ololulunga, western Narok, in 1918 has been

misinterpreted by historians who have relied upon a single explanation – that it was sparked by opposition to forced schooling. Although this was a contributory factor, the uprising – which left between 16 and 51 dead, depending on whose account one accepts – seems to have been symptomatic of a wider frustration with British colonial rule and land alienation.<sup>8</sup>

The evidence suggests that Maasai herds on Laikipia were resistant to ECF, and enzootic stability could be maintained. Also, when they had the space to roam, herders coped with disease by simply moving stock away from infected pastures. In the longer term, a combination of factors, driven by the moves and colonial intervention as a whole, led to acute population pressure, land degradation, erosion of subsistence livelihoods, a decline in the quality of stock since quarantine prevented the import of bulls, loss of markets, and increased vulnerability to drought. Furthermore, by placing the Maasai in reserves, and hedging these about with treaty promises that included a pledge to repel ethnic ‘aliens’, the British nurtured an enduring obsession with boundaries, promised land and exclusivity. This has manifested itself since the early 1990s in ‘ethnic’ clashes and renewed calls for *majimbo* (regionalism), while a fluid ethnic identity has become increasingly concretized.

Further research would be required to find out what impact the immigrants and their stock had on Maasai communities already living in the Southern Reserve, some of whom were violently displaced. More broadly, to view the moves as something which massively inconvenienced the Purko, but left everyone else virtually untouched, is to overlook the ripple effects on other Maasai sections and neighbouring ethnic groups. In 1904 a stone was thrown into the pond that was Maasai life in the northern Rift, making waves for everyone around.

These negative repercussions must of course be weighed against the gains, both from colonial contact and as a result of moving to the south. Individuals gained from the first of

these, in terms of power, finance, education, patronage and wider opportunities. Maasai were forced to make new and profitable alliances, both with agents of the state and other ethnic groups, and between Maasai sections. The gains accrued from moving to the south have included enormous revenues from wildlife tourism, and for some individuals, from lucrative wheat farming and land speculation. However, these riches have not been equitably shared beyond the county councils which manage the game parks in Maasai territory, and powerful individuals and families, though some tourism profits are distributed to the community via Maasai-run wildlife associations. Current grievances in Maasailand include widespread corruption, politicisation, monetisation, the widening gap between rich and poor, encroachment by other ethnic groups, expansion of cultivated areas (though Maasai are increasingly turning to cultivation themselves), and the privatisation and subdivision of land under a land adjudication programme into uselessly small plots. In this process, poor Maasai are being dispossessed by rich Maasai and others.

### **Resistance and power**

The form of passive resistance led by Ole Gilisho was extraordinary for its time and place. But it is entirely consistent with the role of an age-set spokesman in leading, counselling and defending the community, sometimes – if necessary – in defiance of elders. In seeking legal redress through discourse with the British, Ole Gilisho was also conforming to role type, and the form of dispute settlement which he hoped to use had parallels in Maasai customary justice. He emerges from this evidence as an unsung folk hero whose personal charisma and leadership qualities, combined with the opportunities handed to his age-set by nineteenth century battle victories, and later by the opportunities offered by British

colonialism to age-set spokesmen and prophets in particular, allowed him to gain unprecedented power and moral authority. He exercised this power to gain ascendancy over the prophet Olonana and his sons Seggi and Kimuruai. Ole Gilisho's alleged 'conservatism' – a term applied to him by administrators, and unquestioningly reiterated by some scholars – can be reinterpreted as progressivism. Though he later appeared to collude with the state himself, as a paid 'chief', he played a double game – promoting Maasai interests while supporting the state in, for example, its attempts to dismantle warriorhood.

Certain anthropological models of authority in the 'classic' pastoralist gerontocracy, which historians also tended to accept pre-Hodgson *et al*, are implicitly challenged and undermined by this evidence.<sup>9</sup> This model centres on the idea that power resides with male elders and councils of elders; that warriors have no real 'political' power or authority; that warrior rebellion against elders is merely ritualistic in nature; and that prophets are more powerful than age-set spokesmen. The behaviour of Ole Gilisho and his supporters from c1912-13 may be dismissed as an aberration and departure from the norm, but their rebellion was for real, not ritual. The reasoned nature of this resistance belies the stereotypical image of 'wild', irrational and predominantly volatile warrior behaviour. Though produced initially by nineteenth century explorers and missionaries, this image is still current in some quarters.

As for Norman Leys, he did not manage to prevent the second move. But he helped to bring down Girouard, in sowing the seeds of doubt about him at the CO and supplying information that proved the Governor was a liar. His actions prompted the CO to stop the illegal 1910 move, and he both inspired and fuelled actions by an influential circle of humanitarians in Britain to challenge and discredit colonial policy in East Africa. He did more to assist the Maasai in their legal action than he ever admitted in print, while maintaining a

curious ambivalence towards them which was characteristic of the man.<sup>10</sup> Leys also helped to widen the debate about imperialism, the human rights of imperial subjects, land and labour, health and housing, the impact of capitalism upon the developing world, the links between macroeconomic policies and grassroots injustice, and the nature of development in Africa. This debate was a precursor to nationalist struggle and the eventual dismantling of the colonial state – which is ironic, given that Leys did not oppose imperialism *per se*; he simply argued for ‘humane’ and transparent imperialism on liberal lines. Together with McGregor Ross, he challenged settler hegemony in Kenya and helped to scupper settler attempts to create a white dominion. As a Christian Socialist he questioned the role of missionaries, and demanded quality, dogma-free education for Africans since ‘they have as much right as we to understand the world we both live in, and far greater need of knowledge as a defence against oppression’, foreseeing that this would ‘make them think politically’.<sup>11</sup> Leys warrants a full-scale study in his own right, and I have not attempted to cover the story of his post-Kenyan career. As Cell notes, in semi-retirement ‘his home and surgery at Brailsford near Derby became the nerve centre of an intense, unceasing publicity campaign’.<sup>12</sup> Unfortunately, he never lived to see the fruits of it, but African nationalists, the international human rights movement, development practitioners, and a succession of whistle-blowers, have much to thank him for. He had convictions, and was not afraid to voice them.

There was a spectrum of critical dissidence over the Maasai moves in both Britain and BEA, and one must not allow individual contributions to the whole to be obscured by noisier voices such as that of Leys. The dissidents included, of course, Ole Gilisho and his supporters. On the European side, one of the more surprising champions of Maasai rights turns out to have been George Goldfinch – game warden, settler and Master of Foxhounds.

### **Blood brothers and reversed exodus**

The reason why the Maasai failed to violently resist the second move may partly be ascribed to the blood brotherhood pact allegedly made between leading white settlers and Maasai representatives sometime before 1911. The oral evidence for this is overwhelming; I believe it did take place, very likely at Soysambu in the Rift Valley. On this point, however, I shall have my cake and eat it too: whether or not the ceremony occurred, the centrality of this story in oral testimonies which reflect collective memories of the moves is crucially important. If a myth, it functions as a very powerful social metaphor; but if it is true, it is a vital and hitherto unseen beacon in the Maasai-British colonial discourse. Belief in it also helped to shape relationships between certain white settlers and Maasai workers on European farms in the highlands after World War One, relationships rich in irony. These were more complex than many scholars have acknowledged, and cannot be easily dismissed as paternalistic, or characterised solely by white brutality. The indulgence of Maasai workers by Delamere and Colvile in particular was not simply a matter of ‘spoiling their pets’; this was a two-way street whereon a mutual admiration society formed, embedded in the idea of blood brotherhood between two peoples, and shared notions of racial superiority. Of course, both these men were also motivated by land greed.

Certain leading settlers enabled, and actively encouraged, considerable numbers of Maasai to return north after the second move and reconsolidate their herds and families on white-owned farms. In this way, many ‘northern’ Maasai quietly reversed the forced exodus from Laikipia and the Rift. The numbers are unquantifiable without more research. Some retained their toe-hold in the north all along, either by pretending to be ‘Dorobo’ or by

refusing to move at all, successfully seeking refuge as workers on European farms. This pattern of return and reoccupation of the northern territories refutes the standard wisdom that the so-called recolonisation of the 'White Highlands' was a largely Kikuyu venture.

### **The legal situation today**

In the intervening years Maasai leaders have repeatedly complained about the land alienation and its consequences (see my 2005 article).<sup>13</sup> My opening quote summarises the view held by Maasai activists who now intend to revisit the treaties and 1913 case in order to seek legal redress and reparations. They are inspired by legal precedents which include the successful challenge of colonial treaties by indigenous peoples, and their reclamation of natural resources. Such treaties were not all bad news for indigenes; some can be used today to prove separate nationhood and to hold former colonial powers accountable for past pledges. (Aboriginal peoples in Australia, who never made a treaty with the colonial state, have long pressured the government to draw up a treaty precisely because it would guarantee their rights and recognise their cultural distinctiveness.)

One of the best-known challenges has been brought by Maori in response to the Treaty of Waitangi, signed by the Crown and Maori leaders in 1840. Unbeknown to them, it took away their sovereignty. But it expressly guaranteed them 'full exclusive and undisturbed possession of their lands and estates forests fisheries and other properties'. Through a tribunal, established in 1975 as a permanent commission of inquiry into claims relating to the treaty, Maori are able to lodge claims to land and natural resources, or hold the government accountable for breaches of treaty principles. The tribunal does not settle claims, but can recommend whether or not actions or omissions of the Crown breached these principles.

However, in the Kenyan case no such domestic legal process exists, therefore this avenue is not open to the Maasai.

There are parallels between the two scenarios, including the fact that versions of the Treaty of Waitangi were oral. James Belich, who maintains there were at least five treaties, writes that the fourth version was ‘a series of oral agreements *among* chiefs, as well as between them and those speaking for the Governor ... The trouble is, how do we now know what was in them?’<sup>14</sup> This echoes the oral agreements made at the time of the alleged blood brotherhood. And as with the Maasai, the illiterate Maori signatories’ understanding of what the Treaty of Waitangi actually meant was very different from that of the British. Vincent O’Malley writes of this and other early agreements in New Zealand: ‘Indeed, more often it would appear that Maori interpreted early agreements as confirming rather than extinguishing their rights, albeit in a modified environment in which their land and resources would now be *shared with their new guests*’. (My italics.)<sup>15</sup> According to my informants, this ‘sharing’ is exactly what the Maasai believed would happen as a result of their Agreements. Hence the persistent lament that alienated land did not revert to the Maasai community when the British left Kenya.

Patrick McAuslan, now professor of law at Birkbeck College, University of London, says of the 1913 Maasai judgement: ‘My view of the case is the same today as it was when Yash Ghai and I wrote our book in the late 1960s: it is hypocritical and political’. However, he foresees several problems with any forthcoming Maasai action, not least because key precedents – such as the Mabo judgement in Australia, and Waitangi claims – have taken place in national courts. It is dangerous, he says, to assume that British courts will virtually rewrite the law on indigenous land rights just because other jurisdictions have done so:

First, Australian and New Zealand courts are national courts dealing with national land issues. The British courts would be asked to deal with Kenyan land issues. Since the nineteenth century, it has been established that British courts will not pass judgement on land cases in foreign countries where they cannot enforce it. How could they enforce a judgement that Kenyan landowners and the Kenyan government should restore the Maasai to their ancestral land?<sup>16</sup>

McAuslan also believes it highly unlikely that Kenyan courts will go down the road towards land reparations as courts in other former colonies have done. ‘The courts of these countries [apart from South Africa] are staffed by the descendants of the dispossessors and are accepting vicarious responsibility for the defaults of their forebears. But what colonial evils have the Kenyan judges and their forebears been guilty of? They too were dispossessed of land and treated badly.’ Lawyers for the Maasai have said they would prefer to seek justice in London, at least initially, but too much time may have passed. The Privy Council is no longer an option; Kenya abolished appeals to this body in 1963. Other possible avenues include the African Commission for Human and People’s rights in Banjul, Gambia, or the use of UN protocols. The UN Draft Declaration on the Rights of Indigenous Peoples states:

Indigenous peoples have the right to the restitution of the lands, territories and resources which they had traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation.<sup>17</sup>

Article 14 of the International Labour Organisation (ILO) Convention 169 says something similar about the need to establish land claims processes.<sup>18</sup> But the Kenyan government has not signed ILO 169, and the UN Declaration remains a draft. One major sticking point in

discussions of the draft is the refusal of some governments, including that of Britain, to accept the use of the plural ‘peoples’ in its wording. Britain refuses to recognise the collectivity of human rights, explaining: ‘We believe that if states with indigenous communities ratify and implement the six most important UN human rights treaties, they can do more to improve the human rights of indigenous people than by creating new collective rights’.<sup>19</sup> Then there is the whole question of who is indigenous in Africa; some argue that all Africans are indigenous, therefore the Maasai (in this instance) cannot demand special treatment. If discussions are successfully concluded on a new draft constitution for Kenya, this may allow redress for historical injustices including land grabbing. But previous talks ended in stalemate, and it is not clear if and when a new constitution is to be adopted.<sup>20</sup> Two government-appointed land commissions have reported in recent years, but these review bodies cannot resolve this kind of land claim, any more than the Kenya Land Commission did in the 1930s. It is not within their remit.

At the time of writing, the Task Force of Maa-speaking Communities behind the forthcoming action had submitted a Memorandum on the Anglo-Maasai ‘Agreements’ to the British government, setting out their historical grievances. No official reply had been received. But Lord Avebury MP, deciding to take an interest in the Maasai as Edmund Harvey and others had done nearly 100 years earlier, pushed the Foreign Office for a written response, after reminding it that there was a case to answer. He was told: ‘The legal position today is quite clear: at the time of independence the Government of Kenya inherited any obligations that formerly rested on us as the sovereign power’.<sup>21</sup> There is a distinct sense of *déjà vu*.

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Despite some anomalies, there appears to have been a solid basis for Maasai belief in the intrinsic healthiness of their former grazing grounds. White settlers flocked to the highlands principally because they were seen to be healthy, and offered a welcome respite from the sickness that stalked the coast. It follows that what was healthy for whites was healthy for black Africans, too. But Maasai attachment to Enterror, their former northern territory, represents a larger nostalgia for the past, and in particular for Purko well-being and hegemony over other sections, following their rout of the Laikipiak in the nineteenth century. The Purko's last foothold in Enterror, Laikipia, has taken on the status of a lost Eden in social memory. It is said to have been sweet, disease-free, blessed by good pastures and plentiful rain, in contrast to the 'bitterness' of the south. Intertwined with this idea is nostalgia for the concept of a Maasai nation and nationalist identity, which Ole Gilisho allegedly attempted to forge. Enterror was both a place and a defining moment, which many Maasai set against the disharmony and disunity of the present time. The current political struggles over land, resources and power can only be understood in this context.

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<sup>1</sup> From an unpublished draft ‘Concept paper for the facilitation of activities towards institution of the Maasai case’, by SIMOO (Simba Maasai Outreach Organisation), Kenya, 2003.

Supplied to the author.

<sup>2</sup> Part of my Conclusion has been published as an article, and will not be duplicated here. See ‘Malice in Maasailand: The Historical Roots of Current Political Struggles’, *African Affairs*, 104/415 (April 2005), pp. 207-224.

<sup>3</sup> Remarks made by Ole Gilisho in a meeting at Nakuru, 5 December 1912, Conf. 136, Belfield to Harcourt, 17 December 1912, CO533/109, NA.

<sup>4</sup> From a debate on the colonies, 20 July 1911, *Hansard*, Vol. 28, col. 1350.

<sup>5</sup> Wylie, ‘Critics’, p. 65.

<sup>6</sup> Memorandum on Masai Treaties of 1904 and 1911, 23 March 1962, CO822/2000, NA.

<sup>7</sup> See my dissertation, Chapter 4. This subject has been cut for length reasons.

<sup>8</sup> See my dissertation, Chapter 9. This has been cut from the published manuscript.

<sup>9</sup> I am thinking in particular of the Hodgson-edited collection *Rethinking Pastoralism in Africa* (2000).

<sup>10</sup> Cell also noted this ‘fundamental ambivalence’, *By Kenya Possessed*, pp. 10-11.

<sup>11</sup> Leys, *Kenya*, p. 392.

<sup>12</sup> Cell, *By Kenya Possessed*, p. 8.

<sup>13</sup> Lotte Hughes, *African Affairs*, *ibid.*

<sup>14</sup> James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland and London: Allen Lane, 1996), p. 195.

<sup>15</sup> Vincent O'Malley, 'Treaty-Making in Colonial New Zealand', *New Zealand Journal of History*, Vol. 33, 2 (1999), p. 139.

<sup>16</sup> Personal communication. Also quoted in my article, 'Fight for the forbidden land', *Sunday Times Magazine* (London: 4 January 2004).

<sup>17</sup> Draft Declaration on the Rights of Indigenous Peoples, Part VI, Operative Paragraph 25, viewable at [www.cwis.org/fwdp/International/draft9329.txt](http://www.cwis.org/fwdp/International/draft9329.txt)

<sup>18</sup> ILO Convention 169 (1989), Convention Concerning Indigenous and Tribal Peoples in Independent Countries, viewable at [www.cwis.org/fwdp/International/ilo\\_169.txt](http://www.cwis.org/fwdp/International/ilo_169.txt)

<sup>19</sup> *UK Foreign and Commonwealth Office Human Rights Annual Report 2004* (London: 2004) p. 212.

<sup>20</sup> The situation has moved on since I wrote this, but Kenya still has no new constitution.

<sup>21</sup> Chris Mullin MP, Parliamentary Under Secretary of State, Foreign and Commonwealth Office, to Lord Avebury, 23 March 2005.