

# **Il Chamus verses the State: Vulnerability, Litigation and Resilience Building in the Baringo Lowlands of Kenya.**

Inaugural-Dissertation zur Erlangung des Doktorgrades  
der Philosophischen Fakultät der Universität zu Köln  
im Fach Ethnologie vorgelegt von Michael R. Odhiambo aus  
Siaya, Kenia

Köln, 24.03.2015

Erste Referent: Prof. Dr. Michael Bollig

Zweite Referent :Prof. Dr. Thomas Widlok

Vorsitz Prüfungskommission: Prof. Dr. Michaela Pelican

Datum der letzten Prüfung: 23.03.2015

***Dedication***

To my beloved parents Alogo Raila and Elizabeth Akelo

I, Michael R. Odhiambo confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

Signed: Cologne.....

## Acknowledgements

I wish to express my sincere gratitude to all those who contributed to the successful completion of this thesis. I cannot mention you all, but wherever you are, I am truly grateful. However I must mention Prof. Michael Bollig who supervised my thesis through all the stages; and Prof. Thomas Widlok, my second supervisor; Prof. Michaela Pelican, chairperson of my reading committee; Prof. David Anderson for giving me unrestricted access to his personal archives at Oxford University; my Il Chamus associates Philip Sikamoi, Geoffrey Lengusuranga, Ben Olepaa, Stanley Leretoi, Jessica Naisoi, Joannes Lewachatum, Christine Lewachatum, Peter Lenooswamin, Frederick Lewachatum, and Wycliffe Parsalach. Agnieszcka Kutz, Peter Tomno, Kevin Matoro and Jemimah Alogo for research assistance; Monika Böck for administrative support; Johanna Kramm for help with German language translation; Monika Feinen for cartography work; all my CEA and RCR project colleagues, and especially to my dear wife Shubila and my daughter Iman for putting up with me during this hectic period.

## Zusammenfassung

Die Arbeit untersucht im Kontext von sozial-ökologischen Systemen die Rolle des Rechtstreits für die Reduzierung von Verwundbarkeit und den Aufbau von sozialer Resilienz der Il Chamus in der Baringo-Region in Kenia.

Die Il Chamus, eine Maa-sprechende Gruppe, leben südlich des Baringosees im ostafrikanischen Grabenbruch. Zu ihren dominanten Wirtschaftsweisen gehören Weidewirtschaft, Viehhaltung, sowie Gartenanbau und Fischen. In ihrer Vergangenheit haben sie eine hohe Anpassungsfähigkeit aufgewiesen, die sich darin widerspiegelt, auch mit widrigen Umweltdynamiken sowie sozialen und politischen Wandel bestmöglich umzugehen.

Die theoretische Grundlage der Arbeit stellt eine soziale Resilienzanalyse im Rahmen sozial-ökologischer Systeme dar. Die Prozesse des Umweltwandels des sozial-ökologischen Systems der Il Chamus werden ebenso analysiert wie die natürlichen Ressourcen und der Verwundbarkeitskontext sowie die Strukturen und Prozesse, die soziale Resilienz bedingen.

Um diese Strukturen und Prozesse zu verstehen, beinhaltet die Arbeit einen geschichtlichen Abriss der ethnischen Gruppe Il Chamus und der Baringo-Region, eine Analyse der sozialen Organisation der Il Chamus, sowie ihrer natürlichen, sozialen und symbolischen Ressourcen. Es werden die Hauptfaktoren identifiziert, die Verwundbarkeit bedingen können. Zu diesen Stressoren gehören der Neophyt Prosopis Juliflore, gewaltsame Konflikte zwischen den Il Chamus und den Pokot, sowie die politische und soziale Marginalisierung der Il Chamus durch den kenianischen Staat.

Aus der Perspektive einer politischen Ökologie werden die Machtverhältnisse untersucht, die einer Umweltgovernance des sozial-ökologischen Systems der Il Chamus inhärent sind. Hierbei wird der

Rechtsstreit als ein bedeutender Weg für die Aushandlung des Zugangs zu politischen, finanziellen und natürlichen Ressourcen zwischen den Il Chamus und dem Staat, aber auch innerhalb der ethnischen Gruppe diskutiert. Der Rechtsweg wird auch als eine Strategie eingesetzt, um nachteilige Auswirkungen der Umweltgovernance zu mindern. Die Untersuchung zeigt, dass der Rechtsstreit, verstanden als ein Teil von Umweltgovernance, eine Möglichkeit darstellt, Resilienz aufzubauen.

Anhand einer Analyse zweier Klagen der Il Chamus gegen den Staat wird die Rolle des Rechtsstreits für den Aufbau von Resilienz beleuchtet. Es werden die politischen und rechtlichen Strategien der Il Chams untersucht, wie politisches Interesse in Rechtsansprüche überführt wird, die sich auf internationale Rechtskonzepte, wie das der Indigenität, beziehen.

Abschließend kann die Arbeit zeigen, dass die in den Klagen verwendeten Argumente, sich auf die ethnische Identität und die sozialen Institutionen der Il Chamus beziehen und somit diese von großer Bedeutung für den Aufbau und Erhalt der sozialen Resilienz der Il Chamus sind.

## Abstract

Within the context of social resilience in social ecological systems (SES), this thesis looks at the role of litigation in addressing the vulnerability context and thereby enhancing the social resilience of the Il Chamus community who reside in the politically bounded social ecological system of the Baringo lowlands of Kenya.

The Il Chamus, a Maa-speaking community settled at the banks of Lake Baringo, have over the years managed to sustain a livelihood based on irrigation, agro-pastoralism and fishing . They have shown remarkable resilience and ability to survive detrimental environmental dynamics and profound changes in their social and political conditions.

The theoretical basis of this thesis is social resilience analysis within the framework of social ecological systems. It therefore looks into the processes of environmental change within the Il Chamus SES, identifying its environmental resources, vulnerability context and sources of its social resilience.

The thesis includes a study of Il Chamus history and social organization and an ecological and social profile of Lake Baringo. It identifies the main factors driving the vulnerability context of the Il Chamus SES as the invasive plant *Prosopis juliflora*, ethnically instigated violence and political as well as economic marginalization by the state.

As a study in political ecology, this thesis also looks at the political power dynamics inherent in the environmental governance of the Il Chamus SES. In this connection, litigation is presented as negotiating the unequal power relations between the state and the Il Chamus as well as among the Il Chamus and therefore mitigating the unfavourable outcomes of environmental governance. This study therefore locates the resilience building capacity of litigation in the process of environmental governance.

A legal analysis of cases brought by the Il Chamus against the government is used to illustrate the role of litigation in resilience building. The thesis analyses the political and legal strategies of the Il Chamus and describes how they transform political interests into legally claimable rights that appropriate international legal concepts linked to indigenous identity.

Finally, the thesis presents arguments showing that the use by the Il Chamus of litigation grounded on ethnic identity and social institutions has been instrumental in enhancing their social resilience.



## Preface

The lake Baringo Basin is a complex and diverse setting with numerous contradictions, ambiguities and challenges. I came to Lake Baringo for the very first time in April 2010 on a mission to explore my potential fieldwork sites. Together with my research colleagues from the University of Cologne we drove from Nakuru via Marigat town to the small settlement of Kampi ya Samaki on the shores of Lake Baringo. From Kampi ya Samaki we drove back towards Marigat through the Il Chamus settlements of Salabani, then on to Ng'ambo and finally to Kiserian and Rugus.

The lake emerges suddenly on the approach to Marigat and on a hot sunny day provides a spectacular view. My memories from this time, apart from the rugged beauty of the terrain and the scorching daytime heat, are of typical events in the daily unfolding life of a rural community in the Kenyan Rift Valley: market women aggressively trying to sell onions and tomatoes to passing motorists and travellers in the centre of Marigat town; excited children running behind our vehicle asking for sweets and small change; goats grazing the stony road-side and people generally going about their daily lives.

At Kampi ya Samaki, there was a definite tourist feel to the area. A toll gate at the entrance to the settlement controls all vehicles entering and leaving, and all visitors are charged an "entry fee". Several tourist offices dot the small settlement and brokers hawk services for bird watching expeditions and boat rides across the lake. The lake is host to Hippo, crocodile and several bird and snake species, and a snake park and at least three tourist class hotels are found within the camp.

Away from Kampi ya Samaki and into Salabani and Ng'ambo locations, the *Prosopis Juliflora* plant stands out. It brings a lush green colour to the area, but this pleasant sight is tempered by a thick layer of hot dust hiding nasty thorns referred to locally as *misumari* (Swahili for nails).

Expert eyes will recognize snake marks along the dusty tracks, even differentiating them by type. A common warning to visitors here is to beware of thorns and snakes. Snake bites are quite common here and a traditional snake poison healer sells poison antidote not far from the local dispensary. Another common sight is that of ripe Cactus fruit dangling untouched from the trees. The Il Chamus, without a care for the potential nutritional benefits of the Cactus fruit, see the Cactus plant more as traditional fencing material than as food. Also roaming freely in the area are Ostriches, protected by taboo among the Il Chamus.

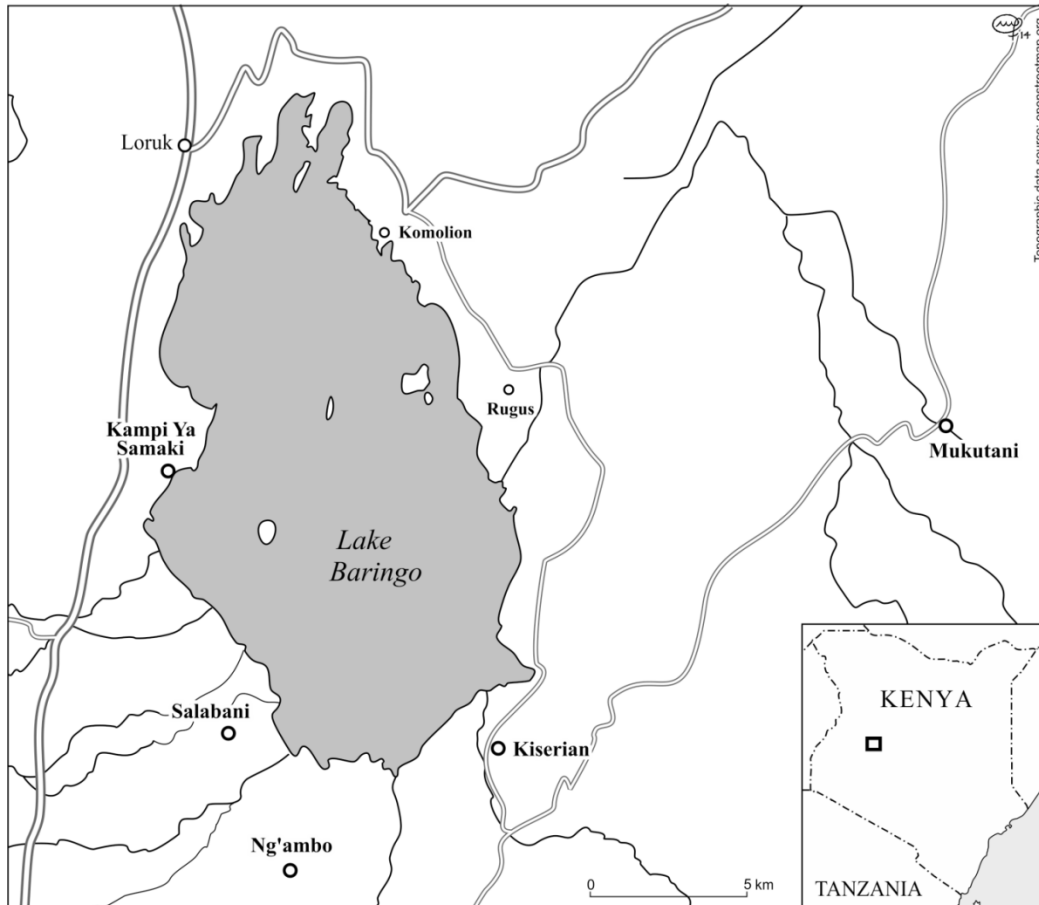
Immediately noticeable was a flourishing charcoal burning trade ostensibly fuelled by legally sanctioned destruction of Prosopis plant which has been designated a noxious weed by the Government of Kenya since 2008. Classification as a noxious weed means that usual stringent charcoal burning regulations are relaxed. Sacks of charcoal lay at strategic points along the roads awaiting pick up by trucks arriving from Nakuru.

At Kiserian, any sense of normality accumulated from Kampi ya Samaki, Salabani and Ng'ambo is lost as images that resonate with the reputation of the Lake Baringo basin as a hotspot for violence begin to emerge.

Here, one notices a definite air of tension and fear of impending violence, and images of a thriving Charcoal business in Salabani and Ng'ambo locations are replaced by images of violence: a refugee camp consisting of a crowd of Manyattas built next to a former airstrip; a military camp next to a missionary settlement; a communal cattle Kraal; empty fish drying racks; unused fish smoking hearths; an abandoned cattle auction shed; vacated homesteads; an abandoned Chief's residence at Mukutani. Little commercial activity goes on here, and the few shops that are open for business sell goods at a marked premium.

Beyond Kiserian into Rugus is an expanse of land referred to as 'no man's land' due to the fact that it is considered too insecure to settle on. It also

marks the boundary between the Il Chamus and Pokot communities. A joint conservancy administered by the two communities was established here with the hope of establishing lasting peace between the two communities<sup>1</sup>.



Map 1: Fieldwork exploration route<sup>2</sup>.

This overview paints an ambiguous picture of strife and triumph in a difficult social ecological environment that is volatile and prone to violence. The fact that the Il Chamus have managed to create and

<sup>1</sup> RUKO Conservancy is named after Rugus on the Il Chamus side (RU), and Komolion on the Pokot side (KO).

<sup>2</sup> Unless otherwise stated, the cartography for all maps in this document have been done by Monika Feinen, Institut für Afrikanistik und Ägyptologie, Philosophische Fakultät, Universität zu Köln.

preserve a niche in their current location for at least two centuries is testimony to their resilience. This thesis presents a novel approach framed within resilience analysis that sets out to understand the interactions between the Il Chamus society and its environment, and how it deploys the political and legal tools at its disposal in effectively adapting to a changing environment and responding to various contexts of vulnerability.

## Abbreviations

ACHPR	African Court of Human and Peoples' Rights
ALDEV	African Land Development and Settlement Board
ASAL	Arid and Semi-Arid Lands
CDF	Constituencies Development Fund
CEA	Culture and Environment in Africa Studies
CERD	Covenant for the Elimination of Racial Discrimination
CHANS	Coupled Human and Natural Systems
DIA	Defense Intelligence Agency
ECK	Electoral Commission of Kenya
EMCA	Environment Management and Coordination Act
FAO	Food and Agriculture Organization
GDC	Geothermal Development Corporation
GEMA	Gikuyu Embu and Meru Association
HRC	Human Rights Committee
IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic Social and Cultural Rights
IGAD	Inter-Governmental Authority on Development
ILO	International Labour Organization
IWGIA	International Work Group for Indigenous Affairs
KAMATUSA	Kalenjin Maasai Turkana Samburu Association
KEFRI	Kenya Forestry Research Institute
KLA	Kenya Land Alliance
KLC	Kenya Land Commission
KLR	Kenya Law Reports (electronic)
MPIDO	Mainyoto Pastoralist Integrated Development Organization
NEMA	National Environment Management Authority

NWA	Noxious Weeds Act
OHCHR	Office of the High Commissioner for Human Rights
PCC	Public Complaints Commission
RCR	Resilience, Collapse and Reorganization
ROK	Republic of Kenya
SES	Social Ecological System
SRC	Salaries and Remuneration Commission
TJRC	Truth Justice and Reconciliation Commission
UDHR	Universal Declaration on Human Rights
UNDRIP	United Nations declaration on the Rights of Indigenous People

### List of Maps

Map 1: Fieldwork exploration route

Map 2: Research location

Map 3: Drainage into Lake Baringo

Map 4: The four Kenyan RAMSAR lakes

Map 5: Distribution of Initial Prosopis planting sites

### List of Figures

Figure 1: The adaptive cycle

Figure 2: Il Chamus clan totems

Figure 3: Net increase in area under water for 4 RAMSAR lakes

Figure 4: List of Il Chamus who died as a result of violent attacks

Figure 5: Il Chamus actors in cases

Figure: Other actors

### List of Pictures

Picture 1: The brown coloration of Lake Baringo

Picture 2: Fluoride effects

Picture 3: Gulley erosion

Picture 4: Maize crop under irrigation

Picture 5: Abandoned cattle auction shed at Kiserian

Picture 6: Members of the Il Chamus community talking to the press

Picture 7: Prosopis logs

Picture 8: Sacks of Charcoal awaiting pick up

Picture 9: Il Chamus women singing

Picture 10: Il Chamus elder

<u>Contents</u>	<u>Page</u>
<b>Chapter 1</b>	
1.1 Problem statement	21
1.2 Research context	22
1.3 Research questions	25
1.4 Research location: the Lake Baringo Basin	25
1.5 Methodology and fieldwork	27
1.6 Chapter arrangement	35
<b>Chapter 2: Theoretical underpinnings and key concepts.</b>	
2.1 The location of the research in the political ecology field	38
2.2 The concept of coupled social ecological systems (SESs)	43
2.3 The concept of resilience	46
2.4 Social resilience	48
2.5 Vulnerability as social practice	49
2.6 Linking environmental governance, litigation and resilience Building	52
2.7 The role of law in resilience building	55
<b>Chapter 3: A brief outline of Il Chamus society: history and social organization.</b>	
3.1 The transformation of the Il Chamus pre-colonial system through the adaptive cycle	60
3.1.1 Origins of the Il Chamus: growth and exploitation (the r phase)	62
3.1.2 Il Chamus development of irrigation agriculture: towards conservation (the K phase)	65
3.1.3 The Olamal and the social control of the irrigation system	66



3.1.4 Success and stability of Il Chamus irrigation: conservation (the K phase)	69
3.1.5 Collapse of the Il Chamus irrigation economy and the advent of colonial rule (the $\Omega$ phase)	71
3.1.6 A period of reorganization and renewal: colonial rule, the switch to pastoralism and the beginning of state interventions	74
3.1.7 The role of violent expeditions	74
3.1.8 Towards a new adaptive cycle: pastoralism and state Interventions	77
3.2 Some aspects of Il Chamus social organization: clans and totems	80
3.2.1 Il Chamus clans and leadership positions	85

#### **Chapter 4: Livelihoods and environmental change in Lake Baringo.**

4.1 A physical and social profile of Lake Baringo	87
4.2 Environmental change and degradation in Lake Baringo	93
4.3 The environmental degradation discourse and environmental interventions in Baringo	96

#### **Chapter 5: the vulnerability context of the Il Chamus: Prosopis, violence and marginalization.**

5.1 Environmental intervention gone wrong: Prosopis juliflora	104
5.1.1 The origin of Prosopis	105
5.1.2 Noxious weed or saviour plant?	107
5.1.3 Characteristics of Prosopis juliflora	108
5.2 Violent regulation in the Lake Baringo Basin	113
5.2.1 Theorizing violence	116
5.2.2 Violent regulation	119
5.2.3 The nature of violence against the Il Chamus	122
5.2.4 The effect of violence on the livelihood status of the Il Chamus	128
5.3 Marginalization of the Il Chamus	132
5.3.1 A theory of marginalization	133

5.3.2 Economic policy background to marginalization	135
5.3.3 Lack of political representation	137
5.3.4 Lack of recognition	138
5.3.5 Lack of recognition of customary rights and title to land	140
5.3.6 Other sources of marginalization	141

## **Chapter six: confronting marginalisation: appearance of the Il Chamus before the TJRC**

6.1 The TJRC consideration of the marginalization of the Il Chamus and other indigenous groups of Kenya	142
6.1.1 Statutory mandate of the TJRC	143
6.1.2 The TJRC formulation of the elements of marginalization in human rights terms	144
6.1.3 Standard applied in determining state obligation and responsibility	145
6.1.4 The TJRC's legal definition of marginalization	146
6.1.5 TJRC's findings on economic marginalization	147
6.1.6 Lack of reliable data as marginalization	149
6.1.7 Systematic Discrimination	150
6.1.8 Trust land laws and marginalization	150
6.1.9 Violence in pastoral areas as marginalization	152
6.2 Some specific findings and recommendations of the TJRC	153

## **Chapter 7: Challenging environmental intervention: the Prosopis case.**

7.1 An Actor Network Theory approach to Il Chamus litigation	159
7.1.1 The primary movers and the problematization	159
7.1.2 Interessement, enrolment and mobilization	161
7.2 Case analysis	164
7.2.1 The Il Chamus complaint	166

7.2.2 The legal framing of the Prosopis case	167
7.2.3 Case analysis: preliminary issues	168
7.2.4 Substantive issues: prayers by the Il Chamus	170
7.2.5 Alleged government responsibility	172
7.2.6 Legal contestations: two sides of Prosopis	177
7.3 The judgment	181
7.3.1 On jurisdiction	181
7.3.2 On the polluter must pay principle	181
7.3.3 On the right to life	182
7.3.4 On the right to property	182
7.3.5 On the right to sustainable development	183
7.4 Final determination	183

**Chapter 8: Legal contestation of identity: the case of *Rangal Lemeiguran and others versus the Attorney General and others*.**

8.1 The political utility of ethnicity	190
8.2 Il Chamus identity through history	192
8.2.1 Il Chamus ethnicity management	192
8.2.2 Meaning of the name Il Chamus	194
8.2.3 The “Maasai” question	195
8.3 Assertion of identity through litigation	201
8.4 Sources of legal protection for indigenous rights	204
8.4.1 The United Nations Declaration on the Rights of Indigenous People	204
8.4.2 Defining indigeneity	209
8.4.3 United Nations treaty monitoring bodies	211
8.5 An analysis of the case of <i>Rangal Lemeiguran and Others v Attorney General &amp; Others [2006]</i>	213

8.5.1 Legal basis of the case	215
8.5.2 Framing of the Il Chamus case	215
8.5.3 Preliminary issues: community voice	218
8.5.4 Restatement of Il Chamus history and cultural uniqueness	219
8.5.5 Disenfranchisement as marginalization	220
8.5.6 Contested positions: the Attorney General and the ECK	225
8.5.7 Analysis of the judgment of the court	228
8.6 Recent developments on indigenous rights	230
8.6.1 Recognition of marginalized and minority groups in the new constitution	230
8.6.2 On the right to development (Article 22 ACPHR)	235
Conclusion	238
References	245

## **Chapter 1**

### Introduction

This study focuses on the agency of the Il Chamus community who have become vulnerable as a consequence of both social and ecological processes within the politically bounded social ecological system (SES) defined by the immediate wetland surrounding the Lake Baringo Basin. This area is occupied by the Il Chamus, Pokot and Tugen communities.

Over the years the Il Chamus have become increasingly vulnerable as a consequence of: political disenfranchisement and economic marginalization stemming directly from government policy that has generally neglected the arid and semi-arid lands of Kenya (ASAL), of which Baringo is a part; Inappropriate interventions by the state that led to the colonization of Il Chamus pastoral resources by the invasive plant *Prosopis Juliflora*; and violent attacks from its more populous neighbours.

This study is an ethnographic study on the Il Chamus that highlights the impact of marginalization, *Prosopis juliflora* and violence on their livelihood. It looks at institutions as socially constructed phenomena that form part of the regulatory mechanism that relate the physical and social sub systems of the social ecological system. We see for instance that as an outcome of violence, traditional institutions give way as the dynamics of power shift from a gerontocracy to emerging powerful individuals created by a developing political ecology driven by violence. How the Il Chamus react to a vulnerability context characterized by disenfranchisement, the invasive species *Prosopis Juliflora* and violence is the main point of departure for this study. The risks posed by *Prosopis Juliflora* and violence are nevertheless not strange or unique in the area, as Baringo has historically been a showcase for crisis, ranging from drought, livestock and human diseases, locust invasions, and environmental degradation in general (Anderson 2002: 73).

## 1.1 Problem statement

Politically bounded SESs in Africa such as that of the Il Chamus of the Baringo lowlands have over the years reacted in unique and often creative ways to system transformations. Such transformations are brought about by a wide range of factors that have included colonial occupation, profound environmental change and degradation, state intervention into local mechanisms of environmental regulation, inter-ethnic violence and political upheavals due to unstable or weak governments. Within the multi-disciplinary setting of studies of processes of change in such SESs, there is a need to understand the role of social actors in shaping and responding to system transformations.

Profound changes in the ecological and social outlook of the Lake Baringo environment have resulted from both natural environmental processes of change as well as social and political ones. One of the main challenges within the study of social resilience in SESs is how to incorporate social processes of change into our understanding of SES dynamics. Key drivers of change have to be identified and their interaction with other ecological and social variables understood and explained.

If the complex moments of resilience, collapse and reorganization are to be captured in a manner consistent with a convergence in theoretical and analytical understandings of SES dynamics then social and political processes that affect SES governance have to be understood together with ecological processes and incorporated into resilience analysis.

For the Il Chamus SES, this study identified as key drivers of change the invasive plant *Prosopis juliflora*; political and economic marginalization; and inter-ethnic violence. These factors have resulted in increased vulnerabilities for the Il Chamus in the late 20<sup>th</sup> and early 21<sup>st</sup> century.

This study therefore aims to show the agency of the Il Chamus in the shaping and reacting to changes in their SES through the use of litigation. Identifying the above named drivers of vulnerability as unfavourable outcomes of governance, this study uses legal analysis to show how the processes and outcomes of litigation have a resilience building effect on the livelihood of the Il Chamus. For instance, the process of litigation is shown to smoothen out internal conflicts and strengthen community cooperation. Also, by bringing out the political and contested nature of environmental governance, we are able to better understand how the litigation effectively intervenes in the process of environmental governance by holding the state to account and re-negotiating the balance of power towards the Il Chamus.

Thus, by introducing legal analysis into the paradigm of resilience thinking, this study hopes to make a contribution to the understanding of the role of social action in SES transformations. In particular, it uses legal analysis to show the negotiation and contestation of power relations within the political dynamics of SES governance and hence demonstrate the role of litigation as a resilience building tool.

### 1.2 Research context.

This particular project on legal regulation in the lake Baringo Basin is part of the research unit known as "Resilience, Collapse and Reorganization in Social Ecological Systems of East and South Africa's Savannahs (RCR)", a collaborative effort between the University of Bonn and the University of Cologne, together with counterparts from several African universities in Kenya and South Africa<sup>3</sup>. The research unit brings together crop scientists, soil scientists, economists, geographers, historians and cultural anthropologists. As the name suggests, the research unit investigates resilience, collapse and reorganization within the heuristic model of the adaptive renewal cycle (Holling 1973, the Resilience Alliance 2009) in

---

<sup>3</sup> Full details of the research unit are available at [www.fg1501.uni-koeln.de](http://www.fg1501.uni-koeln.de)

complex coupled social ecological systems in Africa (see section 2.1). Research within the unit is currently ongoing in various sites in Africa, including Thaba Nchu (Free State, South Africa), Kuruman (Northern Cape, South Africa), Naivasha and Baringo (Kenya). In Baringo, research was conducted within the Pokot and Il Chamus communities.

The unit of analysis adopted in this study is the social ecological system (SES), which integrates physical ecological and social components in a complex relationship, exhibiting "*multiple scales of variables, cross-scale connections, multiple equilibriums and nonlinear interactions that generate complex dynamics and are therefore inherently unpredictable*" (Berkes, Colding and Folke 2003: 31). As a result, change and uncertainty are taken as given and human beings must learn to live with them if they are to achieve sustainable development. How they do this depends on their adaptive capacity and resilience. This study takes an innovative approach to resilience research that links litigation, as a component of governance, to effective access to resources and hence to resilience building. This study therefore looks at how the Il Chamus make use of strategic litigation as a resilience building mechanism.

This study identified marginalization, violence and the invasive plant species *Prosopis juliflora* as key drivers of social ecological change in the Lake Baringo wetland. As typical with complex coupled social ecological systems (see section 2.1), complex dynamics emerge from the interaction of these drivers with other variables in the system. This study traces their effects of on the livelihood of the Il Chamus, and analyses the resultant vulnerability context as well as the Il Chamus response to their status. In particular, it was seen that violence, seen as social practice within a context of political contestation forming part of the environmental reality in the region (Bohle 2007b:9), has created winners and losers as well as special vulnerabilities and opportunities.



Specifically, and perhaps most importantly, violence has led to the emergence of powerful players within the social arena known locally as Wanjurusi<sup>4</sup> who have subverted the traditional institutional make-up of the SES and now dominate the social and economic landscape at the expense of the less powerful. Community members find individual ways to cope and as a group they coalesce around an ethnic identity that seeks to perpetuate a narrative of marginalization and place an emphasis on minority and indigenous group rights. This course is championed by educated community leaders and appeals to both national and international legal institutions that recognize the concept of ethnic minority and indigenous rights. How they convert this politicized image of their identity into social capital is a key aspect of this study. The study therefore looks at how legal regulation offers a tool for the Il Chamus to build their resilience and thus reduce their vulnerability to stressors in a context driven by marginalization, violence and the invasive plant *Prosopis juliflora*.

Being in a relatively weaker position in relation to their Pokot and Tugen neighbours as well as having little say in persistent government intervention efforts in the region, the Il Chamus find litigation and the appeal to authority a better prospect than would larger or more militarized groups such as the Pokot who would rather go for violent regulation. While some Il Chamus have obviously benefited from it, the bulk of the Il Chamus population is rather a victim of violent regulation emanating especially from their numerically and militarily superior neighbours. This study therefore will also analyse the politicization of Il Chamus ethnic identity and their appropriation of the global concepts of marginalization and indigeneity in their quest to influence and secure their livelihood through strategic litigation. In the context of resilience building, litigation is also seen as attempt to influence decision making in the

---

<sup>4</sup> Wanjurusi (s: Mnjurusi), is a word whose origin is unknown to me but which has the loose meaning in the Baringo and surrounding areas of a "broker", someone who facilitates things.

management and regulation of their SES by intervening in the local process of environmental governance and also opening up access to new international networks of patronage.

### 1.3 Research questions.

The research questions addressed in this study fall into three broad categories: the first addresses the ecological and social constitution of the SES. What are the key drivers of change in the SES and what linkages in terms of backward and forward loops exist between them and other variables within the various subsystems that make up the SES?

The second category looks at the vulnerability context from an actor oriented perspective. What are the key sources of vulnerability and what individual and group coping mechanisms do they engender? Who are the key players and what are their specific agendas?

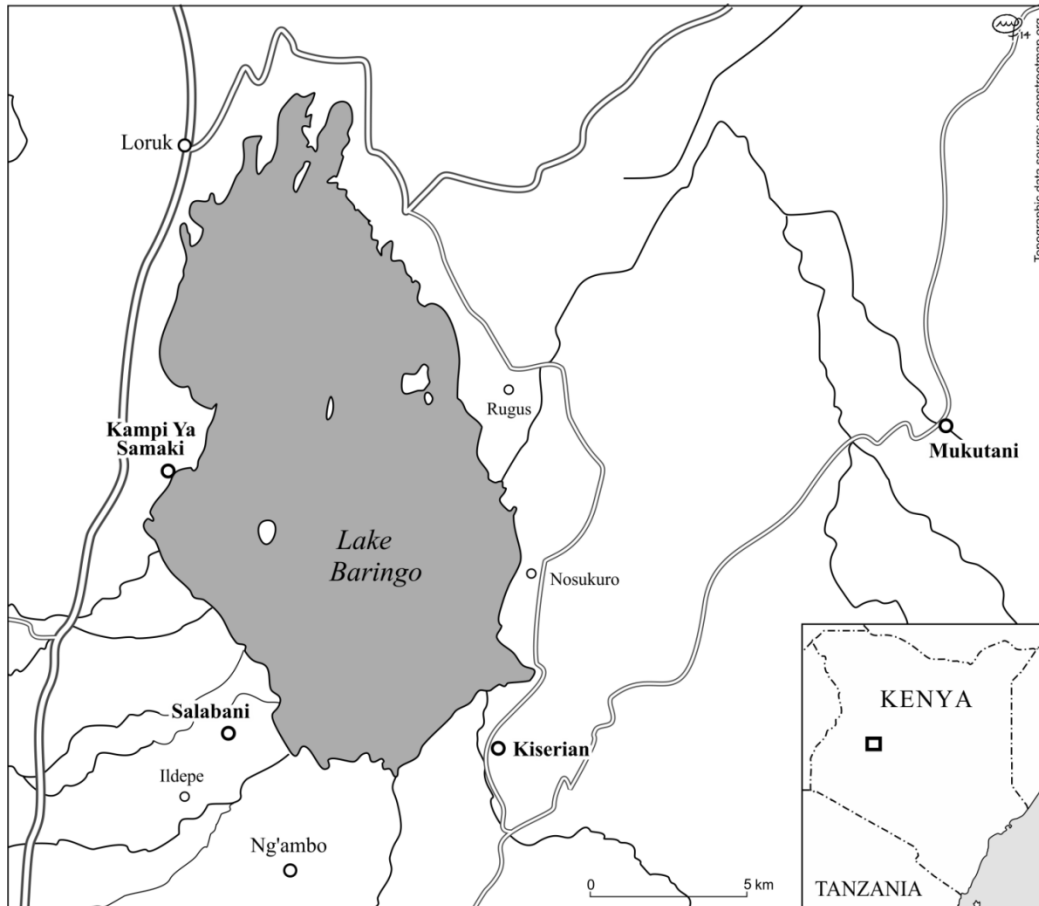
The third category of questions looks specifically at litigation as resilience building. How are narratives of ethnic identity, marginalization and indigeneity constructed and translated into legally contestable claims? How does the process of litigation result in increased social capital for the Il Chamus? What rights are targeted by Il Chamus litigation and how effective are they in securing these rights? How effective can Il Chamus litigation be said to be in terms of resilience building?

### 1.4 Research location: the Lake Baringo basin

The Lake Baringo basin provides a unique location from which to study the social and ecological phenomena involved in processes of environmental change. It is a wetland within a wider Savannah area located north of the Kenyan Rift Valley province, and is inhabited by mixed agro-pastoralists from the Pokot, Tugen and Il Chamus communities.

The project area covers the wider catchment area of Lake Baringo spanning eastwards to the boundaries of the Laikipia plateau. The

catchment spans an area of 6,800 km<sup>2</sup>, while Lake Baringo itself has a surface area of 108 Km<sup>2</sup>. (Odada et. al 2006: 1).



Map 2: Research location.

One of Kenya's five RAMSAR sites, Lake Baringo is, along with Lake Naivasha, part of the Montreux Record since 2002. This is the register of wetland sites on the list of wetlands of international importance where changes in ecological character have been noted as a result of technological developments, pollution or other human interference.

Lake Baringo was designated a RAMSAR site in 2002 because of a number of adverse changes and threats to its survival, including: habitat degradation by siltation, adverse effects of the invasive species *Prosopis Juliflora*, changes in the rivers' courses and diversion of water; increased

water turbidity and a decrease in water nutrient content (RAMSAR<sup>5</sup>, see also Odada et al 2006). According to Schagerl and Oduor, reducing water levels coupled with the construction of dams on the rivers draining into the lake are a major threat to the future of the lake, and the resulting turbidity has a direct impact on the economic viability of the lake and portends catastrophic consequences for the inhabitants (Schagerl and Oduor 2003: 302).

Apart from agro-pastoralism, fishing, irrigation, charcoal burning and tourism define the dominant economic activities in the region. Violent interaction between and among the three communities named above is also a common feature of life in the basin with profound effects on its regulatory profile.

The physical features of the Baringo basin have the appearance of a degraded environment and perceptions by the authorities on the destructive nature of African range management have led to a long history of interventions starting with the colonial government and persisting to this day. This research locates this history within the framework of contestation of ideas and knowledge and the quest by certain actors to exert dominance over environmental change discourse. Thus the interventions have found political justification by articulating dominant discourses such as those based on desertification, environmental degradation and the related notions of equilibrium systems and carrying capacity.

### 1.5 Methodology and fieldwork

To fully realize the research objectives, desk based research and archival investigations at Oxford University<sup>6</sup>, the National Archives at Kew Gardens in the United Kingdom and also in Nairobi, Kenya, as well as the Rift

---

<sup>5</sup> Source: [http://www.ramsar.org/key\\_montreux\\_record.htm](http://www.ramsar.org/key_montreux_record.htm).

<sup>6</sup> With much thanks to Prof. David Anderson who hosted me for a week during February 2010 at Oxford.

Valley provincial Administration offices in Nakuru, the Electoral and Boundaries Review Commission offices in Nakuru as well as the District administration offices in Kabarnet and Marigat were complemented by a field based study. The fieldwork component of the research was planned to take a minimum of twelve months duration, and consisted of a six week exploratory fieldwork survey between April and May 2010, followed by a longer fieldwork period from August 2010 to October 2011. During this time I acquainted myself with the environment and people living in the research area, observed, recorded and analysed the institutions, culture and economic activities around which their livelihoods revolve. The research design relied on ethnographic methods as well as a household survey census. In the main part I relied on participatory methods of inquiry including observation and taking part in various community activities. I held numerous interviews with particular focus groups as well as individuals. I also employed extended case study analysis to give meaning to the interviews.

The fieldwork was guided by the following specific objectives:

1. To identify the relationship between the various groups of actors and the drivers of change within the society and their positions in the hierarchy of power that defines political and social relations, and specifically to analyse the social and cultural practices controlling and implementing their agendas.
2. To describe the social constitution of power as well as the economic and social organizational structure of the Il Chamus with respect to dominant economic activities and cultural practices.
3. To analyse the emergence and development of social networks and social-ecological relations in contested arenas.
4. To outline the respective spatial and social arenas of influence of the identified agent groups.

5. To outline and analyse physical, cultural and structural forms of vulnerabilities surrounding environmental entitlements and resource based livelihoods.

6. To discover the main concerns, perceptions and discourse as far as the main stressors within the community were concerned.

To help with my fieldwork, I had the use of a digital camera, a digital voice recorder, a hand-held video recorder, a GPS (Global Positioning System) machine and a laptop. For local transport I had the use of a motorcycle, which proved very useful in navigating the rugged terrain of Salabani and Kiserian, but was virtually unusable after heavy rainfall. I also enlisted the help of several field assistants at different stages of the research. I made use of a general household survey questionnaire (see appendix) to get demographic, economic and social data. Further data on the issues of Prosopis and violence were obtained from informal discussions, general observations and the mass news media. Free listing interviewing techniques as well as general informal conversations were also used to source information. Social gatherings, cultural events and community meetings provided focal points for observation of group activity and also discovery of community concerns.

One thing I noticed immediately was that the community was rather used to researchers coming and going as several NGOs had been to the area. This should have made the research process easier but one of the consequences of so much research activity was the commercialization of the process. So it was that members of the community had come to expect some sort of compensation for taking part in the research process, and consequently a decision was made within my research group to offer 200 Kenya Shillings (enough to purchase two kilograms of sugar) to each family that participated in the general survey census. This had an impact on the willingness to participate in the research process after the general survey was over, and in this regard my research assistants were very

helpful in obtaining cooperation without further monetary inducements. Locating stable and reliable assistants was also a great challenge, and in the end I used a total of six different assistants with only one, Johannes, who was also my local guide, lasting through the whole research period. This high turnover rate of reliable assistants can be explained by the simple fact that the more educated they are, the more likely they are to go as soon as a better opportunity presents itself.

I first decided to base myself at Kampi ya Samaki, from where it was only a fifteen minute motorcycle ride to one of the sites (Salabani), and a twenty minute boat ride to the other (Kiserian). Practical as it seemed, the reality was that the boats to Kiserian operated at tourist rates, with return journeys costing an average of 6000 Kenya Shillings (about 60 Euros at the going exchange rate then). Additionally, the prospect of wading through approximately fifty meters of slimy mud at the boat landing on the Kiserian shores of the lake made boat journeys to Kiserian a very unattractive option. A motorcycle ride to Kiserian through Marigat and Ng'ambo took at least two hours, so it was out of the question to attend to the two sites simultaneously, and I took the conscious decision to base myself at Salabani. From there I would visit Kiserian periodically.

I found the people in Salabani extremely friendly and welcoming and soon found a willing host in Stan, a young Il Chamus man of the Il Kiliaku age group. Stan was the head of a family unit comprising his mother and siblings, and was unmarried at the time. He had lost his father<sup>7</sup> on a raid by Pokot in Salabani during a daytime raid at a time when Salabani was particularly vulnerable. He and other Il Chamus I spoke to at this time did not just consider the Pokot as enemies but as the very incarnation of the devil and referred to them as Shetani (Swahili for Satan). Few Il Chamus will have a good word for the Pokot, who most consider to be devious, thankless and cruel. It was quite obvious that the Il Chamus harboured a

---

<sup>7</sup> Mzee Lenapurda Long'orkoben, shot dead at Meisori during a daytime raid by Pokot on the 3rd of May 2005. A comprehensive list of Il Chamus victims of deadly violence is provided in Chapter 5.

deep resentment for the Pokot, who seemed to have an upper hand in any confrontations between the two communities owing to their superior numbers and access to arms. While Il Chamus raids into Pokot territory for cattle were not unheard of, most of their forays into Pokot land were either in search of stolen stock or retaliatory. However it did seem to me that blaming the Pokot was a little exaggerated and “Pokot” had become a generic explanatory term for all sorts of ills that beset the community.

My residence at Stan’s homestead in Salabani provided me with a chance to be part of the community and here I observed daily life unfold. I also had the opportunity to witness one of the most important ceremonies in the Il Chamus social life, namely the initiation of a new age group which takes place an average of every ten years. Stan’s own marriage and other landmark social events stood out and a significant part was captured on tape and in pictures.

Here, I was also exposed to the reality of violence and insecurity as well as to the menace of the Prosopis plant. Young Il Chamus Morans patrol the area at night, looking out for any signs of a potential attack. In the mornings, they vent their energy on the Prosopis plant, slashing by Panga new offshoots of the plant in their fields.

In terms of insecurity and violence, however, life in Salabani seemed to be more stable than in Kiserian where images of violence and its prospect are visually dominant. While in Salabani people were aware of the potential threats, they seemed not to be pre-occupied about it. The Prosopis plant dominates the visual environmental landscape in Salabani. The deceptive lushness of the green cover conceals an undergrowth of deep resentment for the plant. While the dominant narrative among the community revolves around the perceived ills of the Prosopis plant, the community seems to be making what they perceive to be the best out of a bad situation, with charcoal burning by far the most important economic activity noted apart from pastoralism. Charcoal burning is rampant with



seemingly no regulation apart from a mission to get rid of Prosopis. However, Acacia and other tree species are facing a threat in the absence of clear regulations.

My experiences in Kiserian painted quite a different picture from what I had in Salabani. Here, I was initially met with a lot of suspicion as the topic of violence and insecurity was very sensitive in this area and I noticed that most people were uncooperative if not evasive. I therefore made a conscious decision to first administer the general household survey questionnaire before attempting to probe any deeper. Even this effort was beset with problems as I and my field assistants in this task were physically obstructed by rowdy youths from proceeding with our job. Their main problem with us, articulated through a local councillor, was that they objected to "foreign" youth "working" in their area while they themselves had no jobs. What I thought was a small misunderstanding soon threatened to escalate into a physical confrontation and my attempts to seek audience with the local chief proved futile as he was apparently looped into the dispute and had taken sides with the local youth.

This confrontation shed a little light on the underlying tensions among the Il Chamus themselves in the area, and was also my first real exposure to the power and influence of the emerging powerful actors known as Wanjursi. There seemed to be in existence unseen "turfs" under the influence of certain powerful individuals that even the local administration could not stand up to.

It took the intervention of the District office in Marigat a few days later to let us proceed with our work. Despite the setback, this event opened my eyes to the mechanics of local power relations in the area and showed me an aggressive and almost militant side of the Il Chamus that I had never seen before. On the literal say so of the councillor, the obstruction was lifted and we proceeded smoothly from then on.

Also while in Kiserian, I understood somewhat the source of resentment the Il Chamus have for their Pokot Neighbours. Sometime in mid-February, at the height of the dry season when pasture was scarce, we noticed some movement at the top of Noompausi hill, near the shores of Lake Baringo at Kiserian. From Kiserian centre, one could make out, dotted across the distance armed Pokot herdsmen with their cattle. Even though this land is generally perceived as belonging to the Il Chamus, they were to camp there for the next six or so weeks, grazing their cattle and from time to time bringing them nearer the lake for watering. It appeared that the Pokot herdsmen were intent on forcing access to grazing and water for their cattle. During this period the atmosphere at Kiserian was extremely tense and at Mukutani there was an increased presence of armed youth. This situation severely hampered my activities which were reduced to a necessary minimum, which was mainly pure observation. I did not feel safe enough to take any pictures at this time, and even though many precious moments passed by unrecorded, they remain etched in my memory.

Around mid-March, with the rains having resumed, the Pokot herdsmen camped around Noompausi hill began to retreat. However, on the 19th of March, at around midnight, we awoke to loud screaming, whistles going and the sound of gunfire. It emerged that the retreating Pokot herdsmen had somehow made away with 49 Il Chamus cattle and were being pursued by armed Il Chamus Morans. On this occasion 22 cows were recovered. The reality of violence both created an opportunity to see first-hand its impact on local livelihoods and hampered the research process, a necessary evil from the research point of view.

Discussions about violence usually drew an expectation to take sides, and visual and verbal prompts that did not elicit supportive comments could be interpreted as being on the side of the 'enemy' and as such, objectivity was practically very hard to maintain. Many times I found myself in complete sympathy with the plight of the Il Chamus and unable to stake a

claim on any status as an objective and passive observer. Even more challenging was the urge and feeling of compulsion to intervene. Would for example, a petition to the Divisional police station in Marigat for more officers using my status and association with a prestigious German University be unwarranted activism, or was it advocacy, or could it be justified as 'participant observation'?

I felt at times that I was not succeeding in gaining the confidence and trust of the community enough for them to let me into the part of their world that was not visible to a casual observer. To identify major actors, their agendas and how they operate needed a view from the inside. No one would easily admit to owning a gun for example, or tell you the source, route or any relevant information to do with access to ammunition. It was therefore a landmark moment for me when while conducting an interview one day, my host proceeded to climb onto a makeshift ladder consisting of a stool buffered by old sheets of cloth and placed atop a squeaky old table to retrieve a neatly folded bundle: "Let me show you my gun", he said, as he clambered carefully down. The sight of the man reaching for the gun marked a great turning point in my 'battle for trust'. I felt I was now trusted enough to be let into some secret aspects of their daily life. I sincerely believe that in the end, I found out as much as an outside confidant could know without themselves being Il Chamus.

Another challenge was that even though the District administration system had been decentralized to Marigat, the truth was that most documents relating to my field sites were still in Kabarnet, and contending with the bureaucracy at Kabarnet was at the best of times testing. Eventually I found some useful annual district reports and development plans in a disused office building which served as a library and also doubled up as a motorcycle garage. For other material I had to go to the Government offices in Nakuru or the National Archives in Nairobi.

As regards the data collected, various challenges presented themselves. It was my initial intention to conduct a survey of the whole population in Salabani and Kiserian, but after covering about 30 households in Salabani I realized that an estimate of the total number of households made during an earlier exploratory fieldwork survey had been grossly under estimated. I therefore had to obtain a random sample from the whole population and start the whole process afresh, incurring in the process a considerable loss of time and resources. The data was then entered into excel and Epidata and analysed using access, which was quite difficult for someone encountering Epidata for the first time. The qualitative data on the other hand accumulated into many hours of audio and video footage which has to be translated, transcribed, edited or otherwise converted into usable case studies, a process that is still ongoing.

Finally, I had to address the question of the utility of the research from the point of view of the Il Chamus community. When invited to comment or ask any questions after an interview session, the most common question was how the study would benefit the community. My consistent answer which I considered honest was that I would be the greatest direct beneficiary of the research, and any benefits to the community would be incidental to information being provided in the thesis being robust enough and available to the community and their development partners. From my own point of view, the fieldwork was an integral component of my research that has given me insights into the role of violence and conflict in the shaping of human-environment relations in the Lake Baringo Basin.

#### 1.6 Chapter arrangement.

The remainder of this work is organized as follows: Chapter two discusses the theoretical underpinnings and key concepts used in the research, including an explanation of the location of the research in the political ecology field, social ecological systems and coupling, theories underlying

resilience and vulnerability, the adaptive capacity model, and the role of law in resilience building.

Chapter three provides a brief historical outline of the Il Chamus society as well as some aspects of its political and social organization. The concept of the adaptive cycle within the framework of resilience theory is used here to analyse the evolution of the Il Chamus economy from hunting and gathering to irrigation, and the collapse of the irrigation economy to give way to a pastoral lifestyle.

Chapter four considers the SES as a resource giver providing environmental entitlements to its users. The livelihood resources of the Lake Baringo basin are described here within the context of a rapidly changing environment and the competing narratives that describe it.

Chapter five looks at the vulnerability context of the Il Chamus, focusing on three key factors identified as the main drivers of vulnerability in the SES: *Prosopis juliflora*, violent regulation and marginalization. Chapter six contains an analysis of the concept of marginalization through the lenses of a legal process conducted by the Truth and Justice Reconciliation Commission of Kenya (TJRC).

Chapters seven and eight analyse two important Il Chamus cases against the government and aim to show the agency of the Il Chamus in responding to their condition of vulnerability, and demonstrate the utility of litigation as a resilience building mechanism. This analysis also explores the political power dynamics between the Il Chamus and the state as well as among differently located actors within Il Chamus society itself.

Finally, an assessment is made on the efficacy of legal regulation within the framework of resilience thinking. The thesis as a whole hopes to introduce an innovative approach that uses legal analysis to interrogate the dynamics of political contestation within the framework of adversarial litigation. In this novel approach to resilience analysis, the process of

litigation is used as a mirror for societal power relations, and litigation itself as a strategy for holding stakeholders in governance to account and thereby mitigating the unfavourable effects of governance. The resilience building effect of litigation is thus found in its ability to intervene in governance.

## **Chapter 2: Theoretical underpinnings and key concepts.**

### 2.1 The location of the research in the political ecology field

Studies that relate humans to their environment, especially those on arid environments occupied by pastoralists have developed gradually from largely equilibrium centred perspectives to those that highlight non equilibrium and chaotic properties of ecosystems, within an emerging paradigm referred to as “new ecological thinking” (Scoones 1999, McCabe 2004).

Earlier ecological thinking as expressed in the works of Clements (1916) and Geertz (1963) were inspired by the biological concepts of equilibrium and the homeostatic regulation of natural biological communities which were used to analogously explain successional change towards climax or equilibrium states within ecological communities existing in a defined closed ecosystem. McCabe attributes the introduction of the concept of the ecosystem to Sir Arthur Tansley in 1935 (McCabe 2004: 21). The ecosystem provided an analytical framework that combined human and environmental aspects to the study of natural phenomena, dominated in these times by notions of equilibrium. These equilibrium based ideas came to provide the basis for such concepts as climax vegetation communities, carrying capacity and its perceived threat of environmental degradation that came to inform governmental interventions into pastoralist areas such as the Baringo basin (McCabe 2004; Anderson 2002).

Studies under the rubric of cultural or human ecology or ecological anthropology (such as Steward 1955, Bennett, 1976 and Hardesty 1977) considered man as exogenous to his environment and linked human cultural behaviour to physical environments, so that cultural attributes, whether based on identity, dominant occupations or geographical locations, were seen as adaptations or responses to environmental variations that defined particular niches within closed ecosystems.

Steward (1955), was particularly influential in this field, linking subsistence strategies to social organization. Rappaport's work among the Tsembaga of New Guinea for example ( Rappaport 1967a), showed how ritual practice involving periodic mass culling of pigs in this SES<sup>8</sup> played a significant role in the regulation of environmental and social relations. It not only cemented social relations and networks but directly impacted on the physical and ecological relations within the Tsembaga closed 'ecosystem', culminating in what he called a "ritually regulated ecosystem" (Rappaport 1967b: 29).

Similarly, Goldschmidt has analysed the changes in occupation among pastoral societies as a function of ecological and cultural adaptability. For example, he describes the Il Chamus settling down to agriculture as an instant of ecological adjustment, "a seeking out of a balance in the use of resources that is as efficient as possible in terms of existing technology" (Goldschmidt 1965: 403).

Cultural ecology was however criticized for ignoring important variables exerting influence on the environment such as disease and population pressure (see Netting 1968 and Ellen 1982, also quoted in McCabe 2004: 23), over-emphasizing energy flow models and equilibrium systems analysis at the expense of the political dimension of social reality. It was also suggested that cultural ecology ignored the structural links between local, regional and global scales (see for instance Simmonds, 1993; Peet and Watts, 1996).

A marriage of cultural ecology with political economy concepts that stressed the political side of social relations marked both a thematic and conceptual turn in the study of human-environment relations. The need to bring politics into ecology led to a diverse and discursive political ecology with numerous variations to suit different fields of inquiry, and the approaches, explanations and application of political ecology concepts

---

<sup>8</sup> Known as the Kaiko pig festival



have tended to depend on the field of study concerned. Within this diversity, however, is a common desire to understand the processes of environmental change and the role of human agency within it. The common theme in these studies is best captured by Harvey: *"all ecological projects (and arguments) are simultaneously political-economic projects (and arguments) and vice versa. Ecological arguments are never socially neutral any more than socio-political arguments are ecologically neutral. Looking more closely at the way ecology and politics interrelate then becomes imperative if we are to get a better handle on how to approach environmental/ecological questions"* (Harvey 1993: 25).

This study is thus interested in the recent strand of political ecology that seeks a nuanced understanding of the role of power relations in human-environment relationships, which is most closely represented by the works of Blaikie and Brookfield (1987), Bryant (1992, 1998), Bryant and Bailey (1997), Peluso and Watts (2001), Bohle and Fünfgeld (2007) to name but a few. Some writers have expressed the fear that since these studies increasingly focus on the social and political struggles related to the environment there is an inherent risk of reducing the role of ecology in political ecology (see for instance Nygren and Rikoon 2008) and thereby consigning natural scientist insights on processes of ecological change to the periphery of political ecology. It is my considered view however, that to fully grasp the role of human social and political action in environmental regulation is a process not dependent on an equally weighted balance between "ecology" and "politics" in political ecology.

This study is therefore guided by the following insight regarding political ecology by Bryant: *"Political ecology examines the political dynamics surrounding material and discursive struggles over the environment in the third world. The role of unequal power relations in constituting a politicized environment is a central theme"* (Bryant 1998: 79).

Consequently, this study looks at the politics of access to resources as a

function of governance, using legal analysis to explore the uneven power relations between the Il Chamus and the government as well as among differently located actors within Il Chamus society.

Crucial in Bryant's formulation of political ecology is the notion of "a politicized environment". It encompasses an actor oriented expression of the contested power, knowledge, meanings of environmental processes and the differentiated effects of the outcome on various sections of society.

At the core of this politicized environment are competing forms of access to and control over resources exercised over various political scales and arenas ranging from the individual, community, national and the global (Watts 2003: 258). In this study, the analysis of Il Chamus case law brings out the contested nature of this relationship, with the courts providing an arena for the expression of alternative formulations of environmental knowledge.

A key theme within the idea of a politicized environment that runs through the entire fabric of this thesis is the idea of contestation. Within this context, the Lake Baringo basin is seen as an arena in which environmental entitlements are contested through political processes that invariably create winners and losers. Within this politicized environment we also see contests between discourses of knowledge and meanings, and between differentially situated political actors at different scales. As seen in sections 2.6 and 2.7 below, this contestation defines the nature of environmental governance, which, in the case of the Il Chamus, is mediated by the application of strategic litigation. It is through its potential to enhance access to resources that litigation becomes a resilience building mechanism for the Il Chamus. The notion of indigenous identity on which Il Chamus litigation is predicated is also a very much contested idea. Current formulations of the notion of indigeneity have

developed through the sustained activism of transnational human rights and advocacy groups into a useful legal resource for communities identifying themselves as indigenous.

A further instance of the contestation is over meanings and environmental discourses such as the contention that African traditional range practices are unsustainable and invariably result in environmental degradation, poverty and associated ills. This is a clear reflection of the domination of the discourse of carrying capacity and inferiority of “unscientific” methods of pastoral production over that of traditional ecological knowledge. In fact, according to Seidle and Tisdell, the contested concept of carrying capacity is much more useful as a political tool. It is scientifically untenable because it relies on value judgments, which are by nature subjective and hence vulnerable to politicization (Seidle and Tisdell 1999: 396, 407). Leach and Mearns (1996) offer a deeper analysis of the political use of environmental concepts within the contestation of ideas and knowledge. They show how environmental policy in Africa is driven to a large extent by a set of powerful but unscientifically proven images whose veracity is not beyond doubt. Based on a Malthusian logic, these images are expressed in terms of imminent destruction of the environment and the urgency of intervention. Such images are backed by concepts such as overgrazing, overpopulation and desertification.

Government interventions based on this logic then have certain outcomes, the interpretation of which again reflects the hegemony of dominant discourses of development over those of marginalization and exploitation. In brief, encapsulated within the processes of environmental change are social and political struggles of access to environmental entitlements played out in a politicized environment. This thesis therefore takes a political ecology approach and relates the efforts of a group of vulnerable actors who use litigation to influence the political process that affect their daily livelihoods.

This politicized environment is further defined by the articulation of environmental issues through the lenses of ethnicity and marginality in both legal and overtly political terms aimed at countering official government policy in particular and environmental governance in general. An analysis of litigation offers in this context a view into the political processes controlling access and distribution of resources and the agency of communities in influencing the effects of this interaction. My research therefore intends to describe the ecological and social processes governing access to resources, and the utility of litigation by the Il Chamus in exerting a positive effect on their vulnerability context.

Litigation that is linked to a global network of advocacy groups and that draws upon national and international sources of law while relying on politically charged concepts embodied in notions of marginalization, minority groups and indigenous identity reflects a trend in contemporary political ecology that highlights the plight of marginal groups within a globalized political and economic governance structure. Here, politics of redistribution and politics of recognition come together under the banner of ecological and social justice, through the mobilization of cultural practices encoded within such notions as traditional ecological knowledge, indigenous property rights, right to life, spiritual link to land use, community land ownership, and the like (Watts 2003: 259).

## 2.2 The concept of coupled social ecological systems (SESs)

This research uses as a unit of analysis the social ecological system. Complex physical and biological processes that define the ecological status of the lake basin interact with other equally complex processes from the social and cultural subsystems that together constitute the social ecological system (SES). This process of interaction between social and physical entities is referred to in contemporary scholarship as coupling. Turner (2003) and Crumley (1994) refer to social ecological systems as being intricately coupled. In other words they are enmeshed in a complex

relationship that relates various autonomous elements of the system through mutual feedback loops and effects that are spread over space and time.

Central to the notion of coupled social ecological systems is the process of coupling. According to Liu et al (2007), coupled human and natural systems (CHANS), are the result of continuous complex interaction over time between man and nature, and Anderies, Janssen and Ostrom (2004: 3) define a coupled social ecological system (SES) as “an integrated system of geo-biophysical, social and cultural subsystems with reciprocal feedback, interdependence and self-organization in which some of the interdependent relationships among humans are mediated through interactions with biophysical and non-human biological units”.

Coupled SESs bring together individual system elements from both the social and ecological realms in reciprocal feedback loops that are defined across various scales. Becker and Jahn (2006) describe how such coupling between system elements can be internalized to create a new composite system that relates, through mutual feedback, different elements within itself. Coupling takes place over organizational, spatial and temporal levels and is influenced by both human and non-human agency manifested in various forms of adaptation and regulation (Liu et al 2007, Lansing et al 2006, Scoones 1999).

At an organizational level, SESs can be viewed as connected by nested hierarchies with both self-organizing and interdependent components (Anderies, Janssen and Ostrom 2004: 3) with reciprocal and feedback effects (Liu et al 2007, Gunderson and Holling, Millennium Ecosystem Assessment 2005). Natural processes within the SES interact to provide humans with ecosystem services which in turn define their environmental entitlements. Humans access their environmental services by applying various forms of regulation within a framework of institutions.

Coupling in geographical space may build up from local level processes such as irrigation and environmental conservation, whose effects may be felt beyond the local to the national and regional levels. These processes escalate gradually to integrate with global dynamics that define global climate change such as ozone layer depletion and global warming. One can think of the link between variables that define the phenomenon of global climate change on the one hand, and micro climate variations and their social economic effects on the other, as describing a facet of spatial linkages between the local, the regional and the global. Not only are natural and human systems linked in this coupled state but so are different societies linked to each other within this all-encompassing web. Liu et al refer to the "effects of distant people on local natural systems and the effects of distant natural systems on local people" Liu et al (2007: 642). In this globalized reality, local environmental and social processes are linked to wider systems creating in this process effects ranging from micro environmental changes such as shifting rainy seasons to social perturbations including local mobility, international migration, increased international trade and its effects on local markets, and the impact of global centres of environmental governance on local environments.

Both contiguous and remote linkages have evolved to form patterns and processes at both the local and global scales. Such processes may then evolve to form new social-ecological systems with their own dynamics, which can manifest into various pathways subject to the degree of change ranging on a scale from infinitesimal to gradual to rapid and profound. Environmental degradation, for instance, is described as a 'slow and silent' process, while violent regulation is often a loud and rapid process (Bohle 2007: 9). Our main interest here is in rapid and profound changes which necessitate a search for new regulatory systems. As a consequence of the profound changes, human action and natural phenomena may combine into a new system that is dominated by either and set the SES on a new path. This may create vulnerabilities and adaptive reactions

ultimately leading to reorganization or even collapse. Identifying key drivers of vulnerability and the social and political processes that shape human agency in confronting this vulnerability is a key aspect of this study.

An important observation that is addressed by this research is the hitherto apolitical nature of the study of SES processes of change, especially looked at from a political ecology perspective. This research therefore combines a physical ecological approach to SES with a social and political approach that uses legal analysis as a tool to portray the social and political processes of contestation.

### 2.3 The concept of resilience

Underscoring the fact that coupled SESs are comprised of complex social-ecological systems and are regulated by complex social interactions, and are therefore complex themselves, Berkes, Colding and Folke (2003: 4) propose the use of the idea of resilience as an “organizing concept and scoping device” to mediate between the intersection of ecological and social system complexity and thus project issues of change and adaptation through the “lens of resilience”.

The concept of resilience is gaining importance across many disciplines and is one that many can relate to from its everyday meaning and usage. Holling (1973) is credited with introducing the resilience concept into ecological literature to explain the workings of nonlinear dynamics that see ecosystems survive perturbations and change (Gunderson 2000).

According to Holling (1973: 17) “Resilience determines the persistence of relationships within a system and is a measure of the ability of these systems to absorb changes of state variables, driving variables, and parameters, and still persist”. He differentiates resilience from stability, which he defines as the ability of a system to return to an equilibrium state after a temporary disturbance. He points out, however, that “an

equilibrium centred view is essentially static and provides little insight into the transient behaviour of systems that are not near the equilibrium” Holling (1973: 2), therefore of little help in complex coupled SESs that are likely to be in continuous transit through different states and zones of attraction, or revolving around multiple equilibria.

Apart from Holling’s concept of resilience that stresses the persistence of systems, several other conceptualizations of resilience exist. The Resilience Alliance (2009) and Carpenter et al. (2001) see resilience as the amount of change a system can withstand and still retain the same controls on structure and function, also expressed as its capacity for self-organization, learning and adaptation. Similarly, Walker et al. define resilience as the capacity of a system to absorb disturbance and reorganize while undergoing change so as to still retain essentially the same function, structure, identity and feedbacks (Walker et al. 2004). Folke, in yet another approach, conceptualizes resilience as opportunity emerging from disturbances in SESs, and thus disturbance is seen as a chance for innovation and development (Folke 2006: 253).

The analysis of resilience in SESs has solidified into the so called resilience theory, whose objective is to understand the source and role of transformative change in adaptive systems (Holling et al. 2002:5). The theory links dynamic cycles across spatial and temporal scales. At the core of resilience theory is the adaptive cycle, which is a heuristic model of phases through which changes in ecological systems go through (Holling 2001:394-395).

Individual adaptive cycles are nested in a hierarchy across time and space. These nested hierarchies may have a stabilizing effect due to the fact that they provide the memory of the past and of the distant to allow recovery after change occurs. They may also have a destabilizing effect when dynamics across scales become "over-connected" or "brittle," allowing small-scale transformations to "revolt" and explode into larger-



scale crises. Taken together this theoretical framework is called "panarchy" (Gunderson and Holling 2002).

According to Holling and Gunderson, resilience theory rests on four key assumptions about ecosystems. First, change is neither linear nor constantly chaotic, but rather episodic and patterned. Periods of slow accumulation of "natural capital" are suddenly interrupted by periods of release and reorganization, caused by the interaction of fast and slow variables. Second, spatial and temporal attributes are discontinuous and scale specific. Third, ecosystems do not have a single equilibrium around which they are homeostatically regulated but display multiple equilibria. Fourth, fixed rules independent of scale applied to such systems lead to loss of resilience, therefore the key to enhancing system resilience is to develop learning abilities and expect uncertainties (Holling and Gunderson 2002:25-27).

#### 2.4 Social resilience

In one of the most recent and comprehensive reviews on the concept of social resilience, Keck and Sakdapolrak (2013) propose to include in the definition of social resilience three kinds of capacities, namely coping capacities, adaptive capacities and transformative capacities. These capacities make societies able to better anticipate, manage and cope with change. Coping capacities refer to the "ability of social actors to cope with and overcome all kinds of adversities"; adaptive capacities refer to their "ability to learn from past experiences and adjust themselves to future challenges in their everyday lives"; transformative capacities refers to their "ability to craft sets of institutions that foster individual welfare and sustainable societal robustness towards future crises".

Transformative capacities are of crucial significance to this study, as they "encompass people's ability to access assets and assistance from the wider socio-political arena, including from governmental organizations and so-called civil society, to participate in decision-making processes,

and to craft institutions that both improve their individual welfare and foster societal robustness toward future crises. As such it explicitly incorporates topics of progressive change and development". Most importantly, they find that social relations, network structures, institutions and power relations as well as knowledge and discourses constitute the major determinants of social resilience (Keck and Sakdapolrak 2013: 11). These attributes speak directly to Il Chamus litigation as a resilience building mechanism, as is seen more explicitly in chapters 5, 6 and 7.

It follows therefore that resilience building especially in the livelihoods of the poor and marginalized is as much a technical as it is a political process (Keck and Sakdapolrak 2013:5). Similarly, Eriksen and Lind (2009) look at resilience building as a political process, noting that the way people adjust to multiple stressors is an intrinsically political process that involves competition by various actors each aiming to secure their own interests, creating winners and losers in the process. Social relations and political alliances are formed between individuals, politicians, customary institutions and government administration in a bid to influence decision making processes that impact on their livelihood choices (Eriksen and Lind 2009: ). Social resilience then is intimately connected to the nature and quality of governance, under which both the technical and political aspects of resilience are regulated.

## 2.5 Vulnerability as social practice

Much like the term resilience, vulnerability is a widely used term with varied and contested meanings but yet accessible due to its widespread use in everyday language, where it evokes a negative sense of being susceptible to harm due to a position of disadvantage relative to other stronger players. Vulnerability as understood and applied in the current study is not far removed from this popular perception of the term.

Studies of SESs especially within the framework of adaptive cycles and resilience theory relate vulnerability quite closely with resilience. Scholars like Berkes (2007) take vulnerability not just a matter of exposure to hazards but as an integral part of the resilience of the system concerned. In this context vulnerability is key to the understanding of change within ecosystems in three important ways: resilience thinking that incorporates vulnerability allows for a holistic evaluation of hazards in coupled SESs; it emphasizes the ability of a system to contain a hazard by either absorbing the disturbance or adapting to it, thereby focusing on what is done rather than what cannot be done, and; provides learning opportunities and options for dealing with future uncertainties and thus important for resilience building to deal with uncertainty and surprise in SESs (Berkes 2007: 283 ).

The ability of societies to build their resilience determines how well they can react to endogenous environmental changes. Adaptive capacity at all levels of society depends on the resilience of their institutions and the natural systems on which they depend. The greater their resilience, the greater is their ability to absorb shocks and perturbations and adapt to change. By the same logic, the less resilient the system, the lesser is the ability of institutions and societies to cope and adapt to change (see also Adger 2000).

Social resilience exerts a direct influence on the security of individuals within the societies. Security here refers not just to availability of livelihood resources, but the ability of members of a given society to effectively access these resources. Sen's entitlement approach (Sen 1981, 1999), or Watts and Bohle's extended entitlements approach (Watts and Bohle 1993) that emphasize entitlements, rights, access and distribution of resources is instructive here. Langridge et al 2006, link the creation of social resilience to a community's ability to access resources that are critical to its survival. In a specific case study focusing on four

communities in California, they found that, in relation to the crucial resource of water, social resilience is enhanced by the strengthening and diversification of a range of structural and relational mechanisms to access (Langridge et al 2006:1, 3). Such mechanisms of access are defined by essentially political processes, and executed through administrative and legal institutions and the social networks that link communities and individual actors to these institutions. In the case of the Il Chamus, litigation can be seen as one of such political processes aimed at facilitating access.

Vulnerability can then be seen as a socially constructed phenomenon that depends on both the ecological and social circumstances of an SES, as well as the institutions that regulate the relations between these two facets, and the society's effective access to environmental entitlements. Effective access that translates into material benefits for the society at large has a direct impact on its ability to adapt to change and hence it's social resilience (Adger et al. 2003:181).

This study therefore makes a critical link between social resilience and the effective access to resources. How resources are distributed and effectively accessed becomes a matter of power dynamics, and is therefore an inherently political process. Thus, vulnerability and resilience building can be seen as social practice involving differently located actors within a society. According to Bohle, and this is the position adopted in this study, social vulnerability is social practice, where human livelihoods and human securities are constantly contested and fought over. It is embedded in social and environmental arenas, where human security, freedom, and human rights are struggled for, negotiated, lost and won. However, in these struggles and contestations, the vulnerable are not mere victims, but rather possess sufficient agency to attempt to alter their condition in life. Living with vulnerability then becomes a constant struggle to cope with threats to their livelihood, which involves actively

seeking out and negotiating for options that minimize risk to their livelihoods and increase their relative security. Success or failure in this effort is relative, but what is crucial here is the agency of the vulnerable as they stake a claim in the political processes that determine their livelihood status rather than what they fail to do (Bohle 2007: 9). In the case of the Il Chamus, their efforts to enforce participation in the political process through litigation are largely shaped by the nature and quality of governance.

## 2.6 Linking environmental governance, litigation and resilience building

This thesis is premised on the idea that access to resources is directly and significantly related to social resilience, and further, that access to resources is regulated by processes of environmental governance.

The politics of access to resources take place within a framework of governance executed to a large extent but not exclusively by the state. Governance here refers to “the structures and processes by which people in societies make decisions and share power” (Folke et al 2005: 444). Lebel et al further define governance as including “laws, regulations, discursive debates, negotiation, mediation, conflict resolution, elections, public consultations, protests, and other decision making processes” (Lebel et al 2006: 4).

Environmental governance therefore determines how resources are distributed, and formulates the rules that regulate access to these resources, and basis of their exploitation and ownership. The various stakeholders compete to influence the decision making process to meet their own ends, and in this sense governance becomes the product of an interaction between these stake holders. Among these stakeholders may be actors representing the state civil service, parliament, ethnic communities, NGOs and the civil society at large, as well as academic and research institutions, each with their own agenda. As such a political

process of contestation by the various stakeholders, governance invariably produces winners and losers.

Because of their weak position in the power dynamics that structure the processes of environmental governance, the Il Chamus have been perennial losers in the political contestations determining access to resources in Kenya. Their weak political position is defined by exclusion from decision making processes, and lack of effective political representation. Intervention measures by the government, such as the introduction of *Prosopis Juliflora*, which was done without the consent of or consultation with the Il Chamus is a case in point.

The Il Chamus also live in an area plagued by endemic violence, and added to this the acknowledged harsh ecological reality defined by general heat and aridity. This is now compounded by the effects of the invasive *Prosopis Juliflora*. In terms of livelihood security this constitutes a risky environment and the Il Chamus have to creatively and constantly adapt to the shifting nature of vulnerabilities caused by such a risky environment. Marginalized from the political processes emanating from the centre that have a direct impact on their daily lives, the Il Chamus seek to enforce participation in these political processes by appealing to the authority of legal regulation. According to Barnet (2006), the inability to participate in and influence decisions and structures that influence their livelihoods reinforces the vulnerability of marginal groups and keeps them marginalized. The Il Chamus can thus be seen as seeking to enforce participation in the political process through litigation and in this way reduce their vulnerability.

Within the resilience theme, active participation in the political processes in which crucial livelihood outcomes are determined is crucial to reducing the vulnerability and enhancing the social resilience of communities like the Il Chamus that live in risky environments. Alcorn et al. have shown in their case study of the Dayak people's social movement in Indonesia that

the erosion of ecological resilience can be effectively countered by social renewal. They contend that if the political system is inaccessible to certain communities who may wish to modify institutions in response to negative ecological feedback, then, during crises, ecological resilience will diminish until the system flips. Resilience depends on a vibrant, diverse and inclusive political atmosphere. They further posit that social movements through political action can prevent SESs moving to undesirable states if they successfully challenge the political system to accommodate their voices and their concerns about ecological feedback. (Alcorn et al. 2003: 299-300).

The Il Chamus have chosen litigation as a form of political action aimed at articulating their interests and thus secure their livelihood. This litigation is based on a discourse of marginalization and indigenous identity and is framed as a social justice and human rights issue. Litigation provides the Il Chamus with a space over which social justice struggles can be articulated and mediated upon. As such, it is used to enhance the participation of local people in the national political process and counter negative outcomes of environmental governance by increasing their effective access to resources, a crucial factor in resilience building.

Where some communities are marginalized and disenfranchised, environmental governance decisions made by the state have no significant input from such communities. In such cases, litigation plays a key role in tempering these governance choices and mitigating their negative impacts on communities such as the Il Chamus that experience marginalization. Litigation predicated upon a political identity as a marginalized or an indigenous group opens up access to legal rights and protections that have been developed over time through the interaction of transnational advocacy groups, international and regional human rights mechanisms, national courts and academic institutions. The notion of indigenous rights has thus developed to become a powerful political tool

because being identified as such opens up access to recognized rights that have a direct impact on access to resources. Indigenous rights as defined and utilized today are themselves the product of a protracted process of political agitation and negotiation fronted by representatives of indigenous peoples themselves, experts, states and national and international NGOs at the highest level of political activity within the United Nations system.

## 2.7 The role of law in resilience building

In a general sense, the law is viewed as a tool that regulates and sets human conduct within certain limits, using as leverage the threat of punitive sanctions. The “rule of law”, in this respect, operates on a premise of legitimacy and general acceptance and its effectiveness depends on compliance by those subject to it.

In a path breaking and novel approach, this study takes a different turn from the function of the rule of law as a means of controlling human behaviour, to a tool of resilience building. Based on the premise that access to resources is a key determinant of resilience, it takes litigation as a check on environmental governance crucial to determining effective access to resources, which access is itself positively linked to resilience.

As a political process that involves contestation by different actors with different capabilities and agendas, environmental governance may result in unfavourable outcomes that may have a negative impact on the livelihood options of certain communities such as the Il Chamus. I argue that this has indeed been the case, and by addressing the political basis of such outcomes, litigation may result in a reconfiguration of political power that may thus have a redistributive effect on resources. The key contention of this thesis, therefore, is that litigation can influence the dynamics of access to resources by intervening in the process of governance. This is particularly useful in countering unfavourable outcomes that ensue from unequal power relations between the various



stakeholders in governance. It not only holds the relevant governance structures to account but also promotes the agendas of the litigants by invoking legal rights, as well as enforcing their participation in the political process.

Current literature on the use of communal litigation as a tool (Comaroff and Comaroff 2009, Lynch 2011a, Lynch 2011b, Igoe 2006) focuses on its role in the strategic construction of ethnic or indigenous identities and on the efficacy of this activity in translating difference into value. For instance, Comaroff and Comaroff have noted a global rise in the use of litigation in processes of governance and particularly in the struggle for cultural identity. They have coined the term 'lawfare' to describe this use of legal means for political and economic ends (Comaroff and Comaroff 2009: 56). They identify the prominence of 'lawfare' in the growing influence of human rights advocacy, a proliferation of law based NGOs and increasing activity among arbiters of legal disputes that has led to an unprecedented growth in global jurisprudence.

Igoe (2006), on the other hand, has looked at the construction indigenous identities by the Barbaig and Maasai communities in Tanzania as a response to the process of globalization. According to Igoe, there is nothing indigenous about the communities claiming the identity, and it is instead an effective "means to mobilize resources and moral, political, and legal advantage on a global stage- a strategy of 'extraversion' (Igoe 2006: 401, quoting Bayart 2000 on strategies of extraversion in Africa). According to him such claims to identity are really efforts to connect to an international network of institutions, ideas, and money.

In Kenya, Lynch (2011a and 2011b) has studied the Ogiek, Sengwer, Endorois and Pokot, and recognized the utility of indigenous identity as a legal strategy. She has shown how these communities have instrumentally and opportunistically harnessed the global discourses of indigeneity, marginalization, minority rights and environmental protection

to strengthen their claims to land and associated resources as well as enter new spaces of political action and diversify patronage.

In an analysis of a legal decision by the ACHPR, Lynch (2011a) recognizes the successful deployment of ethnic difference in litigation by the Endorois, but cautions that such differentiation is inherently exclusive, and when validated by the courts as on this occasion, diverts attention from inequalities in wealth and power while encouraging increased territoriality. For Lynch, this creates an undue emphasis on 'politics of recognition over politics of redistribution'. While Lynch clearly separates litigation from politics, this thesis considers litigation as part of the political process itself and therefore part of what Lynch describes as the neglected politics of redistribution.

While the above mentioned literature does not consider litigation from a resilience concept point of view, the intended benefits of what they variously term lawfare (Comaroff and Comaroff 2009), strategies of extraversion (Bayart 2000, Igoe 2006, Lynch 2011,) or even strategic legal positioning (Lynch 2011a) are clear. For instance, Lynch has found that the ethnic differentiation articulated by resort to indigeneity and other forms of identity can be traced to "a common search for prosperity and security of tenure amidst underdevelopment and state failure". Hence, an increasing scarcity of land and the ensuing competition leads to the "politicisation of identity as a means to protect and promote claims to ethnic terroir" (Lynch 2011b: 150, quoting Bates 2008: 92, 133).

An important question addressed by this thesis and also considered by the above mentioned authors is about the usefulness of litigation. For instance, quoting lost cases by Barbaig and Maasai communities in Tanzania as well as Maasai in Kenya, Igoe assesses the legal pursuit of such claims as unsuccessful and based on this analysis he finds litigation as not beneficial to the communities( Igoe 2006: 405). The Comaroffs have also highlighted the fact that litigation does not always yield its

promise and is often biased towards the rich and powerful and in many cases seemingly promising or strong cases are lost. In many other cases, litigants end up losing even when they have 'won' in court due to weak or non-implementation of favourable court orders (Comaroff and Comaroff 2009: 57). Lynch also rightly questions the value of courtroom victories in the face of unresponsive authorities (Lynch 2011a: 40).

This thesis, however, takes the position that because litigation is both a technical and a social and political process, its resilience building effects necessarily go beyond the simple courtroom outcome of a case, such that even when cases are lost in court, or when the implementation of courtroom decisions is weak, positive outcomes are spread over time. In this context, litigation must be viewed as a process rather than an event with a single win or lose outcome.

Thus, for the Il Chamus, litigation has: enforced their participation in the national political process; enhanced their access to international networks; smoothed internal relations by focusing their attention on a common external foe and reducing internal conflict and dissent; had an impact on their social institutions by providing an opportunity to enact and solidify community age-group roles; clarified contentious issues relating to indigenous identity, political representation, marginalization and the Prosopis weed in a way that has enhanced their effective access to resources. It is the positive relationship between the effective access to resources and resilience that marks litigation in this context as a resilience building mechanism rather than just a tool to regulate behaviour and enforce rules in the traditional sense. By highlighting the strong link between effective access to resources and resilience, this thesis therefore locates the resilience building capacity of litigation in the process of environmental governance.

## **Chapter 3: A brief outline of Il Chamus society: history and social organization.**

### Introduction

The Il Chamus have been able to carve out and hold on to a niche within what is generally acknowledged to be an arid and harsh environment characterized by extreme weather conditions, drought, disease and violence (see for instance Little 1992:18, Anderson 2002:20; Kiage and Liu 2009:1). Despite the harsh conditions of the environment in the Lake Baringo basin, the Il Chamus have shown remarkable resilience by maintaining a continuous presence in the area for at least two centuries.

This chapter gives a brief outline of Il Chamus society, covering aspects of its history and social organization. It is broadly divided into two sections. The first section is an outline of a historical perspective of the Il Chamus that traces changes in their physical and social environment as well as their lifestyle orientations. Over their history, the Il Chamus have experienced lifestyle changes ranging from foraging, irrigation agriculture to various degrees of pastoralism. Fishing has remained a constant supplement to these different modes of subsistence ever since they settled around Lake Baringo. This historical transition is analysed within the resilience theory model of the adaptive cycle. The second section looks at some aspects of their social organization, focusing on the roles of clans and totems in the determination of societal roles.

In this chapter, oral historical narratives recounted as folklore and oral literature recorded in field notes are used to complement and sometimes corroborate written source material.

### 3.1 The transformation of the Il Chamus pre-colonial system through the adaptive cycle

This chapter identifies a complete adaptive cycle that starts from around the 1830s and covers the entire pre-colonial Il Chamus historical period to the beginning of colonial rule in the 1910s. During this period the Il Chamus society was transformed from a foraging based hunter/gatherer economy to one driven by irrigation agriculture. This irrigation economy, supplemented by trade in ivory, saw the Il Chamus location, then known as "Njemps", develop into an important trading centre and stop-over for itinerant traders and voyagers. It eventually collapsed and gave way to a dominantly pastoral economy. The complete switch to pastoralism from around the 1920s onwards represents an exit of the system from the previous adaptive cycle and the beginning of a new cycle characterized by pastoralism and external regulation through state interventions.

To put our analysis properly into the context of the adaptive cycle, the next section provides a brief theoretical consideration of the concept.

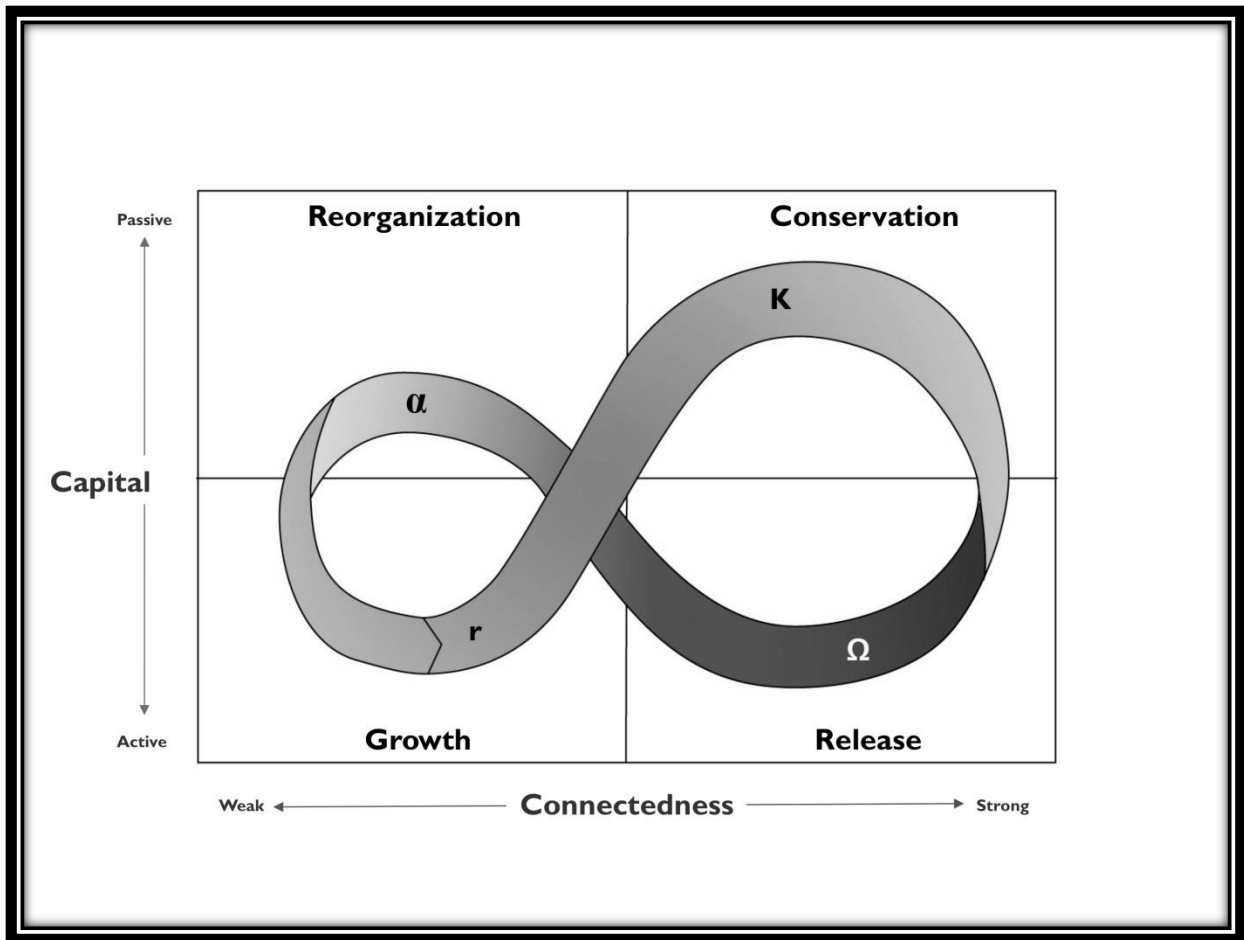


Figure 1: the adaptive cycle<sup>9</sup>.

Within the adaptive cycle, SESs are conceived to pass through four phases:  $r$ , **K**,  $\Omega$  and  $\alpha$ . Phase  $r$  is characterized by growth and exploitation, usually leading to a conservation phase, **K**. During these two phases, the system displays reasonably predictable dynamics. The phase from  $r$  to **K** is also known as the fore-loop, and represents the slow, incremental phase of growth and accumulation. As the system progressively settles into the **K** phase, resources get increasingly locked in and the system becomes more rigid and less responsive to external shocks and stimuli. Invariably, this phase is followed by a turbulent collapse and release phase,  $\Omega$  that quickly gives way to a phase of reorganization,  $\alpha$ . The phase from  $\Omega$  to  $\alpha$  is also known as the back-loop,

<sup>9</sup> Adapted from Gunderson and Holling (2002: 37). Graphic design by courtesy of Noah Raford.

and it is here that reorganization and renewal take place. The reorganization phase may be rapid or slow and innovation and new opportunities are possible. Unlike the r and K phases, the  $\Omega$  and  $\alpha$  phases display unpredictable dynamics. A subsequent  $\alpha$  phase follows which may or may not be similar to the previous  $\alpha$  phase. Where a new path is chosen, as in the present case where there is a switch from irrigation to pastoralism, the system will exit the previous cycle and follow a new adaptive cycle. As a cautionary observation, the adaptive cycle is not necessarily regular; systems can move back and forth between phases and follow different pathways (Walker et al 2004: 2; Gunderson and Hollig 2002).

The next section describes the evolution of Il Chamus lifestyle orientation through historical phases that follow their evolution from foragers to irrigating agriculturalists and eventually pastoralists, making references to phases of adaptive cycle model from  $\alpha$  to  $\Omega$  where appropriate.

### 3.1.1 Origins of the Il Chamus: growth and exploitation (the r phase)

The Il Chamus claim to have come to the Lake Baringo basin at a time period that is out of the scope of any written sources and only covered in the realm of popular folklore. This orally perpetuated historical account of their origins is however of immense symbolic value to the Il Chamus especially in the light of contemporary international legal discourse on indigenous and minority group rights. It links them to an "ancestral" place to which they claim aboriginal occupation and accords them a unique identity that is distinct from surrounding communities. As will be seen later in this thesis, the nexus between occupational history and cultural uniqueness helps to strengthen their claim to the status of an indigenous or minority group. Being recognized as such allows them to claim certain protections under various instruments of national and international law. This aspect is explored further in Chapters 6 and 7 where an analysis of court cases by the Il Chamus is undertaken.

Both oral and written accounts are clear that the Il Chamus never possessed sufficient amounts of cattle in their early history to sustain a pastoral lifestyle (See for example Little 1998: 445). They were initially hunting and gathering and their settlement at Lake Baringo probably occurred during the latter half of the eighteenth century. This period is described in Il Chamus oral history as a period of great wandering, famine and poverty. It is a time when impoverished Il Chamus led the life of mobile hunter gatherers. The earliest age group recalled in popular Il Chamus folklore is Il Meichopo of the Il Keroi clan. It is recounted to be a time when people still wore skins and children run around naked. The name Il Meichopo itself means 'the naked'. None of David Anderson, Peter Little or Paul Spencer, who between them possess unquestionably authoritative information on the Il Chamus, mentions this age group. This is ostensibly because it is impossible to corroborate oral information regarding this period with any archival or other secondary evidence. Spencer, also on account of oral history, identifies Il Karrankuti, which he describes as bordering "on the timelessness of mythical events, long, long ago" (Spencer 1998: 138). For this reason I take it as anecdotal rather than factual evidence as it forms part of the folklore recounted by Il Chamus oral historians.

This early group of Il Chamus settlers was, as recounted in folklore, descended from a southbound migratory party of a Maa speaking group. Attracted by the resources that the lake had to offer, they settled around the shores of Lake Baringo. They found here a settled clan known as Il Keroi with whom they integrated. The origin of the Il Keroi is not quite known but they are thought to have had strong Kalenjin and possibly some Uasin Gishu Maasai elements, and therefore already drew their composition from a diverse pool (Vossen 1978, quoted in Little 1985: 244).

Today, clans associated with the Il Keroi clan claim to be the progeny of "true" Il Chamus (see also Anderson 1998: 142). This coming together of



fairly different ethnic entities to forge a common identity was a common occurrence during this period. Bollig, for instance, in respect of the Pokot, writes of the 1750s to 1830s as a period of “becoming”, where identities are subject to profound changes with violent warfare playing a big role in the process (Bollig 2006:22-24).

These early settlers soon grew in number and started to move and settle further away from the lake shores, practicing some early form of agriculture. They made a fortress to secure themselves from the numerically and militarily superior groups such as the Turkana, the Pokot, and sections of the greater Maasai such as the Loogol-ala Maasai and the Laikipiak Maasai. This fortress was located at the present day Sintaan (see Map 5) and was heavily fenced. They named the settlement Manyatta Il Kateeyo.

Inside, they built some tall granaries made of Bamboo reeds and thatched with grass. Sentries, operating from vantage positions atop the granaries, were employed to look out for intruders. According to folklore, it was in this Manyatta that the first irrigation canal was dug for the purposes of growing millet and sorghum, an event credited to the time when Il Petaa age group were Moran (around 1846). How the Il Chamus developed their irrigation technology is not quite known, though Spencer claims that they discovered irrigation by serendipity (Spencer 1998: 139).

This period, between 1830s to 1850s, when the Il Chamus are gradually moving away from a foraging subsistence economy and starting to incorporate irrigation technology and accumulate knowledge and resources, corresponds to the r phase of the adaptive cycle.

### 3.1.2 Il Chamus development of irrigation agriculture: towards conservation (the K phase)

Internal conflicts led to the splitting of the original Il Chamus settlement into two, later referred to as Il Chamus Lekeper and Il Chamus Leabori. Lekeper were situated in the location nowadays known as Il Chamus (Njemps) location, formerly referred to as Njemps Ndogo. Leabori were found in Il Ng'arua, Ng'ambo, Salabani, Kiserian, and Rugus locations, together comprising the former Njemps Kubwa (see map 5).

During this period the Il Chamus continued to develop their irrigation agriculture. They also did fishing and kept some animals, mainly small stock. Early European explorers and ethnographers were impressed by the fortified Il Chamus villages as well as their irrigation agriculture and fishing. Thompson (1887: 264), for instance, describes what he saw of the Il Chamus system of irrigation:

*"...wonderfully ingenious system of irrigation by artificial canals of (for them) great magnitude. They construct dams across the deep channel of the Guaso Tigrish<sup>10</sup> and thus raise the level of the water to that of the plain, and then, by an intricate network of channels, they spread the precious fluid over a large area, and raise their millet and melons..."*

The basic technology of the irrigation system was the damming of water from the sources and subsequent transportation of the water to the fields. According to Anderson, water for irrigation was diverted from the Perkerra and Molo rivers, and the technology was a furrow system that involved the construction of boulder and brushwood dams from which water was carried a fair distance to the irrigated fields which span over several square miles growing mainly sorghum and millet (Anderson 1988: 527, Spencer 1998: 140).

---

<sup>10</sup> In today's names, this likely refers to the confluence of the Molo and Perkerra rivers.

The success of the Il Chamus irrigation system also depended to a great deal on the availability of water from the Molo and Perkerra rivers, as well as the botanical knowledge of the various varieties of millet and melon that they grew. More importantly, however, was the system of social control and management of the irrigation system which was overseen by the Olamal, a council of elders. The next section considers the role of the Olamal in the social control of the irrigation system.

### 3.1.3 The Olamal and the social control of the irrigation system

Because the irrigation was primarily a communal exercise with each family contributing labour towards common activities such as maintenance of the irrigation canals (Little 1985: 245), communal discipline through cooperation and compliance was of crucial importance.

The Olamal oversaw all aspects of the irrigation enterprise including the settling of any disputes that may have arisen. They exercised complete control over the irrigation system, deciding on the allocation of both land and water (Spencer 1998: 141).

The system therefore relied on the complete submission to the authority of the Olamal. In explaining the source of their seemingly absolute authority, Spencer traced the etymology of the word Olamal to the greater Maasai, where it referred to *"a ritual delegation with coercive powers and a propitious aura so long as the authority of their combined will meets with total and unquestioning respect. Where the integrity of an Olamal is violated, however minor the infringement, misfortune is expected to follow... the Olamal insisted on complete discipline and resisted the emergence of any factions or cliques. They were particularly active during the period of preparation towards the end of the dry season, involving repairs to the irrigation channels and digging individual plots.*

*They also met regularly in the growing season, except when the ground was so well watered with rain that the irrigation system became superfluous, literally. No one could sow or harvest his crop until the Olamal had given their permission, and this would be finally ratified with a blessing by an elder of Kabis or of Lamaee.*" (Spencer 1998: 141). Thus the Olamal did not just exercise complete authority over the irrigation system but their authority had an aura of mystical significance and was accompanied by ritual, overseeing all aspects of the irrigation system from planting to harvesting.

The ritual connection to the authority of the Olamal was also observed by Thompson in his travels among the Il Chamus, though he may not have recognized its significance at that time:

*"One night I was awakened by hearing great singing and dancing, as if the best of fun was going on in the village across the liver... the revelers were moving along the river banks. Then they stopped and howled for about an hour to Ngai. This done, they were addressed by some of the elders, and finally they crossed the stream and proceeded up its course. The singing had been a prayer to Ngai to assist in the damming up of the stream for the purpose of spreading its waters into their fields. This operation occupied them several days. Their efforts were finally crowned with success, and the canals overflowed with their life-giving fluid"* (Thompson 1887: 312).

Thus, the Olamal relied on complete compliance with their authority and a threat of a curse from the elders or even expulsion from the community ensured that they were obeyed. Spencer also adds another dimension to the continued submission to the authority of the Olamal, suggesting that during a peaceful period when the community is not engaged in war, the transition through Moranhood is used to inculcate principles of compliance and discipline (Spencer 1998: 148).

While the Il Chamus were themselves not at war, they were affected by violence taking place around them, and to minimize chances of attacks, they avoided keeping large numbers of cattle so as not to attract the bigger predatory communities (Spencer 1998: 150). They were thus able to maintain a peaceful existence in the middle of violence.

This violence was defined by warfare among various sections of the greater Maasai communities. It was armed conflict and violence referred to as “the Iloikop wars” that lasted almost 40 years, from 1840s to 1880s. According to Anderson these wars pitted different sections of Maa speakers (Il-Oshon)<sup>11</sup> against each other in conflict over cattle and access to pasture and water (Anderson 2002: 24; Waller 1976:532).

During this period of warfare the Il Chamus were still confined to their two fortified villages by the southern edge of Lake Baringo, where they continued to expand their irrigation agriculture, successfully growing sorghum and millet. These wars eventually proved to be an important source of labour for the Il Chamus irrigation system, which contributed to the development of irrigation as a commercial enterprise.

The Il Chamus capitalized on the availability of displaced and destitute pastoralists who became a valuable source of labour, and they strengthened their commercial viability by absorbing them as refugees into their ranks. There was a steady rise during this period towards economic and social prosperity. Some of the refugees, maintaining a pastoral ideal in their outlook, saw a spell in Il Chamus territory and agriculture as a chance to rebuild their stock in cattle. Many of them were fellow Maa speakers (such as Toijo, Loosekelai, Uasin Gishu and Laikipiak)

---

<sup>11</sup> Sections or *Il-Oshon* of the Maa speakers involved included but were not limited to Loosekelai, Il Purko, Uasin Gishu, Laikipiak, Il Toijo, Keekonyukie, Damat, Kaputiei, Loodokilari and Loita.

who eventually integrated themselves and became Il Chamus (Anderson 2002: 27).

It is to be noted, however, that Il Chamus irrigation was not unique within the pre-colonial communities of East Africa, and Anderson suggests that in fact irrigation appears to have been an integral part of the subsistence strategy by pastoral communities (Anderson 1988: 523). Other examples include: the relatively technologically simple irrigation by the Turkana on the floodplains of the Kerio and Turkwel rivers; the flood irrigation by the Pokomo of River Tana; the furrow irrigation plains of the Taita and Taveta; and the furrow plains of the Marakwet escarpment and Weiwei valley near the Cherangani hills. In fact, indigenous irrigation was so widespread as to be the norm rather than the exception (Anderson 1988: 523-527). What was therefore unique about the Il Chamus was the successful orientation of their irrigation towards a commercial market serviced by ivory traders and other travellers, if only for a limited period of time.

#### 3.1.4 Success and Stability of Il Chamus irrigation: conservation (the K phase)

During the decade between 1870 and 1880 the Il Chamus rose to the peak of economic success from their irrigation and ivory trade. "Njemps", as the area was then known, developed into an important trading post for Swahili itinerants and ivory traders. Their irrigation technology had reached an optimum level. Not only did they enjoy good returns from irrigation but the area had plenty of wildlife, including Elephants. Major Powell-Cotton describes it thus:

*"The pasturage must be exceedingly rich, judging from the large herds of game which frequent this part, and the excellent condition in which we found their meat...Hartebeest, Giraffe, Rhino, Warthog, Lion, Serval, Hyena, Black-backed Jackal, Ostrich, Zebra, Eland, Oryx, Waterbuck,*

*Grant's Gazelle, Stein bock, Duiker, Dik-dik, and Leopard*" (Powell-Cotton 1904: 316). Thomson too relates shooting elephant at Njemps (Thomson 1884: 709).

"Njemps" was during this time an important source of ivory shot locally and became a strategic base for ivory trade. Early European expeditions took advantage of the good elephant numbers in the region and are said to have amassed significant fortunes (Anderson 2004: 36, 37). This period therefore marked a special golden age for the Il Chamus. "Njemps" built a reputation as an important commercial hub, offering food and rest to traders and travellers alike who passed through Baringo.

Swahili ivory and cattle traders from the coast, European voyagers, local pastoralists and hunters thus became part of a mutually supporting network that helped to raise the status of "Njemps" as an important trading post. Soon, the European powers of Britain and Germany took note of the strategic importance of "Njemps".

Viewing "Njemps" as a strategic centre especially in terms of their interest in the lucrative ivory business, the Imperial British East African Company (IBEAC), acting as colonial agents of the British, entered into a treaty with the Il Chamus<sup>12</sup>.

Similarly, Dr. Carl Peters noted the strategic importance and potential of "Njemps". In a letter to the German Emin Pasha Committee, he wrote:

*"A Baringo nation would be of the very greatest importance for the general opening up of Central Africa...I consider it equally important in the interests of civilisation and of a general European trade to defend, and*

---

<sup>12</sup> Treaty No. 73 of 14<sup>th</sup> July 1890, referred to as "Treaty between IBEAC and the Chief of Njemps", PRO FO 2/140, quoted in Anderson, DM: Massacre at Ribo Post: Expansion and Expediency on the Colonial Frontier in East Africa, *The International Journal of African Historical Studies*, Volume 37, No. 1 (2004), pp. 33-54, at p. 38

*permanently to secure, the colony of intelligent and submissive Wakuafi<sup>13</sup> dwelling here from the destruction with which they are continually threatened at the hands of the Massai and Wasuk<sup>14</sup>. In a word, I consider the establishment of a strong European station by the Baringo to be called for in the interest of the whole further development of civilisation in Eastern and Central Africa".* Dr. Carl Peters also concluded a treaty with the Il Chamus, offering German protection to them. As a mark of authority established over the Il Chamus, he hoisted a German flag at "Njemps" (Peters 1891: 272-273).

Despite the promising potential of Baringo as a future trading and administrative centre, a collapse of the successful irrigation led economy was imminent. The next phase saw many factors such as drought, disease, and renewed warfare combining to eventually halt the growth of "Njemps".

### 3.1.5 Collapse of the Il Chamus irrigation economy and the advent of colonial rule (the $\Omega$ phase)

During this phase, the fortune built around the Ivory trade and the success of irrigation agriculture began to diminish, and with it started the disintegration of the Il Chamus community and a decline from their peak.

Becoming a victim of their own success, many among their substantial refugee population left with their newfound wealth to get re-established as pastoralists. This left them without the labour to work their elaborate irrigation industry. In addition to this, natural disasters occurred that had a serious impact on their irrigation, initially through flush floods that diverted the course of the Perkerra River and later through prolonged periods of drought and famine as well as epidemics of small pox, rinderpest and bovine pleuropneumonia. As a result, the Il Chamus found

---

<sup>13</sup> Wakuafi was a generic term used by early colonial explorers to refer to peripheral groups such as the Ndorobo. In this case Dr. Carl Peters is referring to the Il Chamus, who were generally considered as one of the many "Wakuafi" groups.

<sup>14</sup> Wasuk, or the Suk, was used in reference to the Pokot.



they could no longer sustain the unique economy that grew during the golden age of expansion and prosperity.

The combined impact of famine and disease led to another break-out of war among the surrounding Maasai sections, this time even more vicious, and the Il Chamus are recorded to have been so badly affected that they briefly went back to a life of foraging, a state in which Thompson found them in 1884 (Thompson 1887: 312; Anderson 2002: 34). This violence and disease led to a vacation of the area as the remaining Maasai groups sought better opportunities elsewhere, with some going as far as into the Central province. This contributed to the area being seen by potential Colonial settlers as a Terra Nullius "ripe for occupation" (See here Morgan 1963: 140,146). Colonial annexation of the adjoining highlands was soon to become a reality, beginning from around 1911.

By 1897 Baringo had already lost its status as an important trading centre. Austin (1899: 307) writes:

*"Njemps, formerly a center for Swahili caravans proceeding to Kavirondo and the great lake, has now sunk into comparative oblivion. Food is exceedingly scarce and chiefly brought in by natives from Kamasia".*

The irrigation system broke down for want of labour and also due to the *Perkerra* River changing its course as a result of heavy flooding (Spencer 1998: 175; Anderson 2002: 46, 47). As the irrigation system at "Njemps" collapsed, the entry of colonial authority steered the Baringo SES onto a new path, one where pastoralism was to play a dominant role.

Thus, from the beginning of the transformation of the Il Chamus economy from hunting and gathering up to the collapse of the irrigation system we have been able to trace the moments of a complete adaptive cycle. From the 1830s to 1850s, we identify a phase of gradual growth and accumulation (r) during which the Il Chamus, through hunting and gathering as well as harvests from a basic irrigation technology, start to

accumulate resources that begin to transform their economy. From the 1850s to 1880s, we see a K phase where irrigation develops to its maximum potential capable of responding to the demand of traders and travellers. During this period, the Il Chamus location (Njemps) develops to a significant hub. Natural disasters in the form of floods, drought and disease, as well as the flight of newly wealthy Il Chamus and former refugees mean the irrigation system lacked sufficient labour and technology to cope. Accumulated resources previously locked in the system are released as wealth is converted to cattle stock. The transformation of the system to a cattle economy comes with new rules that see the authority of the Olamal, which was dependent on a successful irrigation system and peaceful submission to their authority, begin to wane. The entry of the colonial administration that restricts raiding from larger groups as well as providing a source of significant cattle stock for the Il Chamus sets the system on a new path of pastoralism.

The resilience of the irrigation system during this adaptive cycle can be traced to a number of factors: the availability of refugees from the inter-ethnic warfare surrounding the Il Chamus, as well as the Il Chamus policy of welcoming and swiftly integrating outsiders into their midst ensured a reliable supply of labour; the deliberate keeping by the Il Chamus of limited stocks of cattle made them less attractive to larger predatory communities, keeping their location relatively safe; an effective social organization system led by the Olamal was able to ensure cooperation and submission to authority, leading to a very efficient system of production. Finally a flexible attitude and willingness to adapt to new forms of production meant that the Il Chamus were able to reorganize and embrace new systems and technologies, contributing to the overall resilience of the Il Chamus as a group. In the next section, we see how the Il Chamus adapted to a new system oriented towards pastoralism.

This system however had to endure increased intervention from the colonial authorities.

### 3.1.6 A period of reorganization and renewal: colonial rule, the switch to pastoralism and the beginning of state interventions.

The advent of colonial rule during the last decade of the 19th century brought with it annexation of former pastoral grazing land and a policy of containment of the pastoral communities within designated reserves. Loss for the greater Maasai was gain for the Il Chamus. Proximity of the Il Chamus and Tugen reserves to the former territories used by the greater Maasai groups opened up to them access to grazing lands previously unavailable. With the presence of colonial authority now limiting the predatory instincts of the larger groups, the Il Chamus were able to make a move towards a lifestyle of predominant pastoralism.

Apart from the colonial policy that confined local communities to reserves, colonial rule had a major influence on the switch of the Il Chamus to pastoralism in another way: a policy of violent pacification that involved so called "punitive expeditions" against communities perceived by the colonialists to be recalcitrant. These expeditions also involved capture and confiscation of cattle some of which were used to reward allies.

### 3.1.7 The role of violent expeditions

The image of violence as an enforcement tool was reinforced by colonial "punitive expeditions" which involved the use of armed violence. These punitive expeditions were violent, ruthless and efficient, and contributed to a significant degree in the complete switch of Il Chamus community to full time pastoralism. The British were not averse to allying themselves to certain communities and then launching punitive raids against others perceived to have wronged their allies, as the following examples show.

As allies of newly arrived Uasin Gishu Maasai into the Eldama Ravine area, the British launched a punitive raid against the Tugen in 1896, in an attack described by Anderson as "brief but brutal", rewarding the Uasin Gishu with captured stock as compensation for alleged earlier Tugen raids. A further raid in May 1897 by combined British and Maasai troops descended on the Tugen inhabited areas of Eldume Ravine, killing over 100 Tugen and capturing over 300 head of cattle and 8000 shoats as well as razing all crops to the ground. This barbaric act of brutality was followed by two further ones in 1899 and 1900 and went some way towards breaking the Tugen spirit of resistance towards the British (Anderson 2004: 40, 41).

The British were similarly eager to "pacify" the Turkana and justified their raids against the Turkana with the need to protect other British subjects who were loyal. Further, Turkana relations with Abyssinia were seen as a threat to British interests. The Turkana felt the force of British punitive expeditions during the decade between 1910 and 1920, referred to by the Southern Turkana as Ekaru Apumpum (time of gunfire). Raids in 1911-1915 and 1917-1918 (the Lappur patrol) were especially devastating for the Turkana, dispersing clans and resulting on massive loss of cattle and emigration, and a general disruption of lifestyle (Lokuruka and Lokuruka 2006: 130). During one such expedition in 1915 by a combined force of 400 King's African Rifles (KAR) troops under the command of 18 British officers, 400 Turkana were killed and great number of livestock confiscated (Collins 2006: 108). The devastating impact of this attack was made worse by the infamous Lappur patrol of 1917-1918, involving a stronger contingent of British allied forces made up of Sudanese troops, the KAR, and an assortment of levies from groups opposed to the Turkana. This force of over 5,000 well-armed men resulted in cattle losses into the hundreds of thousands and an unverifiable number of human casualties possibly into the thousands, but surely an annihilation from

which the Turkana would never recover (McCabe 2004: 50, Collins 2006: 117). It was credited with finally breaking Turkana resistance.

These punitive patrols by the British were not simply exercises in “pacification” or helping of allies to settle scores, but they were also instrumental in demonstrating with devastating and brutal effect the might of the British Empire, a vital aid in spreading out a thin administrative capacity. Fear of the British gun was meant to drive resistant groups into submission to British authority. The Il Chamus were clear beneficiaries of this particular British policy, as the following account about British raids on the Pokot shows.

As allies of the British, the Il Chamus provided foot soldiers and local intelligence that aided the British with their punitive missions and in the process they benefited greatly in terms of British protection and cattle bounty. The devastating impact of this alliance is perhaps best described by Anderson, who describes one particular revenge attack by British and Il Chamus allied forces on the Pokot at Ribo Post in 1901:

*“The ‘very drastic punishment’ meted out by this patrol was among the most brutal of any punitive expedition in the history of colonial East Africa , with approximately 300 Africans being slaughtered and over 500 cattle and 10,000 sheep and goats being seized. All villages in the vicinity of Ribo Post were razed to the ground and all grain stores were emptied by the troops” (Anderson 2004: 50).*

This, and other punitive raids in which the Il Chamus participated with their British allies, was, according to Anderson, significant in the shift of the Il Chamus towards pastoralism:

*"The British misadventure<sup>15</sup> at Ribo Post even accelerated the decline of the Chamus settlements as a reliable centre of food supply on the caravan route. The cattle gained by Il Chamus involvement in the punitive raids in the Kerio Valley were used to enable a shift in production away from cultivation and towards livestock husbandry."*(Anderson 2004: 54).

As allies of the British, the Il Chamus were beneficiaries of these raids both in terms of protection from stronger groups afforded by their association with the British but also in terms of stock.

By 1920, the *Il Chamus* had definitely become pastoralist in orientation. "*Njemps*" had lost its position as a commercial hub and the Ivory trade in the region had become less lucrative with increasing interest from the colonial authorities who introduced new restrictions and taxes (Anderson 2002). Boosted by the acquired cattle stock from their alliance with the British, the Il Chamus wholly embraced pastoralism.

### 3.1.8 Towards a new adaptive cycle: pastoralism and state interventions

Il Chamus pastoralism set the system towards the path of a new adaptive cycle, the beginning of which was fraught with many challenges posed by drought, disease and the reconfiguration of pastoral resources as a result of the entry of European settler elite into the area and the consequent implementation of a Native Reserve policy. The devastating effects of a serious drought in the Baringo basin at the end of the 1920s, followed soon by a nationwide invasion of locusts towards the end of 1928 greatly affected the SES of the region. The extensive damage caused by the locust infestation alone, which took a special team of colonial officers to put under control using burning, spraying and bran baiting cost an estimated £55,000 over the colony (Annual Colonial Reports, No. 1510, Colony and Protectorate of Kenya, Report for 1929: 18-19). Measured against the image of a supposed 'granary' (Little 1982), this created the

---

<sup>15</sup> The 300 or so African casualties were a rather high price to pay as a "punishment".

impression of an area in the process of serious environmental degradation.

The colonial government, following the recommendations of the Kenya Land Commission report<sup>16</sup> (KLC 1934) which, while recognizing the economic potential of African held land reserves, felt that African farmers and pastoralists lacked the scientific know how which was necessary to effectively exploit the resources under their control. Moreover, it was felt that African farming and herding practices, if unchecked, would inevitably lead to desertification (KLC 1934: 559).

The colonial government then felt it necessary to intervene at policy level on the environmental management of the African reserves. The African Land Development Board (ALDEV) was thus established in 1946. It was intended to guide development in the so called arid and semi-arid lands (ASAL) of the country, including Baringo. Its main focus was on the development and preservation of water resources as well as rangeland conservation. It was to follow the recommendations of the Kenya Land Commission Report 1934 and oversee measures to reduce herd sizes within regulated grazing schemes (Anderson 2002).

Recognizing the potential of the so called ASALs, the colonial government adopted a more comprehensive policy framework that integrated the ASALs. This policy was aimed at maximizing the agricultural potential of Kenya as a whole through intensification, mechanization and commercialization. The "Swynnerton Plan" thus aimed to harness the potential of the ASALs through perceived "best practices" of the day, in tandem with intensive agriculture in the more productive areas of the colony in order achieve a significant boost in the Gross National Product (GNP).

---

<sup>16</sup> The National Archives: Report of the Kenya Land Commission 1934. Reference number CAB/24/248.

The underlying perception and driving logic behind both ALDEV and the Swynnerton Plan was however that traditional agricultural and pastoral practices were not only economically unproductive but were also a growing threat to the environment. They therefore went against the desired objectives of development of the ASAL which required modern intensive cattle production methods and investment in infrastructure such as boreholes, cattle dips, veterinary services, pasture, irrigation and others.

Traditional methods were thus perceived as directly opposed to the colonial government's development agenda, and this carried through even after independence. According to Little (Little 1982:7), both the colonial and post-colonial governments can be seen in their formulation of policy as being anti-pastoral in orientation as such policies have served to consign pastoralism to a peripheral role.

State intervention then became an integral part of the regulatory mechanism of the SES, and this continued into the post-colonial era, and has had a major impact on the vulnerability context of the Il Chamus. Seen as unfavourable outcomes of environmental governance in this study, all the major aspects of Il Chamus vulnerability (*Prosopis juliflora*, marginalization and violence) can be linked in some way to state interventions and policy. These aspects are explored further in Chapters 5, 6 and 7. The next section considers some aspects of Il Chamus social organization.



### 3.2 Some aspects of Il Chamus social organization: clans and totems

Given the “melting pot” nature of the Il Chamus community, clans play a very important role in the anchoring of individual claims to Il Chamus ancestry. Il Chamus clans have a sort of hierarchy of importance depending on their history of accretion into the Il Chamus core community, which consequently informs their claim to certain physical and ritual domains, as well as leadership positions. Il Chamus clans claim their affiliation to either the Il Keroi or Il Toijo clans. Being a community of immigrants, only the Il Keroi clan could claim aboriginal status, and clans linked to the Keroi are considered to be “true” Il Chamus. Clans linked to the Il Toijo are strongly associated with the Samburu. A significant number of the Il Toijo was accepted into the Il Chamus as destitute pastoralists from Samburu around the 1840s following defeat by the Turkana. (Little 1992:28, 29).

The relationship between the Il Chamus and Samburu can be seen in the association between some Chamus Il Toijo clans and their Samburu counterparts. For instance, the Loibuor Kichu clan in Il Chamus claims a close relationship to the Lorokichu and Pusikichu clans in Samburu and do not intermarry.

The subsequent dominant position of the Il Toijo within the Il Chamus clan system is due to the cattle husbandry traditions they brought with them. Their influence, wealth and prestige grew the more pastoralism took a prominent role in the economic outlook of the Il Chamus. It must be remembered that refugees were absorbed into the Il Chamus community as individuals (Spencer 1998:137) and only later did they try to reconstitute themselves into their former clans, a process driven by the existence of sufficient numbers and a common clan history. In this process some clans (mostly those affiliated to the Il Toijo) retained their

former clan identities, while others were completely “*Il Chamusized*”<sup>17</sup>, as for example were elements of Uasin Gishu and Laikipiak Maasai who were absorbed by clans affiliated to the Il Keroi such as the Il Mae and the Il Kapis. This dual clan structure based on an Il Keroi/Il Toijo dichotomy has been kept alive till today (Little 1998: 447).

Closely linked to Il Chamus clans are totems. To certain clans are ascribed certain ritual functions depending on the stake they claim to have in the Il Chamus universe. These ritual functions are then symbolized by totems, which are highlighted and observed both in daily life and on special occasions. Totems also serve as a constant reminder of affiliation to particular clans and their observance serve to cement clan relations and in some cases regulate the use of environmental resources. According to Spencer, clans also serve to provide security, constrain behaviour and accumulate reputation which can enhance or diminish marriage ability (Spencer 1998:159).

Totems anchor individuals to clans, but they also play an important part in the regulation of daily life and are taken quite seriously by the Il Chamus. The import of Il Chamus clans and totems was brought home to me one Sunday morning on a boat ride from Kiserian to Island Camp, where a group of local Christians were going to celebrate Sunday mass. With the boat ready to leave and the driver already revving the engines, some keen observers in the delegation determined that the trip could not start until a certain condition was met. A couple then proceeded to disembark and wade back to dry land from where they came back some time later with a third gentleman and happily declared the boat ready to go. In what must surely be a controversial observation at the expense of the Christian faith of most of the delegation, it turned out that the boat could not leave without the “blessing” of a member of the Il Toimal clan

---

<sup>17</sup> Term used by Little (Little 1992: 27) to denote cultural assimilation of an in-coming group by the Il Chamus.

and specifically of the Leparsere family who had to be fetched on this occasion. This gesture of deference to a clan-specific obligation (symbolized by totem) was a very specific demonstration of the significant meaning attached to clan and totem, showing in this case the blending of Il Chamus totemic obligation and Christian faith. Below is a table summarizing Il Chamus clan totems and their significance as existing at the time of my field-study.

Clan	Totem	Explanation
IlToimal (Leparsere lineage)	Fish (Supore).	Have ritual power over the lake and can bless it to facilitate good fishing or to cure illness. A sick person intending to bathe in the lake as part of some treatment has first to seek the blessings of a member of this clan.
Il Masula	Thorn (Lkukwei).	A person suffering any form of injury inflicted by thorns would seek the blessings of a member of this clan for quick recovery.
Il Parasero	Tick (Lmacheri).	A member of this clan can cure tick related afflictions usually by applying their saliva on the point of the tick bite.
Loimisi	Syphilis (Mirika).	Using the fruit of the Lapsekei plant, members of this clan are claimed to have the power to cast a syphilis causing spell on a perceived wrongdoer.
Il Kesiani	Aloe Vera (Sukuroi), Nose (Nkume), Sneeze (Nkising'at), wild dog (Suyan).	Have the power to curse using Aloe Vera. A sneeze by an Il Kesiani during a conversation signifies a lie by the speaker. They can also cast a spell to divert wild dogs and protect their animals from danger.

Lwara	Fire (Nkima)	Can cure injuries and illness related to fire, usually by applying saliva on the affected area.
Lukumwae	Throat (Lgoso).	Have power to cure all manner of afflictions of the throat such as sore throats, persistent coughs and the like.
Sakaam	Land (Nkupoore e nkop).	Mediate on matters of land purification, soil fertility, pasture and rainfall (rainmaking).
Il Mae	Crane (Nkaitole), Millet (Ntapa), Soil (Nkuluponi), Earth-crack (Lbaat).	Members of the Il Mae clan are the earthly protectors of the crane. A person found to have killed a crane must undergo a cleansing ritual overseen by an Il Mae, during which they are smeared over the whole body by a mixture of curd and blood before taking a bath. Il Mae women are especially pure and are may offer prayers to cleanse irrigation canals of such impurities as may be caused by human faeces for instance before sowing of millet.
Parsaina	Crocodile (Nkinyang').	Can cast a spell to cause a crocodile attack on a perceived offender.
Il Kapis	Millet (Ntapa, share totem with Il Mae), Mair (a green, grain eating bird), Spleen (Ntanun).	A millet field blessed by an Il Mae daughter is assured of a bountiful harvest. Spleen related illnesses can be cured by an Il Mae, usually by laying of hands or patting ribs or the affected area. Il Mae are said to have been eaters of the Mair bird at some point in history and thus adopted it as their totem.

Loibuor Kichu (Letiren and Lekateiya lineages)	Snakes (Lasurai), Witchdoctor, prophesy.	They can curse and cast spells that cause perceived offenders to suffer snake bites. Also have power to foresee and are especially useful in advising on measures to be taken to forestall disasters.
Il Kung'uan	Rope (Nkopit).	They have special powers over the rope. Traditionally, rope made from the Rrapai plant could be used to cast both good and bad spells. A knot of such a rope could be tied to cast a spell to cause mental retardation on a perceived offender, or untied to reverse the spell. A rope attached to the belt of a Moran (guard) could also help protect animals from theft or help recover stolen animals.
Il Pasikir	Rain (Nchan), Thunderstorm (Ndarata), Lightening (Nkiwang'ata).	Il Pasikir women especially, have dominion over the skies and may offer prayers to calm lightning and thunderstorms.
Il Murtanat	Mosquito (Nkojong'oni), Elephant (Lkanjaoui).	During better times when elephants were plenty, Il Murtanat were ordained to hunt and kill them or bless such hunts. Today, Il Murtanat are said to be immune from any afflictions caused by mosquito bites such as Malaria and can be called upon to cure it.
Long'eli, Il Kapsaang', Leleboo, Il Matiyon	These clans have no recognized totem.	

Figure 2: Il Chamus clan totems

### 3.2.1 Il Chamus clans and leadership positions

As already alluded to above, Il Chamus age group and community leadership positions are strongly influenced by clan membership. In as much as the Il Chamus community has an open ended nature (Little 1998:451), acceding to important positions of leadership is dependent upon clan membership. Thus, while anyone can potentially be welcomed into the fold and become nominal Il Chamus, not everyone can become an Il Chamus leader.

The positions of Launoni (age group leader), Loboru-nkeene (assistant group ritual leader), Long'ichaa (age group ritual leader) and Loiboni are among the most important within the Il Chamus society as they maintain the age group system upon which societal control rests.

The Launoni is chosen from the Il Kapis clan and principally acts as a leader, mediator and judge of sorts on matters concerning his age group. He is assisted in his duties by the Loboru-nkeene, who is chosen from either Il Murtanat or Loibuor Kichu clans. The Long'ichaa relates specifically to the circumcision ceremony through which adolescent boys graduate into Morans (field-notes).

The Long'ichaa is selected from the Il Toimal clan and is the first of his age group to face the knife, after which circumcision is open for the age group. At the close of Moranhood, during the Unoto ceremony, the Long'ichaa takes a leading position and is the first to slaughter an Ox followed by the Launoni, Loboru-nkeene and then the other Morans. In the hierarchy of Il Chamus age group leadership positions, the Long'ichaa ranks third after the Launoni and Loboru-nkeene.

Another very important leader is the Loiboni. Traditionally, the Loiboni in Il Chamus community is well respected and is both a prophet and a

healer. Like many other leadership positions in Il Chamus society, clan is paramount and the Loiboni can only come from the Loibuor-kichu clan and specifically the Lekateiya lineage. While the Loiboni is much respected, Il Chamus do not consider themselves bound to his services, and in fact many Il Chamus today would seek out the services of an external Loiboni or equivalent from the Samburu or even Pokot depending on their reputations. This could be partly because of the perceived dominance and success of those communities in raiding, which tends to be directly linked to the prowess of the Loiboni concerned.

Outside of the age group, in matters considered weighty enough to involve the whole community, a Lamaal council is usually constituted. Unlike older times like when the Il Chamus irrigation enterprise was at its peak and the Olamal was a permanent feature with real executive and ritual powers, Olamal councils of today are more ad hoc and less resolute. Any age group can constitute an Olamal council to deal with a particular issue after which it is dissolved. It will be seen in Chapter 5 that violent regulation has had a negative impact on the efficiency of social institutions such as the Olamal councils as well on administrative institutions.

## **Chapter 4: Livelihoods and environmental change in Lake Baringo.**

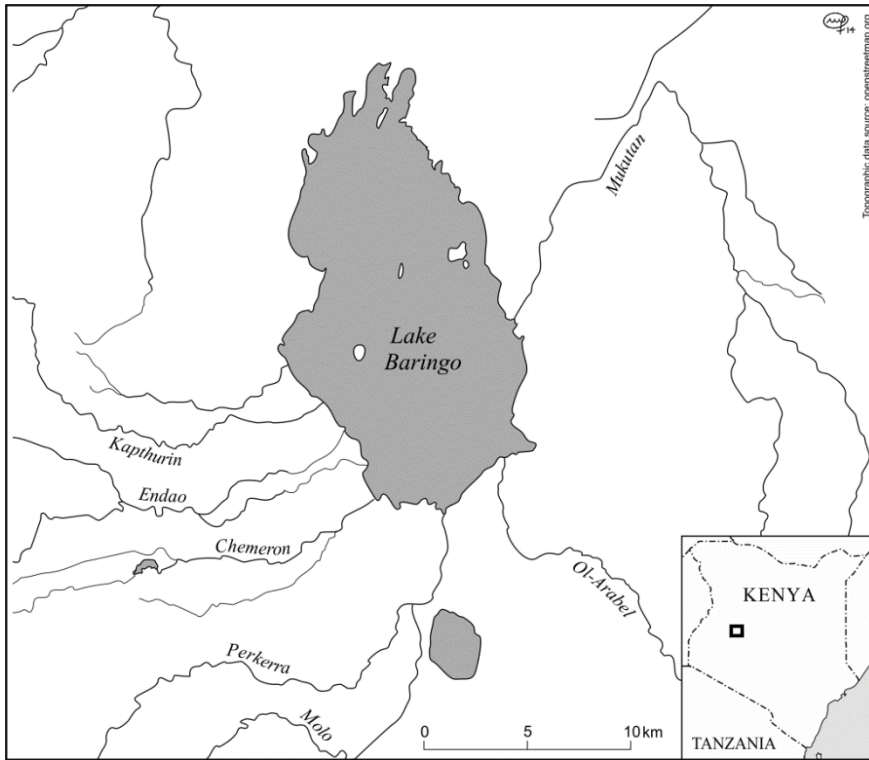
### Introduction

This chapter presents the livelihood profile of the lake Baringo basin within the context of rapid environmental change. It looks at the social and ecological characteristics of the basin and analyses the processes of environmental change that have been observed in the basin over time. Within the context of profound environmental change, it analyses the competing narratives of this change and sets the stage for an analysis of the Il Chamus vulnerability context in chapter 5.

### 4.1 A physical and social profile of Lake Baringo

Lake Baringo is a shallow inland fresh water lake within the Kenyan rift valley drainage basin. It has a surface area of 108km<sup>2</sup>, and lies at an altitude of 1,000m above sea level. Situated at 0°36'N and 36°04'E, the lake is within the Gregory Rift Valley system extending northwards from Lake Malawi and passing through Tanzania, Kenya, and Ethiopia. (Kiage and Liu 2009: 61). Its drainage basin extends to a total area of some 6,820 km<sup>2</sup> (Ballot et al. 2002: 3). Its main sources of water come from several rivers including Ol Arabel, Mukutan, Tangelbei, Endao, Chemeron, Perkerra and Molo.





Map 3: Drainage into Lake Baringo

The water has a brownish, dirty appearance as a result of the high rates of sedimentation resulting from high rates of soil erosion in the catchment, a condition known as turbidity. The water is also characterized by low transparency and a relatively high PH value due to the high alkalinity of the hot spring discharge from Kokwa Island. Turbidity results in the brown coloration of the lake and limits light penetration, resulting in low biomass production and increasing the level of toxins (Ballot et al. 2002: 1, Odada et al.2006: 34).



Picture 1: The brown coloration of Lake Baringo is caused by high levels of turbidity.

The lake has also been found to contain a high fluoride content, which has been attributed to volcanism arising from the tectonic activity that formed the rift system. Because of this, all the major Kenyan Rift Valley lakes including Turkana, Baringo, Borgoria, Nakuru, Elementaita, Naivasha and Magadi contain high levels of fluoride. Water consumed directly from these lakes cause dental discoloration, caries, dental fluorosis and skeletal abnormalities (Gaciri and Davies 1993: 396).



Picture 2: Fluoride effects go beyond the cosmetic and also affect bone and dental structure, causing abnormalities.

The Lake Baringo basin has a highly variable annual rainfall of 500-1000mm that is concentrated on a few days of sporadic downpours following a bi-modal pattern occurring in the months of April to May and October to November. This rainfall is however offset by high day-time temperatures averaging 25°C leading to very high evaporation rates of 1,650-2300 mm, leaving the above mentioned rivers as the main source of recharge. Even with the low recharge potential of these sporadic downpours, they are principal agents of soil erosion, which is a major cause of sedimentation and turbidity in Lake Baringo, with serious consequences for its ecological viability. (Odada et al 2006:31; Kiage and Liu 2009: 61).

While it is principally a fresh water lake, salty inflows feed into the lake from hot-springs on fault-lines at Ol Kokwa Island (Oduor 2000; Odada et al 2006: 31, 34; Beadle 1932). It has no known terrestrial outlet, but its freshness relative to other lakes in the Rift Valley which are alkaline suggests a strong possibility for the existence of one or more underground outlets for the lake (Beadle 1932, also quoted in Ballot et al. 2002: 3).

Gully erosion is a widespread and visually evident phenomenon in the Lake Baringo basin and gives it the look of a highly degraded environment.



Picture 3: Gully erosion

Despite its arid nature and highly degraded appearance, however, the lake Baringo basin also offers an important livelihood resource base for its users, and for the Il Chamus, resources associated with Lake Baringo and its basin provide an important source of livelihood.

The lake provides fish for food, reeds for construction of boats, water for human and livestock consumption and irrigation. Irrigation by private individuals is mainly used to support plots under maize production.



Picture 4: Maize crop under irrigation

Lake Baringo is also an important tourist attraction famous for its varied bird species and is well known as a bird-watchers paradise. Major hotels catering for tourists in this area include Robert's Camp, Island Camp, Soi Safari Lodge and Lake Baringo Block Hotel. According to Gichuki, there are between 400 and 500 different bird species in Lake Baringo (Gichuki 2000, quoted in Odada et al 2006: 34). Among these bird species include the Fish Eagle, a number of which have been trained for tourist entertainment. Experienced Chamus handlers call out to the Fish eagle which then come and go on command, and this spectacle is offered as part of a boat-ride experience in the lake (field notes). Hippos and crocodiles are also found in the lake, as well as snakes, ostriches and other fauna and flora.

The lake is also useful as a transport system, connecting Kampi ya Samaki to Kiserian, as well as to several Islands on the lake. Boat rides offered to tourists are an important source of employment for locals, as several community groups are dependent on this activity

The lake Baringo basin is at the same time an area experiencing dramatic changes in its ecological status, due to both natural and human causes (Kiage et al 2007). As a result, the above mentioned livelihood resources

are all subject to ecological and social processes of change that represent an ever increasing risk to their established livelihood patterns based on agro-pastoralism, tourism and fishing. The next section looks at the social ecological profile of Lake Baringo, describing degradation of these resources within the context of profound ecological change.

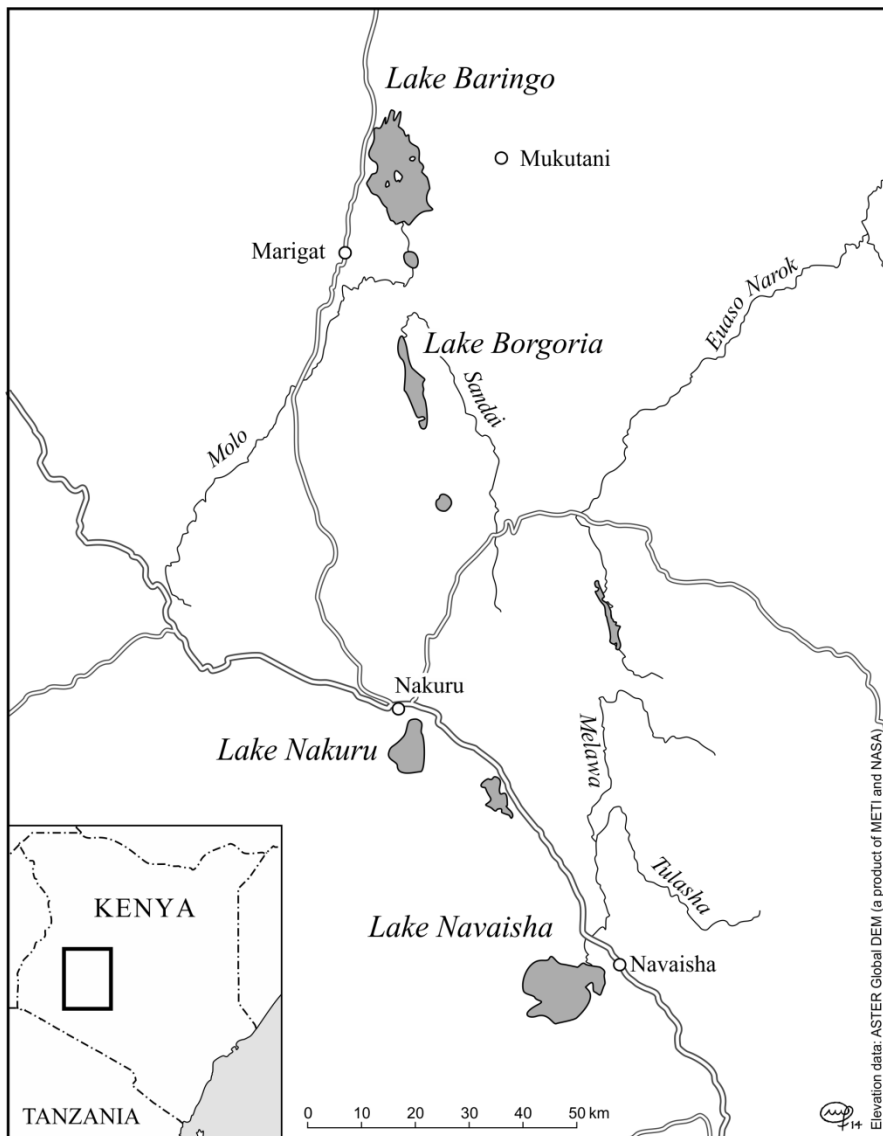
#### 4.2 Environmental change and degradation in Lake Baringo

Numerous studies carried out on the Lake Baringo basin observe increasing trends of degradation in this environment. This degradation is manifested by fluctuations in the lake surface area and depth, loss of vegetation cover including trees and grazing, loss of aquatic biodiversity, loss of fisheries, increased soil erosion and sedimentation, water turbidity, changes in precipitation and a general loss in ecosystem robustness.

For instance, according to Odada et al. (2006), fluctuations in the lake depth have ranged from an average of 8m between 1969 and 1972, to a low of 1.7m observed in 2003. In 2006 it was at an average depth of 2.5m, reaching a maximum of 3.5m at its deepest points.

Similarly, the lake surface area has also revealed a general decreasing trend: 219km<sup>2</sup> in 1976, 136km<sup>2</sup> in 1986, 114km<sup>2</sup> in 1995, and 108km<sup>2</sup> in 2001, projecting a 50% reduction in surface area by 2025 based on these trends (Odada et al. 2006:32, quoting Onyando 2002). Contrary to this general trend, however, a sudden surge in lake levels was noticed between 2011 and 2013.

Between 2011 and 2013, a general trend among lakes within the Eastern African Rift Valley saw significant increases in water levels. Onywere et al. have mapped the extent of flooding in four Kenya lakes at Naivasha, Nakuru, Borgoria and Baringo. The four lakes are all listed as RAMSAR sites because of various threats to their bio-diversity (Onywere et al. 2014).



Map 4: the four RAMSAR lakes: Naivasha, Nakuru, Borgoria and Baringo

Their analysis revealed that at Lake Naivasha, the area under water increased from a low of 107.7 Km<sup>2</sup> in January 2010 to a high of 169.9 Km<sup>2</sup> in October 2013. At Lake Nakuru, the area under water increased from a low of 31.8 Km<sup>2</sup> in January 2010 to a high of 54.7 Km<sup>2</sup> in Sept 2013. At Lake Borgoria, the increase in the area under water was from 32.6 km<sup>2</sup> in January 2010 to 41.1Km<sup>2</sup> in September 2013. At Lake Baringo, the area under water rose from 143.6 Km<sup>2</sup> in January 2010 to a high of 231.6 Km<sup>2</sup> in September 2013. The table below shows the net percentage increase in the area under water experienced over the four lakes.

Lake	area (km <sup>2</sup> ) 2010	area (km <sup>2</sup> ) 2013	Net increase (%)
Naivasha	107.7	169.9	57.8
Nakuru	31.8	54.7	72
Borgoria	32.6	41.1	26
Baringo	143.6	231.6	61.3

Figure 3: net percentage increase in area under water for four RAMSAR lakes.

The main source of flooding in Lake Baringo has been increased surface recharge from Rivers Molo and Perkerra rather than from increased precipitation at the Lake itself, and with this increased recharge has been an increase in the sediment load deposited into the Lake. Increased sedimentation poses serious environmental degradation problems for Lake Baringo, not least of which are increased turbidity and its associated problems of reduced productivity in the lake.

Other immediate effects of the increased flooding include displacement of the riparian community and livestock by the flood waters. This was evident in Salabani, Logumgum, Loiminange, Ngambo, Nosukorro, Loruk and Kokwe Island. The water not only took over residential, agricultural and grazing land but also interfered with the balance of flora and fauna in the basin. Fish, crocodiles and hippos have invaded former villages. The migration of snakes towards drier areas also poses more danger. There was also substantial damage to buildings including hotels and schools, with some being rendered unusable as they went under water. Further, there was loss in terms of lost employment opportunities and increased water-borne diseases.

These trends represent significant levels of environmental degradation and are indeed a worrying prospect for the future of Lake Baringo. The highly degraded images of the basin as well as its unique physical features that seem to enhance this image have led to contested notions of the exact cause and nature of environmental degradation here.



While the fact that the Lake Baringo basin is a highly degraded environment is clearly evident, notions and ideas about the causes of its degradation are highly contested, and dominant perspectives can be seen as a reflection of power relations between different actors. For instance, both colonial and post-colonial governments in Kenya blamed traditional land use and animal husbandry methods for the environmental degradation in Baringo and used them as justification for intervening in the local environmental management processes.

Other perspectives see the annexation of African rangeland resources and the diminished access to pastoral space and resources as being the chief cause of degradation in African areas. Proponents of this thesis therefore linked degradation with the advent of colonialism. It has been argued that in fact much of the so called overstocking during the colonial period had other causes such as deprivation of pasture through annexation of land and generally restrictive policies of the same colonial authorities (Anderson 1984). The following section looks at the development of the environmental degradation narrative in Baringo as a background to the general policy on intervention in the environment by the state that eventually saw the introduction of *Prosopis Juliflora* as an ecological intervention measure. *Prosopis juliflora*

#### 4.3 The environmental degradation narrative and environmental interventions in Baringo

In contrast to a pre-colonial image of Baringo as a beautiful land of relative plenty in the midst of desert-like conditions related by the very early European explorers such as Thompson and Van Hohnel (Thompson 1887: 229, Van Hohnel 1892, quoted in Gregory 1896: 265), later descriptions of Lake Baringo portray it as a land in serious ecological decline.

In the early 1880s, Thompson, on arriving at Lake Baringo, described it in very positive terms:

*"Best of all, there was the mysterious Lake Baringo, gleaming apparently at our feet, though several thousands of feet below. I have now looked upon many striking and wonderful lake scenes in Africa... not one of these spectacles approaches in beauty, grandeur, and variety the landscape that now spread out before me on the edge of the Lykipia plateau"* (Thompson 1887:228-229).

Only about thirty years later in 1921, lake Baringo is described as an *"agricultural slum"* (Burnett and Rowntree 1990: 160, quoting an anonymous scientist in 1921). By 1951 Elspeth Huxley describes Baringo as *"One of the saddest sights in Kenya...Scarcely a blade of grass remains, only stunted scrub"* (Huxley 1951: 336).

By 1990, Burnett and Rowntree describe Lake Baringo and its environs as *"an archetypical example of landscape degeneration"* and *"a useful laboratory where scientists can study the causes, consequences and cures of land abuse in the semi-arid tropics"* (Burnett and Rowntree 1990: 160, 161). These quotes reflect the development of the Baringo environmental degradation narrative in which much blame has been put on African traditional methods of pastoralism and agriculture.

A stereotype that associated African pastoralism with a wanton accumulation of cattle driven not by economic considerations but by primitive cultural belief and practice, supported by such influential academic scholars as Herskovits (1926), was fundamental to the emerging discourse of overstocking and overgrazing that linked East African pastoralism in general directly with environmental degradation (Anderson 2002: 136).

This negative view of African pastoralism in relation to the environment was subsequently perpetuated by conservationists and ecologists (Brockington 2002) who had a strong influence on the mentality of both the colonial and subsequent Government.

Recent scholars such as Odada have carried forward this view. For instance, he says, referring to Il Chamus: "As pastoralists, they keep large numbers of cattle, which overgraze the catchment vegetation leading to enhanced soil erosion, sedimentation in streams and the lake, and frequent flash floods".(Odada 2006: 31). Also: "Livestock overgrazing is a major problem in this area, since the pastoralists are not willing to reduce the number of their herds to conform to the available food biomass" (Odada 2006: 33).

The Colonial government took it as a given fact that African livestock husbandry practices were responsible for a general trend in environmental degradation that would culminate in "desertification". The Kenya Land Commission Report of 1934, for example stressed the link between African pastoralism methods, overstocking and the great risk of desertification. Measures to reduce African stock and improve range conditions were suggested. Desertification was presented as an ongoing threat:

*"We have heard in evidence that 20 years ago the Kamasia Reserve was still a well-grassed country, and the Suk were moving their grazing areas every year with a view to controlling the grass...conditions in the Kamba Reserve and in the drier parts of the Masai Reserve were still tolerable. Now, in many parts where there used to be grass, there is nothing but bare earth" (KLC 1934: 3)<sup>18</sup>.*

This framing of the environment as being in a formerly good state but now threatened with desertification was of course being used as a basis for a proposal to enforce a policy of forced culling of African stock: "We therefore recommend, with all the emphasis at our command, that action be taken with the least possible delay to inaugurate the culling of surplus stock and to pursue unremittingly a policy of controlling the cattle population within the limits which the grazing facilities available from time to time dictate"(KLC 1943: 4).

---

<sup>18</sup> The Kenya Land Commission (KLC) Report 1934. The National Archives, Catalogue Reference: CAB/24/248.

In Baringo, in the middle of a drought at the beginning of the 1930s, desertification was seen as already evident, as the following extract from a report dated 13<sup>th</sup> June, 1933, from the Provincial Commissioner, Rift valley Province, states:

*"Baringo District (Kamasia, Njemps and Suk) is a complete desert. The only feed is thorn trees and bushes. The cattle mortality is very heavy, and the ground round the Bomas is strewn with carcasses. It is impossible to estimate the mortality, but it may easily reach 50 per cent. "* (KLC 1934: 584).

Overstocking was seen as the main reason for the degraded state of the land. The concept of overstocking was based on the idea that land had a fixed carrying capacity which could be optimized or even improved through certain management practices. Working within the parameters of the carrying capacity would then constitute an "equilibrium system". Once exceeded, however, overstocking occurs and the consequence would be inevitable degradation in the quality of the land (Anderson 2002: 139).

The scientific rigor of the carrying capacity thesis was however challenged, and controversy over the relationship between pastoralism and environmental degradation has defined the ensuing debates since colonial times, and consistent with the contested nature of knowledge about environmental change processes, other researchers suggest that the use of definite measures of carrying capacity for various environments is mistaken and ignores flexibility and change in human ecosystems over time (Mortimore, 1998; Niemeijer, 1996). Indeed, the few existing long-term records of cattle populations in East Africa indicate that populations fluctuate according to climate, diseases, and other factors. Thus, over time, cattle densities are adjusted and rarely have a sustained and widespread impact on soil and vegetation (Brockington and Homewood 2001; Mungongo 1995:14, 15).

Nevertheless, in colonial Baringo, carrying capacity and equilibrium system models informed government environmental and development decisions (Anderson 2002: 137-141 analyses trends in colonial livestock figures for Baringo). These resulted in policies that had far reaching implications and justified the designation of Baringo as place in environmental decay due to mismanagement by African pastoralists, a designation which spawned "paternalistic attitudes that saw "vigorous measures" needed to enforce the "correct way for herdsman to behave" (Sobania 1988: 227).

This led to direct government involvement in trying to manage the local rural environment. The adoption by the colonial government of a more direct interventionist approach was also informed by the need to get the colonies more productive on the back of the depression and a genuine fear fed by the catastrophic events of the "dust bowl" in the American Southern plains. Images from this part of the world that showed how soil erosion could transform an agriculturally productive belt into a wasteland created concern but were also used to support arguments for the need for intervention. The drought in many parts of East Africa could thus quite reasonably be seen as a natural progress progression to arid and desert-like conditions, and therefore drastic measures had to be taken to stem the tide (Anderson 1984: 322-323, 327).

However, considered over the *longue durée*, fluctuating environmental change in general and environmental degradation in particular has always been part of the ecological profile of the Lake Baringo basin as both historical and contemporary observations show.

Kiage and Liu (2009), for instance, have analysed Paleo-environmental records derived from pollen, fungal spores, and microscopic charcoal from Lake Baringo, which show that while it has known both wet and dry environmental conditions, the Lake has been to a large extent an arid environment since at least AD 1650. Their evidence also shows that Lake

Baringo suffered two major episodes of intense aridity including two intense dry episodes that led to drying out of the lake around AD 1650 and AD 1720 (Kiage and Liu 2009: 67). These episodes pose particular questions on the link between traditional pastoralist methods and the process of desertification.

Moreover, Kiage and Liu also showed that the environment showed a rapid and remarkable, if brief recovery from the first dry episode without a deliberate anthropogenic intervention. Also, their evidence, as corroborated by oral history sources, suggest a strong correlation between modern episodes of drought and the invasion of locusts. Other scholars, such as Pratt and Gwynne (1977: 33), also support this contention, stating that: "the locust is the little appreciated ultimate cause of land degradation at Lake Baringo". Without further problematizing the possible causes of environmental degradation in Lake Baringo, it is safe to say that over time, both nature and human impact together enhanced soil erosion and led to environmental degradation here.

Various competing theories and explanations of environmental change processes should therefore be considered with caution, and this thesis, rather than focus on causal relationships between various agents, looks at the dominance of some theories over others as part of a political contestation processes.

Current trends of erosion and degradation, therefore, cannot be interpreted as leading towards an environmental catastrophe or end point since these phenomena, while quite obviously linked to human action, also respond to climate variability and have been part and parcel of the Lake Baringo environmental landscape at least for the last 350 years ( Kiage and Liu 2009: 69, 70).

It is a fact that some traditional land use practices have initiated or exacerbated degradation of the environment. But so have certain

intervention measures undertaken in “good faith” to try to uplift the living standards of the local communities. For example, the construction of dams upstream such as the Kindirich dam with an area of 2km<sup>2</sup>, and the Chemeron dam, with an area of 1km<sup>2</sup> is bound to have profound effects on the Lake Baringo SES, as does the Perkerra Irrigation Scheme which has, since its inception in the 1950s, diverted a huge volume of water from the Perkerra River. Molo and Ol Arabel rivers also suffer diversions, and the net effect is reduced water flowing into the lake, increased sedimentation and turbidity, reduced fisheries, and other negative effects. (Odada 2006: 35).

Similarly, the introduction of *Prosopis Juliflora* into Baringo ostensibly to curb the rate of desertification and environmental degradation has had profound effects on the SES, which have contributed to the vulnerability context of the Il Chamus.

The next chapter sets out the vulnerability status of the Il Chamus, focusing on three main aspects: *Prosopis juliflora*, violent regulation and marginalization.

## **Chapter 5: the vulnerability context of the Il Chamus: Prosopis, violence and marginalization.**

### Introduction

This chapter brings together aspects of the Il Chamus SES that define its vulnerability context. The social ecological system (SES) of the Lake Baringo basin is a complex system defined by the interaction between various physical and social elements related to each other in a series of forward and backward linkages that connect various aspects of its environmental governance.

Prosopis juliflora; violent regulation; and social and political marginalization are identified as key sources of vulnerability within the process of social ecological change in the Baringo basin. Their interaction with other variables determine the social ecological profile of the basin, and for the Il Chamus, these key drivers exacerbate their already poor livelihood status. This enhanced state of vulnerability can be seen as stemming from unfavourable outcomes of environmental governance linked to both the physical environment (Prosopis juliflora) and the social political environment (violence and marginalization).

Environmental governance in this context is an inherently political process that determines the ability of Il Chamus to command an effective access to resources, which in turn determines their adaptive capacity and resilience. The chapter begins with an analysis of Prosopis juliflora, exploring its role as an agent of vulnerability for the Il Chamus, and goes on to consider violent regulation as well as marginalization.



## 5.1 Environmental intervention gone wrong: *Prosopis juliflora*

This section deals with the issue of *Prosopis Juliflora* in the Lake Baringo basin, highlighting its history and the contested narratives that have defined its presence in the basin.

Particular interpretations of the processes of degradation have provided the background for government and NGO intervention in the management of the Lake Baringo SES. Intervention measures premised on particular narratives of environmental degradation provide a very good example of the contested nature of knowledge, ideas and related power dynamics. It shows how certain ideas and formulations of knowledge are used as a political tool to exercise authority and domination by certain groups (the state) over others (the society). For instance, it is in response to the images of Baringo as a highly degraded environment coming from a condition of fertility and environmental prosperity that colonial environmental policy in Baringo was formulated. Narratives justifying this policy sought to present African environmental management practices as destructive and therefore liable to change.

Similarly, intervention by subsequent government and NGOs is justified on the need to arrest the process of degradation and to do so urgently. According to Odada, intervention achieves this in one of two ways: by reducing pressure on resources through the provision of alternative sources of income; and by applying direct conservation measures. He also suggests that, being located in a semi-arid, fragile environment with low natural life-sustaining properties, the basin is in urgent need of conservation attention (Odada 2006: 33).

Both the colonial and post-colonial governments sought to exert control by perpetuating the narrative that African pastoral practices were incompatible with the sustainable use of the environment. *Prosopis juliflora* was introduced into Baringo in a similar context of intervention into the environmental management of Baringo and the next section is a

contemporary environmental history concerning *Prosopis juliflora*, starting with its origins.

#### 5.1.1 The origin of *Prosopis*

*Prosopis Juliflora* is today the dominant vegetation in several parts of the Baringo Basin. It is, however, native to Central and South America, and may have been introduced to Africa about two Centuries ago through Senegal (1822), South Africa (1880) and Egypt (1900) (Pasiiecznik et al. 2001, also quoted in Bokrezion 2008: 14).

The Il Chamus claimed in their case against the government that *Prosopis juliflora* was first introduced into Baringo around 1982. This was done by the he Government of Kenya through the Ministry of Agriculture, the Ministry of Environment and Natural Resources in conjunction with the Food and Agricultural Organization (F.A.O.) under a partnership agreement. The reason advanced for the commission of the project was to control desertification and to provide fuel wood. This claim by the Il Chamus is supported by credible studies conducted in the area.

These studies show that *Prosopis Juliflora* was first introduced to Kenya at a Bamburi quarry in Mombasa for rehabilitation purposes in the early 1970s (Ebenshade & Grainger 1980, Maghembe et al. 1983). As an intervention measure designed to restore degraded land and provide fuel wood, the Kenya Government in conjunction with the Food and Agriculture Organization (FAO), introduced *Prosopis Juliflora* to the Baringo area as part of the Fuel wood Afforestation Extension Project in the early 1980s (Kariuki 1993, Lenachuru 2003, Andersson 2005: 7). Further, the Il Chamus claimed that no member of their community was consulted on the introduction of the plant into their territory. Some members of the community were, however, engaged as casual labourers for the project under government supervision.

Moreover, they claimed that *Prosopis* was originally planted in three large plots from where it eventually spread to other parts. This claim by the Il Chamus is also corroborated by independent studies in the region. In a recent study on the extent of *Prosopis* invasion in Baringo, Andersson determined that *Prosopis* seedlings were planted in experimental plots at various sites in Baringo and identified a total of 37 initial *Prosopis* planting sites created under the above mentioned project (Andersson 2005:11). These were distributed in Loruk, Kapthurin River, Salabani, Chemeron Dam, Ng'ambo, Marigat, Eldume, Logumgum, Sandai, Lobi, Ildepe, Sintaan, Kapkuikui and Lobi.



Map 5: distribution of initial *Prosopis* planting sites

Initially, *Prosopis* was well received because it could flourish in areas where no other plant was known to grow. It was also quite easy to plant and its benefits were readily visible, such as the provision of green cover, prevention of soil erosion and sandstorms, provision of shade and fodder for livestock (Lenachuru 2003).

After a ten year time lag (Andersson 2005: 6) *Prosopis* started to exhibit invasive tendencies. Spreading from the planted sites, *Prosopis* has now invaded other areas of the Baringo Basin, most notably in Kampi ya Samaki along the shores of the Lake and along the road to Marigat, on both sides of the road away from Chemeron Dam and sporadically in Sandai, Logumukum, Darajani and Kiserian (Andersson 2005: 18).

#### 5.1.2 Noxious weed or saviour plant?

A major point of contestation between the Il Chamus and the government is on whether the effects of *Prosopis* on the environment are good or bad. The arguments by both sides on this issue are considered in chapter 6, and these are generally supported by reports and studies that portrayed *Prosopis* either as a problematic weed or as an important agent of environmental regeneration. As "an aggressive invader", or alien species, *Prosopis Juliflora* is associated with the loss of Pasture, disappearance of native plant species, harm to livestock and humans. As an environmental regeneration agent its positive attributes such as the provision of fodder, fuel wood and building materials are highlighted.

In a study on the attitudes of Il Chamus residents of Baringo towards the *Prosopis* plant, Aboud, Kisoyan, and Coppock (2005: 1-3) found the Il Chamus to be very knowledgeable about its botanical and ecological features. They were able to identify positive features of *Prosopis* as including: fodder for livestock, nectar for white honey, wood for construction and furniture making. However they also showed awareness of its negative effects, and considered *Prosopis* to be: highly aggressive and invasive; crowding out other plants by forming impenetrable thickets

that choke them; clogging waterways and thus affecting irrigation; encouraging soil erosion by eliminating alternative ground cover; affecting goats teeth by its chemical contents; creating digestive problems and even death for all livestock and causing allergic reactions, asthma and lung infections to humans through its pollen. The overall perception among the Il Chamus people was therefore that Prosopis was detrimental to their livelihood, and that it had been their “worst enemy” over the past 20 years. The Il Chamus called for the complete eradication of prosopis, failing which they would sue the government, a threat which resulted in the Prosopis case considered in chapter six below.

This study recognizes the existence of both positive and negative attributes of Prosopis, and the prosopis case, as we see in chapter six, brought out contested ideas and information about Prosopis. Even outside of the legal setting, there have been contradictory studies on the effects of Prosopis Juliflora on the environment, and this phenomenon has been referred to as the “Prosopis Paradox” (see here Bokrezion 2008). The next section presents some known facts about Prosopis, and as it will be seen, some claims are contradictory and add to the so called Prosopis Paradox.

### 5.1.3 Characteristics of Prosopis juliflora

Prosopis Juliflora is a perennial, fast-growing, ever-green and drought resistant plant that thrives in wet, arid and semi-arid conditions alike. (Bokrezion 2008: 17, Andersson 2005:6). It can grow to a potential height of between 12 and 15 meters, is usually thorny with thorns of up to 5cm in length. It has nitrogen fixing properties and has potentially beneficial uses including wood fuel, animal fodder, human food, and timber for construction and furniture, shade, wind-breaking, bee-keeping, ropes, medicines and as living fences. (Bokrezion 2008:17, 18, 20).

Prosopis leaves have high tannin content (Pasiiecznik et al. 2001) and are unpalatable except for their tender, newly sprouting shoots. Prosopis seeds are contained in pods that have very high sugar content (Batista et

al 2002). Ripe pods are palatable and a mature *Prosopis* tree can produce 40 kg of pods per year, containing up to 60 000 seeds (Alban et al 2002, quoted in Andersson 2005: 6). The consumption of ripe pods by grazing and browsing animals leads to a very high propagation rate, making *Prosopis* a highly invasive plant. Despite its well-known invasive properties, *Prosopis Juliflora* is considered an important agent in combating desertification and environmental degradation and its introduction in many parts of the world has been justified on this basis (Laxen 2007: 17).

The *Prosopis* plant is said to be difficult to eradicate since it can survive cutting by coppicing and its shrubs form impenetrable thickets; its sugary pods are harmful especially to goats' teeth, leading to tooth rot and loss and eventually starvation and death for the goats; *Prosopis* thorns cause injuries on people and livestock that are sometimes so serious as to lead to amputation; *Prosopis* thorns are a menace to motor car and cycle tyres (Lenachuru 2003).

To add to the *Prosopis* paradox, there are contradicting studies on the effect of *Prosopis* on soils. For instance, Maliwal et al (1991) and Singh (1995) suggest that *Prosopis* has a positive effect on soil fertility and crops by reducing soil pH, soil electrical conductivity and soil salinity; Bhojvaid et al (1996) and Bhojvaid & Timmer (1998) suggest improvement to the soil quality through increases in soil organic Carbon, total Nitrogen, available Phosphorous and exchangeable Potassium, Calcium and Magnesium. Maliwal (1991), Singh (1995), and Bhojvaid & Timmer (1998) show improvements in soil water movement, moisture holding capacity and hydraulic conductivity due to root penetration in soils planted with *Prosopis Juliflora*.

On the contrary, Nakano et al (2003) showed leaching of the allelopathic substance L-tryptophan from the leaves of *Prosopis Juliflora*. This particular study seems to lend credence to the claim by the Il Chamus

that *Prosopis* has some negative chemical effects on the soil that discourages the growth of other vegetation.

In a separate study on herbaceous plant species and soil properties in the lowlands of Njemps Flats, Baringo District, Kahi et al. (2009) conducted a comparative research to evaluate the effects of the alien invasive *Prosopis juliflora* and the indigenous *Acacia Tortilis* trees. While they found lower total biomass production under both tree shades than in open areas, a fact indicating that canopies in general inhibit production of under-storey plant species, *Prosopis Juliflora* had more negative effects than *Acacia Tortilis*. The deeper root system of *Prosopis juliflora* crowns led to a more shade and therefore a reduction in photosynthesis for the under-storey herbaceous plants, as well as a higher moisture intake, resulting in lower biomass production (Kahi et al. 2009: 445).

Elsewhere, it was found that *Prosopis Juliflora* leaves further limit the growth of under-storey plant species due to phytotoxic and allelopathic effects of their leaves (Sen and Sachwan (1970), Sankhla et al. (1965) quoted in Kahi et al. 2009: 445). These observations support the claim by Il Chamus pastoralists that *Prosopis Juliflora* limits the growth of pasture. For example, Mwangi and Swallow (2005) reported Il Chamus residents of the Baringo area claimed that *Prosopis* had "killed off other important and useful native trees such as *Iltepesi*, *Ilkiloriti*, *Ilwai*, *Kalalia* (*Euphorbia* spp.) (Mwangi and Swallow 2005: 44).

Pasiecznik et al (2001) and Pasiecznik (1999), also quoted in Mwangi and Swallow 2005: 13), provide a comprehensive account of the generic uses of *Prosopis juliflora*, the principal one of which is that *Prosopis* plays a leading role in the afforestation of arid lands. Their capability of growing on degraded land under arid conditions has made them especially suitable for this purpose. Being a multipurpose tree, *prosopis* fits very well into dry land agroforestry systems, controlling soil erosion, stabilizing sand dunes, improving soil fertility, reducing soil salinity, providing fuel energy

resources, supplying feed and forage for grazing animals, furnishing construction timber and furniture wood, supplementing food for humans, and promoting honey production. *Prosopis juliflora* produces good quality fuel of high quality calorific value, which burns well even when freshly cut. It also produces high quality charcoal and its heartwood is strong and durable. Its branches are widely used as fencing posts, while its pods which are high in protein and sugars may be important fodder for livestock, and food for humans.

However, the pods have also been reported to result in facial contortions, impacted rumen and constipation among livestock. These ill effects may sometimes result in death. *Prosopis juliflora* has also been used to shelter agricultural crops from wind and to reduce the movement of soil and sand. Its leaves contain various chemicals known to affect palatability to other trees (Mwangi and Swallow 2005: 13).

As the above instances show, *Prosopis Juliflora* as a phenomenon presents a very mixed bundle of qualities, and further complicates the so called *Prosopis paradox* (Bokrezion 2008: 5). This ambiguous state of affairs provides fertile ground for the contestation and politicization of issues surrounding *Prosopis*. In this connection, the *Prosopis* case provided an important arena for the Il Chamus to articulate their own understanding and basis of the *Prosopis* problem. This was particularly important given dearth of research that takes into account subjective perceptions of farmers and pastoralists who are directly affected by *Prosopis Juliflora*, and whose perceptions are often dismissed as scientifically invalid and ignorant (Bokrezion 2008:192).

*Prosopis juliflora* has had such a major impact on the vulnerability of Il Chamus livelihood that they felt it necessary to take legal action against the government. The *Prosopis* case was therefore an opportunity to bring out the politicized nature of the narratives surrounding *Prosopis* and highlighted some of the claims articulated by the opposing sides. Before



an analysis of the Prosopis case is undertaken in chapter six, an outlook of the vulnerability context of the Il Chamus is completed in the next sections by considering violence and marginalization respectively.

## 5.2 Violent regulation in the Lake Baringo Basin

*“Living free from the threat of armed violence is a basic human need. It is a precondition for human development, dignity and well-being”- The Geneva declaration on armed violence and development.*<sup>19</sup>

### Introduction

This section on violent regulation in the Baringo Basin complements the previous one on *Prosopis Juliflora* in portraying a fuller picture of the vulnerability context of the Il Chamus. The production of *Prosopis Juliflora* through state intervention and that of violence through violent regulation are seen as unfavourable outcomes of environmental governance processes that operate to enhance the vulnerability of the Il Chamus. This section analyses violence as social practice within the context of environmental change in Social Ecological Systems (SES).

This section aims to show the role of violence in driving social ecological change in the Lake Baringo wetland. We have seen in the preceding section the role of the invasive plant *Prosopis Juliflora* acting as a direct driver of change by physically dominating the ecology of Lake Baringo basin. It will also be shown that as a result of litigation, the classification of *Prosopis Juliflora* as a noxious weed has led to the growth and development of a charcoal based economy. This section will show that in the interaction between the physical ecological component of the SES driven by *Prosopis Juliflora* and the social component driven chiefly by violence, the social component emerges as the dominant force: by capturing the developing economy of charcoal, violence has become the main driver of social ecological change in the Baringo basin SES.

The Lake Baringo Basin is typically a pastoralist zone that has had a continuous history of violence documented since the pre-colonial and

---

<sup>19</sup> <http://www.genevadeclaration.org>

colonial period (Chapter 3). Violence here has been so rampant that it is considered normal and in a metaphorical sense has become part of the description of the landscape, so that it is described as being violent in the same sense that one might describe it as arid, in the sense that this is taken as a given fact and a normal state of affairs.

This state of affairs has led to little interest in violent events that take place not only in Baringo but also in other peripheral areas of Kenya occupied by pastoralists such as the North Eastern province and the Tana delta. As well noted by McCabe (2004: 90), violence in such areas only occasionally grabs media attention when they occur in such a shocking scale that they are rendered newsworthy. Thus, violent events such as the Kanampiu<sup>20</sup>, Tana Delta<sup>21</sup> and Baragoi<sup>22</sup> massacres received global media coverage due to their scale and capacity to shock. For similar reasons, the post-election violence in Kenya in 2007/8 received huge international attention and triggered an unprecedented political, legal and academic interest.

In normalizing the violence, however, popular discourse in Kenya has relegated violence occurring in pastoralist zones to cultural practice and war-likeness necessitated by the demands of the pastoral enterprise, creating a stereotype that suggests that pastoral communities are inherently violent and as such lead a routinely violent way of life. This discourse typically reduces such violence to a simple conflict over scarce pastoral resources.

Violence as an expression of conflict over scarce resources, however, has to be understood in context. Evident from its description as an arid

---

<sup>20</sup> The Kanampiu massacre took place on 15<sup>th</sup> of September 2009 in the Kanampiu area of Samburu Central, with 32 deaths in one night. This was reported as a revenge attack by the Pokot of Baringo East on the Samburu community (IGAD: The Conflict Early Warning and Response mechanism, Country updates September-December 2009).

<sup>21</sup> On 12<sup>th</sup> September 2012, an attack on the Tana Delta left a trail of 38 dead (<http://www.kelvinbrown.net/tana-delta-massacre>).

<sup>22</sup> On November 10 2012, 42 police officers were killed in an ambush in Baragoi in the Suguta valley of Baringo District (Greiner 2013: 1).

wetland (Lwenya and Yongo 2010) , the SES of the Lake Baringo basin is, from an ecological perspective, a relatively unstable wetland subject to climatic extremes but one that becomes an invaluable resource in an arid and unpredictable climatic zone during periods of climatic stress. During drought, the lake provides water, fish and grazing resources. During periods of exceptionally high rainfall, however, flood waters encroach upon riparian Il Chamus settlements, driving them to higher ground in such of shelter and sustenance.

To the peril of the Il Chamus, at such times the basin and its catchment become more attractive to their Pokot and Tugen neighbours. As such, it provides an unmitigated potential for conflict among a diverse set of users, each seeking to realize their own agenda for the available resources. One obvious aspect of the nature of the conflict is that with the resources being highly contested, it often expressed as violence. Clearly, here is an instant where violence can be directly linked in a causal relationship to resource scarcity. As a matter of fact, quite a number of situations here can be explained to a large degree as being related to resource scarcity, such as when Pokot herders violently enforce access to grazing and water on the southern shores of Lake Baringo, or when Tugen and Il Chamus Moran clash violently over the lush Il Mania grazing fields in Salabani location.

However, when brazen gangs attack in broad daylight, indiscriminately maiming and killing humans and driving away livestock, the focus must shift from a superficial lens that views all violence as a primordial contest for scarce resources or even an innate belligerence to one that targets a deeper reality.

Violence in this setting is a much more complex affair with multiple factors coming into the picture. One has to look at issues of resource competition within the broader context of environmental governance where power relations between differently situated actors results in

instances of social, political and economic domination and marginalization that create space for violence to thrive.

This study, therefore, seeks to go beyond stereotype and generic explanations of violence in pastoral areas as typified by the Lake Baringo Basin and takes a more nuanced approach that locates violence in the political processes of governance and access to resources. Before proceeding with an analysis of violent regulation, the next section briefly looks at some existing studies of violence.

### 5.2.1 Theorizing violence

As already suggested above, popular impressions of violence in Kenya's pastoralist areas are largely informed by stereotype and political rhetoric. Additionally, the role of the media and academic commentators in representing these violent episodes as particular forms of normalized expressions feeds the present popular discourse surrounding the whole issue of violence in pastoral areas. Much of this violence is attributed in varying degrees by different commentators to several factors that include: cultural factors that point to a pastoralist love for cattle and a penchant for violence that is entrenched in moral and cultural ideals that include cattle raiding, bride wealth and ritualized initiation into adulthood, as well as a strong sense of ethnic identity; environmental factors that highlight climate change and the harsh realities of pastoral landscapes as well as the limited nature of land available for pasture and water and the ensuing violent competition for these scarce resources; demographic factors that point to a Malthusian trajectory of exponential population growth leading to the subjugation of the weak by the strong through inevitably violent means; socio-economic factors including poverty, income inequalities and marginalization; a proliferation of small and light weapons that both derive from and sustain violence (Mkutu 2007). Between cultural and political ecology, environmental security, peace and security studies, economics, political science and numerous other fields of

study, various combinations of these explanations have spawned a sizeable amount of academic and political literature, a complete review of which is beyond the scope of this chapter.

However, some highly visible research on violence and the environment is much focused on a causal relationship between environmental factors and violent conflict, with a heavy focus on the identification of intervening variables and the feedback loops between them. Prominent researchers in this field including Homer-Dixon and Galtung have problematized the causal chain between environmental scarcities and violent conflict (see for instance Homer-Dixon 1991). Galtung has specifically linked environmental degradation to “more war over resources” (Galtung 1982: 99).

Raleigh on the other hand links the probability of increased communal conflict in African states to what he refers to as the political and economic vulnerability of groups to climate change. While acknowledging the important role of environmental pressures in conflicts, he sees these rather as catalysts in a process primarily driven by the extent of political and economic marginalization. Thus, small and politically insignificant and marginalized ethnic groups experience most conflicts related to environmental pressures (Raleigh 2010: 69).

It is evident that research based on the supposed link between environmental scarcity and violent conflict follows a common Malthusian trajectory that links climate change pressures on population growth in particular to increasing resource scarcity and an inevitable risk of violence.

In the context of security studies, Kahl (1998) has linked Population growth, environmental degradation and violence in developing countries and pointed this out as a threat to American interests. He cites the example of water hyacinth plant in Lake Victoria that caught the interest

of the United States Defense Intelligence Agency (DIA) as a potential trigger of conflict and political instability.

In theorizing violence especially among pastoral societies, Schlee (2004) has sought to complement the purely resource conflict driven theories of violence with a social account that incorporates the importance of cross-cutting ties. Accordingly, the decision to engage in violence is not simply a rational economic decision but one that is also influenced and limited by social structures and how they are recognized and represented. Identity plays an important role as a distinguishing factor that determines who is friend or foe and provides the basic structure upon which alliances are made or broken.

In this scheme, social structures become important “conceptual instruments of exclusion and inclusion as social categories and their overlapping relations”. Cross-cutting ties play a crucial role in this formulation, helping to ensure some level of internal peace but sometimes also escalating conflict. In other cases cross cutting ties help in coping with the consequences of violent conflicts also play an important role in helping to cope with the consequences of violent conflict (Schlee 2004: 143-145).

Bollig (1993) has used a multi-causal model to analyse violence among the pastoral Pokot of Kenya. In this multi-causal model, variables interact with each other in various combinations to explain different modes of conflict. Bollig shows for instance that competition for scarce resources on its own is insufficient to explain violent conflict behaviour, but rather the mode of distribution mediating scarcity. An analysis of institutions that control access to key resources would therefore be instrumental in explaining conflict behaviour. Social relations, reciprocal ties and the motivations to accumulate social; material and symbolic capital (prestige) by actors within these networks; conceptualization of emotion; legitimacy

of tension resolution mechanisms and international supply and demand of lethal weapons are all important variables to consider in this analysis.

Local studies on violence in Kenya stress ethnicity and competition for access to and control of the state and resources as a key driver of violence. For instance, according to Osamba (2001), violence and conflicts arise from “unresolved problems of citizenship and statehood in Kenya”.

Osamba finds the state complicit in the violence through abdication of its obligations as the custodian of legitimate violence, and even as a direct perpetrator, in which case land disputes, ethnicity and cattle-rustling are used to hide government complicity and participation in violence<sup>23</sup>.

Similarly, Greiner has noted the profound change in the nature of livestock raiding among northern Kenya’s pastoralists. Now involving modern lethal weapons, it has become increasingly instrumental in politicized conflicts over land, boundaries and electoral turfs. Greiner thus views these violent conflicts as a turbulent expression of Kenya’s political development and in this context identifies violent cattle raiding as “*a specific form of violent regulation: a well-adapted, dangerous, and powerful political weapon*” (Greiner 2013: 1, 2). The next section further explores this instrumental use of violence as a political tool encapsulated within the concept of violent regulation.

### 5.2.2 Violent regulation

This section uses the concept of violent regulation to explain the dynamics of transformation of the socio-ecological system (SES) of the Lake Baringo wetland within the context of human-environment relationship. Specifically, it deals with how the physical and socio-political environments interact under a regulatory regime temporarily driven by

---

<sup>23</sup> For an analysis of ethnic violence and the privatization of state violence, see Roessler, Philip G, Donor-Induced Democratization and the Privatization of State Violence in Kenya and Rwanda, *Comparative Politics*, Volume 37, No. 2 (January 2005), pp. 207-227.



conflict and violence to extract benefit from the available set of environmental entitlements, a processes we call here violent regulation.

Violent regulation is understood here as a process that pits various actors, each with a stake in highly contested environmental entitlements, against each other in a violent tango that plays out in the backdrop of a rapidly changing socio-ecological environment. As socio-ecological systems undergo rapid transformation, new regulatory regimes defining the human-nature interaction in a particular context emerge in which certain actors resort to direct physical and/or structural violence to secure their own interests (Bohle & Füngfeld 2007).

The violent regulation results in a physical dislocation of the environment as a resource giver. In the social realm the stronger actors subject their victims to economic and political dominance, creating in the process enhanced economic and social status for the winners and disempowerment and new vulnerabilities for the losers.

Violence is in this sense localized and entrenched in the social institutions that regulate human relationships as they contest for environmental entitlements, a process that is dependent on the history as well as cultural meanings and expressions of political power relations. This idea of violence takes from that described by Peluso and Watts, who consider violence as a "site-specific phenomenon deeply rooted in local histories and social relations but also connected to transitional processes of material change, political power relations and historical conjecture" (Peluso and Watts 2001: 30)

This study posits that instances of rapid socio-ecological changes provide the opportunity for the re-ordering of regulatory factors that determine the distribution of environmental entitlements. It is during this process of re-organization that violent regulation finds an entry point.

This situation is compounded by the impending fundamental land-use and land tenure reforms heralded by a new constitutional dispensation<sup>24</sup> and land law regime, bringing to bear an increased pressure on the whole spectrum of entitlements to the existing natural resources. It also presents an opportunity to reconfigure claims particularly on land based resources and in some cases even redefine physical borders.

These profound socio-ecological changes provide the context for the search for new forms of regulation in the human-environment relationship. Leading social actors in this system increasingly find the prospect of resorting to violence both a viable and an attractive option.

Violent regulation then emerges as a major contender within the new order of things, and in the Lake Baringo case acquiring a banality and notoriety that finds legitimacy in the local lexicon via such terms as 'cattle rustling', 'raiding', 'stock theft', 'war-likeness', 'cultural practice', or sometimes more dismissively as 'pastoralist violence', a term often understood to embody fighting over scarce resources, also dubbed 'resource wars' in some academic literature.

In reality, what may be benignly referred to as "cattle-rustling" has taken a heavily militarized turn and is now performed, not with crude weapons but with automatic assault rifles and is no longer the preserve of youths or Morans (Mkutu 2007, Osamba 2001, and Greiner 2013).

High political stakes have seen more organized and lethal forms of violence being visited upon the riparian communities. The violence exerts a huge toll on livelihoods and leaves, in the major part, a weakened and desolate society in its wake, and paradoxically, a select group who do well on the violence and bask in a perverted sense of economic thrift. It would seem that this so called pastoralist violence was transplanted into and has since outgrown existing social structures that tolerated stealing and

---

<sup>24</sup> Kenya promulgated a new constitution in August 2010, in anticipation of which event a lot of conflicts on land issues took place.

counter stealing of cattle among some pastoralist communities. With weak legal and administrative institutions further exacerbating the situation, violence has seen its principal agency gradually slipping from the hands of traditional actors to powerful and ruthless political operatives, and it now seems to thrive with an apparent cloak of impunity.

This research, therefore, concerns itself by how violence affects the governance of environmental entitlements, and stresses the processes and outcomes rather than the aspects and/or links of causality. Access to environmental resources is predicated upon social, political and economic power, and one's position in this scheme can be enhanced or diminished by the application of violence. Violence in turn affects the resource base both directly and indirectly. By focusing on violence as socio-political contestation, this research seeks to improve the understanding of the phenomenon of violent regulation.

### 5.2.3 The nature of violence against the Il Chamus

Violent events in the Lake Baringo basin against the Il Chamus are frequent and range from armed cattle rustling, highway robbery to deadly mass attacks. While extremely traumatic episodes of violence such as deadly mass attacks may be few and far between, the negative effects of violence on their livelihood is massive. The fear brought about by the spectre of violence is real and ever present and next to the occurrence of physical violence itself, further contributes to the general insecurity of the area. I present below a vignette on a particular episode of violence that took place on the 28th of June 2009.

This episode was reported by Nation Tele-Vision (NTV)<sup>25</sup> on the 30th of June 2009.

---

<sup>25</sup> A clip of the report is available at <http://www.youtube.com/watch?v=Dts9al4wsi8>.

The caption accompanying the video clip notes that “a primary school head teacher was shot dead and more than 200 cattle stolen after armed raiders attacked a village in the newly created Marigat District. Another person is admitted to Kabarnet District hospital after he sustained injuries. Seven cows were shot dead”.

The report further goes to say that *“learning activities in 3 primary schools have been interrupted after pupils fled the area following the attack. The affected schools include Mukutani, Rugus and Nosukuro primary. Students of Kiserian Secondary also fled their institution following the attack. Suspected Pokot raiders attacked Kiserian area on Sunday, which is mainly occupied by the Il Chamus community. Fearing more attacks, they are all on the move in search for peace. In this village, children and the elderly sit together. This has been the safest place since they fled. They stay together to give one another comfort, and perhaps that much needed security...The head-teacher of Mukutani primary died on the spot after he was shot, while another person sustained injuries. At least ten students from Kiserian secondary sustained slight injuries, following commotion that ensued as they fled the battle scene... Seven cows were shot dead during the Incident. Baringo police boss Peter Njenga confirmed the attack, noting that a team of security personnel has been deployed to pursue the raiders. More than 3000 families have been displaced following the attack and are camping at the Kiserian trading centre. The victims have appealed for relief supplies and a disarmament exercise to recover illegal guns”* (see Map 2).

Two members of the Il Chamus communities were also interviewed. One, an old man, had this to say<sup>26</sup>:

*“During the raid, they started shooting at the cattle, and they drove more than 100 away. I cannot give the exact number, but we had more than 100 cattle, and they drove them away, killing seven. If we are suffering*

---

<sup>26</sup> English transcription by Author

*like this, we don't know where we shall turn to. These cattle are my livelihood. I have no Shamba. My Shamba is now lying on the ground, finished, even you are witnesses. Now dogs have started eating some carcasses, and our children have no food from now on..."*

The other interviewee, a primary school pupil, had this to say:

*"I was out fetching water, when I suddenly heard the sound of gunfire. On looking, I saw about 15 people. Then I saw cattle being shot. I almost got shot as well, only God saved my life because I ran into the forest. What I would like to know is, do we children have rights? We are competing with other pupils elsewhere in the country and we are going through these dangers, yet we are waiting to sit the same examinations. I feel sad, it is painful because the government has abandoned us, and it is as if we are out of Kenya."*

This attack which took place on the 28th of June 2009 highlights the nature of violence affecting the Il Chamus community. The NTV report quoted above put no names to the people affected. However, the short clip reflects a snapshot of the narratives surrounding these type of violent activities: The impersonal nature of the reporting, as no names are attached to the figures; the strong association of cattle theft with violence; the devastating impact of gun related violence, leading to death mass displacements and disruption of social activities including education; destruction of livelihoods, destruction of social organization structures. It also highlights the extent of marginalization in the area as the injured have to be transported all the way to Kabarnet as the dispensary in Kiserian has no effective facilities, and neither does the hospital in Marigat; the ineffectiveness of the Police forces in tackling the violence; the helplessness of the community from lack of a political voice and the appeal for relief supplies reflecting the inadequacy of their livelihood capacity to cope; the danger from mainly Pokot neighbours, and the destruction of the environment.

During my field research, I managed to track down the family of the school teacher who was killed in the attack, and on this occasion I was able to not only put a name to the figures mentioned by the NTV report but to have a very close encounter with the effects of violence on the lives of ordinary Il Chamus.

The victim was a school teacher, a father of four and a breadwinner to an extended network of dependents. Given the generally low levels of education among the Il Chamus, he was a valuable resource and his death had a direct and profound impact on his family and dependents. However, a fading photocopy of the burial program is what remains in memory of the deceased. Needless to say, the attackers have never been brought to book, leaving the victims with no justice, closure or compensation. In line with Il Chamus traditions, there was no monument or visible grave, and the family could only point to a general direction to indicate the final resting ground of their departed kin. His name was Joshua Kamangora Ole Kodoom. At the time of his death, he was the headmaster at Mukutani Primary School. An extract from his eulogy by his family taken from the burial program details his last moments:

*“The late met his death during a Pokot raid on 28-6-09 at 5:00 p.m. in Kiserian after a gunshot that killed him instantly 300m from Kiserian Primary School. The late was alerting the pupils who were fetching water in the lake that the Pokot were approaching to where they were. His body was taken to Kabarnet District Hospital mortuary, where it is brought today to Mochongoi for burial. MAY GOD REST HIS SOUL IN ETERNAL PEACE, AMEN”.*

While it is difficult to determine the exact scale of violence related damage suffered by the Il Chamus, the nature and effects of these damages are diverse and include physical assaults, displacement, psychological suffering and death. Quantifying the effects of violence is also made more difficult by the fact that the Il Chamus are generally

averse to counting of property, livestock and children and usually prefer to give vague answers like 'many' or 'few' rather than exact numbers. Official records, especially those relating to deaths from violence are hard to come by, and officially, the nearest police station at Marigat does not keep such data. Traversing the extent of the area occupied by the Il Chamus also reveals a deceptive absence of symbols recording or commemorating death such as marked graves or plaques.

This is because traditionally, the Il Chamus do not keep conspicuous graves or any elaborate monuments for the memory of the dead. Apart from the simple and functional event of burial, death among the Il Chamus is traditionally not commemorated and neither is the spirit world of ancestors that is revered in many African societies part of the Il Chamus world view. Yet the absence of visual signs of memory to death in the lake Baringo basin should not obscure the deadly impact of violence on the livelihood of the Il Chamus. Absent too are any protracted rites of mourning. For the Il Chamus, therefore, in the absence of mitigating factors embodied in mourning rituals and the commemoration of death, an encounter with violent death is both fatal and final, and no bigger loss can be imagined (See here Kawai 2008: 125, 126).

The vignette described above represents a sample of violent attacks on the Il Chamus. It is impossible to track down all such attacks. Below is a compilation of some Il Chamus who lost their lives to violence on diverse dates between 2001 and 2011.

1. Lerrinyal Letaglaa, a donkey trader (Il Miricho age group) was shot in Mukutani, date unknown, estimated year of event 2001.
2. Two boys, sons of Lebene Lesaron and Lekirerio Kenyi, shot dead at Rukus dam while watering cattle, estimated year of event 2001.
3. Mzee Motor Lekai shot dead at Noosidan while out in his compound taking tea, 3rd of April 2003.
4. Jackson Lekuroito, then Board chairman Kiserian Primary school, shot at Mosuro on his way home, 4th of April 2005.
5. Nkiririo Lekosek, shot dead at Sokotei by Pokot raiders, 9th of April 2005.
6. Nkilip Leparteneu, shot dead at Kiserian by Pokot raiders, 9th of April 2005.
7. Lenkires Lenoolmae, shot dead at Kiserian by Pokot raiders, 9th of April 2005.
8. Dominic Lemanki, shot dead at Sokotei by Pokot raiders, 9th of April 2005.
9. Lakarang'an Lekateiya, shot dead at Sokotei by Pokot raiders, 9th of April 2005.
10. Lelesepei (Administration Police officer), shot dead at Kiserian by Pokot raiders, 9th of April 2005.
11. Joseph Murumbi, shot dead at Kiserian by Pokot raiders, 9th of April 2005.
12. Mzee Lenapurda Long'orkoben, shot dead at Meisori during daytime raid by Pokot, 3rd of May 2005.
13. Nauroo Lekosek, Standard six pupil at Lorrok Primary School, shot dead at Mpaach by Pokot, 17th of May 2005.
14. Joseph Leparkolwa, shot dead by Pokot at Leswaa, 19th of May 2005.
15. Long'olemuge Leng'ochaile, shot dead by Pokot at Noosukuro in cattle Boma at 7am in the morning, 25th of March 2007.
16. Wesley Lemaitano, shot dead at Lekirricha dam by Pokot while watering cattle at 1pm in the afternoon, 29th of March 2007.
17. Joshua Letiren, shot dead at Lekirricha dam by Pokot while watering cattle at 1pm in the afternoon, 29th of March 2007.
18. Lekitima Lorreng'ei, shot dead by Pokot at Nkasotok, 30th of June 2007.
19. Lemunken Lesikamoi, shot dead by Pokot at Nkasotok, 30th of June 2007.



20. Leng'arua Lokortobong, shot dead by Pokot at Kiserian, 30th of June 2007.
21. Edwin Lekichep, student, shot dead by Pokot at Tikalug while carrying examination papers, 15th of July 2007.
22. Long'orrok Lenkarrari, shot dead by Pokot at chief's compound in Mukutani, 31st of July 2007.
23. Robert Leleserlei, shot dead by Pokot at Noosukuro while fishing, 2007.
24. Nicholas Lenachuk, shot dead at Nkasotok, 24th of December 2007.
25. Wilson Lengochaile, form four school leaver, shot dead at Ndorot while bringing back recovered cattle from a previous Pokot raid, 30th of October 2008.
26. Joshua Kamangora Lekodoom, former headmaster at Mukutani Primary School, shot dead at Kiserian while alerting pupils about Pokot raiders, 28th of June 2009.
27. Loisosion Lenapunya, shot dead at Tikalug by suspected Tugen attackers at 7a.m in the morning on his way to the market.

Figure 3: List of Il Chamus who died as a result of violent attacks

#### 5.2.4 The effect of violence on the livelihood status of the Il Chamus

The worst hit area or hotspot of violence in the Lake Baringo basin are the Rugus, Kiserian and Mukutani locations, all found in Mukutani division. As the above table suggests, the Il Chamus have felt the brunt of the violent events in the Baringo in the recent past. Today, the impact of the phenomenon of violence on their livelihood is clearly visible:

There is a perceptible air of fear, tension and the expectation of attack. Travel between Kiserian and Mukutani shopping centres is especially affected as this stretch of the road has become notorious for attacks and is dangerous to travel even in broad daylight as armed youths patrol the area and attack with impunity, robbing, injuring and in a few cases killing. Recent trends show a reduction in the cycle of attacks and counter attacks between the Pokot and the Il Chamus as ethnic entities. Increasingly, independent units of perpetrators with little or no allegiance to community are observed;

A new form of pastoralism has emerged, which has seen the development of an overcrowded settlement in Kiserian. A common Kraal in the midst of a dense concentration of Manyattas reminiscent of a refugee camp now dominates the scenery. This emerging trend has had devastating effects on water points and pasture which are quickly rendered dry and/or unusable due to overuse and hoof damage. The spread of contagious animal diseases also affects herd sizes and quality;

Abandoned homesteads owing to relocation of scores of families to relatively safe areas such as Eldume and Ng'ambo create the image of an economic wasteland while at the same time crowding up the receiving areas;

Economic desolation is clearly visible with under-stocked or empty kiosks and cafes dotting what remains of the shopping centre. A cattle auction market built with the help of World Vision has hardly been used and lies abandoned. With the Marigat cattle auction also suspended for most of the year and a fishing moratorium in place, there are little signs of economic activity and an air of desperation chokes the land. There is as a result, a very high rate of dependence on food aid and reliance on resident missionaries;



Picture 5: This cattle auction shed for the Kiserian cattle Market had not been used from the time it was built with help from World Vision.

There is evident loss of administrative control. Mukutani Division lacks a visible administrative presence. A well-developed former Chief's residence lies abandoned and one is referred to Marigat for any administrative services. The current Chief's office has only recently resumed operations from a makeshift structure and most Il Chamus residents who fled earlier violent attacks are yet to return;

Weakening of social regulatory institutions can also be observed. A regime of violence has led to a weakening in both the administrative and social institutions. Kiserian is virtually a bandit's jungle and the Olamal (elders' council) as previously constituted is no longer influential. This social institutional failure coupled with administrative failure along with an insecure environment has led to the erosion of a previously existing moral economy and the demise of any traces of a proper market based economy. We now see an emergence of a new political economy of violence where powerful actors thrive and livelihoods are subjugated to their agendas, creating a warped picture of economic 'development';

There is also an emergence of new centres of power within the community as protection gains an increased premium. Because of the high level of insecurity, people are more and more willing to pay for armed escort services through identified danger zones such as the stretch of road between Kiserian Mukutani up to and including the Mukutani River. Armed youth from Pokot, Tugen and Il Chamus communities provide "security" services and Brokers (Wanjurusi) have risen in prominence. Wanjurusi combine all sorts of trading activities such as the charcoal trade between Marigat and Nakuru, cattle trading at Loruk and Marigat cattle markets. Most are conspicuously wealthy and maintain connections of influence with powerful people such as politicians and businessmen.

It is not just the actual realization of violence but also the fear and insecurity engendered by its prospect that adversely impacts on the livelihood strategies of the affected communities.

As the community grapples with changing roles of its various member groups, individuals develop own strategies according to the real and perceived risks of violence. As a group, the Il Chamus reach out to external agencies and institutions for assistance. They seek to exploit a “victim” status through existing cultural, administrative and legal institutions, as a strategy to protect a lifestyle-sustaining wetland resource that gains an increased premium during periods of environmental stress such as drought.

The Il Chamus have been to court twice<sup>27</sup> and also recently appeared before the Truth, Justice and Reconciliation Commission (TJRC)<sup>28</sup> to articulate their grievances as a community. Such efforts to appeal to legal and administrative institutions for redress have resulted in a heightened sense of ethnic identity as they strive to reinforce the narrative of a “marginalized” minority community. An increased awareness of political rights is clearly discernible, and the Il Chamus are seen to gradually coalesce around an ethnic identity consistent with internationally recognized notions of indigeneity.

The next section completes the vulnerability context of the Il Chamus by looking at the issue of marginalization.

---

<sup>27</sup> See *Rangal Lemeiguran & others v Attorney General & others* (2006) eKLR and *Charles Lekuyen Nabori & 9 others v Attorney General and 3 others* (2007) eKLR.

<sup>28</sup> Public hearing held on 25<sup>th</sup> October 2011 at Government Training Institute, Kabarnet. See [www.tjrkenya.org](http://www.tjrkenya.org) for more details.

## 5.3 Marginalization of the Il Chamus

### Introduction

Marginalization and exclusion from political process of governance have resulted in an enhanced state of vulnerability for residents of Kenya's Arid and Semi-Arid Lands (ASAL) generally, and the Il Chamus in particular. This study links the marginalization of the Il Chamus to government economic and development policy; the limited capacity of the Kenyan state to govern effectively; and environmental pressures.

It will be shown that official government policy deliberately diverted state economic resources for development away from the pastoral areas of Kenya generally by concentrating efforts and resources on areas seen to have agricultural potential. Additionally, the unique structure of the Kenyan state characterized by ethnically based networks of patronage and a general lack of accountability to administrative institutions has negatively affected its capacity for effective governance. The result is an economy dominated by a coalition of bigger and stronger ethnic groups at the expense of smaller groups such as the Il Chamus.

This chapter will also show how the Il Chamus have made use of a legal process conducted by the Truth and Justice Reconciliation Commission (TJRC)<sup>29</sup> of Kenya to articulate their perceptions of marginalization and

---

<sup>29</sup> The Kenya TJRC was set up in 2008 in the aftermath of the 2007/2008 post- election violence in Kenya. It was part of a peace deal that led to the formation of a grand coalition government made up of the two major opposing sides to the conflict. It was felt that a TJRC would be able to address the cause and effects of historical injustices and gross violations of human rights and therefore contribute towards national unity, reconciliation, and healing. The Commission is established by an Act of Parliament (Truth Justice and Reconciliation Commission Act no. 6 of 2008) to investigate the gross human rights violations and other historical injustices in Kenya between 12 December 1963 and 28 February 2008. The judicial powers of the TJRC were however only limited to the investigation, analysis, and making a report on what happened between 1963 and 2008 in regards to gross violations of human rights, economic crimes, illegal acquisition of public land, marginalization of communities, and ethnic violence. It could not prosecute but could recommend prosecutions, reparations for victims, institutional changes, and amnesty in exchange for truth for perpetrators who did not commit gross human rights violations ([www.tjrckeny.org](http://www.tjrckeny.org)). The Il Chamus were among many groups of Kenyan communities who appeared before the TJRC to testify on their marginalization.

the subsequent findings and recommendations of the commission that has led to gradual but profound changes in the government policy and development programs in the ASAL as a whole. First, we consider a theoretical framework of marginalization in the context of contested power relations in Africa.

### 5.3.1 A theory of marginalization

Raleigh (2010: 70) captures the context of marginalization of weaker groups in Africa through his explanation of the concept of “political relevance” (see also Scarritt and Mozaffer 1999). According to this theory, the political constitution of African states such as Kenya is explained by the political power of ethnic communities. Based upon this political power, ethnic groups are then classified as either “politically relevant” or “politically irrelevant.” Whether a community is politically relevant or not depends on the level of their influence in politics at the national level.

Politically relevant ethnic communities derive their power from their numerical and structural capacity to influence national politics in general, and electoral contests in particular. In contemporary Kenya this translates to the ability to convert population numbers into voting blocs, and it explains why the Kikuyu and Kalenjin for instance are politically relevant ethnic communities. They are able to deliver, as a bloc, votes that are crucial to the winning of a national presidential election contest. They also occupy geographically productive areas of Kenya and therefore have structural advantages in the generation of wealth. Following this logic, a group like the Il Chamus, because of their small population and also their geographic location, command little attention from the state. They are too small to constitute either a viable voting bloc or a potential threat; neither do they have at their command any significant resources to attract the political class.

Communities with little national political clout are therefore “politically irrelevant” and are discriminated and excluded from the political decision making arena. This exclusion and discrimination then sets the basis for the social and economic marginalization of weaker groups (see also Gurr 1993 and Scarritt 1994).

Because such politically irrelevant areas do not pose a direct threat to the viability of the government, they can be ignored without fear of immediate harm to the government. A government such as Kenya would therefore prefer to concentrate its resources on maintaining powerful networks that sustain the political class rather than invest in the provision of public service goods to areas occupied by the smaller, weaker groups.

Marginalization has several effects that weaken a community’s adaptive capacity to environmental changes. For instance, it increases the risk of conflicts escalating into violence especially where access to resources and political power is dependent upon ethnic considerations. Indeed, Raleigh posits that violent conflict over access to critical livelihood resources in politically irrelevant areas is often chronic and a product of absent or hostile governments (Raleigh 2010:71). This would explain the chronic nature of ethnically motivated violence in Baringo.

The marginalization of Kenya’s arid and semi-arid lands (ASAL) in general and that of the Il Chamus in particular can be perceived of in terms of the political relevance classification discussed above.

Government development policy adopted at independence reflected an effort to institutionalize the perception of the ASAL areas of Kenya as politically and economically irrelevant, resulting in their marginalization.

The next section gives the background to the marginalization of the Il Chamus through official government policy.

### 5.3.2 Economic policy background to marginalization

Since gaining independence, economic policy in Kenya has been articulated by long term policy plans and shorter five-year development plans. Long term economic plans are laid out in Sessional Papers, and so far Kenya has had three sessional papers setting out its long term policy objectives: Sessional Paper Number 10 of 1965<sup>30</sup> which aimed to incorporate features of African socialism and democracy into economic planning, Sessional Paper Number 1 of 1986<sup>31</sup> which incorporated the structural adjustment programs and Vision 2030 of 2008 which laid out Kenya's policy objectives up to the year 2030. It was Sessional Paper Number 10 of 1965, however, that provided the blue print that was used to drive the government's development and intervention agenda in Kenya's ASAL. As will be seen below, this policy paper effectively institutionalized the marginalization of Kenya's arid and semi-arid areas.

Sessional Paper Number 10 of 1965 outlined the new post-colonial government's blue print for development policy in the ASAL of Kenya. The paper introduced the new government's theory of Democratic African Socialism, which provided the theoretical framework and logic within which the government's objective of ensuring rapid economic development and social progress for all citizens would be achieved.

One of the central tenets of the paper dealing with the right to property was that under African Socialism, the power to control resource use resides with the state, and that "*the right of the state to guide, plan and even order the uses to which property will be put is universally recognized and unquestioned*" (ROK 1965: 10)

This blue print also described traditional agricultural practices as outmoded farming techniques that were wasteful and dangerous for the

---

<sup>30</sup> Republic of Kenya: Sessional Paper Number 10, 1965: African Socialism and its Application to Planning in Kenya (ROK 1965).

<sup>31</sup> Republic of Kenya: Sessional Paper Number 1 of 1986 on Economic Management for Renewed Growth.



environment. Burning of vegetation was seen as potentially turning fertile ground into desert, destroying forests and eliminating important water supplies. These practices were therefore to be curbed through education and legislation (ROK 1965: 24).

It also went further to declare the preference for agriculture over pastoralism as the economic activity identified to be beneficial to the country's development objectives. According to the paper, agriculture was the dominant sector of the economy and therefore its development would be given first priority in the African areas (ROK 1965:36, 37). The economic logic behind this policy was explained and justified thus:

*"One of our problems is to decide how much priority we should give in investing in less developed provinces. To make the economy as a whole grow as fast as possible, development money should be invested where it will yield the largest increase in net output. This approach will clearly favour the development of areas having abundant natural resources, good land and rainfall, transport and power facilities, and people receptive to and active in development"* (ROK 1965:46).

Even though the policy paper declared the government's commitment to rapid economic development and social progress for all citizens, it set out a plan that effectively marginalized the ASAL until very recently, and it is therefore not surprising that to date, the so called ASAL of Kenya remain the least developed and marginalized in the country. Post- independence Kenya has, in line with this policy paper, provided little in terms of direct investment in the ASAL. This policy paper thus sets out the background to the marginalization of Kenya's ASAL generally, and that of the Il Chamus in particular. This marginalization has been manifested in several ways, but of particular importance within the vulnerability context of Il Chamus livelihood are lack of political representation; denial of identity or mis-identification; non-recognition of title to land, and other structural forms of marginalization that are manifested as lack of basic social services

including health and education, as well as poor infrastructure. The next section looks at particular instances of marginalization of the Il Chamus.

### 5.3.3 Lack of political representation

Kenyan politics, viewed from a Western political thought (Marxist) analysis, displays no common class or ideological basis that could unite any of the disparate groups of society in a common cause. As a result, politics in Kenya is largely personalized. Political power is concentrated in a powerful executive and state resources are distributed through patronage networks built upon the basis of ethnic affiliation. Access to the state is facilitated by powerful regional politicians rather than political parties, and ethnic mobilization is key to voting patterns (Wa Githinji and Holmquist 2009: 106-107). Orvis has gone further to describe Kenyan politics as among the most ethnically defined in Africa (Orvis 2001: 1).

Elected office is the key to accessing the centre of the state resource distribution mechanism, and brings with it economic rewards in terms of remuneration as well as a link to the money making networks that exist at the heart of the executive. An elected member of parliament is therefore a key player in the access to state resources by his constituents, and given that Kenyan MPs are reputed to be among the best paid in the world, members of parliament provide a very important source of patronage in addition to being able to articulate the particular concerns of their constituents in parliament.

Elective politics in Kenya is consequently a high-stakes activity that takes a lot of organization, manipulation and investment. Kenya is classified by the World Bank as a low income country with a per capita annual income of \$860 in 2012 (about \$2.3 per day). Members of parliament (MPs) earn huge amounts of money in basic salaries, allowances, mortgages, loans, car and other attractive benefits<sup>32</sup>.

---

<sup>32</sup> Since the start of the new parliamentary session following elections in 2013, salaries and remuneration for Members of Parliament (MPs) are set by the Salaries and

Most importantly, MPs are also in charge of the Constituencies Development Fund (CDF). The Constituencies Development Fund was created by the Constituencies Development Fund Act, 2003 with the primary objective of addressing poverty at grassroots level by dedicating a minimum of 2.5% of the Government ordinary revenue to grassroots development and the reduction of poverty, and has been instrumental in alleviating poverty at the grassroots for instance through initiation of development projects and provision of scholarships to poor students<sup>33</sup>. However, because they are controlled by MPs, access to CDF funds is dependent on having a representative MP.

The Il Chamus fall under Baringo Central constituency who's MP for over 40 years until his retirement from politics was former president Daniel Moi (1966-2002), a Tugen. Moi's son, Gideon Moi, took over as the MP for Baringo Central from 2002 to 2007, when the current MP, Sammy Mwaita, also a Tugen, took over. As is shown in the legal analysis of the Identity Case in Chapter Eight, under the current mapping of electoral boundaries, it will be theoretically impossible for an Il Chamus to be an MP unless provisions catering for special interest groups are invoked. These are discussed at length in Chapter seven.

#### 5.3.4 Lack of recognition

The Il Chamus, as with other indigenous groups in Kenya, have suffered from non-recognition both as a distinct ethnic community and also as an indigenous group. The government of Kenya has been keen to represent the Il Chamus as a sub-clan of the greater Maasai and therefore not

---

Remuneration Committee (SRC). This has seen some reduction in the rates. Ordinary Members of Parliament now get between \$80,000 and \$ 106,500 per annum in basic salaries exclusive of other benefits such as mortgages, car, sitting, entertainment and other allowances (Gazette Notice 2885 dated 28 February 2013). Previous rates for MPs were set by themselves through the National Assembly Remuneration Act. In the previous parliament, ordinary MPs got a financial package including a yearly basic salary of between \$126,000 and \$176,000. (See also Iqbal, Z: Fix the Roads: Kenya's MPs and the Audacity of Greed, International Institute for Justice and Development, <http://iijd.org>, 8 July 2010).

<sup>33</sup> See [www.cdf.go.ke](http://www.cdf.go.ke)

culturally distinct (Chapter 7). Such mis-identification has led to ambiguous and sometimes erroneous classification in official statistics with further repercussions for the marginalization of the Il Chamus. For Instance, in the last census for 2009<sup>34</sup> the Il Chamus were coded as though they were two different communities: Njemps (code 607, and Il Chamus code 612). Given that these were the instructions given to enumerators, the eventual figures ascribed a lower figure for the Il Chamus.

Furthermore, the concept of indigenusness is highly contested in Kenya and the government does not recognize any community as being indigenous. The official position of the Kenya government is that “all Kenyans of African descent are indigenous to Kenya”<sup>35</sup>. It has explained its position by stating that identifying certain communities as indigenous would amount to discrimination on a tribal basis. These positions have nevertheless been conclusively rebutted both by local courts and the ACPHR (Chapter 7). To underscore its resistance to the concept of indigeneity, the Kenya government has to date not ratified ILO convention number 169 on indigenous and tribal people in independent countries, and, along with Burundi and Nigeria, abstained from voting in 2007 at the historic adoption of the United Nations Declaration on the Rights of Indigenous People (UNDRIP).

The Kenya government instead prefers to “recognize the vulnerabilities of minorities/marginalized communities”<sup>36</sup>. While this gives some latitude for groups such as the Il Chamus to claim certain rights and protections, it attempts to exclude them and other groups that desire to be identified as indigenous the very extensive and substantive rights reserved for

---

<sup>34</sup> See Republic of Kenya: 2009 Kenya Population and Housing Census 24th/25th August, 2009: Enumerator’s Instructions Manual.

<sup>35</sup> See Human Rights Council/UPR, Report of the Working Group on the Universal Periodic Review Kenya (2010e) §109: 23.

<sup>36</sup> Ibid; the Constitution of Kenya 2010. The Constitution also recognizes the concept of self-determination as set out in the UNDRIP by recognizing the need or desire of these communities to preserve their unique cultures and identity.

indigenous people globally. This denial also has the intention of keeping them out of the global network of the indigenous rights movement. Despite the government position, the Il Chamus, along with over 25 other communities<sup>37</sup> in Kenya currently self-identify as indigenous.

#### 5.3.5 Lack of recognition of customary rights and title to land

The marginalization of the Il Chamus is further exacerbated by a lack of recognition of their traditional and customary rights to land. While land, as a factor of production and as the basic foundation of all social ecological systems is central to economic well-being, land ownership in Kenya is governed by a complex set of laws that have, since the colonial times, applied to different parts of the country. This has made it possible to abuse the laws as well as the institutional authorities that govern them, creating space for land grabbing and irregular allocation of public land to powerful and influential people (Njuguna and Baya 1999). The land occupied by the Il Chamus was originally designated as a native reserve whose administration then devolved to local councils under the Trust land system. All the communal land used by the Il Chamus therefore is designated as trust land, which means that its care and management has been placed under the County Council of Baringo. The fact that no individual titles are recognized has diminished the economic value of Il Chamus land as a factor of production since they have no power to use it as a form of credit guarantee, thereby losing out on a major source of financing from private financial institutions which recognize individual title deeds as a guarantee for credit. The role of trust land in the marginalization of the Il Chamus and other indigenous groups in general was considered extensively by the TJRC and is discussed further in Chapter six, section 6.1.8 below.

---

<sup>37</sup> IWGIA 2012: Country Technical Notes on Indigenous Peoples' Issues, The Republic of Kenya, at page 1.

### 5.3.6 Other sources of marginalization

This section considers other sources of marginalization of the Il Chamus which can be grouped together as emanating from insufficient capacity for effective governance. The sum total of the interaction of these factors has been to increase the levels of poverty among the Il Chamus, further reducing their adaptive capacity to SES changes.

Inappropriate environmental intervention measures such as the introduction of *Prosopis juliflora*, effects of violence from neighbouring ethnic groups, especially the Pokot (see section 5.2 above), exclusion from participation and decision making in local development projects have all led to undesirable outcomes such as lack of sufficient social amenities, health centres, schools and public infrastructure. These issues are considered in the next chapter within the context of a legal process of adjudication presided over by the Kenya Truth and Justice Reconciliation Commission (TJRC), before which the Il Chamus also appeared to seek resolution to their grievances against the state. This process showed the legal articulation of marginalization and its effects.

## **Chapter six: confronting marginalisation: appearance of the Il Chamus before the TJRC**

In order to articulate their grievances as a marginalized community, the Il Chamus appeared before the Truth, Justice and Reconciliation Commission (TJRC)<sup>38</sup>. In addition to the two Il Chamus cases analysed in chapters six and seven of this thesis, the appearance before the TJRC and the resulting consideration, findings and recommendations of the TJRC provide another useful forum for the analysis of litigation as a resilience building mechanism. While reactions from the government to the finding and recommendations of the TJRC were not immediate, gradual changes in government policy are being observed. The next sections analyse the political marginalization of the Il Chamus in light of the TJRC legal process<sup>39</sup>.

### 6.1 The TJRC consideration of the marginalization of the Il Chamus and other indigenous groups of Kenya

The Kenya Truth, Justice and Reconciliation Commission provided another arena for the legal articulation of issues considered oppressive by the Il Chamus and other indigenous groups. The overall mandate of the TJRC was wide in scope, and this section focuses on the issue of marginalization. Here we shall see how political questions were formulated as legal and human rights issues. The TJRC findings and recommendations on the question of marginalization will also be looked at in this section. The next sections proceed as follows: First, we consider the statutory mandate of the Kenya TJRC, looking at the grounding of its authority in an act of parliament, as well as the definition and scope of its duties. This is followed by an analysis of specific issues raised by the various indigenous groups, including the legal formulation of marginalization in human rights terms as well as the duties and

---

<sup>38</sup> Public hearing held on 25<sup>th</sup> October 2011 at Government Training Institute, Kabarnet. See [www.tjrckenya.org](http://www.tjrckenya.org) for more details.

<sup>39</sup> This analysis is based on the report of the Truth, Justice and Reconciliation Commission, Volumes IIB, IIC and IV.

obligations of the state in ensuring the enjoyment. Lastly, the findings of the TJRC on marginalization and their recommendations are considered.

#### 6.1.1 Statutory mandate of the TJRC

The Kenya Truth, Justice and Reconciliation Commission (TJRC) was mandated by parliamentary statute<sup>40</sup> to inquire into and establish the reality or otherwise of perceived economic marginalisation of communities and make recommendations on how to address the marginalisation.

This mandate required it to investigate, document, and make recommendations in relation to human rights violations of civil and political rights as well as social and economic rights. In relation to socio-economic rights, the Act required the Commission to establish an accurate, complete and historical record of violations and abuses of human and economic rights inflicted on persons by the state, public institutions and holders of public office, both serving and retired. In doing this, the Act further required the commission to establish as complete a picture as possible of the causes, nature and extent of the gross violations of human rights and economic rights committed between 12 December 1963 and the 28 February 2008.

As part of its mandate therefore, the TJRC dealt with economic marginalisation and violations of socio-economic rights. Its report provided an analysis of the perceptions, narratives and reality of economic marginalisation. It documented marginalization at two levels: that of regions and that of particular groups of society. Its regional analysis was focused on the pre-2010 provincial administrative units, focusing on the North Eastern, Nyanza, Coast, Western, and North Rift Valley (which includes Baringo). These perceptions were then weighted against the documented extent to which residents of the selected regions enjoyed and accessed social and economic rights in reality.

---

<sup>40</sup> The Truth, Justice and Reconciliation Act.



In arriving at their finding and recommendations, the TJRC took testimonies from members of affected communities during hearings it held across the country; interviews with key actors, personalities and experts; memoranda submitted by individuals and groups; and reports of focus group discussions on economic marginalisation conducted in January and February 2012 in all the eight regions of the country. Secondary sources relied on include academic writings and reports by governmental and non-governmental actors or agencies.

The TJRC therefore had to define in legal and human rights terms the elements of marginalization; make a finding as to whether these rights were violated, by whom and how; and make recommendations to remedy the situation.

According to the conclusions of the TJRC, economic marginalisation was indeed a national and cross-cutting theme in so far as the poor and other disadvantaged groups such as women, ethnic minorities and indigenous groups are concerned.

#### 6.1.2 The TJRC formulation of the elements of marginalization in human rights terms

The TJRC used a legal human rights based approach that construed the freedom from poverty as a human right and marginalisation as a breach of economic and social rights. In this formulation, the government is looked as having an obligation to guarantee the enjoyment of these rights by all its citizens on a principle of equality and non-discrimination. The TJRC therefore had to adopt a legal definition of marginalization as well as define the nature and scope of government obligations towards its citizens in the provision of the said rights.

The commission approached human rights in a holistic way that did not distinguish between bodily integrity rights and social and economic rights. Since it was required to focus on “gross” violations of rights, such a

conceptualization of rights meant that a gross violation of bodily integrity rights was also a violation of social and economic rights, and vice-versa.

The mandate of the TJRC to investigate gross violations of social and economic rights was especially significant in Kenya because these were not mentioned in the old constitution. Because Kenya is a dualist country<sup>41</sup>, these treaties, even where they provided clear rights to individuals and groups, local courts were unable to adjudicate over alleged breaches of these rights. All claims of violation of rights had to be formulated in terms of existing local sources of law. This meant that economic and social rights could not be adjudicated in Kenyan courts of law as they were not catered for in the old constitution. The TJRC therefore provided a unique forum for the consideration of violations of social and economic rights.

### 6.1.3 Standard applied in determining state obligation and responsibility

Since there was no local standard by which to hold the state to account for the violation of social and economic rights, the TJRC used the standard defined by the United Nations Committee on Economic and Social Rights in determining whether the state had met its obligation relating to socio-economic rights. The ESR Committee issued General Comment Number 3 to clarify the nature of a state's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), establishing a 'minimum core' of obligations in relation to socio-economic rights:

*"A minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every state party. Thus, for example, a state party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most*

---

<sup>41</sup> Being a dualist state means that international treaties to which Kenya is a party cannot be applied directly in the country and only become effective when local enabling legislation is passed to give effect to the provisions of the treaty. On the contrary, international treaties entered into by monist countries become effective immediately they are ratified and no further legislation is required for local effect.

*basic forms of education is, prima facie, failing to discharge its obligations under the covenant. If the covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être. By the same token, it must be noted that any assessment as to whether a state has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each state party to take the necessary steps "to the maximum of its available resources".* In order for a state party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

The new constitution of Kenya (2010) which itself was the product of political agitation, negotiations and litigation, does recognize social and economic rights<sup>42</sup> and defines the nature of the state's obligations towards the realization of those rights<sup>43</sup>.

#### 6.1.4 The TJRC's legal definition of marginalization

The TJRC, in executing its mandate, therefore adopted the following working definition of marginalization<sup>44</sup>.

*"Marginalisation is the social process of becoming or being made marginal (especially as a group within the larger society). 'Marginality' is seen in two dimensions: societal and spatial. While spatial marginality relates to geography – existence at the fringes, or at a distance from the centre –*

---

<sup>42</sup> Under Section 43.

<sup>43</sup> Section 21(3) of the Constitution of Kenya 2010 states that the state shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43 on economic and social rights. In the achievement of these rights, the state is required to use maximum resources available (funds, people, skills, good management and other assets) and in an effective and accountable way, to ensure the attainment of maximum levels of enjoyment of rights for all.

<sup>44</sup> With acknowledged reference to Gurung G and M Kollmair. 2005. Marginality: Concepts and their limitations.

*societal marginality 'focuses on human dimensions such as demography, religion, culture, social structure (e.g. caste, hierarchy, class, ethnicity, and gender), economics and politics in connection with access to resources by individuals and groups'*

The TJRC recognized three dimensions of marginalization: political, economic and social-cultural. It described political marginalization as a disempowering outcome of social and political processes that exclude certain sections of society in the participation in decision making, representation and participation in the democratic process of governance.

Political marginalization then leads to social and economic marginalization, since politically disempowered groups cannot by definition gain access to other social and economic rights and privileges. Social marginalization restricts access to social resources such as education, health services, housing, income and work. Poverty then becomes an unavoidable consequence of political and social marginalization. In practical terms then, this legal formulation of marginalization corresponds to the political ecology formulation that sees marginalization as an unfavourable outcome of governance inherent in unequal power relations.

#### 6.1.5 TJRC's findings on economic marginalization

According to the commission, various regions, groups and communities in Kenya have experienced economic marginalization since independence. In its view, this marginalization can be explained by historical, socio-economic and political factors, including: the over-centralization of state power and resources; the ethnicization of politics; an all-powerful 'imperial' presidency marked by lack of accountability; lack of judicial independence, weak rule of law and personalization of power; bad governance and rampant corruption; a patronage based economy reliant on state resources and an ineffective land tenure regime characterized by unresolved historical land conflicts.

The Commission traced the genesis of inequality and marginalization to the colonial administration, whose construction of ethnic boundaries as a strategy of government, land acquisition by European settlers and the massive relocation of communities to designated reserves set the conditions for marginalization of certain regions and communities. Subsequent post-colonial governments then failed to correct the resulting injustices, and this is seen as one of the root causes of land conflicts in Kenya. New government elites simply took over the land formerly occupied by settlers rather than restore it to its original owners, leading to the massive inequalities in land ownership and access witnessed today.

As noted above, the commission also found that Kenya's first formal economic blueprint, the Sessional Paper Number 10 discussed above was responsible to a large extent for the marginalization of certain regions in Kenya, most of which are occupied by pastoralists. While presented in terms of inclusion, human dignity, brotherhood and social justice, the policy prioritized investment in agriculturally viable areas at the expense of the more arid areas. It also prioritized private title to land as a necessary driver of economic growth. Thus, in communities where communal land tenure under customary law was present were immediately at a disadvantage. Customary land tenure was moreover limited by Trust land regulations which, rather than protect or promote their interest in land, became a source of dispossession and fraudulent excision of land from weaker communities.

Further, the first post-colonial Kenyan government under Kenyatta went blatantly against the African tenets of claimed by the original policy by systematically weakening the constitution, increasing executive presidential power at the expense of the other arms of government and instituting a de facto one party state through repression of democratic dissent and opposition. The resultant state was powerful yet unaccountable and over time has come under the control of ethnically based patronage networks.

In the following sections, we consider certain elements of government practice and policy that were identified by the TJRC process as forms of marginalization.

#### 6.1.6 Lack of reliable data as marginalization

The TJRC noted that the Kenyan state has displayed a general lack of accountability in relation to the availability of data on its development record. It was virtually impossible to gauge the extent of state development expenditure relating to different regions and groups. There is a general lack of reliable historical data regarding financial expenditure by the state on social programs and infrastructure in the regions identified as economically marginalized.

Specifically, the TJRC expressed the view that the state's lack of data and collection of data in respect to North Eastern and North Rift (including Baringo) only served to perpetuate the marginalisation of these regions. By failing to provide statistics tracking development in these regions, there was neither a basis upon which the state could assess the economic needs of these regions nor a standard by which the state's performance could be measured. The net result was a further marginalization of already marginalized regions.

In addition to the lack of cogent data relating to the political and economic marginalization of certain communities, the TJRC also noted the deliberate non-recognition of certain communities in the available government statistics. For instance, the notion that Kenya is a nation of 42 ethnic groups or tribes amounts to a denial of the existence of certain groups, which are often assumed to be part of larger groups.

The persistence of this arbitrary limit on the number of ethnic communities in Kenya to 42 was noted by the TJRC as being of major concern to minority and indigenous communities in Kenya. This statement

was taken to disregard existence of many smaller, perpetuating the idea that they were irrelevant to the national political discourse.

#### 6.1.7 Systematic Discrimination

The TJRC also identified systematic discrimination of minority and indigenous as another form of marginalization. This discrimination was informed by established state policy such as the Sessional Paper Number 10 already referred to above, lack of formal recognition of certain groups, denial of citizenship rights, negative public portrayal of minority and indigenous people and the differential application of certain laws, specifically that relating to trust land.

#### 6.1.8 Trust land laws and marginalization

The TJRC noted that Kenya's constitutional law before 2010 was not designed to resolve questions arising from colonial and post-independence land ownership policy. For instance, communities that had lost land due unjust colonial laws such as the Crown Lands Ordinance could not rely on any existing constitutional provisions for redress. Ironically, the only category of land dealt with under the old constitution was Trust Land. Section 114 of that constitution defined Trust Land as including "the areas of land that were known before 1 June 1963 as Special Reserves, Temporary Special Reserves [or] communal reserves." And further, at section 115:

*"All Trust Land shall vest in the county council within whose area of jurisdiction it is situated [...] Each county council shall hold the Trust Land vested in it for the benefit of the persons ordinarily resident on that land and shall give effect to such rights, interests or other benefits in respect of the land as may, under the African customary law for the time being in force and applicable thereto, be vested in any tribe, group, family or individual: Provided that no right, interest or other benefit under African*

*customary law shall have effect for the purposes of this sub-section so far as it is repugnant to any written law”.*

According to the Commission, this definition excluded those minority ethnic communities such as the Ogiek, Sengwer, Boni and coastal communities that were previously not recognized and vested with ‘reserve’ land. Further, there was no reliable system of division of land under the custody of county councils between the various communities resident in them.

County councils were vested with enormous power in respect of Trust Land under their authority, and rules for acquisition by the state of Trust Land were ambiguous as to the rights of minority communities.

Protection of customary land tenure under Trust Land laws was so weak that minority and indigenous communities covered under these laws were left vulnerable. The rights of communities under Trust Land were limited to the “use of the land subject to customary laws of that community”. However, statutory law took judicial precedence over these customary laws. The commission noted that the protection accorded to customary land tenure under such conditions was weak and inadequate to protect the rights of communities.

The Trust Land system was also amenable to abuse by county councils as had indeed been the case in many parts of the country, where councils, contrary to their obligations as custodians of the land, have used their authority to fraudulently and irregularly dispose of Trust Land.

The transformation of the Trust Land regime in Kenya by the new constitution is therefore one of the most important achievements of legal regulation in Kenya, including litigation by groups such as the Il Chamus, political agitation and lobbying by human rights groups and a democratic expression of popular will through a referendum. This issue is discussed further in chapter 7 under outcomes of Il Chamus litigation.



### 6.1.9 Violence in pastoral areas as marginalization

The commission noted that violence in pastoral areas of Kenya is endemic and it defined the responsibility of the state in terms of the international legal norm known as “Responsibility to Protect”. This norm was affirmed by the UN General Assembly and the commission deemed it applicable in the Kenyan context to ensure that the state protects pastoralists and other communities from mass killings and other atrocities.

The concept of “Responsibility to Protect” applies to all situations where citizens’ lives and property are at risk from violence, and as the commission noted, the fact that the violence is classified as inter-communal in nature or grounded in a long-standing, culturally-based practice does not exempt it from the reach of the state “Responsibility to Protect” obligation. Quoting a recent statement on inter-communal violence in Nigeria by the Global Centre for the Responsibility to Protect, the commission noted that:

*“This responsibility requires preventing massacres before they are perpetrated and halting them should they begin. It involves ensuring that ... military, police and government officials - local, state and federal - do not commit ‘Responsibility to Protect’ crimes and take appropriate measures to prevent and halt atrocities committed by non-state actors”*

The commission acknowledged that it had received reports from multiple communities including the Il Chamus of assistance being sought from authorities to address impending raids but. Such calls for assistance have regularly been met with total failure or delayed response from state security forces, sometimes arriving days after deadly attacks have been in progress. Some reports did suggest the collusion of security forces in political and economic based raiding, and the commission noted this as a major barrier to the effective provision of security.

## 6.2 Some specific findings and recommendations of the TJRC

-The TJRC, in its final observations, found that certain communities in Kenya had been marginalized because of their status as indigenous people. In so doing, it declared that there had been sufficient evidence to demonstrate that minority and indigenous communities in Kenya have suffered specific gross violations of human rights on account of their membership in these communities.

-Accordingly, the TJRC found that throughout the period it was mandated to investigate (from 12 December 1963 to 28 February 2008), the state had failed to recognize the existence, unique culture and contributions of many minority and indigenous communities in Kenya, including the Il Chamus.

-The Commission also found that the state had, since independence, consistently discriminated against minority and indigenous communities, specifically those residing in North Eastern, Upper Eastern, Rift Valley and Coast provinces, by the use of emergency laws and regulations in violation of their rights to equality and due process of law.

-In relation to violence in predominantly pastoralist areas, the TJRC found that the state had failed in its responsibility to protect its citizens as defined in international law. As a result of this failure, there was gross violation of personal integrity and economic rights in the form of thousands of deaths, injuries, forced displacement, sexual violence, loss of property and destruction of entire homesteads and villages over a period of more than 40 years.

-Rather than protect its citizens, the TJRC observed that the state had engaged in security operations in these areas that were so oppressive that they amounted in some cases to crimes against humanity. Specifically, the commission made reference to the so called "Wagalla Massacre" targeting the Degodia Somali community, attacks on the Pokot

community, bombings of Samburu communities, as well as multiple other operations<sup>45</sup>.

-The state had also failed in addressing boundary disputes among pastoralist communities such as the Turkana, Pokot, Borana and Somali clans, resulting in unresolved conflicts, violence, murder, displacement of thousands of communities, loss of livelihood and generally interfering with the economic and social development of the communities concerned.

-Regarding the administration of land, the commission found that laws and regulations governing the various categories of land in Kenya, including Trust Land, Government land, or Group ranches, has created a situation of *de facto* discrimination, leading to the massive dispossession of pastoralist and hunter-gatherer communities by expulsion from their ancestral lands.

-The commission also found that development policies adopted by the state have failed to protect the rights of minorities and indigenous peoples and have been implemented without their free, prior and informed consent as required by law. Rather than create conditions that would enhance the quality of the lives of minority and indigenous communities, a big majority of the projects have exacerbated the marginalization and exclusion of these groups.

-Finally, the TJRC found that the state had failed in its obligations by consistently refusing to implement important judicial decisions related to promoting and protecting the rights of minority groups, such as the those emanating from litigation by the Il Chamus and Endorois communities. In the light of these findings, the TJRC made the following recommendations:

---

<sup>45</sup> The Wagalla massacre took place on 10 February 1984 at the Wagalla Airstrip in Wajir, North Eastern Province. Kenyan troops called in to quell inter-ethnic violence stand accused of rounding up, detaining at brutally murdering at the Wagalla Airstrip about 5,000 Somali men. The TJRC declared the Wagalla massacre the worst human rights violation in Kenya's history.

-That within two years of the issuance of its final report, the government ratifies the following international and regional instruments: ILO Convention 169; Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention Against Discrimination in Education; and Statelessness Conventions.

-That within six months of the issuance of this report, the president of the Republic of Kenya issues an official, public and unconditional apology to minority and indigenous communities in Kenya for the state's systematic discrimination against these groups and communities during the mandate period.

-That the Kenya Law Reform Commission examines all Kenyan legislation to ensure that it does not result in de jure or de facto discrimination against minority groups.

-That the relevant government institutions, in consultation with minority and indigenous groups, develop national legislation governing state-sponsored or private development programs that requires free-prior and informed consent of affected communities and that includes specific guidelines as to how to engage in a process of consultation with communities.

-That the government develops a plan on data collection and disaggregation on minority and indigenous communities, with special attention to ensuring disaggregation of data related to minority and indigenous women. The process shall incorporate the principles of the United Nations Expert Workshop on Data Collection and Disaggregation for Indigenous Peoples.



Picture 6: members of the Il Chamus community talk to the press after making representations before the TJRC public hearing held on 25th October 2011 at Government Training Institute, Kabarnet.

## Conclusion

The legal process by the TJRC, while not directly instigated by the Il Chamus, did provide another forum for the articulation of legal rights, and particularly those concerning marginalized groups.

As a highly valued legal process with an international audience, the process was instrumental in making authoritative analyses and definitions of issues affecting indigenous communities and as such lessened the need for future government resistance.

While its powers of prosecution are limited to making recommendations, such recommendations do create another standard for holding the government to account as far as its obligations and duties are concerned.

Already, government policy and attitudes can be seen to be changing in response to the sum total of political and legal processes including that of the TJRC and the two discussed in the following chapters.

The next two chapters focus on litigation and the agency of the Il Chamus in responding to their conditions of vulnerability described in the preceding sections of this chapter.

## **Chapter 7: Challenging environmental intervention: the Prosopis case.**

### Introduction

Together with the last section of the previous chapter, the next two chapters in this thesis focus on legal processes involving the Il Chamus and the government. They aim to show the use of litigation in a politicized environment (Bryant 1998) and its role in resilience building. Litigation is presented here as a useful mechanism of contestation to access, gain control and maintain rights over resources. An analysis of the court cases is employed as a tool to bring out the salient aspects of contestation inherent in the political nature of environmental governance. In chapters six and seven, two Il Chamus cases, each targeting different aspects of their vulnerability are presented and analysed.

The first case considered is a reaction by the Il Chamus to an environmental intervention by the government which saw the introduction of *Prosopis juliflora* into Baringo and which had profound effects on the Il Chamus SES. *Prosopis juliflora* has already been discussed in chapter three above as part of the vulnerability context of the Il Chamus. Here it will be considered in the light of contested versions of its nature and effects on the environment presented by the opposing parties.

The case of *Charles Lekuyen Nabori and 9 others versus Attorney General and 3 others [2008] eKLR*, hereafter *the Prosopis case*, was brought by the Il Chamus against the government of Kenya, seeking remedy for damages suffered as a result of the *Prosopis* plant. A legal analysis of this case will show, in a general sense, the process of transformation of politically articulated concepts such as sustainable development into legal rights. More specifically, it will show: how the Il Chamus made use of elements of environmental law such as the right to a clean environment and the right to sustainable development to prove government liability; how the Il Chamus linked the invasion of *Prosopis juliflora* to breaches in

constitutional principles of right to life and right to property; and how the Il Chamus deployed strategies of dramatic spectacle and traditional dress to reinforce their cases against the government while invoking elements of their ethnic identity.

Before entering into a legal analysis proper, this chapter will first offer an analysis of the process involved in enjoining the actors in both cases. This analysis is based on the actor network theory, and, since the actors in the two Il Chamus cases were all drawn from the same pool, the process depicted here applies to both cases.

### 7.1 An Actor Network Theory approach to Il Chamus litigation

In order to better understand how the Il Chamus managed to organize themselves to take advantage of local and international legal concepts and convert their political grievances into legal issues, this section makes use of Callon's actor network theory, or sociology of translation (Callon 1999).

Callon describes the sociology of translation as a means of production of knowledge and construction of a network of relationships in which social and natural actors control both who they are and what they want (Callon 1999: 68). During the process of translation, the identity of the actors, the conditions and scope of their interaction are negotiated and decided upon (Callon 1999: 68). Identifiable in this process are Callon's four moments of translation, namely: problematization, interessement, enrolment and mobilization.

#### 7.1.1 The primary movers and the problematization

In this specific case we see the role played by a small group of primary movers consisting of well-educated Il Chamus elite and some elders who used legal knowledge and other resources at their disposal in structuring a network of actors based on a particular form of power relationship.



This small group of primary movers was the main driver of the process of translation and the movement of the process through Callon's moments of translation is clearly discernible. First, they go through a stage of problematization, where they formulate the problem at hand and determine the actors. Occupying an integral position in the process, they frame the problem in such a way that they are indispensable in its resolution. The primary movers were the same for the two Il Chamus cases and was a small group consisting of Il Chamus students, a legal practitioner and some elders. They became indispensable by framing the problem as one of transforming narratives of marginalization and indigenous identity into political capital. They also presented litigation as a means to this end. Litigation would provide answers to pertinent questions such as: whether the government has an unqualified right to determine the terms of environmental governance and whether they could be held liable for breaches thereof; whether the Il Chamus could be recognized as an indigenous and vulnerable group in Kenya, and whether the rights and protections associated with indigenous identity and enjoyed by others elsewhere in the world could also be realized by the Il Chamus.

The primary movers possessed between them the legal knowledge (through the legal practitioner), the social capital (through the traditional influence of the elders) and other resources (through links to a local NGO and the international indigenous group movement). They were thus indispensable to the process.

The primary movers also determined the group of actors who were to be involved in the process of litigation, including the petitioners who would put their names forward as representing the whole of the Il Chamus community, administrators, local activists, the legal representatives, the legal exhibits as well as the list of respondents. These included: Thomas Letangule, the Il Chamus legal practitioner who also was to act as their main advocate in court; Pheroze Nowrojee, a well-celebrated human rights lawyer based in Nairobi; some students; a local NGO known as the

Mainyoto Pastoralist Integrated Development Organization<sup>46</sup> (MPIDO); elders drawn mainly from the Il Medoti age group, and a goat which was presented as a live legal exhibit at the high court in Nairobi. Through the formulation of the legal claim, they also determined who their legal adversaries were to be in court (the Attorney General and the other respondents). Thus, through formulating the problem legally and determining the actors, the process of problematization to which the primary movers were indispensable was complete. A full list of actors is provided in figures 5 and 6 below.

### 7.1.2 Interessement, enrolment and mobilization

Once the problematization was complete, various devices were used to ensure the participation and cooperation of the Il Chamus as a community. Elders of the Il Medoti age group, being the patrons of the Il Kiapu age group who were the Moran at that time, led the efforts to persuade the community to support the cause. The appeal to the wisdom and authority of the elders from the Il Medoti age group was used to legitimize the process in the eyes of the community, as well as to dissuade or even suppress any dissenting voices. Negotiations and discussions were centred on a common ethnic identity and experiences of suffering as well as presentation of evidence of marginalization and the strong possibility of success in court. Il Medoti women were also instrumental in fund-raising to meet part of the legal costs and transportation of the petitioners and supporters to Nairobi. Every household was asked to contribute 1000 Kenyan Shillings.

Once the commitment and cooperation of a large section of the community was reached, mobilization followed. Since the processes of translation and litigation involve a small group claiming to represent the larger society, mobilization has to do with the legitimacy of the representatives or spokesmen. Whether the spokesmen are truly

---

<sup>46</sup> <http://mpido.org/>

representative of the group depends on how well controversies challenging this relationship are resolved (Callon 1999). As we shall see in the legal analysis below, this question was also tackled and positively resolved in court, when it was decided by the judges that indeed the few nominated petitioners could claim to represent or speak on behalf of the whole Il Chamus community.

NAME	AGE-GROUP	OCCUPATION
1. Thomas Letangule	Il Mopoiye	Legal practitioner
2. Amos Lempaka	Il Kiapu	Human Rights Activist
3. Charles Lekuyen Nabori	Il Medoti	Senior Chief
4. Joel Ole Saaya	Il Medoti	Councillor
5. Clement Nashuru	Il Mopoiye	Legal scholar, MPIDO
6. Wesley Kakimon	Il Mopoiye	Councillor, Il Chamus ward
7. Edward Tamar	Il Kiapu	Teacher
8. Ngamia R. Lemeiguran	Il Medoti	Elder
9. Shaolin Leriche Meguran	Il Kiliaku	University student
10. Samson Lereya Kakimon	Il Mopoiye	Teacher
11. Samantita S. Lengigaa	Il Mopoiye	Elder
12. Stanley Leterewaa	Il Medoti	Retired teacher

Figure 5: The Il Chamus actors

NAME	REMARKS
13. Pheroze Nowrojee	Leading Kenyan human rights lawyer and senior counsel.
14. Mainyoito Pastoralist Integrated Development Organization (MPIDO)	See below*.
15. The Honourable Attorney General	Main respondent in both cases and is the face of the government in court.
16. The Minister for Environmental and Natural Resources	Respondent, chief government officer in charge of environment and natural resource issues in Kenya.
17. National Environmental Management Authority	Respondent, government agency in charge of environmental management.
18. The Country Council of Baringo	Respondent, chief trustee of Il Chamus land.
19. Electoral Commission of Kenya	Respondent, in charge of delimiting electoral boundaries as well as regulating nominated members of parliament under special interest group category.

Figure 6: other actors

\* The Mainyoito Pastoralist Integrated Development Organization<sup>47</sup> (MPIDO) is a non-governmental organization (NGO) established in 1996 to fight against the marginalization of Maa-speaking pastoralists in Kenya. It is headquartered in Nairobi but conducts field activities in Kajiado North, Narok, Naivasha, Nakuru and its environs. MPIDO has, as one of its main objectives, to promote and secure the rights of Maa speaking pastoralists with regard to land and natural resources, and they seek to achieve this is through lobbying, advocacy and the engagement of communities in public interest litigation. Through financial and legal advice as well as civic education and awareness creation, they assist communities such as the Il Chamus to take their cases to court.

---

<sup>47</sup> <http://mpido.org/>

The Il Chamus got connected to MPIDO through an Il Chamus legal scholar who was linked to MPIDO during its formative years. Through MPIDO, the Il Chamus are connected to the global network of indigenous movements. MPIDO is the current Chair of the World Alliance for Mobile Indigenous Peoples. Locally, MPIDO is part of the Kenya Land Alliance. The Kenya Land Alliance (KLA) is an umbrella network of Civil Society Organizations and Individuals committed to effective advocacy for the reform of policies and laws governing land in Kenya<sup>48</sup>. MPIDO also has observer status with the African Commission for Human and Peoples' Rights (ACHPR) and is an active participant in this Commission's periodic sessions. They also are linked to the United Nations human rights system through the UN Permanent Forum on Indigenous Peoples Issues and the Office of the High Commissioner for Human Rights (OHCHR). The Il Chamus are thus well connected to the international indigenous rights movement and are able to align themselves to current and emerging discourses relating to the human rights of indigenous peoples. The next section is devoted to an analysis of the *Prosopis* case. The case will also look at the strategies employed by the Il Chamus to influence public opinion to their favour, for example by the use of dramatic effects in the performance of litigation.

## 7.2 Case analysis

The case of Charles Lekuyen Nabori and 9 others versus Attorney General and 3 others [2008]eKLR (Petition 466 of 2006), hereafter also referred to as *the Prosopis case*, was brought against the government of Kenya and its agents by the ten Il Chamus residents of Ng'ambo location<sup>49</sup> acting on behalf of the entire Il Chamus community. The suit, lodged as a constitutional reference, named as respondents the Attorney General of Kenya in his capacity as the principal legal advisor of the Government of

---

<sup>48</sup> <http://www.kenyalandalliance.or.ke/>

<sup>49</sup> Drawn from the list of participants in section 6.3.1 above, they were Charles Lekuyen Nabori, Joel Ole Saaya, Clement Nashuru, Wesley Kakimon, Edward Tamar, Ngamia Rangal Lemeiguran, Shaolin Leriche Meiguran, Samson Lereya Kakimon, Samantita Samaria Lengiyaa and Stanley Leterewaa

Kenya (first respondent), the Minister for Environment and Natural Resources (second respondent), the National Environmental Management Authority (third respondent) and the County Council of Baringo (fourth respondent). The Il Chamus community was represented by one of their own, Thomas Letangule, identified earlier as one of the primary movers and who also acted as lead counsel in the case (see figure 5 above). The case was argued in front of three judges: Honourable Lady Justice K. H Rawal, Honourable Lady Justice Mary Ang'awa and Honourable Justice D. K. S Aganyanya.

It will be noted here that the filing of the Prosopis case was not the first time the Il Chamus were attempting to go to court about Prosopis. In 2006 they filed a complaint against the Attorney General and the Minister of Environmental and Natural Resources<sup>50</sup>. This complaint was however hastily withdrawn because of technical and procedural objections raised by the Attorney General. In order to by-pass these procedural difficulties, the Il Chamus opted, as a tactical move, to file a case based primarily on constitutional rights instead.

As will be seen in the following sections, the execution by the Il Chamus of their case against the government was ingenious because it deployed legal arguments that linked the negative effects of Prosopis on the environment to breaches of the constitutionally guaranteed rights to life and property as well as to fundamental principles of environmental law and international conventions. The Il Chamus used the court as a platform to demonstrate to the world not only their perceptions about the ill effects of the Prosopis plant on their livelihood, but also the unjust nature of their relationship with the government as a key player in the environmental governance of the Lake Baringo Basin.

An additional dimension to Il Chamus strategy was the dramatic performance of their legal arguments, involving the use of highly emotive

---

<sup>50</sup> This complaint is filed in the court records with Reference number Hccc115/06.

language, readily recognizable accessories such as traditional dress and public performance of traditional songs. For added dramatic effect in the Prosopis case, the Il Chamus brought a toothless goat to court. This was meant to show the judges a living example of what Prosopis can do to the teeth of a goat. While the toothless goat was eventually never admitted in evidence as an official exhibit of the court, its impact on the publicity of the Il Chamus predicament was immense, and it became an iconic representation of the detrimental effects of *Prosopis juliflora*.

The analysis in the next sections will bring out contested versions of the origins, characteristics and effects of *Prosopis juliflora* on the livelihood profile of the Il Chamus community. To support their various positions, both sides presented affidavits and oral declarations under oath.

#### 7.2.1 The Il Chamus complaint

The precise nature of the Il Chamus complaint against the four respondents was that due to administrative failures and negligent intervention on the environment by the government and its agents, they caused the invasive weed *Prosopis juliflora* to grow and colonize a large part of the Lake Baringo Basin environment. For these failures and the resulting injury, the Il Chamus sought remedy from the court in the form of specific compensation, exemplary damages, costs of the suit and any other remedy the court would deem appropriate to the injury suffered.

They anchored their legal claim to the land affected by the *Prosopis* plant to their status as communal land owners with a long and continuous history of occupation; an ancestral link to the land; and by virtue of heavy dependence on the land for their livelihood and subsistence. They also pointed to the fact that they had laid out a significant investment in the land by building schools and other social amenities.

### 7.2.2 The legal framing of the Prosopis case

The Prosopis case, as already noted, was lodged as a constitutional reference. As such, it was framed in terms of breaches to fundamental constitutional rights, specifically the right to life, the right to a clean environment, and the right to property. Anchored on these constitutional rights were statutory functions defined by two acts of parliament, the alleged breach of which defined the full scope of the Il Chamus case. These were the Noxious Weeds Act (NWA) and the Environmental Management and Coordination Act (EMCA). As will be seen below, this combined approach that appended statutory obligations to constitutional rights was a clever legal strategy by the Il Chamus to by-pass the procedural difficulties of a purely statutory track.

From a legal perspective, the Il Chamus had two tracks open to them for the ventilation of their concerns about Prosopis Juliflora. The first was to follow the channels laid down under the statutory provisions of the Environmental Management Act. The second was to bypass the statutory process and present a suit directly to the constitutional court. The technicality to be overcome in this case was that the constitutional court only dealt with “constitutional” matters, and a casual reading of the Il Chamus case would readily suggest that this matter was indeed subject to statutory rather than constitutional adjudication, which is why framing it as they did was an ingenious move.

Further, as it would emerge during the hearing, the Il Chamus had indeed already tried following the statutory option, and had in fact raised a complaint to the National Environment Management Authority (NEMA) as required by statute on the negative effects of Prosopis on their livelihood<sup>51</sup>.

---

<sup>51</sup> This petition, done with the assistance of the Community Museums of Kenya (an NGO), was registered by the Public Complaints Committee of NEMA as PCC Complaint Number 67 of 2005 and was lodged against the Kenya Forestry Research Institute (KEFRI) and the Food and Agriculture Organization (F.A.O.).



The NEMA committee consequently carried out investigations into the effects of the weed and upheld the claims by the Il Chamus, recommending, among other steps, that Prosopis be declared a noxious weed under the Noxious Weeds Act and eradicated. These recommendations were, however, not implemented, and this is why the Il Chamus opted for a constitutional reference: the statutory procedure conferred no powers on the statutory body concerned to implement its own recommendations or remedies upon the infringement of environmental rights. On the contrary, the constitutional court had powers to implement its own decisions through the issuance of appropriate orders. Further, the constitutional court had a wider scope to award damages and other more specific remedies as sought by the Il Chamus. Thus the tactical decision by the Il Chamus to institute proceeding before a constitutional court was a pragmatic decision based on the fact that the court, as opposed to the statutory body, had in place mechanisms to enforce its decisions.

### 7.2.3 Case analysis: preliminary issues

Before the case could proceed to a full hearing, the court had to respond to certain issues relating to the competence of the application and the jurisdiction of the court to hear the matter.

The respondents in the case all raised preliminary objections on two main procedural issues. The first related to the choice by the Il Chamus to file a constitutional reference rather than a statutory based claim. The government side argued that since there were sufficient statutory provisions catering for the concerns of the Il Chamus, the application was not properly before a constitutional court and was therefore an abuse of process and a waste of the court's time.

Secondly, the respondents claimed that the Il Chamus had not indicated in the title of the petition, the specific provisions of the constitution which they alleged to have been violated.

The court however observed that these were general guidelines only and in this case the alleged violations were so clear to the court that it was not in difficulty to know the extent of the petitioners' case and their claims. This was a sensible and pragmatic approach that upheld the interests of justice in the face of formulaic and procedural obstacles calculated to frustrate the flow of justice. The court admonished the respondents for dwelling on inconsequential technical issues not worthy of the gravity of the constitutional matters they were called upon to adjudicate.

The respondents also claimed that while the petitioners were required to provide adequate evidence to prove their allegations, they had not shown what specific loss and damage they had suffered. The court replied that the sufficiency or otherwise of the evidence is an issue of proof of the claims and cannot by itself be a ground to make the matter incompetent or an abuse of the court process.

The court noted that the government was attempting to rely on technicalities to defeat the course of justice and declared that access to justice is a constitutional right which cannot be restricted by procedural technicalities (statement of Justice Rawal).

The government argued that only two issues raised by the Il Chamus had constitutional status thus meriting the consideration of the court: one touching on the breach of the right to life as protected and envisaged by section 70 and 71 the Constitution, and the other relating to the breach of right to property. They contended therefore that the rest of the claim ought to be struck off.

However, by admitting that at least two declarations were of constitutional status, the respondents fatally injured their objections to the proceeding of this case in a constitutional rather than a statutory court. In the event, the judges affirmed their jurisdiction on account of

the two constitutional issues, but broadened the scope of their judgment to include virtually all the points made by the Il Chamus.

Having disposed of the preliminary issues, the court proceeded to consider the substantive issues of the case.

#### 7.2.4 Substantive issues: prayers by the Il Chamus

As already mentioned above, the Il Chamus filed their petition invoking provisions of sections 60, 70, 71 and 75 of the then Constitution of Kenya and Provisions of Environmental Management and Coordination Act (EMCA) and the Noxious Weed Act (Cap 325 Laws of Kenya). These provisions relate to the right to life, the right to property and the right to a clean environment.

Specifically, the Il Chamus sought the following declarations:

- A declaration that the fundamental right to life as protected and envisaged by Section 70 and 71 Constitution of Kenya, comprises, consists and translates to the right and entitlement to a clean and healthy environment free from pollution of any kind that is detrimental to human health, wealth and/or socio-economic well-being and ultimately the human life.
- A declaration that the right to a clean and healthy environment is a fundamental attribute of people and the aggression to the environment occasioned by the weed *Prosopis Juliflora* amounts to a breach of this right, which this Honourable Court is empowered to address and remedy accordingly.
- A declaration that the Petitioners right to life, as set out in section 71 of the Constitution has been compromised by the introduction of the weed *Prosopis Juliflora* to warrant this Honourable Court's intervention.

- That the weed *Prosopis Juliflora* be declared a noxious weed in the same category with other weeds set out in the suppression of Noxious Weeds Act Cap 325 Laws of Kenya.

- A declaration that the failure by the Respondents to take affirmative steps towards eradication of the weed/plant *Prosopis Juliflora* amounts to breach of the right to own property and from compulsory denial of that right as set out in Section 75 of the constitution of Kenya, due to the invasive nature of the weed.

- A declaration that the introduction of the weed *Prosopis Juliflora* to Ng'ambo location of Marigat Division of Baringo District of Kenya in or about 1982 and the continued unabated spread of the weed was and is a clear contravention of the three fold statutory and internationally acknowledged principles on protection and conservation of environment namely the Sustainable Development Principle, the Polluter pays principle, and the Precautionary principle.

- A declaration that the introduction of the weed *Prosopis Juliflora* amounted to and still amounts to a breach of the petitioners right to sustainable development as envisaged and set out in the Environmental Management and Coordination Act 1999.

Additionally, the Il Chamus sought orders of total eradication of *Prosopis Juliflora* and the appointment of a Commission to assess and quantify the loss visited upon the environment and to residents of Baringo District by the Plant, as well as orders for compensation and Exemplary Damages.

The Il Chamus claimed in their petition that the *Prosopis* plant had been shown to be a harmful plant wherever it had been planted. Specifically, they claimed that it had caused particular injury to them as a community and to their environment as follows:

- That owing to its invasiveness, Prosopis forms extensive and impenetrable thickets that gradually choke up all other indigenous plants and grasses leaving much of the soil bare and prone to erosion.
- That it suppresses the growth of other vegetation thus leading to the loss of pasture important for livestock.
- That the Prosopis thorn is poisonous and has led to the loss of livestock impeded human movement and damaged machinery. Specifically, Prosopis thorns have caused paralysis of limbs leading to amputation of affected limbs, resulted in massive punctures to machinery, caused blockage of roads and footpaths.
- That Prosopis has also caused the blockage of rivers, causing flooding.
- That Prosopis has grown into homes and schools, causing displacement of people and loss of playing fields.
- That Prosopis has had a negative psychological effect on the residents, causing anxiety and fear.
- That by directly destroying the pastoral enterprise which is the economic bedrock of the Il Chamus, Prosopis has caused massive poverty in the area.

The Il Chamus went on to show that not only was the Prosopis plant harmful to them, but that the government, the Ministry of Environment and Natural Resources, the National Environmental Management Agency and the Baringo County Council were all responsible to various precise degrees.

#### 7.2.5 Alleged government responsibility

In the Prosopis case the Il Chamus alleged that the Government of Kenya together with the Food and Agriculture Organization (FAO) introduced a noxious weed known as Prosopis Juliflora within the Ng'ambo location, Marigat Division area of the Rift Valley Province in the early 1980's.

Because of its status as a UN body enjoying diplomatic immunity in Kenya, the FAO was omitted from the suit.

According to the Il Chamus, the government had not been forthright in their intentions and actually misled them that the plant would be of benefit to them, only for it to wreak havoc on their livelihood. They claimed that within a period of about 20 years, the plant had colonized their living space and was still spreading. It had caused loss of pasture by crowding out indigenous plants, loss of livestock, and blockage of roads, foot paths and rivers. Prosopis also had poisonous thorns that were harmful to human beings and livestock. Because of these effects, the plant had destroyed the economic basis of their livelihood.

Specifically, the Il Chamus accused the government of:

- Knowingly allowing the introduction of the weed while knowing or ought to have known its impact on the environment in the long term;
- Failing to take measures to safeguard further damage and/or address the problem of the weed on the environment or the people;
- Lacking a policy to eradicate Prosopis despite loud complaints from the affected communities;
- Introducing the weed without a contingency plan to manage its adverse effects;
- Failing to monitor the spread and impact of Prosopis and prevent further spread and damage.
- Failing to compensate the affected communities for losses suffered;
- Being reckless by introducing Prosopis without carrying out proper research on its effects;

- Ignoring available evidence from countries of origin on the highly negative effects of Prosopis and proceeding nevertheless to sanction the introduction of Prosopis on the petitioner's land.
- Failing to institute environmental management measures to stop the further spread of Prosopis.

The Il Chamus contended that because of these failures or negligence of the Government, they were holding it liable for the loss, suffering and massive damage to the environment and their livelihood. The government was also acting in contravention to its obligations as a signatory to the convention on Biological Diversity 1992. The government's negligence, according to the Il Chamus, was further demonstrated by their failure to act on the recommendations of the report of the public complaints committee which had outlined specific steps for the government to take in dealing with the Prosopis problem.

The government, on its part, denied responsibility for the presence of Prosopis in the area and countered that the petitioners must prove their allegations that the government introduced the said Prosopis Juliflora to the area and that the same has adverse effect on the environment.

In opposing the claim by the Il Chamus that their right to property had been breached, the government argued that the relevant sections of the constitution cited by the Il Chamus only dealt with trust land (see chapter six, section 6.1.8), and since the Il Chamus had not shown that they held trust land, they could not therefore have a right to claim and hold land under the constitution. Further, the government reminded the court that since the Il Chamus had earlier filed and withdrawn a suit (see footnote 52 above) based on the same issue of Prosopis juliflora and which made no claim to property, there was no justification for the Il Chamus to make a claim for property under this constitutional reference. Moreover, they argued that loss of property was governed by the Land Acquisition Act which dealt with compulsory acquisition of property. The fact therefore

that Prosopis has taken over the petitioners' land did not amount to compulsory acquisition, and since the said land was still there, it was therefore not true that the Government acquired the land for the last 20 years. This argument was defeated when the court declared that in the modern context the right to property can be breached in other ways than compulsory acquisition, including the taking over of Il Chamus land by Prosopis. The fact that they could not use their land as they wished due to the presence of Prosopis amounted to a breach of the right to property.

On the report of the Public Complaints Committee, the government suggested that it was a policy matter under section 5 of EMC Act and as such should not have been placed before the constitutional court for interpretation.

The government argued that in any case, it was practically impossible to eradicate Prosopis Juliflora, but that it could nonetheless be used on a positive way to sustain development, control climate change and reduce green- house gasses in the atmosphere. As such, exploitation of the plant was the best possible management option.

On the their obligations to respect and uphold provisions of international treaties and conventions to which they were a party, the government claimed that the international instrument referred to by the Il Chamus did not fall under customary international law, was soft law and therefore not binding on the government.

On the demands by the Il Chamus that a commission be set up to enquire to the losses incurred by the community, they claimed that none should be set up because no evidence of any losses has been demonstrated by the Il Chamus.

For their part, the National Environmental Management Agency (NEMA) was accused of failing in its statutory duties as laid down in its establishing act, The Environmental Management and Coordination Act,



1999 (EMCA) and failing to advise the government appropriately regarding the effects and management of Prosopis.

Further, the Il Chamus alleged that as a result of this statutory failure by the NEMA, the government had not addressed the plight of the petitioners and all other affected groups, causing them irreparable harm.

The National Environmental Management Authority (NEMA) claimed that they had been wrongly enjoined into the proceedings. Not only was the introduction of Prosopis done before the enactment of EMCA which they were being accused of failing to act upon, the proper procedure for the petition would have been to pursue the provisions of the statute and not the Constitution. They further argued that fundamental rights can only be guaranteed and secured by the state, and therefore a statutory body such as the NEMA cannot be sued for the same.

However, enjoining the third respondent (NEMA) to the petition served another very important function for the Il Chamus from a legal strategic point of view. Any proof provided by the NEMA to substantiate what steps they had been taking to fulfil their mandate would invariably introduce into the court record the findings by their Public Complaints Committee and thereby compel the court to consider it. As already mentioned earlier, though the recommendations of this Committee had been favourable to the Il Chamus, they were never implemented, and their introduction into the court record would be a second opportunity to have them implemented. In the event, this was indeed the case and the court, in its recommendations, made a specific order that the recommendations of the Public Complaints Committee be implemented. This was a significant result for the Il Chamus given that under the governing Act, NEMA had no powers to enforce their own recommendations and this was an effective way to give biting force to the said recommendations of the NEMA commission.

In their defence, NEMA also contended that while they had no obligation to do so, they nonetheless visited the sites of Prosopis invasion and carried out research and conducted a public awareness campaign.

They also argued that though the right to life was important, it was not a priority given “the country’s’ stage of development”. They also imputed that the right to a clean environment was subject to “availability of funds.” These statements predictably drew the ire of the court and the NEMA was admonished accordingly.

To them, the plant was introduced with good intentions since it could not be eradicated completely, it was sufficient that something is being done about the problems and their actions so far had proved that they were active and alive to the situation.

#### 7.2.6 Legal contestations: two sides of Prosopis

We have already seen in Chapter five different and sometimes contradicting narratives about Prosopis juliflora. In the Prosopis case, the narratives about Prosopis juliflora were put to legal contestation by both sides of the case, and this section takes a look at a cross section of topics that were subject to this contestation.

Contrary to the above evidence from academic researchers as well as eye witness accounts, the government, through its agents and legal representatives in court attempted to deny that it was responsible for the introduction of the Prosopis Juliflora plant not just in Baringo but anywhere in Kenya for that matter. For example, Professor Kivutha Kibwana, then Minister for Environment and Natural Resources, claimed under oath that records available to him showed that the Government did not introduce or sanction the introduction of Prosopis juliflora in Ng’ambo Location, and that Prosopis Juliflora was available in some parts of Kenya already in the 1930’s, and that by 1970’s it was commonly found in many places in Kenya. Subsequently, it was dispersed by human and animal

activity as well as by natural phenomena. This attempted denial was remarkable given that before the court was a Ministerial statement<sup>52</sup> issued by the same Professor Kibwana to Parliament on the 20<sup>th</sup> June 2006, part of which stated:

*"I wish to inform you that my Ministry introduced the Prosopis Juliflora tree, a native of Southern America in the 1970s. The main reason for this introduction was to assist in the rehabilitation of the arid and semi-arid lands. In addition, it was meant to provide fodder, shade, firewood and building poles. It was also to assist in honey production and act as wind breakers in arid areas which include Turkana, Baringo, Tana River, Garissa, Isiolo Mandera, Meru and Taita Taveta districts among others"*

Mr. Njoroge Mwangi, counsel for the government, said that to claim that the government was responsible for introducing Prosopis to Ng'ambo was to mislead the court: this was simply not true. Both Professor Kibwana and Mr. Mwangi then went on to state that even though the government had not been responsible for the introduction of Prosopis Juliflora, they had assumed responsibility to deal with the matter out of a general concern for its citizens.

Despite the attempts by the government to deny that they introduced the plant, the court found that they in fact did introduce the plant, but absolved them of improper motive in doing so. Their good intentions in introducing Prosopis were said to be: to curb soil erosion; to provide wood fuel; to provide poles for the construction industry; to reclaim areas destroyed by quarries. By introducing vegetation, it was believed that soil

---

<sup>52</sup> Ministerial statements are usually issued by Ministers on the floor of parliament in response to questions by interested Members of Parliament. A ministerial statement is usually given where the official position of the government and specific details on government actions are required as part of an answer to a question asked in parliament. Because they are usually detailed in nature, Ministers concerned are usually given some notice in order to research the question and come back with a detailed answer. A ministerial statement thus issued reflects the official position of the government on the matter.

binding would be improved, hence reducing the rate and effects of soil erosion.

The court, after a perusal of all the evidence before it including submissions from the parties, sworn affidavits, publications and letters annexed to the petition and responses to it, rejected the claims by the government and its agents that they were neither aware of nor responsible for the introduction of Prosopis Juliflora into Baringo (statement by Justice Ang'awa at paragraph 84 of the judgment).

The court took as proven beyond reasonable doubt that Prosopis was introduced to Baringo in 1980's with an agreement signed in 1982 between the Government of Kenya and the Food and Agriculture Organization (statement by Justice Ang'awa at paragraph 81 of the judgment).

The court next heard from both sides arguments presenting two different sides of Prosopis. The Il Chamus introduced evidence to prove the detrimental effects that Prosopis has had on their livelihood. On the other hand, the government had the difficult task of refuting some of the claims by the Il Chamus and highlighting the potential and benefits of Prosopis. As it will be seen in the following section, however, evidence showing the negative effects of Prosopis by the Il Chamus was overwhelming and the supporting material provided were very persuasive to the judges.

The Il Chamus, to demonstrate the ill effects of Prosopis, led evidence to show that: Prosopis had impeded their access to the resources of Lake Baringo by clogging the shores and making it difficult to fetch water; livestock feeding on the pods of the plant developed problems with their teeth and digestion, affecting their ability to feed and causing death. Consumption of Prosopis was also said to lead to bad tasting meat from the animals. The Il Chamus also presented as evidence research studies claiming that the plant causes allergy, asthmatic conditions and inflammation of the lungs in human beings. Their health was at risk due

to this plant. The Prosopis thorn was so poisonous that it had led to immobilization and even amputation of limbs.

These claims by the Il Chamus were supported by some very persuasive pieces of evidence, including affidavits, photographs, correspondences, minutes of meetings and reports from important personalities. For instance, one Dr. Wellington K. Kiamba, a graduate of Bachelor of Medicine and Bachelor of surgery, University of Nairobi and Medical Practitioner based at Nakuru, swore an affidavit detailing how he treated three of the petitioners on the 5<sup>th</sup> of July 2006 after they developed medical complications following encounters with Prosopis thorns.

As mentioned earlier in this chapter, part of the strategy employed by the Il Chamus in arguing their case was the use of highly graphic and sometimes incredible statements, and their use of a report by Professor Ratemo Michieka, former director of the National Environment Management Authority (NEMA), is an example. The report stated in parts:

*"Mention the word 'Prosopis' to anyone from the arid and semi-arid areas (ASAL) of Kenya and you will create chills down his/her spine. It creates agony, poverty and curses to anyone who has encountered with the Plant...Livestock numbers have been reduced tremendously. The allelopathic effects of prosopis have reduced pasture (grass species) to naught. Once the canopy establishes, no vegetation grows under and locals must vacate the invaded areas!! They migrate in search of pasture. If an animal is trapped in the weedy enclosure, no one dares rescue it, the animal might starve to death in there, reason, the owner might be pricked and have his limb amputated. No one gets out at night, chances of stepping on a thorn or being scratched are high; no one can go for anybody's help in case of fire or any assistance, they will be pricked. Water channels, rivers and streams have their courses changed by prosopis. Goats, which eat the plant, have had their teeth fall off, their mouth disoriented and their stomachs swollen as there is no*

*regurgitating, which takes place. Loss of cattle and goats is a problem now. In extreme instances the seeds "start germinating" inside the goats' stomachs!! When they die and intestines opened, accumulated sprouting prosopis seeds are found inside".*

In the final analysis, the Il Chamus were able to overwhelmingly demonstrate to the court the negative effects of Prosopis as well as its impact on their livelihood. The court rejected the government's attempts to dissociate itself from the introduction of the plant into Baringo and found that the Il Chamus had sufficiently demonstrated the nature and extent of Prosopis injury to their livelihood. It held that the government was responsible.

### 7.3 The judgment

By a majority decision, the judges found in favour of the Il Chamus and addressed themselves to the following issues respectively.

#### 7.3.1 On jurisdiction

The court declared that by virtue of the fact that at least two constitutional provisions, namely the right to life and the right to property were up for interpretation, the constitutional court had jurisdiction to hear the matter. Further, the Petitioners' reliance on the EMCA section 3(1) is embodied in section 84 of the constitution. Therefore, they were entitled to introduce statutory provisions into a constitutional interpretation. These statutory provisions embody the environmental justice principles of sustainable development, and the polluter pays principle.

#### 7.3.2 On the polluter must pay principle

The court decided to uphold the principle of polluter must pay and held the government of Kenya accountable for its decision and actions to bring Prosopis Juliflora into Baringo twenty years earlier, whether the resulting effects were known to it or not. They found that there was a duty of care and accountability by the Government of Kenya towards the Il Chamus,

and that the government erred in introducing a noxious plant. Though their intentions may have been good they had to remedy the negative effects of Prosopis occasioned by their actions.

### 7.3.3 On the right to life

The court observed that both section 84 of the Constitution of Kenya and Section 3 of the Environmental Management Coordination Act (EMCA) refer to the same bundle of rights, namely that every Kenyan is entitled to the right of life, and the right to a clean and healthy environment.

Whereas the government had claimed that the Il Chamus in their application had failed to clearly identify what rights had been violated or breached and by whom, the court observed that the Il Chamus had convincingly shown how the Prosopis Juliflora had interfered with their development and social life style. The court therefore concluded that the government had failed to put in place a management program or elevate the crisis to a national issue. The court ruled that from the submissions and affidavits before it, it had been established that the plant Prosopis Juliflora had so injured the lives of the Petitioners and others as to deprive them of sustainable development and the right to life.

In arriving at this ruling the court adopted a broad interpretation of the rights to life. In the view of the court, the constitution must be given a broad meaning and not interpreted literally as called for by the government. This right includes the right to be free from any kind of detrimental harm to human health, wealth and or socio economic well-being. The fundamental rights protected by the constitution therefore extend to those breached by the existence of Prosopis Juliflora.

### 7.3.4 On the right to property

The court held that Prosopis had affected the right of the Petitioners to access their property, amounting to a breach of the right. Responding to the claims of the government, the court held that the right to property did

not only mean right from compulsory acquisition by any person or organ of the Government. The constitution also grants rights to the security of home and that of other property. In this connection, the court observed that in this modern age there are other means by which the fundamental human right of property and its protection can be breached. For example, rendering the land unusable for its original purpose in the way Prosopis had done was another way of breaching the right to property.

#### 7.3.5 On the right to sustainable development

The court held that each and every Kenyan is entitled under the constitution and under the environmental Act EMCA to a right to life, as well as a right to a clean and healthy environment. The Prosopis Juliflora plant has displaced the petitioners and curtailed their social lifestyle and development. Their right to develop and improve their life style has been curtailed by the introduction of this plant. The government has failed in its task to put in place a management program or made it a national issue, and therefore the Petitioners have had their rights infringed when they have been deprived of the sustainable development.

#### 7.4 Final determination

In the final result, and in recognition of the fact that the Il Chamus' case had been substantially vindicated, the petition was allowed accordingly, and the court made the following orders:

-That a right to a clean and healthy environment free from pollution of any kind that is detrimental to human health, wealth and/or socio-economic well-being and ultimately the human life is a fundamental right to life as enshrined in Section 70 of the Constitution of Kenya.

-That the right to a clean and healthy environment is fundamental attribute of people and the aggression to the environment occasioned by the weed Prosopis Juliflora amounts to a breach of this right which this Honourable Court is empowered to address and remedy accordingly.



- That the introduction of the weed Prosopis Juliflora has caused and continues to cause more harm than good to the environment and its harmful effects and damages far surpass any reasonable and beneficial use that it could be put to and it thus ought to be eradicated and/or managed with expediency.
- That the Petitioner's right of life as set out in above is compromised by the introduction of the weed Prosopis Juliflora to warrant the intervention by a constitutional court.
- That the failure by the Ministry for Environment and Natural Resources to take affirmative steps towards eradication of the weed/plant Prosopis Juliflora amounts to breach of the right to own property.
- That a commission comprising of technical and local experts be appointed by the Government under terms and reference to be set out by this Honourable Court inter alia to:
  - Assess and quantify the loss visited upon the environment and to the residents of Baringo District by the weed Prosopis Juliflora.
  - Assess and quantify the loss resulting from the introduction and non-action by the Government.
  - Assess injury to persons and commensurate and make a finding and report to court its assessments and findings.
  - Assess and ascertain the injuries occasioned to individuals resident in the areas affected by the weed Prosopis Juliflora and recommend commensurate monetary compensation thereto.
- Complete its task within sixty (60) days of appointment. -The first and second respondents to implement the Public Complaints Commission recommendations with respect to the complaint on Prosopis Juliflora in PCCC No.67 of 2005 (see section 6.2.2 above) between Community Museum of Kenya and Kenya Forestry Research Institute and Food

Agricultural Organization. The recommendation referred to here was that *Prosopis juliflora* be declared a noxious weed under the Suppression of Noxious Weeds Act (Chapter 325 of the Laws of Kenya).

-The Costs to the Petitioners by the first and second Respondents. This meant that the government through the Attorney General and the Minister for Environment would meet the financial costs of the case. This was quite an important victory for the Il Chamus as legal costs are usually quite high and this is one of the main reasons hindering access to justice by the poor.

In legal terms, the case was a major victory for the Il Chamus, as all their prayers were granted. It proved that all their efforts had not been in vain and it was quite a good result for their morale as a community. Most importantly, the government was ordered to meet the legal costs of the petition.

Evidently, the government has been slow to implement some orders of the court and it is expected that the full impact of the judgment will take longer to unfold. However, one aspect of the judgment that had an immediate impact on the resilience of the Il Chamus was the order that *Prosopis* be declared a noxious weed. This was done quite expeditiously after the judgment. The judgment was handed down on the 11 December 2007 and one year later, the then Minister for Agriculture, Mr. Noah Arap Too, declared *Prosopis juliflora* a noxious weed under the Noxious weeds Act in the whole of Kenya with effect from 30 December 2008<sup>53</sup>.

The Noxious Weeds Act is an Act of Parliament aimed at the suppression and possible eradication of weeds that are deemed to be harmful. When the responsible Minister declares a weed noxious he may specify the area within which the order is to be implemented. This may be within a certain district or defined boundaries, or the whole of Kenya. In the case of

---

<sup>53</sup> This declaration was announced by Gazette Notice Number 184 of 2008, dated 17 December 2008.

Prosopis the Minister made the declaration to apply in the whole of Kenya, meaning that wherever Prosopis was found in Kenya, it was to be treated as a noxious weed.

According to the said Act, the presence of a noxious weed creates an obligation on every person responsible for the land within a declared area to clear the noxious weed, or cause it to be cleared from that land.

Clearing in this context is defined to mean digging up or pulling up and burning, or employing other authorized means of destruction. The Il Chamus were thus under an obligation to destroy Prosopis, including by burning.

The obligation to destroy a noxious weed is perhaps one of the most important reasons why the Il Chamus wanted Prosopis juliflora declared as such, because it could then legally be destroyed by burning. Burning of Prosopis to produce charcoal has made it easier for Il Chamus households to access a cheap source of household fuel and provided an extra source of livelihood for those members of the Il Chamus community who engage in the trade.

Classification as a noxious weed meant that the very strict rules regulating the charcoal burning trade in Kenya<sup>54</sup> are ignored. This has made it easy for people living on land occupied by Prosopis to engage in the charcoal trade. Because only mature Prosopis trees are suitable for charcoal burning, better off people who are able to invest in chain-saw

---

<sup>54</sup> The Minister for Forestry and Wildlife, under section 59 of the Forests Act 2005, has made the so called Forests (Charcoal) Regulations 2009. These regulations apply to forestry, sustainable charcoal production, transportation and marketing. Under these regulations, all persons engaged in burning and selling of charcoal must obtain a license or permit from the Kenya Forest Service (KFS). Further, all commercial charcoal producers shall organize themselves as business firms or charcoal producer associations to be registered under the Societies Act. Producers are expected to undertake an environmental impact assessment, have a reforestation/conservation plan and a management plan for woodlands where wood is harvested. Before any charcoal is transported, the transporter must apply to the KFS for a charcoal movement permit for any amount exceeding three bags. In addition, they need a certificate of origin and purchase receipts from the producer. A seller of charcoal is required to have a copy of the certificate of origin, a copy of the movement permits and a business license/permit from the local authority.

cutters or to employ manual labour have been able to efficiently exploit the charcoal. There are also quite high transportation costs involved and commercial trading in charcoal is therefore dominated by only a few people.



Picture 7: Prosopis logs being prepared for charcoal burning.

The impact of charcoal, whether at household subsistence level or at a commercial level has definitely contributed to the resilience of the Il Chamus. The next chapter considers the second Il Chamus case, after which a joint evaluation is made of the consequences of both cases.



Picture 8: Charcoal sacks awaiting pick up and onward transportation to Nakuru. Small producers of charcoal usually leave out sacks of charcoal at strategic points. These are then picked up by Lorries belonging to charcoal merchants from Nakuru. In 2011 a sack of Charcoal was sold at Ksh. 250 in Salabani while in Nakuru a similar sack would go for between Ksh. 700 and 1000.

## **Chapter 8: Legal contestation of identity: the case of *Rangal Lemeiguran and others versus the Attorney General and others.***

### Introduction

This chapter is focused on the analysis of a second case brought by the Il Chamus against the government. This case was in response to political marginalization and disenfranchisement of the Il Chamus and was framed by them as a claim for parliamentary representation. It was premised on their status as a special interest group and linked to their identity as an indigenous community. The case of *Rangal Lemeiguran and Others v Attorney General & Others [2006] eKLR*, hereafter the *Identity case*, was initially filed on 12 March 2004 and was lodged against the government through the Attorney General and the Electoral Commission of Kenya (ECK), which is the government's principle agent in the management of elections in Kenya.

Within the general framework of governance, the analysis in the following sections will explore the legal nuances of political contestation inherent in adversarial litigation. By demonstrating the positive effect of litigation for the Il Chamus in the process of governance, this chapter shows the importance of litigation as a resilience building mechanism. In this analysis we see the political utility of identity and the appropriation by the Il Chamus of global concepts of indigenous identity and marginalization to advance a political agenda through the process of litigation. It is also shown how, by the legal framing of political issues in terms of human rights and social justice norms, the Il Chamus were able to effectively challenge their political marginalization.

As a forum for political contestation, this case shows the articulation of concepts that are directly relevant to the nature of environmental governance in Kenya. These include: indigenous and minority rights; public participation in the affairs of the state and the obligations of the state in ensuring such participation in fulfilment its human rights

obligations; free, prior and informed consent of indigenous people to state projects carried out in their territories, and the legal right to participate in governance. Within the context of indigenous identity as a political tool, this analysis will also incorporate an historical enquiry into the development of the concept of indigenous rights globally and its allure for communities such as the Il Chamus.

The chapter is organized into thematic sections that seek to answer the following questions: how useful is the notion of ethnic identity in general, and indigenous identity in particular, as a political mechanism for access to resources? How have the Il Chamus historically been able to influence perceptions about their identity? How has the concept of indigenous identity developed over the years and how is it articulated in national and international legal discourse? What sources of legal protection exist for indigenous peoples within the framework of national and international law? How have the Il Chamus framed political concepts into legally contestable rights, and what rights specifically have they invoked? How have the Il Chamus established and maintained links to a global network of indigenous movements?

An important question that arises from both of the Il Chamus cases analysed in this thesis, and which is addressed at the end of this chapter, is what impact the process of litigation has had on the processes of governance that can be positively linked to resilience building.

In order to understand the Il Chamus case in its proper wider global political context, the next section begins by describing the indigenous identity phenomenon and its utility as a political tool. It then looks at some theoretical groundings of ethnic identity in general and indigenous identity in particular.

## 8.1 The political utility of ethnicity

This thesis treats the notion of identity as an indigenous group analogously to that of ethnic identity in general, when viewed as a political tool. The notion of ethnicity or ethnic identity is itself highly contested and has been described as socially constructed yet complex, contested, fluid and in a state of constant evolution (Lynch 2006, Berman 1998, Waller 1993).

In Kenya, ethnicity in general is a politically significant category of inclusion and exclusion that has been exploited both by political elites at the top and the populace at the bottom (Lynch 2006), and is ultimately linked to access to resources. A deep analysis of why and how come ethnicity as a political category has achieved a prominent status in the political articulation of resource issues in Kenya is a complex and much studied issue but that is beyond the scope of this chapter.

What is certain is that geographically defined or politically bounded ethnic identities in Kenya as we know them today can largely be traced back to the colonial project, which is not to say that pre-colonial Kenya did not have already, at the time of colonial occupation, certain well defined ethnic entities. British colonial powers in particular, through their "indirect rule" model simply attempted to lay a rigid and ethnically coded administrative template onto pre-existing but fluid ethnic entities to extend their rule. In doing this, they relied on the social structures of those entities, which were largely based on patronage and kinship networks (Spear and Waller 1993).

In addition to Kenya's colonial history, Wa Githinji and Holmquist also ascribe the salience of ethnicity in Kenyan politics to a lack of common class or ideological base upon which to unify the various cleavages that define Kenyan society. They describe political power in Kenya as residing in the hands of an all-powerful executive who distribute state resources through ethnic affiliation. This powerful executive drives the conduct of

the state, access to which is facilitated by powerful regional politicians rather than political parties. Ethnic identities, therefore, play a central role in the process of governance, and can determine the degree of access to resources by a community (Wa Githinji and Holmquist 2009:106-107).

However, while ethnic identities may be socially constructed through local political and social processes, they are first and foremost built upon a tangible basic foundation cemented by biological and social ties with common histories and myths of origin encompassed within a narrative of "one people" (Lynch 2006). Ethnic identities are, as Ake describes them, "decidedly real" notwithstanding their fluidity and arbitrariness, and are not simply figments of human imagination (Ake 1993: 2). The construction of particular ethnic identities is therefore based upon existing foundational structures.

The property of ethnic identities as complex and fluid also means that they are not immutable and therefore highly contestable, creating uncertainty and ambiguity in defining the boundaries of each ethnic group, as well as determining who belongs to what ethnic group. It is within this ambiguous space that ethnicity as a political tool finds its utility.

Within this space, individuals are able to negotiate their membership, communities are able to negotiate and contest their boundaries, as well as determine who is friend and who is foe (Lynch 2006: 50). Within the context of current perceptions of indigenous identity, the notion of self-identification within international legal discourse, which notion allows groups to identify themselves as indigenous, has provided ample opportunity for indigenous groups such as the Il Chamus to claim the tag for themselves without indulging in extensive efforts of justification. It is particularly within the context of self-identification as indigenous groups that we have seen a proliferation in recent times of groups identifying themselves as such. Before getting into a specific discussion of indigenous



identity in Kenya we first see in the next section how the Il Chamus have historically been involved in shaping perceptions about their identity.

## 8.2 Il Chamus identity through history

This section will show that at various phases of their history, the Il Chamus have been able to influence perceptions by others about their identity. They have managed to do this by highlighting or suppressing certain aspects of their historical roots through a process referred to as ethnicity management (Cronk 2004). In terms of resilience thinking, this section therefore aims to show how identity may be negotiated at different phases of the adaptive cycle, and how it is linked to social resilience.

### 8.2.1 Il Chamus ethnicity management

The manner in which the Il Chamus manipulate perceptions about their ethnicity presents a classic example of ethnicity management, a term used by Cronk (Cronk 2004: 72-74) to describe the process by which the Mukogodo “became” Maasai. The Mukogodo switched from speaking Yaaku to Maa and deliberately strove to become pastoralists from a predominant activity of hunting and gathering. They presented a different facet of their desired ethnicity as the audience demanded. To the British, from whom they needed recognition and protection, they presented themselves as pure Yaaku speaking hunters and gatherers or Dorobo. Dorobo is used here in the sense of not possessing cattle and subsisting through hunting and gathering (See Cronk 2002: 32; Waller 1985: 349, and for a detailed discussion of the term “Dorobo”, Bernstein 1976: 1-11). To their Maasai contemporaries, from whom they desired acceptance, they shunned their label as Dorobo and presented themselves as fellow Maasai. In a similar but less radical fashion, the Il Chamus adopt a flexible attitude to their perceptions and descriptions of ethnic affiliation. Many Il Chamus Moran I spoke to were keen to describe

themselves as “Maasai kamili” (pure Maasai), yet in official forums and in the eyes of the Government they want to be seen as ‘Il Chamus’, an indigenous people.

It is to be noted that as an ethnic group, the Il Chamus contain elements of a diversity of groups with whom they have interacted over the years such as Samburu, Loogolala, Uasin Gishu and Laikipiak from among the Maasai affiliated communities, as well as of Tugen, Turkana, Elgeyo, Kikuyu and even Luo, among others, reflecting their rich heritage through time. Representing a mosaic made from a diverse group of peoples, they are the product of many upheavals that systematically and gradually wove into their ethnic fabric communities of refugees. While some of these refugees were being assimilated into the Il Chamus, they brought with them elements of their own ethnic and cultural constructs. Waller (1985: 350) has described the situation in the Il Chamus settlements of Lake Baringo as one where “*successive waves of migration and upheaval over a wide area are laid bare like geological strata through the accretion of different groups to a permanent core population*”. Given this complex mix of cultures, it is in the end rather difficult to assign Il Chamus identity to any one particular origin. According to Little (1998: 451), “*The open-ended nature of Il Chamus identity made it difficult to devise a consistent distinction between cultural insiders and outsiders*”. It is this quality of Il Chamus identity that makes it possible for them to ‘manage’ their ethnicity within the boundaries of political contestation.

In the case of the Il Chamus, instances of ethnicity management can be seen in their folklore, dress, song, dance, and expressed in commercial, political and legal forums. As is evident below, folklore and myths of origin provide one of the most important tools for the expression of particular versions of identity.



Picture 9: Il Chamus women singing in traditional attire

As a result of rapid social and ecological change, ethnicity can be politicized as part of the resulting political contestation, creating certain political narratives built upon ethnic identity. In the case of the present day Il Chamus, this entails recourse to an identity that seeks to fit within a certain politically expedient category that stresses indigeneity and forges a strong link to some 'ancestral' place. In this respect, folklore, or myths of origin recounted as part of their oral history becomes part of a process that gives "*meaning and purpose to an ethnic community and its cultural symbols of solidarity and exclusion*" (Smith 1984: 293). Ethnic identities are solidified by myths of origin and descent which are stored in a repository of group folklore to be recounted and sometimes re-enacted in cultural ceremony. Il Chamus folklore contains such myths to explain their origins and as part of their ethnicity management. At present their objective is to be seen as a distinct and indigenous entity that is separate from the core Maasai groups, and this is reflected in current versions of their oral history. The next section looks at some oral myths about the origin of the Il Chamus, and also considers the link between the Il Chamus and the Maasai.

### 8.2.2 Meaning of the name Il Chamus

One version of Il Chamus folklore attributes the origin of the name "Il Chamus" to the word "Amusoo", which refers to a gift of prophesy or foresight. The word "Amusoo" itself means to foretell or guess positively

the contents of a person's luggage, unspoken words or intended deeds. This version therefore expresses a positive identity that associates the Il Chamus with foresight and vision.

According to a second version, "Il Chamus" is a corrupted version of the word "Mamus". According to oral history, the Maa speaking group came from a "far-away country up north" in search of food, water and pasture. On reaching Lake Baringo, one man declared himself too sick to continue with the south bound trek. The main party then left him behind, and only his family and in-laws decided to remain with him.

The abandoned party discovered fish in the lake and finding it agreeable, the man was quoted as saying, "Mamus ajo aatung'ayeki", meaning "I am glad I was abandoned" (because as a result, he found food in the form of fish from the lake). So it is said that the name Il Chamus was derived from the word "Mamus". This particular myth serves to front a distinction of the Il Chamus as unique entity with a traceable origin that is separate from both the Samburu and larger Maasai groups, contrary to ethnological evidence that links the Il Chamus quite strongly to the Samburu. As a matter of fact, both Anderson (2002) and Little (1998) refer to the Il Chamus as 'Il Chamus Maasai', a categorization that the current discourse of an indigenous and ethnic minority fights hard to disengage from. As the legal analysis of the *Identity case* will show, the connection of the Il Chamus to the Maasai was an important point of legal contestation with the government claiming that the Il Chamus were a sub-clan of the Maasai and therefore not a culturally distinct ethnic group. Because this issue goes to the core of the current formulation of Il Chamus identity, the next section therefore considers the nature of the relationship between the Il Chamus and the Maasai.

### 8.2.3 The "Maasai" question

In trying to define the Il Chamus as an ethnic group, it is therefore important first to address the issue of their "Maasainess". Are they or not

Maasai, and to what extent? This seemingly innocuous question has profound political implications for their claim to an indigenous identity as well as with regard to the issue of land ownership, which is itself a major source of conflict Kenya today.

A consideration of Il Chamus ethnographic history links them quite strongly to the Maasai in general and the Samburu in particular (see Chapter 3; Little 1992: 27). However, the current political formulation of their identity as an indigenous group seeks to downplay this link and present the Il Chamus as a distinct cultural group despite these historical connections. While not denying their historical connection to the Maasai in general and the Samburu in particular, the Il Chamus avoid being strongly associated with the Maasai because this diminishes their claim to cultural distinctness.

With the “Maasai” question, a paradox presents itself. Within the so called Maa speaking pastoral ideal for which the Il Chamus have been known to strive but fall short of on account of being associated with foraging, fishing and irrigation, being associated with “Maasai” is desirable to them (Cronk 2004: 63-64; Spencer 1998: 132), yet they are held in low esteem by the larger Maa speaking groups. In relation to the Maasai, Little describes the Il Chamus as *“one of those ambiguous communities of Maa speakers upon whom pastoral Maasai depended for grain and refuge but who were held in relatively low esteem by them...geographically on the Maasai periphery, although being Maasai was always part of their heritage”* (Little 1998: 444). Ironically, their foraging heritage, which has been central to their survival, was a major reason for their being despised by the core Maasai groups (Spencer 1998: 132).

In a different context, being associated with the Maasai is similarly desirable. For instance, Il Chamus Moran, when performing traditional dances in tourist hotels in Kampi ya Samaki, exploit the Maasai

association as a commercial brand and present themselves as Maasai. Not many tourists will have heard of the Il Chamus but many are attracted to romantic images of the Maasai. It therefore makes perfect business sense for the Il Chamus Moran to market themselves as Maasai.

When among their peers, Il Chamus Moran will mimic “fashionable” Maasai practices which they consider prestigious. For instance, they kill small stock like sheep and goats by smothering just like Samburu Moran would do. In contrast, during official ceremonies such as the Eunoto (2011)<sup>55</sup> or in the homestead they slaughter by the use of sharp knives. When they eat fish, which is shunned by other Maasai groups, they cure the aberration by avoiding milk for the rest of the day. When asked what they admire most in the Maasai culture, many Il Chamus Morans have a simple answer: *cattle keeping*. I find the mimicry and appropriation of Maasai cultural imagery and stereotype only a useful façade that does not go deep into Il Chamus identity. An Il Chamus teacher at Kiserian Secondary school rationalizes this attraction to things Maasai: “*I think what an Il Chamus Moran desires most is not so much a Maasai identity but respect and acceptance from other Maasai as coming from the same cultural stock, as people of cattle*” (field notes).

It would appear that quite a substantial amount of prestige is associated with successful cattle husbandry, and the Maasai reputation is based upon it. An Il Chamus Moran’s quest to appropriate a measure of “Maasainess” in his outlook is thus rather a quest for validation or even inclusion into a select club of enviable cattle breeders.

In the current context of political contestation, however, where there are potential dividends to be derived from being indigenous, being strongly associated with Maasai could be undesirable.

---

<sup>55</sup> This is one of the most important ceremonies where an age group is initiated into *Moranhood*.

During different phases of their history, the Il Chamus have grappled with the problem that seems at once to be pulling them both away from and towards a Maasai association in their identity. Having long recognized both the utility and burden of bearing the Maasai brand, they have been able to portray the outward appearance of being Maasai when it suited their interest and dissociating themselves when the situation demanded otherwise. During the 1840s to 1880s, for instance, when conflicts and battles for access to pastoral resources among neighbouring pastoralists were rife, an association with the Maasai through language, dress and general outward appearance was common. Cultural similarity could have played a role in attracting refugees into their midst who, as we have seen, played a crucial role in the early success of the irrigation economy.

This cultural association was noted by early European ethnographers who considered the Il Chamus as a distinct group but with Maasai origins. Thompson, for instance, described the Il Chamus (Njemps) as *“Unquestionably Masai in race, and only separated from that tribe through the loss of their cattle and the consequent necessity of breaking their cherished convictions by cultivating the soil, they had developed new ideas, manners, and customs in a comparatively short period”* (Thompson 1887: 263).

During the early years of British colonial rule and especially when land was being demarcated according to perceived ethnic identities, the Il Chamus, in negotiating successfully for their own land, stressed their “Maasainess” by highlighting their Maa language, names and age set system as evidence. This was expedient at the time because the Maasai, having signed treaties and made special arrangements, enjoyed a certain unique status with the local colonial administration and could claim historical and cultural affiliation with the land in question. (Little 1998:

448. Also quoted are Galaty 1991, Waller 1976; Kenya Land Commission Report 1934: 1846).

Indeed, both the colonial European and their pastoralist neighbours used the Maasai label on the Il Chamus. Even Anderson (Anderson 2002: 16) refers to the Il Chamus as "Il Chamus Maasai". Historically, however, until the 1870s, the Il Chamus related more to other peripheral Maa speakers such as the Uasin Gishu, Samburu and Laikipiak, whom the central Maasai sections distinguished from themselves (Galaty 1991, 1993). The strong Maasai connection emphasized at this time was therefore more imagined than real (Little 1998: 446).

The overwhelming Maasai influence in their social organization and outlook, however cannot be denied but only suppressed. Not only do they speak a Maa dialect close to that of the Samburu (See for instance Vossen 1978) but their social organization is distinctly Maasai in orientation, complete with age sets that include a Moran regiment. They also maintain very close friendship ties with the Samburu (Anderson 2002: 33). This connection with the Samburu has been explored in the light of Il Chamus clan history in chapter 3 above.





Picture 2: Il Chamus elder in ceremonial attire. The black coloured gown (Shuka) is worn on special occasions by both men and women. On this occasion, mothers, fathers and elders of newly circumcised boys wore the black Shuka.

In recent times, the Il Chamus, prompted by strong political activism by opinion leaders within the community, have been downplaying the Maasai connection as it does not augur as well with their intended purpose to be an authentic other. Their current self-description as an indigenous and marginalized community requires a distinction from the Maasai. This then necessitates a move away from any strong Maasai connection to one loose enough to afford the Il Chamus an “independent” identity.

Such an identity provides the Il Chamus with an important negotiation tool for land rights both under local and international legal orders, and the Il Chamus have used litigation as a forum to negotiate their ethnicity on the basis of indigenous identity.

### 8.3 Assertion of identity through litigation

In Kenya, the Il Chamus are not alone in exploiting the inherent ambiguity and uncertainty of ethnicity to redefine, renegotiate and otherwise contest their ethnic identities, branding themselves as indigenous groups or otherwise vulnerable ethnic minorities. Over 25 communities<sup>56</sup> in Kenya currently self-identify as indigenous.

The Okiek, Sengwer, Endorois and most recently, residents of the Tana delta wetlands<sup>57</sup> have all brought cases to court with various degrees of success (Lynch 2006, ). Thus, the process of ethnic differentiation, negotiation and contestation is very active in contemporary Kenya and is ultimately linked to access to resources and patronage both internal and external (Lynch 2006, 2011a, 2011b).

Further facilitating this process within the international human rights discourse on indigenous identity, several legal institutions have adopted as part of their continuing practice, flexible and inclusive notions of the category with an underlying logic of inclusivity as opposed to exclusion of any groups claiming the right to be identified as such. The African Union, for example, through its human rights court established under its governing charter, the African Court of Human and Peoples' Rights (ACHPR), has recognized the functional utility of the term "indigenous peoples" as a politically expedient identity. Noting that indigenous people need to have the critical situation of their human rights addressed, they describe the term "indigenous" as well suited to provide an analytical frame within which the unique situation of vulnerable groups can be articulated. The term "indigenous", in this sense therefore, serves as an analytical concept that highlights the situation of people identifying themselves as such.

---

<sup>56</sup> See IWGIA 2012: Country Technical Notes on Indigenous Peoples' Issues, The Republic of Kenya, at page 1.

<sup>57</sup> See *Abdalla Rhova Hiribae and 3 others versus the Attorney General and 6 others*, civil case No. 14 of 2010, on behalf of the Orma, Wardei, Somali, Pokomo, Mijikenda, Malakote, Bajuni and Luo communities.

It is as a political rallying point that the term has found the greatest utility among indigenous peoples and it has grown into a global movement connecting alliances and groups of a diversity of people united by shared experiences of suffering and injustice.

The African Court of Human and Peoples' Rights has officially adopted an understanding of the term "indigenous peoples" that focuses on shared vulnerabilities expressed within the criteria of marginalization, discrimination, cultural difference and self-identification. (ACHPR 2005: 9, 10).

Indigenous identity as a political category is thus of crucial importance, not least because of the rights that have crystallized around it. Being able to claim this status, however, is more than just a matter of invocation and often, especially in Africa, communities have to go through a lengthy process to be recognized as such, not to mention the fact that African states have been reluctant to even recognize the existence of a category of indigenous peoples in the continent, often pointing out that all Africans are indigenous. Because of the highly contested nature of indigenous identity, litigation has emerged as an important strategy for communities such as the Il Chamus to assert their identity as indigenous peoples.

Through litigation the Il Chamus find a political forum to negotiate and forge an identity under which they can gain access to legal protection as well as social, political and economic rights defined in existing national and international legal instruments. Here, ethnic identity becomes politicized in terms of an indigenous people, a connotation loaded with notions of economic and social marginalization and a livelihood defined by a special relationship to land as well as a unique culture that is under threat of extinction. We have already seen how the Il Chamus engage in a process of ethnicity management. This process is further refined by litigation that is strategically deployed to portray Il Chamus community as

an indigenous and marginalized minority community that qualifies for recognition and protection under indigenous or minority group rights.

Kenyan litigants, however, face an additional difficulty because, until the adoption of a new constitution in 2010, the local legal system was not designed to promote the rights of indigenous people, a difficulty which was however tempered by the possibility to apply international legal principles.

In this regard, and especially for the Il Chamus, the applicability of international customary law principles have been very useful in accessing rights and protections enshrined in international instruments which would otherwise be out of their reach owing to the dualist nature of the Kenyan legal system, which requires international legal commitments to be made operational locally through specific enabling legislation. Moreover, Kenya's conduct at international forums dealing with the rights of indigenous people has not been supportive of indigenous rights. Kenya has for example not ratified the ILO 169 and is yet to pass local legislation to effect the provisions of the relevant international legal instruments. It was also among only seven countries that abstained from the acclamation that unanimously passed the UNDRIP at the UN General Assembly in 2007.

For the Il Chamus therefore, litigation as a strategy to gain access to these rights has been a creative process involving the formulation of international legal principles to fit into narrowly constructed national sources of law. This is a process that requires political awareness, organizational and networking skills, legal knowledge as well as financial resources, but one that also opens up new networks and sources of patronage and therefore potentially expanding both the economic and social capital resource bases of the actors. The Il Chamus, like many indigenous communities around the globe, are alive to this potential of litigation, and, relative to other communities in Kenya that have chosen

the path of litigation, the Il Chamus have achieved a reasonable degree of courtroom success.

Indigenous identity as a political tool is attractive for many communities in Africa because of the rich content of rights guaranteed to those identified as such. These rights, however, are the result of a long process of international activism and lobbying. The next section looks at the historical development of 'indigenous rights', focusing on the political processes of contestation that shaped the concept.

#### 8.4 Sources of legal protection for indigenous rights

Global spaces where legal rights relating to indigenous people have been articulated, negotiated and debated upon in the last three decades include: the United Nations human rights system through the United Nations Working Group on Indigenous Peoples (UNWGIP) whose efforts have culminated in the Universal Declaration for the Rights of Indigenous peoples (UNDRIP); the United Nations human rights treaty monitoring bodies; the International Labour Organization (ILO), whose resolution number 169 constitutes the sole legally binding instrument specifically protecting the rights of indigenous people, and Jurisprudence from the inter-American Court of Human Rights (IACHR) and the African Court of Human and Peoples' Rights (ACHPR), other regional courts as well as municipal courts which have also been instrumental for the clarification and articulation of indigenous rights, contributing to an expanding international customary law regime supporting the rights of indigenous peoples. The next few sections are devoted to the salient aspects of these important sources of indigenous law.

##### 8.4.1 The United Nations Declaration on the Rights of Indigenous People

The last three decades have witnessed an increasing importance of indigenous rights issues which have grown from an obscure position within international legal discourse to the very centre of the international

legal and policy framework. That indigenous rights issues have come to dominate the international legal and human rights scene is a remarkable achievement by itself given the low standing of indigenous affairs in international law just three decades ago.

The remarkable success by indigenous groups in bringing their issues to the fore of international attention can be attributed to unrelenting pressure from an international network of indigenous people's organizations and civil society operating within a framework coordinated from the United Nations human rights system through its institutional, legal and policy structures. The United Nations Working Group on Indigenous Populations (UNWGIP) has been instrumental in this regard, giving space for articulation by indigenous groups of their concerns, and guiding a consultative drafting process that culminated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). After the adoption of the declaration the work of the UNWGIP is furthered by the United Nations Human Rights Council and more specifically the United Nations Permanent Forum on Indigenous Issues which focuses on the implementation of the declaration.

The UNDRIP is the result of over 20 years of negotiations and debate at the UN involving indigenous people and their representatives, states and other stakeholders. It represents a landmark achievement in the advancement of indigenous peoples' rights. It is a fitting response to the historical injustices faced by indigenous people that persist to date, and is a reflection of universally applicable human rights norms and best practices.

The UNDRIP is specifically tailored to the human rights issues identified by indigenous peoples and their representatives and covers a broad spectrum of rights ranging from economic, social, cultural, civil, political, spiritual and environmental rights. While it has the status of a declaration and therefore does not have the effect of a binding treaty, it nevertheless

is a very important contribution to the developing body of international customary law and is intended to set “minimum standards” for the treatment of indigenous people (UNDRIP 2007).<sup>58</sup>

Anchored on the principles espoused in the Universal Declaration of Human Rights (UDHR), The UNDRIP is divided into 46 articles and covers important rights and freedoms such as the freedom from discrimination based on their indigenous origin or identity, the right to self-determination, the right to their traditional lands and natural resources, the right to their traditional way of life and political institutions, the right to their identity, the right to preserve and maintain their cultural heritage, freedom from forcible relocation, the right to establish and control their educational systems and the right to participate in decision-making bodies (UNDRIP 2007).

The UNDRIP represents the biggest single achievement of the United Nations human rights system, and by addressing specific human rights concerns of indigenous peoples, it ensures their inclusion within the international human rights system. Given the complex negotiations and other processes of contestation that went into the final draft of the UNDRIP, it is fair to say that it would never have been achieved without the dedicated structures of the UNWGIP within which indigenous groups found a voice and a place to articulate their interests.

The UNWGIP provided a forum for articulation of issues affecting indigenous groups spread over the globe. It was here that the long standing notion of indigenusness predicated on the idea of “first peoples” as exemplified by the North and South American Indians as well as Australian aboriginals was successfully challenged, contested and eventually expanded to include African groups.

The entry of African groups claiming to be indigenous within the international human rights framework is a recent phenomenon, and as

---

<sup>58</sup> Document A/61/295

such, they had to contend with settled notions of indigeneity related to the ideas of 'first people' and autochthony (cited in Hodgson). In other parts of the world such as South America and Australia, this was a fairly uncontested and straight forward way to categorize indigenous groups.

Given the particular histories of migration, settlement and colonization in Africa, it is often said that all Africans are indigenous (Hodgson: ), a classification that had the potential to exclude Africans from the global indigenous rights movement and one that was often quoted to deny them recognition in their own nation states. (ACHPR, Il Chamus case). The UNWGIP played a crucial role in facilitating the entry of African indigenous groups into the global indigenous movement by opening their doors to all comers and engaging participants in the discussions about meanings and understandings of indigeneity and eventually adopting the self-identification criterion that opened the door to indigenous groups from all sections of the globe (Hodgson). If the UNWGIP opened the door for African indigenous groups to participate in the international indigenous rights movement, many African states, ironically, were reluctant to accept the existence of indigenous groups within their national borders and became a major stumbling block in the negotiations aimed at achieving consensus for the adoption of the UNDRIP.

African states resisted the recognition of indigenous peoples due to fears of upsetting their own fragile nation states through potential cessation claims, which fear, strangely enough, is not supported by any indigenous groups in Africa ever having expressed the desire to secede. These fears were forcefully expressed during the negotiation process that ultimately led to the adoption of the UNDRIP by the so called "African group", led by Namibia.

The African Group used their leverage to seek for a deferment on the declaration for a year "to allow time to address the concerns raised". Finding fault with the manner of adoption of the draft Declaration which



was done by vote at the Human Rights Council, the African group felt that a document of such importance to the international community should have been put before the General Assembly for adoption by consensus. They also warned that the Declaration posed fundamental political and constitutional problems for its implementation. These, and other important key concerns listed below, were raised by the African Group in a draft aide-memoire<sup>59</sup>.

Among the key concerns of the African group were: the absence of a definition of indigenous people in the draft text. They claimed that adoption of a declaration without such a definition would create tensions among ethnic groups and create instability within sovereign states; They also expressed fears that the notion of “self-determination” espoused in the text of the declaration could be misinterpreted as creating the possibility of cessation by certain groups from nation states; They feared that the notion of free, prior and informed consent might confer a power of veto over the laws of a democratic legislature; They were also concerned that it would be politically unworkable to give effect to provisions conferring rights to indigenous people to traditional resources including land.

According to this group, these issues had to be clarified before they could offer their support to the declaration.

The responses to these concerns were crucial to the eventual acceptance by the African group and the current high profile of indigenous rights issues in the African continent can be traced, through the African Commission, to these responses. Because of the gravity of the issues and their relevance to indigenous rights as a whole, the next few sections are devoted to their analysis.

---

<sup>59</sup> Draft Aide Mémoire, African Group, United Nations Declaration on the Rights of Indigenous People, 9 November 2006, New York.

#### 8.4.2 Defining indigeneity

Recalling that the process of drafting, debating and achieving consensus on the UNDRIP was a highly contentious and politicized issue that involved a diversity of actors, there were, inevitably, certain sticky points that threatened to derail the whole project. Key among these issues was how to define the scope and application of the term 'indigenous group'. Different countries put forward their opinions based on their own particular experiences with and motives for indigenous populations within their territories.

China, for example, insisted that a precise definition of indigenous peoples was "necessary and imperative". She associated the existing discrimination and inequality affecting indigenous peoples with the European policy of colonization. According to China, the definition of indigenous people had to be "scientific and objective," and based on the "special historical misfortunes" of the peoples concerned. Properly defined in this manner, the Chinese delegation concluded, indigenous peoples did not exist in Asia generally, or China in particular. In support of China, Malaysia added that indigenous peoples did not exist in countries where the original inhabitants were not put on reservations but lived harmoniously in one society. India reasoned that not defining indigenous people could weaken the hand of "genuine" indigenous peoples in asserting their rights if there was no distinction from social groups, since the Declaration was never intended to apply in situations where "the entire population of a country can be said to be indigenous, but those where the original inhabitants were overrun by settlers from overseas, dispossessed and reduced to marginal groups in their own lands". Bangladesh, in concurring, stated that in Asia, both tribal and non-tribal peoples alike have the same claim to being indigenous, and therefore the Declaration should focus on the "unique case of injustice" in the Americas and Oceania, where the indigenous inhabitants were subjected to the "alien values of an alien culture, dispossession and near extermination" .

In the end, it was clear that no consensus was achievable on the issue of definition of indigenous people, a situation reflected in the contents of the final draft of the Declaration which contains no definition of indigenous peoples but instead champions the concept of self-identification. (Barsh 1996: 792- 793).

Recognition as an indigenous group does not in itself, however, confer upon indigenous people immediate and unqualified rights based on the UNDRIP.

This is because while the UNDRIP was an important milestone in the advancement of indigenous peoples rights, it is not by itself, as already noted, a binding legal document. However, its adoption by a big majority of member states enhances its status as a source of customary international law. Moreover, it is given life and binding legal authority by national and regional courts in their decisions on matters concerning indigenous people, as we shall see shortly in the Il Chamus case that is analysed further below.

The UNDRIP as a source of legal rights for indigenous people is important because it articulates specific rights that can be invoked by indigenous people worldwide. Within the context of resilience building, however, certain notions are crucial in the translation of the legal rights espoused by documents such as the African Charter and the UNDRIP into positive outcomes of governance. For instance, the notion of a right to development as embodied in free, prior and informed consent (FPIC) speaks directly to the process of environmental governance as it seeks to enforce the participation of indigenous people in decision making processes that have a direct impact on their livelihoods.

The next section therefore identifies certain United Nations human rights treaty monitoring bodies as a source of rights for indigenous people, highlighting in the process rights specifically contingent to environmental governance as alluded to above.

### 8.4.3 United Nations treaty monitoring bodies

Through the reporting mechanism of United Nations treaty monitoring mechanisms, states are subjected to the authority of the treaties and conventions governed by the various UN bodies. The obligation on states to submit regular reports provides a forum where they can be held accountable for their actions or policies towards indigenous people, and this obligation is taken so seriously that the very act of submitting reports is in itself considered a step towards compliance with treaty objectives<sup>60</sup>.

In this connection, the Human Rights Committee (HRC) and the Committee on the Elimination of Racial Discrimination (CERD) have been active in promoting indigenous group rights by interpreting the provisions of human rights treaties and covenants in a way that is favourable to indigenous groups, as well as monitoring their implementation.

For instance in interpreting article 27 of the International Covenant on Civil and Political Rights (ICCPR), the HRC has issued guidelines strongly in favour of indigenous communities. Article 27 of the ICCPR requires those States in which ethnic, religious or linguistic minorities exist, that persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

In General Comment No. 23, issued as a guide to interpretation, the HRC has interpreted Article 27 as regarding the rights of indigenous peoples to include the protection of a way of life that is connected to the control over, and use of, lands and resources. Further, the HRC states that with regard to the cultures of indigenous peoples and the use of their traditional lands and resources, a correct reading of Article 27 includes

---

<sup>60</sup> See: Compilation of Guidelines on the Form and Content of Reports to be submitted by States Parties to the International Human Rights Treaties: Document HRI/GEN/2/Rev.6 dated 3 June 2009 which contains harmonized guidelines on the form and content of reports to be submitted by states parties to human rights treaties.

the positive duty of the State to “ensure the effective participation of members of minority communities in decisions which affect them.”

Following this interpretation, the HRC, in its concluding observations, has consistently called upon States Parties to respect their duty to consult with indigenous peoples prior to any economic development or granting of any resource concessions within their traditional lands or territories (Ward 2011: 56, also get the source documents).

Similarly, the Committee on Economic, Social and Cultural Rights (CESCR), in its capacity as the monitoring body for the International Convention on Economic, Social and Cultural Rights (ICESCR), has issued General Comment No. 21<sup>61</sup>, to guide states in interpreting Article 15 of ICESCR, which relates to the right to participate in cultural life. The CESCR expands these rights to include the rights of indigenous peoples to restitution or return of lands, territories and resources traditionally used and enjoyed by indigenous communities where they have been taken without the prior and informed consent of the affected peoples. Further, it explicitly urges States Parties to respect the principle of free, prior, and informed consent of indigenous peoples in all matters pertaining to their specific rights. Thus, the CESCR has made a clear and unambiguous link between the collective rights of indigenous peoples’ to their lands and resources and their right to participate in their cultural rights (See here Ward 2011).

A final instance in this section relates to the Committee on the Elimination of Racial Discrimination (CERD), which is the monitoring body for the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The CERD has issued General Recommendation No. 23 which relates to the rights of indigenous people as outlined in the

---

<sup>61</sup> CESCR, General Comment No. 21: right of everyone to take part in cultural life (article 15, paragraph 1 (a), of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/21 (21 December, 2009).

ICERD, in which it states that states must consult and obtain informed consent of indigenous peoples in decisions that relate directly to them.

States are specifically required to ensure that indigenous peoples have equal rights to participate in public life. Like the General Comment 21 by CESCR mentioned above in relation to property and resources, CERD calls for restitution in situations where decisions have already been taken without the prior and informed consent of the affected indigenous peoples. CERD has justified its stance to interpret State parties' obligations as requiring positive steps in the manner described above on the duty to protect indigenous peoples from discrimination and uphold the right to equality, inherent in which are rights of participation in development and resource exploitation which extend to free, prior and informed consent.

From the above sections, it is clear that being classified as an indigenous group carries with it strong advantages within the international legal framework. The next section is devoted to an in-depth legal analysis of the Il Chamus case *Rangal Lemeiguran and Others v Attorney General & Others [2006]*. Through this analysis, legal and political articulations of various positions relating to human rights by both the Il Chamus and the government are highlighted. Legal analysis is used here as a tool to illuminate the political processes of contestation inherent in environmental governance as seen through the lenses of adversarial debate performed in a court of law.

#### 8.5 An analysis of the case of *Rangal Lemeiguran and Others v Attorney General & Others [2006]*

This case, about the right to representation in parliament of indigenous people, was lodged in a constitutional court. It sought relief in the form of declarations to the effect that state policy executed by the Electoral Commission of Kenya, acting as an agent of the government, was in breach of the constitutional rights enshrined in the then Constitution of

Kenya and alienated the Il Chamus from its protections. *Rangal Lemeiguran and Others* highlighted the marginalization and disenfranchisement of the Il Chamus and also confirmed their status as an indigenous group.

This case was also an opportunity for the Il Chamus to restate their history and claims to ancestral lands linked to their unique culture and way of life. Apart from being an occasion to contest their history in a court of law, the case also gave the Il Chamus a chance to create a documented record and further entrench their status as an indigenous group.

The case was also used to highlight the effect of violence on their livelihood, grabbing of Il Chamus land, exclusion from food aid, locking out of Perkerra irrigation scheme to the advantage of their Tugen neighbours, and environmental degradation from upstream activities.

Their train of argument was that in addition to being a numerical minority, they were also an indigenous group and therefore qualified, as a special interest group within the meaning of section 33 of the then Constitution of Kenya, to have a representative from their community nominated to parliament to articulate the particular interests of the group.

The Il Chamus claimed that to have a member of parliament nominated from their community would not only give them a voice in parliament and encourage political participation but specifically protect Il Chamus land from encroachment by the larger communities and also safeguard their social, cultural and economic life, which is crucial to their survival as an indigenous people. Having an Il Chamus member of parliaments could directly bolster their resilience.

To strengthen their claim, the Il Chamus cited international legal instruments such as the United Nations Declaration of the Rights of

Indigenous Peoples, the International Covenant on Civil and Political Rights (1966), the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (Adopted by the UN General Assembly Resolution 47/135 of 18th December, 1992), the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June, 1990, the Framework Convention for the Protection of National Minorities (1995), the International Labour Organization, and the Convention Concerning Indigenous and Tribal Peoples in Independent Countries, No. 169 (1989).

#### 8.5.1 Legal basis of the case

The petition by the Il Chamus was based on sections 1 and 1A of the old Constitution of Kenya that declared Kenya a sovereign republic founded upon multiparty democratic principles. The Il Chamus were seeking to enforce their participation in parliament as a “special interest group” by virtue of section 33 of the old constitution, which provided for the nomination by parliamentary political parties, subject to the approval of the Electoral Commission of Kenya (ECK), of an additional twelve members of parliament. It was brought against the Attorney General (on behalf of the government of Kenya as its main legal advisor), the Electoral Commission of Kenya (as the body responsible for the creation and distribution of parliamentary constituencies), and the Constitution of Kenya Review Commission, which was defunct by the time of commencement of the case. It thus sought to enforce the right to political representation in parliament based on a classification as a “special interest group”. This classification, under the laws of Kenya, availed rights analogous to those accorded to indigenous groups in jurisdictions that specifically acknowledge them as such.

#### 8.5.2 Framing of the Il Chamus case

Legally speaking, the Il Chamus case was premised upon constitutional provisions relating to fundamental rights and freedoms as enshrined in



section 1 declaring Kenya to be a sovereign republic; section 1A describing the Republic of Kenya as a multiparty democratic state; section 33 describing the procedures for appointment by the president of nominated members of the National Assembly to represent special interests; section 42 describing the manner of allocation and delimitation of parliamentary constituencies; and sections 70-84 defining the fundamental rights and freedoms of the individual.

A political framing also suggested that the disenfranchisement of the Il Chamus was part of a wider scheme to alienate Maa speaking groups in general. Here they relied on previous efforts by the wider Maa community to reinforce the narrative of a history of political marginalization of these groups. Such efforts included "A memorandum by Maa community to the Constitution of Kenya Review Commission, which highlighted the historical injustices against the Maasai as a people, such as the Maasai agreements of 1904 and 1911, under which the Maasai were made to cede over 16,000 square kilometres including 11,500 square kilometres of what became the White Highlands"(paragraph 15).They thus suggested that the "boundaries in Rift Valley be redrawn to create three regions including one comprised of Maa speaking groups of Narok, Kajiado, Transmara, Laikipia, Samburu and Marigat Division of Baringo. The Il Chamus argued that they were a minority population with minimal impact on a democratic system of government which was characterized by the domination of smaller communities by the larger ones. A possible way to arrest this pattern of marginalization was to have an Il Chamus representative in parliament. This could be achieved by invoking the relevant sections of the constitution that provided for a mechanism of achieving parliamentary representation of special interest groups under section 33(2) of the then Constitution of Kenya.

Consequently, the Il Chamus made representations to the Court based on their status as a minority community that had had no representation in parliament since Kenya's independence. Implicit in this contention was

the insinuation that former president Daniel arap Moi who was the parliamentary representative of Baringo Central (which covered the Il Chamus areas) never represented the interests of the Il Chamus in parliament. This is even more remarkable considering Moi's position at the centre of power in Kenya for over thirty years.

The Il Chamus made a direct claim for indigenous status, stating that they were "*one of the few indigenous communities in Kenya, as recognized in international law with attendant rights and protections*". In addition, they pointed to the fact that they also qualified to be considered as a minority in Kenya on account of their small numbers in relation to Kenya's total population, contending that "*the number of the community is very small in the context of the total population of 30 odd million in the Republic*". The Il Chamus premised their claim to specific instruments of international law as well as local Kenyan legal provisions.

Claiming protection as a "special interest" group as envisaged by section 33 of the then constitution, the Il Chamus made a strong case that their exclusion from parliamentary representation was an ongoing and grave breach of the relevant provisions of the constitution, provisions from which the Il Chamus "have never benefited and unlikely to benefit". According to the Il Chamus, the breach of these provisions was made worse by the mandatory language of the constitution. It was therefore a failure of duty by the ECK and the Il Chamus sought a declaration by the court to this effect. Such a declaration would naturally trigger a corrective action to the advantage of the Il Chamus. The demand by the Il Chamus for representation was thus properly grounded following local legal logic bolstered by international provisions.

The Il Chamus thus sought directions from the court that not only recognize the failure by the ECK to correctly interpret their mandate under the constitution and cater for the Il Chamus but that they should in future in the course of their duty apply the necessary constitutional

provisions to give effect to the requirement to give the Il Chamus a voice as a special interest group. According to the Il Chamus, directions by the court to the ECK to effectively reserve a nominated place for a representative of the Il Chamus will be in recognition of the fact that such a representative will: address potential threats arising from pressure on resources stemming from the growth of their more populous neighbours and secure Il Chamus livelihood and way of life; prevent “ethnic apathy”, which presumably means lack of interest in the political affairs of the country.

They made another claim to indigeneity that links their survival as a group to their culture and traditions, and to the territories they occupy, which again resonates with modern developments of the indigenous identity concept: “the Il Chamus being an indigenous community is entitled to safeguard its own cultural values, its traditions and its social patterns, and the territorial identity of the Il Chamus as an indigenous people is critical to its flourishing and its survival” (paragraph 25).

### 8.5.3 Preliminary issues: community voice

A very important issue considered by the court at the beginning of the trial was an objection by the government that went to the very core of the Il Chamus case. This was whether the four individuals who had raised the petition could claim, at law, to be representing the voice of the whole Il Chamus community.

The ECK, in their objection, claimed that the application by the Il Chamus lacked merit in law and in facts, was frivolous, vexatious and an abuse of court process.

The judges in this case translated the provisions of section 84 (1) of the former constitution to mean that no one can bring an action relating to breaches of protection of fundamental rights and freedoms of the individual on behalf of another except when that other is under detention.

Thus, except for a person under detention, *“every other complainant of an alleged contravention of fundamental rights must relate the contravention of such right to himself as a person”*.

Despite this reading, and despite the fact that the wording of this section, making reference as it does to “fundamental rights and freedoms of the individual” as opposed to the “group”, the court found it contrary to the right of self-expression to invoke a limitation on a person choosing to be represented by another as in the present circumstances, declaring that there is “nothing in our view to prevent an individual or a group of individuals with a common grievance, alleging in one suit that their individual fundamental rights and freedoms under section 70 and 83 inclusive of the Constitution have been infringed in relation to each one of them, and to them collectively. In this case the applicants are also not restricted to a person, to seek a declaration that each and every one of them, and their community, represent or constitute a special interest in terms of section 33 of the Constitution. Hence it would be a violation of the right to self-expression under section 79 of the Constitution if either applicant were denied a right to be heard whether individually or in turns, or chose to express themselves through one representative. The applicants individually, and as a group, have the legal right to bring this application” (at paragraph 61).

With the court having decided on the matter of whether four members of the Il Chamus could purport to represent the whole community, the Il Chamus proceeded to lay out their case.

#### 8.5.4 Restatement of Il Chamus history and cultural uniqueness

The Il Chamus took the opportunity to restate their population, history of occupation and ethnic composition, claiming to number between 25,000 and 30,000 people. They claimed to be one of the branches of the Maasai people that settled at Lake Baringo about two centuries ago. A long history of occupation resonates well with contemporary legal reasoning on

indigenous people. Consistent with international legal trends that promote self-declaration as a mechanism of identifying indigenous groups, the Il Chamus made a clear claim to the status of indigenous, referring to themselves as “one of the indigenous peoples of the Republic” (at paragraph 4).

They presented a version of their history that highlighted warfare and struggles at the turn of the 18th Century that led to warfare, migration and assimilation, supported by academic literature. Consistent with academic historical accounts (see chapter three), they portrayed the Il Chamus as mosaic of different groups who came to settle at Lake Baringo at different times seeking refuge and a livelihood, thus incorporating clans from the Maasai, Samburu, Turkana, Pokot and Tugen.

They rejected the “colonial” name “Njemps” and, recounting their bravery and collective wisdom, proudly laid claim to the name “Il Chamus”, which is supposedly Maa for “people who can see into the future”. These claims form the outline of a cultural distinction that seeks to set them apart as “a distinct community with their own history and language” (paragraph 6).

They also use evidence from the Kenya population census (KPC 1989, volume 1), setting out data by tribes with separate figures for the Kalenjin, the Maasai and Il Chamus to show that even by the reckoning of this very important government document, the Il Chamus are a clear and distinct group different from the Maasai.

#### 8.5.5 Disenfranchisement as marginalization

The Il Chamus presented evidence showing the ECK’s flawed basis of creation and distribution of parliamentary constituencies. Using figures from data published by the ECK and figures from the 1999 population census published by the Ministry of planning in 2001, the Il Chamus demonstrated that taking account of the vast expanse of land occupied by the Il Chamus as well as their small but homogeneous and sparsely

spread population in the areas they occupy, the ECK should have, within the requirements of the constitution and the dictates of democracy, granted the Il Chamus a nominated seat in parliament on the basis of their status as a special interest group.

They stressed that they were not in any way seeking to secede or be considered as not being part of the Lake Baringo district but made a compassionate plea for social justice premised on the principles of "*human rights and fairness*".

The Il Chamus claimed that the three constituencies carved out by the ECK in Baringo district had favoured both the Pokot and Tugen at the expense of the Il Chamus. The Tugen dominated Baringo Central and Baringo North constituencies, and the Pokot Baringo East constituency.

It was unlikely, given the voting patterns and distribution of population as well as the boundaries in the then Baringo district that a person from the Il Chamus community could vie for and be elected as a member of parliament for the region. Since independence and probably for the next forty years, the Il Chamus will not have a representative reflecting their needs and social outlook in parliament.

It is on this basis that the Il Chamus argued that their fundamental rights of representation in parliament guaranteed by the provisions of sections 1 and 1A of the old Constitution of Kenya had been denied and were likely to continue being denied unless something changed. They could not rely on the very small statistical possibility for an Il Chamus candidate to be elected to parliament in order to guarantee their fundamental human rights as guaranteed by the constitution. To prevent their continued marginalization, they demanded that the then Baringo Central constituency be divided into two separate constituencies so as to increase the likelihood of having representation of their needs, and further, that this could be achieved by the ECK if they took account of "the appropriate

demographic and numerical considerations and all the powers set out in section 42 of the Constitution of Kenya”.

The predicament of the Il Chamus betrayed the paradox of their 40 years under Daniel arap Moi, who in all his tenure first as vice president and then as president of the Republic of Kenya was the Member of Parliament responsible for championing the interests of the Il Chamus. While Moi, being both an openly partisan Tugen and a pastoralist, in the latter years of his rule relied on politics of cultural similarity that sought to cater for Il Chamus interests under the umbrella of KAMATUSA<sup>62</sup> (Kalenjin, Maasai, Turkana and Samburu), the Il Chamus had to invoke their cultural uniqueness and difference in order to fight for their rights. Moi was in particular notorious for using the slots reserved for nominated members of parliament to represent special interests to spread his patronage by awarding them as a reward for loyalty.

In court, the Il Chamus presented Moi as uncaring, aloof and insensitive to their plight. A rare visitor, Moi surrounded himself by a small clique of persons and was not therefore accessible to his Il Chamus constituents. Being also the president of the country, the Il Chamus saw the lack of interest shown by Moi to their predicament as carried on at the national level, further marginalizing them.

Moi's alleged bias against the Il Chamus was also evident in the fact that the Tugen areas of Baringo District have better infrastructure and social amenities including schools, health centres, electricity and telecommunications compared to only one secondary school in Il Chamus areas. Did they bring quantified evidence?

---

<sup>62</sup> The group KAMATUSA originated in the early 1990s and was relied on by Moi to consolidate his own political base in the newly revived multiparty politics in Kenya. It was formed as a counter to a similar tribal grouping that brought together members of the Gikuyu, Embu and Meru tribes, known as the Gikuyu Embu Meru Association (GEMA). These groups have lately become active again with the GEMA endorsing and fronting Uhuru Kenyatta and KAMATUSA endorsing William Ruto (Tom Maliti: Poll: Nearly two-thirds of Kenyans are opposed to ethnic groupings: Commentary from Kenya Cases at the International Criminal Court. *International Justice Monitor*, A project of the Open Society Justice Initiative, [www.ijmonitor.org](http://www.ijmonitor.org). (See also Little 1998: 452).

This political marginalization was also reflected by the claim that at the time of filing this plaint, the highest post ever held by a member of the Il Chamus community nationally was that of District officer (DO).

The Il Chamus, in their pleadings, made a very direct link between lack of political representation to economic and social marginalization (§29).

Due to lack of a political voice for the Il Chamus, and given their weak and marginal status, they were unable to defend the land grabbing of Ol Kokwa and Parmalok Islands by powerful individuals thought to be a front for developers intending to build tourist resorts, which grabbing led to the displacement of 200 Il Chamus.

On insecurity, the Il Chamus painted the situation in very graphic and dramatic terms, perhaps as a strategy to highlight what they believed to be a grave situation in the eyes of the judges. They pointed out that the Il Chamus have been the main victims of cattle rustling and related violence by the Tugen and Pokot, claiming that “whenever security forces are deployed in the district, it is the Il Chamus who have been beaten and maimed, their women raped and people displaced, and that no concern has been voiced by their Member of Parliament on such occasions” (Para 36).

A rather unfortunate claim but one that reflects the reality of life for most pastoralist communities who have lost viability of their pastoral enterprises, was the claim that the Il Chamus were discriminated against during distribution of relief food during critical times.

This discrimination and isolation from the political and economic spheres has led the community to see itself as “occupying a very dark corner of the nation and in comparison with the democratic gains and openness that other parts of the country now have as a foundation to build on, the community sees itself as neglected and improperly being handicapped in the task of undertaking its own development”(at p.40).This impassioned



plea for the right to development has been couched in powerful imagery, another tactic to reinforce a legal point.

The Il Chamus also claimed to have been locked out of the Perkerra Irrigation Scheme, which, though located in their former lands, was now dominated by members of the Tugen community who were now mostly benefiting from the lucrative horticultural production.

Similarly, lack of representation meant the Il Chamus lost out on the allocation of commercial and residential plots in both Marigat and Kampi ya Samaki market centres.

The Il Chamus also claimed that they could not, having no representative, do much about environmental degradation occasioned by irresponsible use of their neighbours. Being downstream users by virtue of their location at the shores of Lake Baringo, the Il Chamus faced inconsiderate use by upstream communities at the source of the Molo and Perkerra rivers in the upper regions of central Baringo whose activities have led to "serious deforestation" as well as siltation of Lake Baringo itself, with negative consequences on the volume and quality of water available to the Il Chamus. This has had a direct impact on the volume of fish and pasture available for the Il Chamus with serious consequences on their livelihood options.

According to the Il Chamus, these political, social and economic problems have become embedded in the structures of governance and are the results of continuous neglect stretching over a period of forty years. Given their population in relation to the rest of the country, the Il Chamus cannot impact the polls one way or another, and representation by a member of Parliament from an overwhelming majority is premised on the absence of accountability as such a representative feels no obligation to speak up for the rights of the minority. This is essentially what happened during the years of representation by the former president Daniel arap Moi, who felt under no obligation to cater for the interests of the Il

Chamus who were a minority in his parliamentary constituency of Baringo Central.

The Il Chamus further pleaded that their situation would be worsened in the event that oil or other mineral wealth was discovered within their location. This prospect made representation even more necessary in order to prevent the exclusion of the community from enjoying any resulting benefits and from needless and exploitative development and/or irreversible destruction of their values, traditions and social patterns. While rather speculative, these fears by the Il Chamus have been justified by recent intense prospecting activities by the Geothermal Development Corporation (GDC). According to a report by the GDC, these geophysical investigations show the presence of a geothermal resource in the Baringo region. Consequently, preliminary work to determine the locations for drilling exploration wells is ongoing (Simiyu et. al 2011: 9).

While the Il Chamus seemed to have made a compelling case before the court, the attorney general and the ECK had counter arguments to rebut the position of the Il Chamus, and the following section looks at the countering arguments of the government.

#### 8.5.6 contested positions: the Attorney General and the ECK

Anticipating lack of cooperation by the Attorney General in the proceedings, the Il Chamus referred the court to the maxim in *Zola and Another v Ralli Brothers Limited & Another (1969) EA 691*:

“For the proposition that any defendant or respondent who takes a passive attitude to an application and fails to answer it fully or at all do so at their own peril and they only have themselves to thank if their reticence results in the court taking an adverse view of their side of the case”.

Indeed, the AG failed to file even a single affidavit in response hence the court was free to consider as uncontested the various claims made by the

Il Chamus against the AG. The AG's participation in the case was limited to a memorandum of appearance and a list of four authorities consisting of the constitution of Kenya and three cases<sup>63</sup>. The limited and rather indifferent participation by the AG can be seen as reluctance by the government to submit to the authority of the court, a position which has important implications for assessing the value of the whole litigation process. This issue is discussed to a greater extent at the end of this chapter.

The ECK for its part put up a robust response to the Il Chamus position. They denied that the Il Chamus were a distinct community and that they numbered between 25,000 and 30,000 as claimed. Further, they claimed that the Il Chamus were in fact a Maasai clan in Kenya, and there being thousands of clans in Kenya, representations could not be based on clans.

They also claimed that, according to their District Election Coordinator (DEC) for Baringo District, the total population of Il Chamus was 16, 012 living with Samburus and Maasais in five administrative locations, and that they share the same language with the Maasai. The ECK's contention here was therefore that the Il Chamus were not a distinct community and neither did they occupy any specific location exclusively. The judges noted that this position falsified well documented facts produced by the Il Chamus relating to their population numbers and origin. Their contention that the Il Chamus were spread out in five locations living with the Maasai and Samburu was not supported by facts.

The ECK also stated that even though the number of registered voters in Baringo central constituency was about 48,000 as claimed by the Il Chamus, the said registration was not based on communities and they wanted the Il Chamus to prove that they occupied and were registered in certain wards exclusively.

---

<sup>63</sup> Namely: *Kisay Investments Ltd v Attorney-General* (HCCC 2832 of 1990), *William K Chelashaw v Republic* (Nairobi miscellaneous criminal appeal 93 of 2003), and *Paul Imison v Attorney-General* (Nairobi HC miscellaneous application 1604 of 2003)

The vice chairman of the ECK, in his replying affidavit, denied that ethnic, tribal or indigenous community considerations form part of the special interest criteria used by the ECK in determining electoral constituency boundaries, in a clear contradiction to the position advanced by the chairman.

Conceding that section 42 (3) of the constitution gave the ECK a broad discretion when creating or reviewing parliamentary constituencies, the chairman of the ECK swore in his replying affidavit that they do in fact take account of tribal or clan welfare when considering the parameters of "community interest". They were, however, wary of the potential dangers of "over stressing tribal or clan interests which are generally emotional", at the expense of the population criterion (paragraph 55 of judgment).

To clear this apparent contradiction, the court declared that contrary to the position of the ECK vice chairman, "the question of clan, tribe and being a minority and an indigenous community is an important element in the definition of special interests. For even in the tribe there are features that may be specific to a particular clan, such as rain-making or the administration of curses and oaths. These aspects distinguish one clan or indeed community from another. In particular, it is the social-economic organization, language and custom that define one community as being distinct from the other, and "to say otherwise would be to ignore the reality of the face of Kenya, as the vice-chairman appears to suggest in paragraph 14 of his affidavit" ( paragraph 58 of the judgment).

It is clear already from this clarification by the court that the ECK had been wrong all along by not taking this element into consideration in the execution of their mandate.

### 8.5.7 Analysis of the judgment of the court

The court summarized Il Chamus claim thus:

*“It is applicant’s case that the applicants themselves and their community the Il Chamus are a distinct and separate community from their surrounding neighbours and compatriots the Tugen and Pokot in Baringo District. They speak the ‘Maa’ language like the Samburu to their north and Laikipia Maasai to their east, but they are not either a clan or Maasai tribe. The applicants and their community are the Il Chamus according to their perhaps close cousins the Maasai, the ‘people who see far into the future’. They say that they are an indigenous and a minority protected under the various instruments in international law. From the point of view of an indigenous and a minority people the applicants claim that their quest for representation as ‘a special interest’ group is a matter of consideration both under section 1A and section 33 of the Constitution by parliamentary political parties.”(§86).*

The court perused evidence presented by the Il Chamus to support their claims about their history and composition and on weighing these against the evidence by the ECK, found no basis to justify claims by the ECK that the Il Chamus were a sub-clan of the Maasai. The court described the ECK’s attempts to describe the Il Chamus as “extremely casual and unfortunate”, contradicting even their own census records which had been admitted as part of the court record.

On the other hand, the court found the evidence presented by the Il Chamus sufficient to prove the existence of “a unique, cohesive, homogenous and a culturally distinct minority which is also quite conspicuous by any standards”. The court was satisfied that the Il Chamus were united in their quest to preserve their culture, and, perhaps most importantly, that they qualify as “internationally recognised indigenous peoples” (paragraph 95 of the judgment).

To reinforce their finding that the Il Chamus were an internationally recognized indigenous people, the judges adopted as their own the definition by the UN Special Rapporteur Francesco Capotorti in the context of article 27 of the International Covenant on Civil and Political Rights (CCPR):

“A group numerically inferior to the rest of the population of a state, and in a non- dominant position whose members — being nationals of the state — possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions religions and language”, and that of Jubs Deschenes<sup>64</sup> as follows:

“A group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law”.

In the final analysis, the judges ruled that the government had failed to prove that the Il Chamus were a sub-clan of the Maasai and declared, much to the satisfaction of the Il Chamus that “We do find that the Il Chamus do qualify as an indigenous people”.

In so ruling, the court made further orders, most important of which was the effective direction to the ECK to ensure through its machinery that the Il Chamus get representation on grounds of their status as a minority and indigenous group. The court orders were never implemented, however recent developments on indigenous rights in general and marginalization in particular have provided the Il Chamus with some remedies. As explained in the conclusion to this chapter, the success of Il Chamus litigation as a resilience building mechanism lies with the total sum of

---

<sup>64</sup> Recommended to the UN in 1985, (Doc E/CN.4/Sub.1/1985/31).

effects of the whole process. These are evident in changing government policy and internal cohesion of the community.

## 8.6 Recent developments on indigenous rights

Since the conclusion of the two Il Chamus cases analysed in this thesis, some major developments have taken place within both the national and international legal arena. Locally, Kenya has adopted a new constitution and internationally, the African Commission on Human and Peoples' Rights (ACHPR) has adjudicated over a very important case that clarified and shed more light on indigenous peoples' rights. The next section looks at some of these developments.

### 8.6.1 Recognition of marginalized and minority groups in the new constitution

In August 2010, after years of political agitation, lobbying and representations by different groups of Kenyan societies including representatives of indigenous groups such as the Il Chamus, the Republic of Kenya adopted a new constitution<sup>65</sup>. This was done through a national referendum vote.

With this new constitution, rights of marginalized communities as well as duties of the state, some of which were the subject of litigation by the Il Chamus, were given juridical recognition. The Constitution provides a legal framework which spells out national values and principles of government which include participation of the people, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. It is quite telling that protection of the marginalized has been included as a national value and principle of governance, and this underlines the recognition of lack of protection of these groups under the previous legal regime.

---

<sup>65</sup> See: The Republic of Kenya 2010, Laws of Kenya: The Constitution of Kenya, Revised Edition 2010 Published by the National Council for Law Reporting with the Authority of the Attorney General.

Most importantly for the Il Chamus, the new constitution addresses to quite a significant degree the issues of government policy and marginalization, issues that have contributed most to their vulnerability context. All state and public officers are now bound by the principles of governance inscribed in the new constitution whenever they make or implement public policy decisions, so that discriminatory policies such as the Sessional Paper Number 10 discussed in Chapter 5 will never ever be part of public policy again. This means that government policy as a basis of intervention must pass the new constitutional test to be applicable.

As a consequence of awareness of the new guidelines, a new policy paper to guide government engagement with the arid and semi-arid areas of Kenya (ASAL) was adopted in 2012<sup>66</sup>. This paper recognizes the marginalizing effect of the previous policy paper and is deliberately formulated as a counter measure and is intended to release the full potential of the ASAL. The paper therefore identifies and addresses three areas of particular significance to Kenya's ASAL: strengthening national cohesion by reducing the development gap evident between Northern Kenya and the rest of the country; ensuring sustainable livelihoods through the protection and promotion of traditional and customary institutions and mechanisms essential to productive pastoralism; strengthening the climate resilience of communities in the ASALs by ensuring food and nutritional security across the ASAL.

An important quality of the new policy is its incorporation of alternative views and knowledge of ecology and range management, such as non-equilibrium environments. Consequently, the influence of equilibrium system concepts such as carrying capacity has been diminished, and pastoralist systems are now looked at with new and alternative perspectives.

---

<sup>66</sup> Republic of Kenya, Sessional Paper No. 8 of 2012 on National Policy for the Sustainable Development of Northern Kenya and other Arid Lands: 'Releasing Our Full Potential'.



The issue of marginalization is addressed in the constitution at both conceptual and operational levels. The constitution not only clarifies terms and meanings related to marginalization but also gives specific guidelines on the implementation of relevant provisions relating to marginalization.

For instance, Article 260 of the Constitution defines marginalized and minority communities as follows:

“Marginalized community” means—

(a) A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;

(b) A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;

(c) An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy;  
or

(d) Pastoral persons and communities, whether they are—

(i) Nomadic; or

(ii) A settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;

“Marginalized group” means-

A group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4) of the Constitution’ (i.e., race, sex, pregnancy, marital status, health status, ethnic or social origin, colour,

age, disability, religion, conscience, belief, culture, dress, language or birth)‘.

Further, the Constitution protects against discrimination whether by public or private actors and calls on the state to take legislative and other measures including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals and groups because of past discrimination (section 27 (6)).

The Constitution also provides for the right of marginalized communities to participate in the political affairs of the country. It calls upon parliament to enact legislation to promote the parliamentary representation of vulnerable groups including minorities and marginalized communities (Article 100). Public participation in elections is promoted to enhance universal suffrage based on the aspiration for fair representation and equality of vote (Article 81).

Another critical issue that has been addressed by the new constitution is land. Most importantly for pastoral communities, community land is now a recognized category of land tenure in Kenya. This development means that communities are now able to register communally held land and obtain recognized title documents for it. According to Article 63 (1), communities can be identified for the purposes of such registration on the basis of ethnicity, culture or similar community of interest. Community land is defined as consisting of: (a) land lawfully registered in the name of group representatives under the provisions of any law; (b) land lawfully transferred to a specific community by any process of law; (c) any other land declared to be community land by an Act of Parliament; and (d) land that is: (i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or (iii) lawfully held as trust land by the county governments, but not including

any public land held in trust by the county government under Article 62 (2).

Furthermore, community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

These provisions on community land remove the uncertainty brought about by lack of clear title to land as was previously the case, a situation that both diminished the value of communal land as a factor of production and exposed it to illegal excisions and land grabbing.

In order to facilitate and oversee the translation of rights and definitions relating to land issues, the Constitution has created, among other institutions, The National Land Commission (NLC). The NLC is mandated, among other duties, to manage public land on behalf of the national and county governments; regulate land use and property; register title in land throughout Kenya; initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress; and encourage the application of traditional dispute resolution mechanisms in land conflicts.

Perhaps the most significant impact of the new constitution has been the change in nature of government from a fully centralized state to one where certain functions of government have been devolved to the counties. Under this new system, Kenya is now a republic with a central government and devolved units of local governance spread in 47 counties. The Il Chamus fall under Baringo County.

Article 174 of the constitution defines the objects of the devolution of government as, among others: to promote democratic and accountable exercise of power; to foster national unity by recognizing diversity; to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and

in making decisions affecting them; and to recognize the right of communities to manage their own affairs and to further their development.

#### 8.6.2 On the right to development (Article 22 ACPHR)

Another important development with regard to indigenous peoples' rights that has a direct impact on the Il Chamus is the so called right to development. While the court case analysed above did recognize in principle the right of the Il Chamus to sustainable development, this right has been more comprehensively articulated in the case law of the ACPHR. One of the major sources of marginalization of the Il Chamus was their non-involvement in the design and implementation of projects within their residential areas, such as happened with the introduction of Prosopis. The right to development sets out clear provisions requiring not just the participation of indigenous people in such projects but also their free, prior and informed consent. Consequently, indigenous people have to be adequately involved in the development process.

The African Commission conceives of the right to development as consisting of two limbs, one constitutive and the other instrumental, with the two together providing the procedure and substance of development. For the state to fulfil its obligations under the right to development, it must meet the requirements of both limbs, as the right can only be fulfilled *in toto* and not by parts. A violation of either limb constitutes a violation of the right to development, as if the fulfilment of only one limb. Further, according to the African Commission, the execution of the right to development must be "equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, overarching themes in the right to development".<sup>67</sup>

---

<sup>67</sup> The Endorois case, paragraph 277, refers also to U.N. Declaration on the Right to Development, U.N. GAOR, and 41st Session. Document A/RES/41/128 (1986), Article 2.3, on "active, free and meaningful participation in development."

Even where the state is providing services, the recipients must be able to exercise their freedom of choice, such as choosing where to live where housing is provided. In other words, state benevolence, despite its good intentions, must never be arbitrary if it is to fulfil the right to development. Freedom of choice is thus part and parcel of the right to development (paragraph 278).

The principle of free, prior and informed consent requires that “indigenous peoples are not coerced, pressured or intimidated in their choices of development.”<sup>68</sup>

The African Commission has set its own standards that require states to consult with indigenous peoples especially on such sensitive issues as land. For such consultations to be considered effective participation, they must be adequate. As such, they must be “undertaken in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures”.<sup>69</sup>

Further, according to Article 2(3) of the UN Declaration on Development<sup>70</sup>, the right to development includes “active, free and meaningful participation in development”. Such development should result in empowerment of the recipient community.

The IActHR has made a close connection between participation and the right to development. In the *Saramaka v Suriname* case, it stated that in order to ensure the effective participation of the Saramaka people in development or investment plans within their territory, the State had a

---

<sup>68</sup> Antoanella-Iulia Motoc and the Tebtebba Foundation, Preliminary working paper on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that they would serve as a framework for the drafting of a legal commentary by the Working Group on this concept. U.N. Doc. E/CN.4/Sub.2/AC.4/2004/4 (2004), paragraph. 14 (a), quoted in paragraph 279 of the *Endorois* case.

<sup>69</sup> ILO Convention 169, forming the basis of Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities (Twenty-eighth session, 2003).

<sup>70</sup> U.N. Declaration on the Right to Development, U.N. GAOR, 41st Session, Doc. A/RES/41/128 (1986).

duty to actively consult with them according to their customs and traditions. This duty requires the State to both accept and disseminate information, and entails constant communication between the parties, which consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement<sup>71</sup>.

The African Commission is therefore of the view that where any development or investment projects are likely to have a major impact on the territory of an indigenous people, the State has a duty not only to consult with them, but also to obtain their free, prior, and informed consent, according to their customs and traditions (paragraph 291). A project cannot therefore proceed on the territory of indigenous people without them agreeing to it, and their decision must be based on correct and relevant information related to the project, and it must be freely obtained.

Finally, where benefit is to be derived from exploitation of resources within the territory of indigenous people, such benefit must be shared. The African Commission, following the IActHR in the Saramaka case has said that benefit sharing is vital both in relation to the right to development and, by extension the right to own property. The right to development will be violated when the development in question decreases the well-being of the community (paragraph 294).

Crucially, the state bears the responsibility for creating conditions favourable to a people's development<sup>72</sup>.

---

<sup>71</sup> Inter- American Court of Human Rights, Case of the Saramaka People v Suriname (Judgment of 28 November 2007).

<sup>72</sup> Declaration on the Right to Development, Article 3.

## Conclusion

Considering the Il Chamus community as being part of a politically bounded SES, this thesis has sought to contribute to our knowledge of how important variables defining SESs interact with each other in situations of profound changes in SES dynamics, and how societies adapt to such changes.

As a complex SES, this study identified *Prosopis juliflora*, violent regulation and marginalization as key drivers of change in the system. Each of these drivers was then analysed to reveal a series of linkages between them and other variables in the system. A historical analysis of environmental change in the Baringo area revealed a pattern of continuous intervention measures by the state starting from the colonial era to the current government.

It was also shown that these intervention measures were largely based on a discourse of environmental degradation resulting from African traditional range management and animal husbandry practices. Supported by early scholars and influential scientists, this discourse became dominant in matters of environmental knowledge, and was used by the state to justify intervention in local environmental governance systems. In this connection, it was mostly expressed in terms of overstocking, overgrazing and presented as likely to end in desertification and other catastrophic scenarios if unchecked.

As a product of such intervention measures, *Prosopis juliflora* was introduced to the Baringo area by the government in the 1980s ostensibly to curb the rate of desertification. This environmental intervention measure had profound effects on the environment which have been extensively discussed in chapter 4 and overall it was shown that it had detrimental effects of the viability of the mixed agro-pastoral livelihood system of the Il Chamus.

Similarly, violence was analysed as part of the regulating mechanism defining interactions within the SES. Violent regulation was analysed as a social process of contestation between differently located actors in the system. As a political process, violent regulation produced losers as well as winners. Among the winners were shown to be an emerging class of young Il Chamus known locally as Wanjurusi, who, through both legitimate and illegal forms of business, are thriving amidst the violence. The rise of Wanjurusi has however altered internal power structures among the Il Chamus, reducing the power and influence of elders who, along with most ordinary Il Chamus, suffer from the effects of insecurity and general poverty. Overall, however, violence was shown to have had a devastating effect on the Il Chamus livelihood

For instance, increasing insecurity has led to overcrowding in certain parts of Kiserian, where Il Chamus refugees have congregated in large numbers with their animals. As an adaptation to the constant risk of violence especially from their Pokot neighbours, the Il Chamus in this area keep all their herds in one place, combining numbers to secure their animals. This has increased the risk of disease and further internal conflicts in the management and use of available water and pasture resources.

Il Chamus ability to cope with the effects of violence has greatly been affected by their systematic political and economic marginalization by the state. This study therefore also analysed the marginalization of the Il Chamus within the context environmental governance under a nominal democratic state committed to the values of equality and social justice.

This study linked the marginalization of the Il Chamus to the state economic and development policies as well as the unique character of the Kenyan state controlled by patronage networks based on ethnicity. With weak administrative institutions, accountability in the use of state resources has been elusive, and powerful actors from larger and stronger ethnic groups have come to dominate the control of state resources at the



expense of smaller and weaker groups like the Il Chamus. The effects of marginalization were found to be many and varied and provided the main factors underlying poverty in Il Chamus society.

Given the vulnerability context of the Il Chamus driven by the above mentioned key factors of Prosopis, violence and marginalization, this thesis aimed to explain, within resilience analysis of SESs, the enduring character of the Il Chamus as a resilient system. A brief historical analysis of Il Chamus society was done that placed the pre-colonial and early colonial Il Chamus society within a complete adaptive cycle. The resilience of the Il Chamus during this particular cycle was shown to have been mainly due to a socially instituted irrigation economy that was dependent upon a particular optimum level of technology and ecological conditions, the collapse of which marked the end of the cycle and the beginning of another.

In contemporary Il Chamus society, we notice litigation and appeal to the power of authority as a key strategy of the Il Chamus in building up their resilience. *The main proposition by this thesis, therefore, is that litigation by the Il Chamus has been a key source of resilience building in their system.*

In explaining the resilience of societies within SESs, this study started from the proposition that access to resources is a key determinant of social resilience, and further, that access to resources is a function of environmental governance. Defining environmental governance as the politics of access to resources, a process that invariably creates winners and losers, this thesis then goes on to define the vulnerability context of the Il Chamus as a product of unfavourable outcomes of governance.

This thesis has shown that by being able to positively intervene in the process of governance, litigation has altered the power dynamics inherent in the process and had a direct impact on all the three key drivers of

vulnerability identified here, namely Prosopis, violence and marginalization.

This thesis made use of legal analysis to demonstrate particular nuances of political contestation inherent in the process of environmental governance. Through legal analysis we saw how the Il Chamus were able to: link themselves to an international network of human rights activists; organize themselves into a coherent social and legal unit able to invoke legally defined rights; appropriate global concepts of indigeneity and marginalization; negotiate and contest, using the language of human rights and social justice, an identity and categorization that that would secure them and protect their access to resources crucial to their livelihood; convert their experiences of vulnerability into political and legally claimable sources of access to resources, and challenge government policy and practice by invoking state obligations in both local and international legal systems.

Specifically, this thesis has demonstrated how the targets, processes and outcomes of litigation have enhanced the resilience building capacity of the Il Chamus with certain specific results.

Firstly, the targets of Il Chamus litigation can be seen as having direct resilience building capacity. In the Kenya Truth and Justice Commission process, the Il Chamus targeted a determination that they had been victims of marginalization by the state and had suffered as a consequence from several negative effects such as being denied political representation, lack of protection from violence and poverty in general. A declaration that they, as an indigenous community, were indeed marginalized by the Kenyan state led to recommendations to redress the situation, including a change in the economic policies responsible for their marginalization. New institutions such as the National Land Commission as well as the National Gender and Equality Commission are now in place

to address issues specifically related to marginalization of vulnerable sectors of the Kenyan society.

Similarly, in the Prosopis case, the Il Chamus targeted declarations to the effect that the introduction of Prosopis juliflora in Baringo had breached their rights to life, property, a clean environment and sustainable development. They also wanted it declared a noxious weed since being classified as such would enable them to destroy the weed using any means possible, including burning it as charcoal. Charcoal burning, free from the normal stringent rules regulating the charcoal trade in Kenya, has provided an alternative source of livelihood for the Il Chamus, clearly building their resilience.

In the identity case, the Il Chamus targeted declarations that they were indeed an indigenous community and that this gave them a status as a specially protected category of citizens qualifying for representation in parliament. An Il Chamus Member of Parliament (MP) would be instrumental in articulating their issues and in this way influencing governance at a high level. Also, such a member would be an alternative source of patronage for the Il Chamus as well as promote their projects through the Constituency Development Fund (CDF) managed by MPs.

Further, as an indigenous community, they are now able to benefit from standards laid down by the World Bank for funding government projects involving indigenous groups.

As social practice, it was shown that the process leading to litigation had the overall effect of enhancing unity and solidarity while suppressing dissent and internal conflicts. The various roles played by different sections of the community also had the effect of reinforcing social ties and provided an occasion to act out social roles in a situation of social upheaval.

The process of litigation also saw members of the Il Chamus using their professional and social contacts to connect the community to an international network. It was shown that particular individuals facilitated the connection of the community to MPIDO, an NGO with international connections all the way to the highest levels of the UN. Through MPIDO, the Il Chamus found access to an external source of patronage and support that, by providing an alternative source of resources, reduced dependence on the government.

As far as the outcomes of litigation were concerned, it is noted that in the first instance, purely as legal contests, the Il Chamus were successful in all the three instances analysed here. Such positive outcomes at the end of an emotionally and financially draining process such as litigation boost the morale of the community as a whole and encourage other communities in similar situations to follow a similar course.

Among the positive outcomes of the litigation were: the vindication of Il Chamus rights to life, land, property, political participation, representation and sustainable development; the classification of Prosopis as a noxious weed; the recognition of the Il Chamus as an indigenous group; the recognition of the Il Chamus as a marginalized group in Kenya and the definition of the exact nature and cause of that marginalization.

All these outcomes were accompanied by specific orders and directions for the government and its administrative institutions to undertake but are yet to be fully implemented. Il Chamus litigation must however be viewed within the limits of an intransigent Kenyan state operating in an environment of weak local and regional legal institutions and where impunity prevails over respect for the rule of law and court directives are seldom respected .

This thesis therefore measures the outcome of Il Chamus litigation not in terms of the degree of compliance with Court orders which have so far been overwhelmingly in their favour, but with the overall incremental

effect of the litigation taken together with other forms of political activism, agitation and lobbying.

The Il Chamus have shown remarkable resilience throughout their history and are likely to do so in the future. Key to this is their overall attitude that sees challenge as opportunity. The Il Chamus have displayed a readiness to adapt and change to new conditions, an attitude that has enabled them shift between different forms of subsistence. Perhaps Spencer best captures this “dynamic flexibility” when he describes the Il Chamus as having held on to a foraging strategy, extending their range of activities as opportunities arose (Spencer 1998: 134).

In modern times, the Il Chamus have developed a reputation as a litigious community, and this thesis has shown the effect and potential of litigation as a resilience building mechanism.

## References

Aboud, A.A., P.K. Kisoyan, and D.L. Coppock. 2005. Agro-pastoralists' wrath for the Prosopis tree: The case of the IL Chamus of Baringo District, Kenya. Research Brief 05-02-PARIMA. Global Livestock Collaborative Research Support Program. University of California at Davis. 3 pp

Adams, William M., and Anderson, David M. 1988. Irrigation before development: indigenous and induced change in agricultural water management in East Africa. *African Affairs*, Volume 87, No. 349 (October 1998), pp. 519-535.

Adger, W. Neil., Huq, S., Brown, K., Conway, D and Hulme, M. 2003. Adaptation to climate change in the developing world. *Progress in Development Studies* 3, 3 (2003) pp. 179–195.

African Commission on Human and Peoples' Rights (ACHPR). 2005. "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" on the human rights situation of indigenous peoples and communities in Africa. Online version available from <http://www.iwgia.org.sw163.asp>.

African Commission on Human and Peoples' Rights (ACHPR) and the International Work Group for Indigenous Affairs (IWGIA). 2006. Indigenous Peoples in Africa: the Forgotten Peoples? The African Commission's work on indigenous peoples in Africa. Online publication, available at [www.achpr.org](http://www.achpr.org) and [www.iwgia.org](http://www.iwgia.org).

African Commission on Human and Peoples' Rights (ACHPR) and the International Work Group for Indigenous Affairs (IWGIA). 2010. United Nations Declaration on the Rights of Indigenous Peoples: advisory opinion of the African Commission on Human and Peoples' rights on the United Nations Declaration on the Rights of Indigenous Peoples.

- African Commission on Human and Peoples' Rights (ACHPR). 2007. Advisory opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples.
- Aikman, S. 2011. Educational and indigenous justice in Africa. *International Journal of Educational Development* 31 (2011), pp. 15–22.
- Ake, C. 1993. What is the problem of ethnicity in Africa? *Transformation* 22 (1993), pp.1-14.
- Alcorn, Janis B., Bamba, J., Maisun, S., Natalia, I., and Royo, Antoinette G. 2003. Keeping ecological resilience afloat in cross-scale turbulence: an indigenous social movement navigates change in Indonesia, in Berkes, F., Colding, J., and Folke, C (editors). 2003. *Navigating Social-Ecological Systems: Building Resilience for Complexity and Change*. Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo: Cambridge University Press.
- Allen, J. 2003. *Lost geographies of power*. Malden, MA: Blackwell.
- Anderson, D.M. 1984. Depression, Dust Bowl, Demography, and Drought: The Colonial State and Soil Conservation in East Africa during the 1930s. *African Affairs*, Vol. 83, No. 332 (Jul., 1984), pp. 321-343.
- Anderson, D.M. 2002. *Eroding the commons: the politics of ecology in Baringo, Kenya, 1890s-1963*. Oxford: James Currey.
- Anderson, D.M. 2004. Massacre at Ribo Post: Expansion and Expediency on the Colonial Frontier in East Africa, *The International Journal of African Historical Studies*, Volume 37, No. 1 (2004), pp. 33-54.
- Andersson, S. 2005. *Spread of the introduced tree species Prosopis juliflora (Sw.) DC in the Lake Baringo area, Kenya*. Umeå: Institutionen för skoglig vegetationsekologi Sveriges lantbruksuniversitet.
- Austin, H.H. 1899. From Njemps to Marich, Save and Mumia's (British East Africa), *The Geographical Journal*, Vol. 14, No.3 9September 1899.

Ballot, Andreas I. , Pflugmacher, S., Wiegand, C., Kotut, K., and Krienitz, L. 2003. Cyanobacterial toxins in Lake Baringo, Kenya. *Limnologica* 33, 2-9 (2003).

Barnet, J. 2006. Climate change, insecurity and injustice. In: Adger, WN., Paavola, J., Huq, S., and Mace, MJ (editors). *Fairness in adaptation to climate change*. Cambridge, MA: MIT Press.

Barsh, R. L. Indigenous Peoples and the UN Commission on Human Rights: A Case of the Immovable Object and the Irresistible Force. *Human Rights Quarterly* 18 (1996), pp. 782-813.

Bates, R. H. 2008. *When Things Fell Apart: State Failure in Late-Century Africa*. Cambridge: University of Cambridge Press.

Batista A.M., Mustafa A.F., McKinnon J.J. and Kermasha S. 2002. In situ ruminal and intestinal nutrient digestibilities of mesquite (*Prosopis juliflora*) pods. *Animal Feed Science and Technology*, 100(1-2):107-112.

Bayart, Jean-François and Stephen Ellis.2000. Africa in the World: A History of Extraversion. *African Affairs*, Vol. 99, No. 395, Centenary Issue: A Hundred Years of Africa (April 2000), pp. 217-267.

Bennet, J.W. 1976. *The ecological transition: cultural anthropology and human adaptation*. Oxford: Pergamon Press.

Berkes, F. and Folke, C., (editors). 1998. *Linking Social and Ecological Systems*.

*Management Practices and Social Mechanisms for Building Resilience*.

Cambridge: Cambridge University Press.

Berkes, F. 2007. Understanding uncertainty and reducing vulnerability: lessons from resilience thinking. *Natural hazards* (2007) 41: 283-295.

Berkes, F.,Colding, J., and Folke, C (editors). 2003. *Navigating Social-Ecological Systems: Building Resilience for Complexity and Change*.



Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo: Cambridge University Press.

Berman, Bruce J. 1998. Ethnicity, patronage and the African state: the politics of uncivil nationalism. *African Affairs* (1998), 97, pp. 305-341.

Bernstein, John L. 1976. The Maasai and Their Neighbors: Variables of Interaction, *African Economic History*, No. 2 (Autumn 1976) pp. 1-11.

Bernsten, John L. 1980. The Enemy Is Us: Eponymy in the Histiography of the Maasai, *History in Africa*, Volume 7 (1980), pp.1-21.

Bhojvaid P.P., Timmer V.R. and Singh G. 1996. Reclaiming sodic soils for wheat Production by *Prosopis juliflora* (Swartz) DC afforestation in India. *Agroforestry Systems*, 34(2):139-150.

Bhojvaid P.P. and Timmer V.R. 1998. Soil dynamics in an age sequence of *Prosopis juliflora* planted for sodic soil restoration in India. *Forest Ecology and Management* 106(2-3):181-193.

Bianco, Barbara A. 1996. Songs of Mobility in West Pokot. *American Ethnologist*, Vol. 23, No. 1 (Feb., 1996), pp. 25-42.

Blaikie, P. 1989: Environment and access to resources in Africa. *Africa* 59, 18-40.

Blaikie, P. 1995. Understanding environmental issues. In Morse, S. and Stocking, M., (editors), *People and environment*. London: UCL Press, 1-30.

Blaikie, P. and Brookfield, H. 1987. *Land degradation and society*. London: Methuen.

Bohle, H-G. 2001. Vulnerability and criticality: perspective from social geography. *Newsletter of the International Human Dimensions Programme on Global Environmental Change* 1(2).

Bohle, H-G. 2007a. Geographies of Violence and Vulnerability an Actor-Oriented Analysis of the Civil War in Sri Lanka. *Erdkunde*, Bd. 61, H. 2 (Apr. - Jun., 2007), pp. 129-146.

Bohle, H-G. 2007b. Living with Vulnerability: Livelihoods and Human Security in Risky Environments. *InterSecTions (Interdisciplinary Security ConnecTions) Publication Series of UNU-EHS*, No.6/2007.

Bohle, H-G., and Fünfgeld, H. 2007. The political ecology of violence in Eastern Sri Lanka. *Development and Change* 38 (4): 665-687.

Bokrezion, H. 2008. The Ecological and Socioeconomic Role of *Prosopis juliflora* in Eritrea: An Analytical Assessment within the Context of Rural Development in the Horn of Africa. Unpublished PhD. Thesis, Johannes Gutenberg-Universität, Mainz, Germany.

Bollig, M. 1993. Intra-and Interethnic Conflict in Northwest Kenya. A Multi-causal Analysis of Conflict Behaviour. *Anthropos*, Bd. 88, H. 1./3. (1993), pp. 176-184.

Bollig, M. 2006. *Risk Management in a Hazardous Environment: A Comparative Study of two Pastoral Societies*. New York: Springer.

Bratton, M and Mwangi S. Kimenyi. 2008. Voting in Kenya: Putting Ethnicity in Perspective. University of Connecticut, *Department of Economics Working Paper Series*, Working Paper 2008-09, March 2008, pp. 1-24.

Brockington, D., and Homewood, K.2001. Degradation debates and data deficiencies: The Mkomazi Game Reserve, Tanzania. *Africa* 71(3): 449-480.

Bryant, Raymond L. 1992. Political ecology: an emerging research agenda in Third-World studies. *Political Geography*, Volume 11, No. 1, January 1992, 12-36.

Bryant, Raymond L., and Bailey, S. 1997. *Third World political Ecology*. London, New York: Routledge.

Bryant, Raymond L. 1998. Power, knowledge and political ecology in the third world: a review. *Progress in Physical Geography* 22, 1 (1998) pp. 79-94.

Bunimovitz, S and Avraham Faust. 2001. Chronological Separation, Geographical Segregation, or Ethnic Demarcation? Ethnography and the Iron Age Low Chronology. *Bulletin of the American Schools of Oriental Research*, No. 322 (May, 2001), pp. 1-10.

Burnett, G.W and Rowntree, K.M. 1990. Agriculture, research and tourism in the landscape of Lake Baringo, Kenya. *Landscape and Urban Planning*, 19 (1990), pp. 159-172.

Callon, M. 1999. Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fishermen of St. Brieuc Bay, in Biagioli M (editor), *The Science Studies Reader*. New York: Routledge.

Carpenter, S., Walker, B., Anderies, J Marty., and Abel, N. 2001. From Metaphor to Measurement: Resilience of What to What? *Ecosystems*, Vol. 4, No. 8 (Dec., 2001), pp. 765-781.

Cerone, J. 2010. Endorois Welfare Council v. Kenya (African Commission on Human and Peoples' Rights), Introductory Note, *International Legal Materials*, Vol. 49, No. 3 (2010), pp. 858-906.

Clay, E. and B. Schaffer (Eds.). 1984. *Room for Manoeuvre: An Exploration of Public Policy in Agriculture and Rural Development*. London: Heinemann.

Cleaver, K. 1992. Deforestation in the western and central African forest: The agricultural and demographic causes and some solutions. In, K. Cleaver, M. Munasinghe, M. Dyson, N. Egli, A. Peuker & F. Wencélius

(eds.), *Conservation of West and Central African Rainforests*, World Bank Environment paper No.1. Washington D.C.: World Bank, pp. 65-78.

Clements, F.E. 1916. *Plant succession: An analysis for the development of vegetation*. Publication 242. Washington, DC: Carnegie Institution of Washington.

Corntassel, Jeff J. 2003. Who is Indigenous? Peoplehood and Ethno nationalist Approaches to Rearticulating Indigenous Identity. *Nationalism and Ethnic Politics*, Volume 9, No. 1, Spring 2003, pp. 75-100.

Colding, J., Elmqvist, T., and Olsson, P. 2003. Living with disturbance: building resilience in social-ecological systems, in Berkes, F., Colding, J., and Folke, C (editors). 2003. *Navigating Social-Ecological Systems: Building Resilience for Complexity and Change*. Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo: Cambridge University Press.

Collins, Robert O., The Turkana Patrol of 1918 Reconsidered, *Ethno history* 53: 1 (Winter 2006), pp.95-119.

Colony and Protectorate of Kenya. 1929. *Annual Colonial Reports*, No. 1510, Report for 1929.

Comaroff, John L and Comaroff, J. 2009. *Ethnicity, Inc*. Chicago, London: University of Chicago Press

Cronk, L. 2002. From True Dorobo to Mukogodo Maasai: Contested Ethnicity in Kenya, *Ethnology*, Volume 1, No. 1 (Winter 2002), pp. 27-49.

Cronk, L. 2004. *From Mukogodo to Maasai: ethnicity and cultural change in Kenya*. Colorado: Westview press.

Crumley, C.L. 1994 *Historical ecology: cultural knowledge and changing landscapes*. Santa Fe: School of American Research Press.

Davis, Shelton H (editor). 1993. Indigenous Views of Land and the Environment. World Bank discussion papers No. 188, The International Bank for Reconstruction and Development/THE WORLD BANK.

Dreze, J., and Sen, A. 1989. *Hunger and public action*. Clarendon Press, Oxford, UK.

Eaton, D. 2002. The business of peace: raiding and peace work along the Kenya-Uganda border (part I), *African Affairs*, 107/426, 89–110.

Eavis, P. 2002. SALW in the Horn of Africa and the Great Lakes Region: Challenges and Ways Forward. *The Brown Journal of World Affairs*, spring 2002, Issue IX, pp.251-260.

Ebenshade H.W and Grainger A. 1980. The Bamburi reclamation project. *International Tree Crops Journal*, 1 pp. 199-202.

Ellen, R. 1982. Systems and regulation. In *Environment, subsystem and system: The ecology of small-scale social formations*, 177-203. Cambridge: Cambridge University Press.

Eriksen, S and Lind J. 2009. Adaptation as a Political Process: Adjusting to Drought and Conflict in Kenya's Drylands. *Environmental Management* (2009) 43:817–835.

Etkin D., Haque E., Bellisario L., and Burton, I. 2004. An assessment of natural hazards and disasters in Canada. The Canadian natural hazards assessment project. Public safety and emergency preparedness Canada and environment Canada, Ottawa.

Folke, C ; Thomas Hahn. ; Per Olsson and Jon Norberg. 2005. Adaptive governance of social-ecological systems. *Annual Review of Environmental Resources*, 2005, Volume 30, pp. 441-473.

Folke, C. 2006. Resilience: the emergence of a perspective for social-ecological systems analyses. *Global Environmental Change* 16: 253-267.

- Fujii, L N. 2010. Shades of truth and lies: interpreting testimonies of war and violence, *Journal of Peace Research* (2010), 47 (2) 231-241.
- Gaciri, S.J., and Davies, T.C. 1993. The occurrence and geochemistry of fluoride in some natural waters of Kenya. *Journal of Hydrology*. 143 (1993) 395-412.
- Gallopín, Gilberto C. 2006. Linkages between vulnerability, resilience, and adaptive capacity. *Global Environmental Change* 16 (2006) 293–303.
- Geertz, C. 1963. *Agricultural Involution*. Berkeley: University of California Press.
- Gichuki, F.N. 2000. *Monitoring of birds in Lake Baringo and its watershed*. Consultancy report submitted to United Nations Office for Project Services (UNOPS).
- Goldschmidt, W. 1965. Theory and Strategy in the Study of Cultural Adaptability, *American Anthropologist* 67 (1965), pp. 402-408.
- Goodhand, J. 2001. Violent conflict, poverty and chronic poverty. *CPRC Working Paper 6*, Chronic Poverty Research Centre, Manchester, UK.
- Gregory, J. W. 1896. *The Great Rift Valley: Being the Narrative of a Journey to Mount Kenya and Lake Baringo*. London: John Murray.
- Gregory, J. W. 1901. *The Foundations of the British Empire*. London: Horace Marshall & Son, Temple House, E.C.
- Greiner, C., Guns, Land and Votes: Cattle Rustling and the Politics of Boundary (Re) Making in Northern Kenya, *African Affairs* (Advance Access 2013), pp.1-22.
- Gunderson, L. H., and Holling, C.S. (editors). 2002. *Panarchy: understanding transformations in human and natural systems*. Washington, D.C., USA: Island Press.

Gurr, T R. 1993. Why Minorities Rebel: A Global Analysis of Communal Mobilization and Conflict since 1945. *International Political Science Review* 14: 161–201.

Hardesty, D.L. 1977. *Ecological anthropology*. New York: Wiley.

Hakansson, N T. 2004. The Human Ecology of World Systems in East Africa: The Impact of the Ivory Trade, *Human Ecology*, Vol. 32, No.5, October 2004, pp.561-591.

Harvey, D. 1993. The nature of environment: the dialectics of social and environmental change. In Miliband, R. and Panitch, L., (editors), *Real problems, false solutions*. London: Merlin Press, 1-51.

Herskovits, Melville J. 1926. The Cattle Complex in East Africa, *American Anthropologist*, New Series, Volume 28, No. 1 (January to March 1926), pp. 230-272 (first of a four article series).

Hirschman, A.O. 1968. *Development Projects Observed*. Washington D.C.: Brookings Institution.

Hoben, A. 1996. The cultural construction of environmental policy: Paradigms and politics in Ethiopia. In, M. Leach & R. Mearns (eds.), *The Lie of the Land: Challenging Received Wisdom on the African Environment*. Oxford: James Currey, pp.186-208.

Hobley, C.W. 1906. Notes on the Geography and People of the Baringo District of the East Africa Protectorate, *The Geographical Journal*, Vol. 28, No. 5 (Nov., 1906) pp. 471-481, at p.472.

Hodgson, Dorothy L. 2002a. In Focus: Indigenous Rights Movements. *American Anthropologist* 104(4), pp. 1037-1049.

Hodgson, Dorothy L. 2002b. Precarious Alliances: The Cultural Politics and Structural Predicaments of the Indigenous Rights Movement in Tanzania. *American Anthropologist*, New Series, Vol. 104, No. 4 (Dec., 2002), pp. 1086-1097

Hodgson, Dorothy L. 2009. Becoming Indigenous in Africa, *African Studies Review*, Vol. 52, No. 3 (Dec., 2009), pp. 1-32.

Holling, C.S. 1973. Resilience and Stability of Ecological Systems. *Annual Review of Ecology and Systematics*, Vol. 4 (1973), pp. 1-23.

Holling, C. S., Gunderson, L.H and Ludwig, D. 2002. In quest of a theory of adaptive change. Pages 3-24 in Gunderson, L.H and C. S. Holling, C.S (editors). *Panarchy: understanding transformations in human and natural systems*. Washington, D.C., USA: Island Press.

Holling, C. S., and Gunderson, L. H. 2002. Resilience and adaptive cycles. Pages 25-62 in L. H. Gunderson and C. S. Holling, editors. *Panarchy: understanding transformations in human and natural systems*. Washington, D.C., USA: Island Press.

Homer-Dixon, T. 1991. On the Threshold: Environmental Changes as Causes of Acute Conflict. *International Security*, vol. 16, no. 2.

Huntingford, G. W.1953. *The Southern Nilo-Hamites*. London: International African Institute.

IGAD-CERWAN: Country Updates for the Kenyan side of the Karamoja cluster: September-December 2009.

Igoe, J. 2006. Becoming Indigenous Peoples: Difference, Inequality, and the Globalization of East African Identity Politics. *African Affairs*, Vol. 105, No. 420 (Jul., 2006), pp. 399-420.

International Labour Organisation (ILO). 2009. Indigenous and Tribal Peoples' Rights in Practice: a Guide to ILO Convention No. 169. Programme to Promote ILO Convention No. 169 (PRO 169), International Labour Standards Department, 2009.

IWGIA 2012:Country Technical Notes on Indigenous Peoples' Issues, the Republic of Kenya.



Kahi, C.H., R.K. Ngugi, S.M. Mureithi and J.C. Ng'ethe. 2009. The canopy effects of *Prosopis Juliflora* (Dc.) and *Acacia Tortilis* (Hayne) trees on herbaceous plants species and soil physico-chemical properties in Njempes Flats, Kenya. *Tropical and Subtropical Agro-ecosystems*, 10 (2009), pp. 441 – 449.

Kahl, Colin H, population Growth, Environmental Degradation and State-Sponsored Violence: The Case of Kenya, 1991-1993, *International Security*, Volume 23, No. 2 (Autumn 1998), pp.80-119.

Kariuki P.M. 1993. *A social forestry project in Baringo, Kenya: A critical analysis*. Unpublished Master's thesis.

Kawai, K. 2008. The Epistemology and Ontology of the Chamus in Kenya. *African Study Monographs*, 29(3): 119-131, September 2008, at p. 126.

Keck, Margaret E and Kathryn Sikkink. 1999. Transnational advocacy networks in international and regional politics. UNESCO 1999, Blackwell Publishers: Oxford (UK).

Keck, M and Sakdapolrak, P. 2013. What is Social Resilience? Lessons Learned and Ways Forward. *Erdkunde*, Vol. 67 · No. 1, pp.5-19.

Kiage et al. 2007. Recent land-cover/use change associated with land degradation in the Lake Baringo Catchment, Kenya, East Africa: evidence from Landsat TM and ETM+, *International Journal of Remote Sensing*, Vol. 28, No. 19.

Kiage Lawrence M and Liu K-B. 2009. Palynological evidence of climate change and land degradation in the Lake Baringo area, Kenya, East Africa, Since AD 1650, *Palaeogeography, Palaeoclimatology, Palaeoecology* 279 (2009) 60-72.

Klopp, J and Prisca Kamungi. 2008. Violence and Elections: Will Kenya Collapse? *World policy Journal*, Winter 2007/2008, pp.11-18.

Kulet, H.R .1972. *To Become a Man*. Nairobi: Longman Kenya Limited. In

Langridge, R., Christian-Smith, J., and Lohse, Kathleen A. 2006. Access and resilience: analyzing the construction of social resilience to the threat of water scarcity. *Ecology and Society* 11(2): 18, pp. 1-15.

Langridge, R. ; Juliet Christian-Smith.; and Kathleen A. Lohse. 2006. Access and Resilience: Analyzing the Construction of Social Resilience to the Threat of Water Scarcity. *Ecology and Society* 11(2): 18. [Online] URL: <http://www.ecologyandsociety.org/vol11/iss2/art18/>

Larick, R. 1986. Iron Smelting and Interethnic conflict among precolonial Maa-speaking pastoralists of north-central Kenya. *The African Archeological Review* 4 (1986), pp. 165-176.

Larick, R. 1991. Warriors and Blacksmiths: Mediating Ethnicity in East African Spears. *Journal of Anthropological Archaeology* 10 (1991), pp. 299-331.

Lansing et al 2006

Laxén, J. 2007. Is *Prosopis* a curse or a blessing? – An ecological-economic analysis of an invasive alien tree species in Sudan. *Tropical Forestry Reports* 32, Viikki Tropical Resources Institute (VITRI), University of Helsinki

Leach, M. and Robin Mearns. 1996. Environmental change and policy, In Melissa Leach and Robin Mearns (eds). *The Lie of the Land: Challenging Received Wisdom on the African Environment*. Oxford: James Currey, pp. 1-33.

Lebel, L.; Anderies, J. M.; Campbell, B.; Folke, C.; Hatfield-Dodds, S.; Hughes, T. P.; and Wilson, James. 2006. Governance and the Capacity to Manage Resilience in Regional Social Ecological Systems. *Ecology and Society* 11(1): 19. [Online] URL:<http://www.ecologyandsociety.org/vol11/iss1/art19/>

Lemarchand, R. 1972. Political Clientelism and Ethnicity in Tropical Africa: Competing Solidarities in Nation-Building. *The American Political Science Review*, Vol. 66, No. 1 (Mar., 1972), pp. 68-90.

Lenacuru C. I. 2003. *Impacts of Prosopis species in Baringo District*. Proceedings of workshop on integrated management of Prosopis species in Kenya, pp. 41-47.

Lind, J. 2003. Adaptation, conflict and cooperation in pastoralist East Africa: a case study from South Turkana, Kenya. *Conflict, Security & Development*, 3:3, 315-334,

Lind, J., and Eriksen, S. 2006. The impacts of conflict on household coping strategies: evidence from Turkana and Kitui Districts in Kenya. *Die Erde* 137: 249-270.

Little, Peter D. 1992. *The Elusive Granary: Herder, Farmer and State in Northern Kenya*. Cambridge: Cambridge University Press.

Little, Peter D. 1985. Social Differentiation and Pastoralist Sedentarization in Northern Kenya, *Africa* 55 (3), 1985, pp. 243-261.

Little, Peter D. 1996. Pastoralism, Biodiversity, and the Shaping of Savanna Landscapes in East Africa. *Journal of the International African Institute*, Vol. 66, No. 1, pp. 37-51.

Little, Peter D. 1998. Maasai Identity on the Periphery, *American Anthropologist* 100 (2) pp. 444-467.

Liu J et al. 2007. Coupled Human and Natural Systems, *Ambio*, Vol. 36, No. 8 (Dec 2007), pp.639-649.

Lokuruka, Michael N.I., and Lokuruka, Pauline A. 2006. Ramifications of the 1918 Turkana Patrol: Narratives by Ngaturkana. *Ethnohistory* 53:1 (winter 2006), pp. 121-141.

Longley, K., and Maxwell D. 2003. Livelihoods, chronic conflict and humanitarian response: a synthesis of current practice. *ODI Working Paper No. 182*. Overseas Development Institute, London.

Lwenya, C., and Yongo, E. 2010. Human aspects of siltation of Lake Baringo: Causes, impacts and interventions, *Aquatic Ecosystem Health and Management*, 13:4, 437-441.

Lynch, G. 2006. Negotiating Ethnicity: Identity Politics in Contemporary Kenya . *Review of African Political Economy*, Vol. 33, No. 107 (Mar., 2006), pp. 49-65.

Lynch, G.2011a. Becoming Indigenous in the Pursuit of Justice: the African Commission on Human and Peoples' Rights and the Endorois. *African Affairs*, 111/442, pp. 24-45.

Lynch, G. 2011b. Kenya's new indigenes: negotiating local identities in a global context. *Nations and Nationalism* 17 (1), 2011, pp. 148-167.

Maghembe J.A., Kariuki E.M. and Haller R.D. 1983. Biomass and nutrient accumulation in young *Prosopis juliflora* at Mombasa, Kenya. *Agroforestry Systems*, 1:313-321.

Maliwal G.L., Nadiyadara C.M., Punjani S.H. and Patel C.L. 1991. Changes in soil properties as influenced by *Prosopis juliflora* and crop covers in salt affected soils. *Annals of Arid Zone* 30(1):57-60.

Mamdani, M. 2005. Political Identity, Citizenship and Ethnicity in Post-Colonial Africa. Keynote Address, Arusha Conference, "New Frontiers of Social Policy" – December 12-15, 2005.

McCabe, Terrence J .2004. *Cattle bring us to our enemies: Turkana ecology, politics, and raiding in a disequilibrium system*. Michigan: The University of Michigan Press.

Mkutu, K. A. 2007. Impact of small arms insecurity on the public health of pastoralists in the Kenya–Uganda border regions. *Crime Law and Social Change* (2007) 47:33–56.

Morgan, W.T.W. 1963. The 'White Highlands' of Kenya, *The Geographical Journal*, Volume 129, No. 2 (June 1963), pp. 140-155.

Mortimore, M. 1998. *Roots in the African Dust*. Cambridge University Press: Cambridge (UK).

Muehlebach, A. 2001. "Making Place" at the United Nations: Indigenous Cultural Politics at the U. N. Working Group on Indigenous Populations. *Cultural Anthropology*, Vol. 16, No. 3 (Aug., 2001), pp. 415-448.

Mueller, Susanne D. 2008. The Political Economy of Kenya's Crisis, *Journal of Eastern African Studies*, 2:2, pp. 185-210.

Mungongo, C. G. 1995. Social Processes and Ecology in the Kondoa Irangi Hills, Central Tanzania, *Meddelanden series B 93* Department of Human Geography, Stockholm University, Stockholm.

Mwangi E and Brent Swallow. 2005. Invasion of *Prosopis juliflora* and local livelihoods: Case study from the lake Baringo area of Kenya. *ICRAF Working Paper* – no. 3. Nairobi: World Agroforestry Centre.

Nakano H., Nakajima E., Yoshiharu F., Yamada K., Shigemori H. & Hasegawa K. 2003. Leaching of the allelopathic substance, L-tryptophan from the foliage of mesquite (*Prosopis juliflora* (Sw.) DC.) plants by water spraying. *Plant Growth Regulation*, 40(1):49-52.

National Commission on Gender and Equality Commission: Flares of Marginalization among Selected Minority Communities of Kenya: Results of Public Education and Information Forums Held in Coast, Rift Valley and Eastern Regions: May 12 -19, 2013.

Netting, R.M. 1968. *Hill farmers of Nigeria: a cultural ecology of the Kofyar of the Jos Plateau*. Seattle: University of Washington Press.

Niemeijer, D.1996. The dynamics of African agricultural history: Is it time for a new development paradigm? *Development and Change* 27: 87-110.

Njuguna, H. K and Martin M Baya. 1999. *Land Reforms in Kenya: an Institution of Surveyors of Kenya (ISK) Initiative*. Paper summarizing the booklet "Land Reforms in Kenya: The Institution of Surveyors of Kenya Perspective", available online at <http://www.isk.or.ke>.

Norgaard, R.B. 1994. *Development Betrayed: the End of Progress and aCoevolutionary Revisioning of the Future*. New York: Routledge.

Nygren, A., and Rikoon, S. 2008. Political Ecology Revisited: Integration of Politics and Ecology Does Matter. *Society and Natural Resources*, 21: 767-782.

Odada, Eric O., Onyando, Japheth O., and Obudho, Peninah A. 2005. Lake Baringo – Experience and Lessons Learned Brief, In: International lake Environment committee (ILEC) (ed.), integrated lake basin management. Shiga: International lake Environment committee (ILEC) Foundation.

Odada, Eric O., Onyando, Japheth O., and Obudho, Peninah A. 2006. Lake Baringo: addressing threatened biodiversity and livelihoods. *Lakes and Reservoirs: research and Management* 2006 (11) 287-299.

Oduor, Nellie M and Joseph K. Githiomi. 2013. Fuel-wood energy properties of *Prosopis juliflora* and *Prosopis pallida* grown in Baringo District, Kenya. *African Journal of Agricultural Research*, Vol. 8(21), pp. 2476-2481, 6 June, 2013.

Ole Ndaskoi, N: *The Root Causes of Maasai Predicament*, Unpublished.

Orvis, S. 2001. Moral Ethnicity and Political Tribalism in Kenya's "Virtual Democracy". *African Issues*, Vol. 29, No. 1/2, Ethnicity and Recent Democratic Experiments in Africa (2001), pp. 8-13.

Omwega, A and Segbedzi Norgbey.2004. Lake Baringo community-based land and water management project. *Evaluation report on project GF/3010-00-03*. United Nations Environmental Programme (UNEP).

Onyando, J. O. 2002. *Land cover resource maps of Lake Baringo drainage basin*. Consultancy report submitted to UNOPS.

Onywere, S.M. et al. 2014. *Geospatial Extent of 2011-2013 Flooding from the Eastern African Rift Valley Lakes in Kenya and its Implication on the Ecosystems*. Unpublished.

Osamba, Joshia O: Violence and the Dynamics of Transition: State, Ethnicity and Governance in Kenya, Africa Development, Volume XXVI, Nos. 1 and 2, 2001, pp.37-54.

Pasiecznik, N.M., Choge, S.K., Muthike G.M., Chesang, S., Fehr, C., Bakewell-Stone, P., Wright, J., and Harris, P.J.C. 2006. *Putting Knowledge on Prosopis into Use in Kenya. Pioneering Advances in 2006*. KEFRI, Nairobi, Kenya and HDRA, Coventry, UK. 13pp.

Peet, R., and Watts, M. 1996. Liberation ecology: development, sustainability, and environment in an age of market triumphalism. In Peet, R., and Watts, M. (editors), *Liberation ecologies: environment, development, social movements*. London: Routledge, 1-45.

Peluso, N., and Watts, M. 2001. Violent Environments, in Peluso, N., and Watts, M (editors), *Violent Environments*, pp. 3-38. New York: Cornell University Press.

Peters, Dr. C. 1891. *New Light on Dark Africa: being the narrative of the German Emin Pasha Expedition, its journeyings and adventures among the native tribes of Eastern equatorial Africa, the Gallas, Massais, Wasukuma, etc., etc. on the Lake Baringo and the Victoria Nyanza*. London, New York and Melbourne: Ward, Lock and Company.

Powell-Cotton, Major. 1904. Notes on a Journey through East Africa and Northern Uganda, *Journal of the Royal African Society*, Volume 3, No. 12 (July 1904), pp.315-324.

Pratt, D.J. and Gwynne, M.D., 1977. Rangeland Management and Ecology in East Africa. London/Sydney/Auckland/Toronto: Hodder and Stoughton.

Raleigh C. 2010. Political Marginalization, Climate Change, and Conflict in African Sahel States. *International Studies Review* 12, 69–86.

Rappaport, Roy A. 1967a. *Pigs for the Ancestors: Ritual in the Ecology of a New Guinea People*. New Haven and London: Yale University Press.

Rappaport, Roy A. 1967b. Ritual Regulation of Environmental Relations among a New Guinea People. *Ethnology*, Volume 6, No. 1 (January 1967), pp. 17-30.

Rawlinson, A. 2003. The political manipulation of ethnicity in Africa. INSOLENS, online publication, January 2003, downloaded from [www.insolens.org](http://www.insolens.org).

Republic of Kenya: Sessional Paper Number 10, 1965: African Socialism and its Application to Planning in Kenya (ROK 1965).

Republic of Kenya: Sessional Paper Number 1 of 1986 on Economic Management for Renewed Growth.

Republic of Kenya 2010, Laws of Kenya: The Constitution of Kenya, Revised Edition 2010 Published by the National Council for Law Reporting with the Authority of the Attorney General.

Republic of Kenya, Sessional Paper No. 8 of 2012 on National Policy for the Sustainable Development of Northern Kenya and other Arid Lands: 'Releasing Our Full Potential'

Resilience Alliance. 2009. *Resilience*. [www.resalliance.org](http://www.resalliance.org)

Robinson, Lance W., and Berkes, F. 2010. Applying Resilience Thinking to Questions of Policy for Pastoralist Systems: Lessons from the Gabra of Northern Kenya. *Human Ecology* (2010) 38:335–350.



Roessler, Philip G, Donor-Induced Democratization and the Privatization of State Violence in Kenya and Rwanda, *Comparative Politics*, Volume 37, No. 2 (January 2005), pp. 207-227.

Sanders, D. 1994. Developing a Modern International Law on the Rights of Indigenous Peoples. University of British Columbia, unpublished.

Scarritt, J. 1994. Nonviolent Versus Violent Ethnic Political Action in Africa. In *Justice without Violence*, edited by Paul Wehr, Heidi Burgess, and Guy Burgess. Boulder, CO: Lynne Rienner.

Scarritt, J and Shaheen Mozaffer.1999. The Specifications of Ethnic Cleavages and Ethno-political Groups for the Analysis of Democratic Competition in Contemporary Africa. *Nationalism and Ethnic Politics* 5: 82-117.

Schagerl M and Oduor, S. O. 2003. On the limnology of Lake Baringo (Kenya): II. Pelagic primary production and algal composition of Lake Baringo, Kenya, *Hydrobiologia* 506-509 (2003), pp. 297-303.

Schlee, G. 2004. Taking Sides and Constructing Identities: Reflections on Conflict Theory: The Journal of the Royal Anthropological Institute, Vol. 10, No. 1 (Mar., 2004), pp.135-156.

Scoones, I. 1999. New ecology and the social sciences: What prospects for a fruitful engagement? *Annual Review of Anthropology* 28: 479-507.

Seidle I. and Tisdell, Clem A. 1999. Carrying capacity reconsidered: from Malthus' population theory to cultural carrying capacity. *Ecological Economics* 31 (1999) 395-408.

Sen, A., 1981. *Famines and Poverty*. London: Oxford University Press.

Sicherman, C. 1996. Kenya: Creativity and political repression: the confusion of fact and fiction. *Race and Class* 1996 37: 61, pp. 61-71.

Simiyu, C., Gichira, J., Mwakirani, R., Wamalwa, A., Kangogo, D., and Noor, Y.2011. *Resistivity Studies of the Lake Baringo Geothermal Prospect, Kenya*. Proceedings, Kenya Geothermal Conference 2011, Kenyatta International Conference Centre, Nairobi, November 21-22, 2011.

Simmonds, I.G. 1993. *Interpreting nature: cultural constructions of the environment*. London: Routledge.

Singh G. 1995. An agroforestry practice for the development of salt lands using *P. juliflora* and *Leptochloa fusca*. *Agroforestry Systems*, 29(1):61-75.

Smith, Antony D. 1984. Ethnic myths and ethnic revivals, *Archives of European Sociology*, XXV (1984), pp.283-305

Sobania, N. 1988. Pastoralist Migration and Colonial Policy: A case Study from Northern Kenya. In *The Ecology of Survival: Case Studies from Northeast African History*. Johnson, D., and Anderson, D (editors), pp.219-240. London: Lester Crook Academic Publishing.

Spear, T and Waller, R (editors). 1993. Being Maasai: ethnicity and identity in East Africa. London: James Currey.

Spencer, P.1998. *The pastoral continuum: the marginalization of tradition in East Africa*. Oxford: Oxford University Press.

Thompson, J. 1884. Through the Masai Country to Victoria Nyanza, *Proceedings of the Royal Geographical Society and Monthly Record of Geography, New Monthly Series, Volume 6, No. 12 (December 1884)*, pp. 690-712.

Thomson, J. 1884. Through the Masai Country to Victoria Nyanza, *Proceedings of the Royal Geographical Society and Monthly Record of Geography, New Monthly Series, Volume 6, No. 12 (December 1884)*, pp.690-712

Thomson, J, 1887 (new and revised edition). *Through Masai land: a journey of exploration among the snow-clad volcanic mountains and strange tribes of Eastern equatorial Africa. Being the narrative of the Royal Geographical Society's expedition to Mount Kenia and Lake Victoria Nyanza, 1883-1884*. London: Sampson Low, Marston, Searle, & Rivington.

Turner II, B.E.A. 2003. Illustrating the coupled human-environment systems of vulnerability analysis: Three case studies. *Proc. Natl. Acad. Sci.* 100:8080-8085.

Turner II, BL., Kasperson RE., Matson, PA et al.2003. A framework for vulnerability analysis in sustainability science. *Proc Nat Acad Sci USA* 100:8074-8079.

- Upton, C. 2013. The new politics of pastoralism: Identity, justice and global activism. *Geoforum*, online version downloaded from journal homepage: [www.elsevier.com/locate/geoforum](http://www.elsevier.com/locate/geoforum)
- Vossen, R. 1978. Linguistic evidence regarding the territorial history of the Maa-speaking peoples: some preliminary remarks. *Kenya Historical Review*, 6, pp. 34-52.
- Wa Githinji, M and Frank Holmquist. 2009. The default politics of ethnicity in Kenya. *The Brown Journal of World Affairs*, Fall/Winter 2009, Volume 16 (1), pp. 101-117.
- Walker B., Holling CS., Carpenter SR., and Kinzig, A.2004. Resilience, adaptability and transformability in social–ecological systems. *Ecology and Society* 9(2):5.
- Waller, R. 1976. The Maasai and the British 1895-1905: the origins of an alliance. *The Journal of African History*, Volume 17, No. 4, pp. 529-553.
- Waller, R. 1985. Ecology, Migration and Expansion in East Africa, *African Affairs*, Vol. 84, No. 336 (July 1985), pp. 347-370.
- Ward, T. 2011. The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law. *Northwestern Journal of International Human Rights*, Volume 10, Issue 2, pp.53-84.
- Watts, M. 2003. Political ecology, in Sheppard, E. and Trevor J. Barnes (editors), a companion to economic geography. Blackwell Publishing: Malden, MA (USA), Oxford (UK) and Victoria (Australia).
- White, P.S. and Pickett, S.T.A., (editors). 1985. Natural disturbance and patch dynamics: an introduction. In Pickett, S.T.A. and White P.S (editors), *The Ecology of Natural Disturbance and Patch Dynamics*, pp. 3–13. Orlando, FL: Academic Press.
- Xanthaki, A. 2009. Indigenous Rights in International Law Over the last 10 Years and Future Developments. *Melbourne Journal of International Law*, Volume 10.