

## Contextualising conflict: Introduced institutions and political networks combating Pastoral Poverty

**Fred Zaal**  
**Morgan Ole Siloma**

### **Introduction<sup>1</sup>**

Poverty and conflict both bring to mind images of destitution. Conflict causes destruction, destitution and disruption of society. The resources to which people have access are damaged to the degree that livelihoods are threatened and poverty is increased. Poverty may also lead to conflict as righteous claims on resources are not met (Verstegen 2001) and scarce resources are competed about (Homer-Dixon 1999). However, this last relationship may be a simplification, as there are many other causes for conflict that hide behind this simple explanation. For example, it may be that not the poor among themselves compete for scarce resources, but that parties previously not involved start to compete with the local poor. The poor may not even have the resources to start a conflict, but rather the well off who through a lack of political, social and cultural mechanisms for control, compete freely for access to resources. As conflict-resolution mechanisms are likely to be absent in those cases, there is very little likelihood of conflicts being moderated once they break out unhindered. In fact, conflicts may be the unavoidable outcome in any society where processes of resource access and distribution are not handled through established political institutions and their controlling elites (Verstegen 2001).

It hardly needs repeating that most pastoral populations are marginal in the spatial, economic, social and cultural meaning of the concept. However, the various forms of marginality are not necessarily related (Kabeer 2000). This paper focuses on a conflict over forest resources in the Loita Maasai area in Narok District, Kenya. Whilst it can certainly be said that the pastoral Loita Maasai<sup>1</sup> are spatially and economically marginal and poor in many definitions of the concept<sup>2</sup>, they are not marginal in an institutional and political sense, at least, not any more. This paper focuses on this institutional side of pastoral society and tries to present a narrative through which the conflict can be understood. The paper shows that through their institutional wealth (their social capital), the Loita Maasai have been able to organise themselves politically and defend their ownership of and access to a very crucial resource. The paper also shows that the absence of established equitable political institutions for resource access can be solved through outside intervention, provided the proper relationships are forged with other political forces within the country. The

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<sup>1</sup> The word Loita will be used henceforth for both the people and their territory.

<sup>2</sup> Though not in their own definitions of wealth and poverty as on one important determinant of wealth: the ownership of animals, they are certainly not very poor.

mobilisation and generation of political institutions may form a starting point for improving access to scarce resources for the poor and thus the fight against marginality. We feel political institutions are often neglected as changing them goes against the status quo even within pastoral society.

### **Theory of institutions in resource conflict**

Within any society there are scarce resources, so that access to these resources needs to be regulated, whether they be arable land or parking space (Hardin 1977). The discussion on environmental entitlements (Leach *et al.* 1999) is based on this assumption. In this view, institutions at various levels (local, regional, national) manage the process of access, turning resources into endowments. This process, the endowment mapping process, develops the idea that resources are valuable and can be used for the generation of entitlements and wealth. Subsequently, there are institutions that moderate the process of turning these endowments into entitlements. These are used to develop capabilities of actors. These in turn influence resource availability, and the endowments and entitlements mapping processes whereby the distribution of access and control is changed or strengthened. The attention in all of this process is on the internal distribution of benefits, within a context of adaptation of society to changing environments through their institutions. Overall, this is a harmonious model.

However, as Devereux shows, there are extra-legal transfers that change the distribution of benefits (Devereux 2001). Extra-legal transfers may occur at the higher level of institutions, where *communities* compete for resources, or of individuals misusing institutions for their private benefit. These types of resource conflicts do not easily fit in the framework of Leach *et al.* Especially if these institutions are *Government* institutions, there is a problem of the legitimacy of the state and its role in the brokering of access. If the legitimacy of state institutions is questioned, an important instrument for resource mapping and conflict resolution is eroded. It depends on the level of political awareness within the population and their leaders whether the victims resent the government, or the individuals within it who misuse the institution. If the latter happens, they may find alliances within the state apparatus to link up with.

We think that the present case is one of those, and our idea is that the traditional socio-economic and political institutions that were available to the Loita Maasai have been used profitably to generate linkages with other, newer and more powerful institutions to attain control over threatened resources. This process is by no means finished, it is still in full development, and our earlier assessment of it (Ole Siloma and Zaal 2005) is much more positive on the impact of this 'neo-African Governance' system that has developed than we are now. There is another issue as well. The process of balancing the claims over resources of various stakeholders is a political process. The legitimacy of this political process however is related to the degree by which the population within the judicial territory of the state that organises the process has underwritten it. By the latter we not only mean that individuals may be seen to misuse these institutions, but that the institutions themselves are not considered legitimate for the purpose of, in this case, mitigating access to local resources. The population may not fully support the legitimacy of the political institutions at state level, the political process related to it, and the outcome of this process in terms of forest management decisions and the distribution of outcomes.

As one of the most significant developments in the past few decades, governance refers to the patterns of collaboration that emerge between public, private and civil society actors in the provisioning of public goods or the satisfaction of common needs (Pierre & Guy Peters 2000). It encompasses both the process of interaction (and the way this has become institutionalised) and the outcomes of such interaction (affecting the livelihoods of people). Furthermore, it includes both a vertical dimension (for example across different levels of government; decentralisation), and a horizontal dimension (for example dissimilar types of organisations and institutions participating at the same level for service delivery). As it links the management of society's natural resources with the political process of providing access to the outcomes of their use, the impact of this development on poverty is considerable. This is especially so since the poorest depend in a higher measure and a much more direct way on these natural resources than the wealthy (Reitsma et al 1997). This has supported the renewed interest for non-government organisations in the framework of governance systems for resource access and services delivery (Kaldor 2003, Van Westen 2001). This means that political-institutional innovations that promise improvement in terms of political participation of the population in their society will have to come from levels other than national government. Formal systems are changing, as the trend is moving away from government and towards ideas of governance based on the role of civil society and the private sector. These sectors merge with what is left of traditional systems in quite unexpected ways, and with unexpected outcomes (Ole Siloma & Zaal 2005). These traditional systems were quite local or regional in scope, so the resultant governance system at the national level is very diverse.

The question is whether governance as a principle is strong enough to settle the potentially conflicting political process of management of and competition for natural resources. There are broadly two schools of thinking on this issue. One school maintains that scarcity will lead to competition and thus conflict over the resource, while the opposing idea is that scarcity will lead to cooperation in the wise and just distribution of the resource, as a conflict would hurt all. Conflicts occur when this process is disturbed (Homer Dixon 1999). We should therefore be interested in cases in which local level institutions and organisations have been able to establish an equitable, peaceful and sustainable situation of access and use of scarce natural resources, and in which these institutions have been powerful enough, or have been linked to political institutions powerful enough to Ward off claims from other actors to access. One of those cases is that of the Loita Naimina Enkiyio forest in the Maasai area of Narok, Kenya. Even though the situation seems to be changing in recent days, up till very recently this forest was managed along entirely traditional lines, even while the fierce battle was going on for control of the forest and its benefits. This case shows how traditional institutions governing access and use of resources may be mobilised and linked to higher-level institutions to fight in a new arena of political processes.

### **The Loita Naimina Enkiyio forest: environment**

The Loita Naimina Enkiyio forest (hereafter Loita Forest for short) is an area of 330 km<sup>2</sup> situated in the southern part of Loita Division, Narok district, in southern Kenya (Figure XX).

(Introduce Figure XX about here)

The Loita Forest borders the Nguruman-Magadi escarpment bordering Kajiado District to the east, the Osupuko Oirobi (Purko Maasai land) to the north, the border of Tanzania to the south and the rangelands towards the Maasai Mara National Game Reserve to the west. Loita Division encompasses a variety of ecosystems, of which the grasslands at low altitude and the forest at a higher altitude form the dominant features. The Loita Forest is one of the few un-gazetted and largely undisturbed indigenous forests in Kenya (see for other examples Njogu 2003). The Loita Hills with the Loita Forest are the main water catchments for the surrounding region. The forested highlands receive an annual rainfall of between 600-1,200 mm, while rainfall in the rangelands is lower at 600-700 mm. The water catchment value of the forests has been estimated at 105 million Kenya Shillings per year (Ole Siloma, 2003). Most rivers drain eastward into the Ewaso Nyiro River, which runs into Lake Natron in Tanzania. Physiognomically, the forest can be classified generally as a 'dry upland forest'. However, within the forest, three broad categories can be identified, namely the Afromontane dry conifer forest dominated by the African Pencil tree (*Juniperus procera*) usually on the hill tops, mid up-land semi-deciduous forests and mixed species low upland forests. Dispersed within the extensive closed canopy forest are bush, glades and wetland areas. The Loita Forest supports a variety of large mammals, such as elephant, buffalo, hippo, antelopes, predators (lion, leopard and cheetah) and a rich bird life with approximately 100 bird species sighted. The forest is home to various endemic species such as the threatened grey-crested helmet shrike and the brown-capped Apalis. The adjacent grasslands are occupied by resident and migrant ungulate species of plains' game, which graze alongside Maasai livestock. In terms of tourist-potential beauty, this area is unsurpassed.

The wetland areas, marches and in extreme circumstances the up-land semi-deciduous and mixed species forests form the ultimate fallback grazing areas in times of drought (Musyoka 1999). During the extreme drought of 2005-2006, almost all Loita animals were grazed in the forest. The Loita community has an indigenous tenure system that gives use rights of natural resources to various groups in and outside the community. The land, both the rangeland and the Loita Forest, has been shared by multiple users for grazing, traditional and cultural ceremonies, medicinal plants, construction materials and as a source of water. There are certain resource types and uses that are strictly controlled, while other resources are more freely accessible. For example, the forest has considerable spiritual and emotional value and many transition rites and other important rituals and ceremonies take place in the forest, such as the fertility blessings for women who are unable to give birth, and white soil for circumcision ceremonies is found here. Because of this, the Loita community sees the spiritual leader, the Laibon, as the custodian of the forest. The Laibonok (plural for Laibon) have permanent rights and access to certain areas of the forest for their functions (Karanja et al. 2002). Certain resource types, like a tree referred to as the oltukai, are only meant for Laibon use for the performance of these traditional rituals. Livestock in Loita graze according to the rain regime. During the rainy season, livestock stay in the rangeland (Olpurkel), which has wide grassy plains and salt licks. The Loita Maasai understand the role that the forest plays as a water catchment area and a source of water in dry seasons and drought years, as all water sources in Loita emanate from the forest. It is uncommon to find community herds grazing in the forest during the rainy season. Even the community members living close to the forest resist this temptation. During the rainy season they either graze in the grassland near

the forest or migrate to the east and south of the forest. It is only during the dry season that the animals are driven near the forest and up into the glades within the forest (Osupuko). In these glades, water sources are plentiful and vegetation survives longest thanks to the forest's water retention capacity. Since the Loita community does not live in isolation, there is a mixed pattern of grazing between them, the adjacent Purko community and the Loita Maasai of Tanzania. The Loita Maasai, especially the ones bordering Tanzania, drive their cows to Tanzania during the dry season for pastures and salt licks because the rains start earlier there. The Tanzanian Loita, in turn, bring their cattle to the glades during prolonged dry seasons. The Purko Maasai drive their cattle to the southern glades of the forest during extreme droughts. As long as the boundaries of the territories are undisputed, the sharing of seasonal pastures by different Maasai sections poses no threat. It is a reciprocal right used during emergencies and regulated by customary laws. In this case and depending on the season, the Laibon and the herders have overlapping rights to use the forest for cultural ceremonies and grazing, respectively (Ole Siloma & Zaal 2005).

### **Loita institutions: pastoralists and politicians**

Traditionally, institutions for resource management were geared towards the sustainable use of the grazing lands, salt licks, water points, and forests for construction and firewood, as well as for a variety of other uses. Adaptation to a fundamentally unstable natural environment as described by Leach et al. (1999) was the basic rationale, both for the short-term production of milk for food and for the longer term production of animals. However, a number of new institutions and organisations have appeared. We will present them as they appear in the description of the conflict.

#### *Traditional leaders*

Maasai society shows a remarkably diverse set of sub-divisions, all seemingly to distribute power over society as a whole. One of the most important ones is that of the Section. There are a large number of sections of Maasai, each territorially divided. In Narok, we find the Purko, Keekonyokie and Loita Maasai. A second very important institution is that of the clan, which cuts through sections and sometimes even ethnic group boundaries. Each clan has its own leaders with their recognised chief – the Olaigwanani. In the event of any problems or conflicts within or between clans, it is these leaders who meet to deliberate on the matter. In addition there are age groups, which comprise of men who were initiated during a given time span (usually eight to ten years). In each age group, the age group's godfathers (representing older age sets) and age group members appoint five leaders. These traditional leaders represent the age group at the level of the Loita community and play roles in conflict management not only within their respective clans and age groups, but in the entire community. The most important traditional leader is the Laibon. The Laibonok are diviners who can predict calamities and prescribe and prepare medicines. They are key figures in the social governing structures of Loita society. They are consulted during major events, have social and spiritual control and command great respect in the community. They preside over social events and ceremonies such as the age set initiation and cleansing rituals. By virtue of their position, they are the overall caretakers of the Loita Forest and perform ritual duties in specific sacred sites within the forest. Although there are many Laibonok in Loita, there is only one Chief Laibon. This position is inherited when the incumbent Laibon selects one of his sons as his successor.

### *Appointed government officers*

The introduced western-style government in Kenya comprises national, provincial, district, division, location and sub-location authorities, in accordance with the way Kenya is subdivided administratively. At division level and below is the Divisional Officer (DO) who is in charge of all administrative issues. S/he participates in all development activities and heads all development committees in Loita Division. The five location chiefs in Loita division and the sub-chiefs (who administrate the sub-locations) participate in all development activities in their locations and sub-locations and report to the DO. They act as ex-officio members of the various development institutions in Loita. Based on their formal authority, government officials to various degrees assume responsibility over resource management, and may do this with various degrees of impartiality and fairness. When they are selected from the Loita area itself, they may be responsive to traditional ideas of responsibility for local needs, or they may respond to the demands of the formal central government. They are often the focal point between formal government and informal traditional institutions, in particular when these two sets of institutions conflict. That is why their behaviour so dramatically determines the outcome of political processes of environmental management.

### *Elected leaders*

Wards are the units that are being represented by the elected Councillors at the District level. Apart from these Wards, there are Constituencies – areas that are being represented by elected Members of Parliament at the national level. The boundaries of Wards and Constituencies do not necessarily coincide with those of the administrative areas. Ward Councillors are elected members from each of the two (at present, see below) Wards in Loita Division. Initially, there was only one Ward in Loita, but after a temporary increase to five in the 1997 elections, the number of Wards was again reduced in 2002 when the general elections were held. There are now two democratically elected councillors, who represent the Loita community interests in the Narok County Council, where most other councillors come from the Purko Maasai community.

### *Narok County Council (NCC)*

Though the council consists primarily of elected councillors, who are dealt with above, the NCC is an actor of its own. In Kenya, the State authority at District level is the County Council. County Councils play an important role in natural resource management decisions, because they hold all land that is classified as Trust land in trust for the resident communities. Because it is Trust land, the legal functions regarding Loita Forest are vested in the Narok County Council. As the majority of the population belongs to the section of the Purko Maasai, most councillors in the Council are Purko Maasai. The NCC played a central role in the Loita Forest conflict.

### *The Ilkerin Loita Integral Development Project*

The Ilkerin Loita Integral Development Project (ILIDP) is a local non-governmental organisation that was started in 1968 as a joint venture between the Loita Maasai, the Catholic Diocese of Ngong and the Dutch Catholic co-financing agency for development programmes CEBEMO (now Cordaid). It was set up with the aim of training the local people to manage their development and other desired socio-economic, political and cultural changes. A central office and various sub-centres in

the locations in Loita, later transformed into Pastoral Community Development Associations (PCDAs), initially formed the main structure of ILIDP.

ILIDP as a whole is managed and run by a local Board of Governors, which ideally has the responsibilities and powers to direct, manage and oversee the operations and functioning of the entire project. The Board has twelve members, half of whom are representatives of the PCDAs, while the other half are traditional and government leaders as well as legal representatives. It thus taps into all types of established institutions. The project has worked on community training and awareness creation, livestock improvement and upgrading, livestock disease control, land rights training, cultural awareness and practices, community organisation, social cohesion and sectional unity. More recently, support activities have been initiated on the aspects of practical technical skills training, functional literacy, gender awareness, formal education, and subsistence agriculture (ETC-East Africa, 2003).

#### *Loita Council of Elders (LCE)*

The most powerful institution in Loita is the Loita Council of Elders (LCE), which has come to play a key role in development activities and the management of natural resources. It is this institution and the County Council that we will focus on in the discussion of the Loita Forest conflict. Its power stems from the fact that it draws its members from all relevant customary, government and elected leaders in Loita, even though in itself it is an informal institution. This forms a very strong basis for enacting resolutions that are passed in the meetings of the LCE. It also sanctions the major decisions in Loita, including land and natural resources issues. The strength of this group is its ability to combine the traditional skills of the clan, age group leaders and the Laibon, with modern knowledge from the elected local government and government officers and local NGOs. The initiative to set up this Council came from ILIDP leadership, itself a complex mixture of formal and informal, elected and appointed, modern and traditional powers, geared to the alleviation of poverty and the equitable distribution of ownership of and access to resources.

#### *Concerned Loita Citizens (CLC)*

This is a rather elusive group of individuals that emerged during the conflict. This group chose to support the Narok County Council in the gazettelement of the Loita Forest. The rationale behind the support of the NCC was their focus on the need for economic developments to pay for the upkeep of the forest, rather than (or in addition to) using it for the traditional purposes of grazing, plants, water and sacred sites. It is a loose group and has not registered or formally organised itself. It resists the Loita Council of Elders rather than proposes a new institutional framework for political action.

### **A short history of the conflict**

The roots of the conflict within the community on the Loita Forest seems to date from an earlier period during which there was a conflict of interest between two important players: the first director of the ILIDP and the then councillor for Loita. Earlier, they were friends and age mates. However, apparently, in the late 1980s, a number of projects were initiated such as a cattle dip and dairy facilities in the sub-centres of the project area. Much of the proceeds of those facilities were kept in the coffers of ILIDP project. After allegations that these funds had been misused, there developed a rift

between the two individuals and their allies, and it was this rift that was mirrored in the factions in the later Loita Forest conflict. Both factions used this occurrence and other earlier developments in the Maasai Mara and the Kamororo Group Ranch (we will refer to these two other examples later) to back up their claims.

The Loita councillor mentioned above, let's call him N, defeated a powerful Loita person to the seat in the council through elections in the late 1980s. He represented the Loita people in the Narok District County Council (NCC). Not long after that, allegations were made that both he and the Member of Parliament for the area (let's call him T), together with a powerful Minister for Local Government (we will call him NT), were planning to alienate the forest, have it gazetted as a National Park, and use it to construct lodges at its boundaries for mass tourism use. This would enable the generation of considerable revenues, but it would also mean that the local population would be restricted in its use of the forest from then on. From our interviews it appeared as if this rumour, because at first it was not more than that, came about when the three men met when they had a house-warming party organised by one of them. They were seen to disappear for a private meeting. Later, they had met again, this time in the Maasai Mara, in one of the lodges owned by Minister NT. This is relevant, as it raised fears that the Loita Forest would be treated similar to the Maasai Mara Game reserve. Here too, the park, after its formation, had been declared off-bounds to the local Maasai. The latter experience restricted entry for the grazing of their animals though these areas are important refuges in times of drought. To meet in the same type of environment naturally linked the two processes in people's minds. The three men seemed to have agreed that the Loita Forest was to be demarcated for gazette, and the councillor drafted a letter that the Loita people agree to this. The intention to gazette the forest was communicated with the Minister for Environment. Until then, this minister was of the opinion that gazette was to proceed. He himself seems to have benefited from a similar procedure, where the neighbouring Group Ranch area of Kamororo referred to above had been demarcated and leased to him when he was still the Member of Parliament for a neighbouring constituency. He was the one who had subsequently suggested to the then Minister for Tourism and Natural Resources (as the Ministry was called at that time) to see whether tourist sites could be developed in the forest.

However, after the meeting where gazette of Loita Forest had been decided upon had finished, a member of the entourage seems to have communicated the plan to a member of ILIDP staff who quickly realised the situation was urgent. He communicated with the director of ILIDP project who called a meeting of the Loita Council of Elders.

This LCE had been installed earlier with assistance from the ILIDP project, to organise the community around a more centralised forum of discussion and decision-making. It called to memory an earlier council set up by the British colonial government that had as its goal to facilitate the distribution of information on rules and regulations declared by the colonial government. Even that earlier council had discussed these rules and regulations autonomously, and had not always passed on or accepted these colonial rulings. In the present case however, the LCE was intended to have a broad representation of the population in the council. The purpose of this was participation in decision-making through the council in the affairs of the project would ultimately lead to more relevant project work. It also however made the link between ILIDP and the senior elders, the elected councillors, the Laibon, the development officers in the government and some of the women's and youth groups



very tight. Some of these LCE members were also in the Board of ILIDP for example. This showed when the LCE meeting was called and the threat (in the eyes of the project director) of the loss of the forest to private enterprise was discussed. The Narok County Council (NCC) was acknowledged as being entirely justified in managing the forest and decide on its future use, as the Council keeps all un-demarcated and un-gazetted land in trust for the benefit of the population by Kenya law. Even so, the loss of access to the Maasai Mara and Kamororo, which was previously allowed by earlier Councils, made the ILIDP and LCE very concerned. Other cases were mentioned, such as the destruction of the Mau forest, which is also a Narok forest area under NCC trusteeship. The LCE decided to organise a meeting with the Minister for Environment. He confessed that the process for gazettelement was going on, and was astounded that information on this had leaked out. After having been explained the situation and the concerns, the Minister changed his mind and agreed to assist the Loita community. A lawyer was asked to advice, and he suggested a separate institution should be established to legally represent the Loita population, as it was general seen to be beyond the brief of the LCE. This Council had no legal status anyway and could not sue or be sued. The LCE on behalf of the Loita population unanimously accepted.

Of course this merits the question whether, as a non-legal institution informally representing the population, the LCE was in a position to do this, and what the status of the newly established entity would be. At least part of the population, that part of the population that supported councillor N as their democratic representative, may not have had the feeling the LCE represented them. This was in fact an argument voiced by a number of the interviewees. The NCC had the responsibility by law to decide on the future of the forest. However, we have to consider the timing of the conflict (and the following is our own analysis of the situation, not derived from the interviews). The first truly democratic elections were to be organised in 1992, and the present stage of the conflict, the NCC could hardly be considered truly democratic in a representative and multi-party democratic meaning of the word. One can wonder whether in this sense the NCC was representing the community for which it held these natural resources in trust.

There was another issue as well. The Loita form only a minority of the population in Narok District, and they had only one councillor at that time, a councillor who perhaps naturally sided with the majority of the NCC councillors. The majority of councillors are from the majority Purko Maasai, of which the Member of Parliament P T and Minister NT were also member. This division of ethnic groups within Narok, a characteristic of the area that pre-dates even the pre-conflict situation described above by decades, had earlier led to tensions. The Purko population, being more numerous and living in slightly dryer areas of Narok, had for some time been invading the forest and Loita area. The relationship between these two groups were 'not cordial' to quote an interviewee. Certain Purko clans related to the Loita had already established themselves in the forest before independence, and even then, the establishment of camp-sites between them and the rest of the forest-dwelling population had been proposed to avoid further invasion, according to interviewees. The gazettelement was thus seen by some as a move by certain Purko Maasai to occupy the forest and alienate it from the Loita people.

To juridically fight the gazettelement of the forest, with the help of the Minister for Environment and the lawyer, a Trust was set up, the Loita Naimina Enkiyio Conservation Trust (LNECT). Many of the elders in the Board of ILIDP or participating in the LCE found themselves as one of the 6 members of the Board for

LNECT, and thus the link between ILIDP, LCE and LNECT was very tight. In the view of those opposing ILIDP, the establishment of LNECT actually precipitated the conflict, where until that time there had been differences of opinion. The ILIDP camp stated that the Trust was needed to attract funding, organise resistance and legally fight the alienation of the forest, the NCC camp stated that this Trust was unlawful as it was fighting the legal role of the NCC as trust-holder. Why would there need to be another legal holder of Trusteeship when this had been arranged by law already? The argument against this was that the NCC had not acted to the benefit of the population before (and examples given were stated above), and that it was not the democratic type of organisation that Kenya was going for (again, the latter statement never appeared in any of the interviews but came from our understanding of the situation). Also, recent international jurisprudence gave indigenous peoples the right to defend their case against a government that systematically neglected their right of access to traditional resources (though this development developed fully slightly later in the legal fight, as it referred to the second World Conference on Human Rights held in Vienna in 1993).

The remarkable situation now developed that legal representation by the NCC was considered by these arguments to be less in the interest of the local population than an organisation and an institution, the ILIDP and LCE, that were never established democratically, but that were organised through outside interference for the benefit of these same people. The ILIDP was a project set up through the Catholic Church and funded by a Dutch NGO, CEBEMO (now Cordaid), while LCE was in turn established by ILIDP, and LNECT by ILIDP! Even some interviewees on the ILIDP side found this to be slightly non-transparent.

The matter was taken to court by LNECT. In this court case, many found it very difficult to choose sides. Conflicting points of view started to become apparent within the Loita community, within groups within that society (women groups were divided along clan lines, old and young disagreed on issues, etc), and even individuals found they were torn apart. A chief disagreed with the NCC, a Purko Councillor agreed with ILIDP. There were many who could not decide, who sided with those they had supported before, or kept neutral. Many saw this conflict as a battle between councillor N and the director of the ILIDP project. Some however changes sides from NCC to the ILIDP camp due to the fact that the latter were more open in their decision making, and kept the population better informed through the intricate network of traditional patron-client relationships and relations of traditional communication and decision making that the Loita Maasai always have had.

This was the impact of the completely new way the LCE was organised, an neo-African governance institution as we called this elsewhere (Ole Siloma and Zaal 2005) that collected new and old, representative and authoritarian, political and social organisations and institutions in one coherent new institution, aided by the organisational talents of professional project staff. It was seen as a forum where young new leaders could be educated in the art of leadership, and get in-house training in policy-making and politics within the Loita community to become wise and responsible decision makers. It has acquired according to most interviewees a semi-legal status in the Loita community, as it brings unity, understanding, discussion and community decision making to the Loita community in a transparent manner. Of course, the concept of 'community' here doesn't include the councillor and his followers.

Apart from the 'battle of the elders' between councillor N and the director of ILIDP in court, another development took place. The elections gave the opportunity for both factions to present their views and generate support. Of course, within Loita councillors supported by the ILIDP faction were better placed to win this election within Loita. One item that came up for public scrutiny was the letter that councillor N had written stating that the Loita people were supportive of the gazettelement. This and many other issues ultimately led to the political demise of councillor N and the installation of a new one, councillor S. The Loita Ward, with the new councillor in the NCC, was split up and five Wards were established. This increased the representation of Loitans in the Ward considerably, and when a Loitan was elected as chairman of the NCC, the political clout of the Loita community in the NCC had improved. At about this time, Narok District was split up in two, with Maasai Mara (the financial basis of the earlier mentioned Minister NT) finding itself in the new District of Trans Mara, and Narok District reduced in size. The power balance had shifted between the elections of 1992 and the last years of the 1990s. The group around the earlier Councillor N, the Member of Parliament T and Minister NT was no longer in control. On the instigation of the new councillor, apparently to avoid payment of the high court costs on either side, the case was withdrawn from court.

Interestingly, NCC set a number of conditions. The position of the Purko in the forest was to be seen as a given for example, and a new player, IUCN, was asked to do a study on the quality of the resources in the forest, and to develop a management plan in which all present users were included. The LCE invited IUCN in 1998-1999 to come and do this. The initial part, an inventory of the natural resources, was implemented (Maundu et al 2001). However, the design of the management plan caused renewed concerns in the community, and a group of Loitans, grouped around the earlier councillor N and calling themselves 'Concerned Loita Citizens' (CLC) opposed this process. At one point in time, a large group of people was collected outside the gates of the ILIDP project, and a very unfortunate accident happened whereby one person was shot dead and several wounded when the police tried to hold off a skirmish. Probably, the IUCN initiative, wherever it came from, faced the problem of a very sensitive situation in which the space for manoeuvring was very limited. Any initiative such as the IUCN support for the development for a management plan needed to be extremely careful to relate to the existing institutional framework, as one interviewee rightly explained. If no full information was provided to and understood by the population, than there would surely be resistance to its introduction after the experiences in the past decade and a half.

This had an impact on any activity proposed. Even a relatively small initiative such as the introduction of an eco-tourism facility in the forest proposed by the Loita Development Foundation (LDF) attracted attention and is met with resistance. LDF is an organisation that is very highly regarded in the area due to the work on livestock disease eradication that they organise for various local donors. They have a rather extensive network of shops where the veterinary medicine is sold to local livestock owners. However, all this did not mean that an eco-lodge went through the decision making pipeline unnoticed and unopposed. Court cases were filed to resist the establishment of such a lodge by LDF, as the process seems to have been supported by NCC while LCE members might not have endorsed it fully.

This points again at the role of LCE. The conflict has made it into a forceful instrument of discussion and decision-making. The fact that there is such a large institutional overlap with ILIDP and LNECT in terms of individuals sitting in the Boards of these organisations and institutions makes it even more powerful. However, several interviewees complained that the LCE is growing in number of people attending, causing lengthy discussions, disunity on issues discussed, and individual members using the council increasingly to gain support for their private views on projects for development. There is still no management plan for the forest, and the community members we spoke to fear that if the plan is not developed and supported by a unified Council, there will again be people who see the opportunity to gain control over the forest, or a government at whatever level that will gain control and exclude it from use by the Loita community.

### **Pastoral institutions, poverty and politics**

So what is the issue in the Loita forest case?

There is a conflict between a number of institutions, organizations and individuals that has its cause in the fact that a number of these institutions have claimed the role of stakeholder and the right to interfere that that entails, while the earlier stakeholders have not really seen the need to allow them that stakeholder role. The 'original stakeholders', the present users of the forest, have in the course of the years organized access rules and as a result, the forest is relatively well maintained. Of course, there was competition for these forest resources, between Purko and Loita Maasai for example, but there is also evidence of mitigation of that competition. With the introduction of the state in the colonial period, the seeds of conflict were sown. The state, by virtue of its territorial character, has included the forest and Loita area within its judicial and institutional realm. With it, it has claimed access to the Loita resources for the benefit of the population within the state as a whole. It thus claims the right to interfere, and it does this on the basis of a classical capitalist development discourse. Those claims are legitimate (the state has the right to interfere), but they enclose a degree of sensitivity to the non-monetary use value of the forest in the livelihood of the original users. Any claim to the economic benefits of forest management needs to be compensated with adequate alternative sources of livelihood, and at least to contribute democratically in the decision making on that claim. The more unique the relationship between a certain population and its resources, the more carefully need those compensations be tailored to the needs of that original population to allow them to relate to certain key resources as far as possible. In the case of a unique relationship that cannot be compensated by any other resources elsewhere, there is probably an unavoidable and continuous link to be organized between that population and the resource, even in the new situation envisioned by the state. This is the theory of compensating measures.

The process of balancing the claims of the various stakeholders is a political process. The legitimacy of this political process however is related to the degree by which the population within the judicial territory of the state has underwritten it. And in the case of a former colony, it may not always be the case that that population fully supports the legitimacy of the political institutions at state level, the political process related to it, and the outcome of this process in terms of management decisions and the distribution of outcomes. There are two additional problems. The first is the fact that in many instances and certainly in Kenya, this legitimacy of the institutions, process

and outcomes is further eroded by the fact that individuals who dominate these institutions influence the process to their personal benefit and appropriate these outcomes. And secondly, at the level of the constellations of institutions actually managing and using the resources there may be questions of legitimacy of claims. For example, institutions and organizations may have been introduced that claim the right to interfere and be considered stakeholders, though they have a 'democratic deficiency'. Both sides may subsequently use these deficiencies in the other party as a reason for refusing the others' right to interfere. The position of both sides is weakened or strengthened to the degree by which they either profess to support the views of the earlier and original (problematic in most instances and areas) stakeholders, or to which they support local community based organizations or institutions in organizing themselves and expressing their point of view on the form, process or outcomes. This is the moral basis of the right to interfere that these newly introduced institutions and organizations should have. Earlier international jurisprudence supports the view that the original inhabitants have a claim on their territory that the State may not violate. This discourse on territoriality and ethnicity was successfully used in the Loita Forest court case. It was found to be stronger than the arguments based on a development discourse brought forward by the State.

Of course, the problem lies with the idea of the 'Original Inhabitants'. Actually it is the accident of history that has made the Loita Maasai the 'Original Inhabitants' because they happened to have lived in the area when the present modern state was introduced. Shifts in domination of categories of people and their institutions having taken place before that time (the extermination and inclusion of ethnic groups by and in Maasai society) are actually quite similar to the conflict we are presently discussing. Only, there is no recourse or redressing, the earlier 'Original Inhabitants' have disappeared to a large degree. Also, one should consider the issue of the legitimacy of the *merger* of traditional stakeholder institutions and those newly introduced institutions and organizations, as their legitimacy is quite different. We referred earlier to the 'neo-African governance' situation this has caused. The actual development of the conflict in Loita at least was very much influenced by the formation of a higher-level institution within the local community, the Loita Council of Elders. A large variety of institutions and organizations, both traditional and new, both representative and non-representative, were merged in this new higher-level 'neo-African governance' institution and this reduced the likelihood of conflict developing. Whether this 'neo-African governance' institution had a higher moral right to interfere is questionable when we consider that some of the constituent parts did not really have that moral right either, even though it was formed on the basis of the voluntary affiliation of the local traditional institutions and for the benefit of all Loitans.

The earliest roots of the conflict may have been at the lowest level of communities using the same resource. We refer to the Purko Maasai slowly invading the Loita Forest. Local conflicts about resources have attracted most of the attention in pastoral studies, be these resources water points, drought grazing areas, or salt licks (Homer Dixon 1999). The situation in Loita at present is different. The way the present conflict developed was a conflict between state level stakeholders (whether legitimate or not in a judicial sense) and lower level stakeholders (similarly legitimate or not, but this time in a moral sense). The fact that the lower level stakeholders held out and ultimately (for the time being) won out, was the outcome of processes of continual

institutional, organizational and individual alliances being formed at the lower level (supported by the higher moral ground that the newly introduced organizations such as ILIDP claimed openly or implicitly) and the erosion of the position of the stakeholders at the higher level for causes that had reduced their legitimacy towards the local stakeholders in the first place: political manoeuvring for own benefit. With the latter statement we mean that the same occurrences of abuse of state institutions and organizations for personal benefit that started the conflict have eroded the position of State level stakeholders in this conflict, a situation that has a certain irony in it.

The discourse of development and conflict has focused minds on resource use and scarcity of natural resources, while actually it is a discourse on territoriality and ethnicity, and ultimately on power, on processes of power formation and appropriation of resources to the detriment of already marginal populations. The discussion should be about the democratic content of the state institutions, about their legitimacy or lack thereof, compared to that of undemocratically established organisations that have generated a lot of support, but that are uncontrollable by the population at large. The political economy of access to natural resources is not discussed, because those who would discuss it are all within the organisations and institutions that are its instruments. The fact that Minister NT did not win ultimately may have caused him embarrassment, but it should not have done him the degree of damage that it did. It did him damage because it was the outcome of a power struggle that he lost.

The impact of the conflict, though it was not uniquely pastoral in character, certainly also had an impact on pastoral society. We already saw that initiatives that came after the main conflict ended were considered with a high level of mistrust. Any development initiative that does not come from the local population itself, supported by a large section of the population and the LCE is likely to fail. In addition, though the LCE has its merits, it is growing in size due to the inclusion of newer members who have seen its success, and decision-making is getting increasingly difficult. And third, while the local traditional institutions still exist and even temporarily have been strengthened due to their inclusion in the LCE, they have not been able to prevent erosion of their status during the conflict. The conflict has caused divisions within and between groups in Loita community that have impacted negatively on the level of control of the Loita Forest as a resource. The competition between institutions focussing on these natural resources, an aspect that we missed in the paper by Leach et al, cannot be accommodated by the LCE any longer. The impact on the Loita Forest is already clearly visible, as the rate of degradation is increasing. The Loita Forest may be in danger, and the impact on this marginal and natural-resource dependent community of Loita Maasai may be severe.

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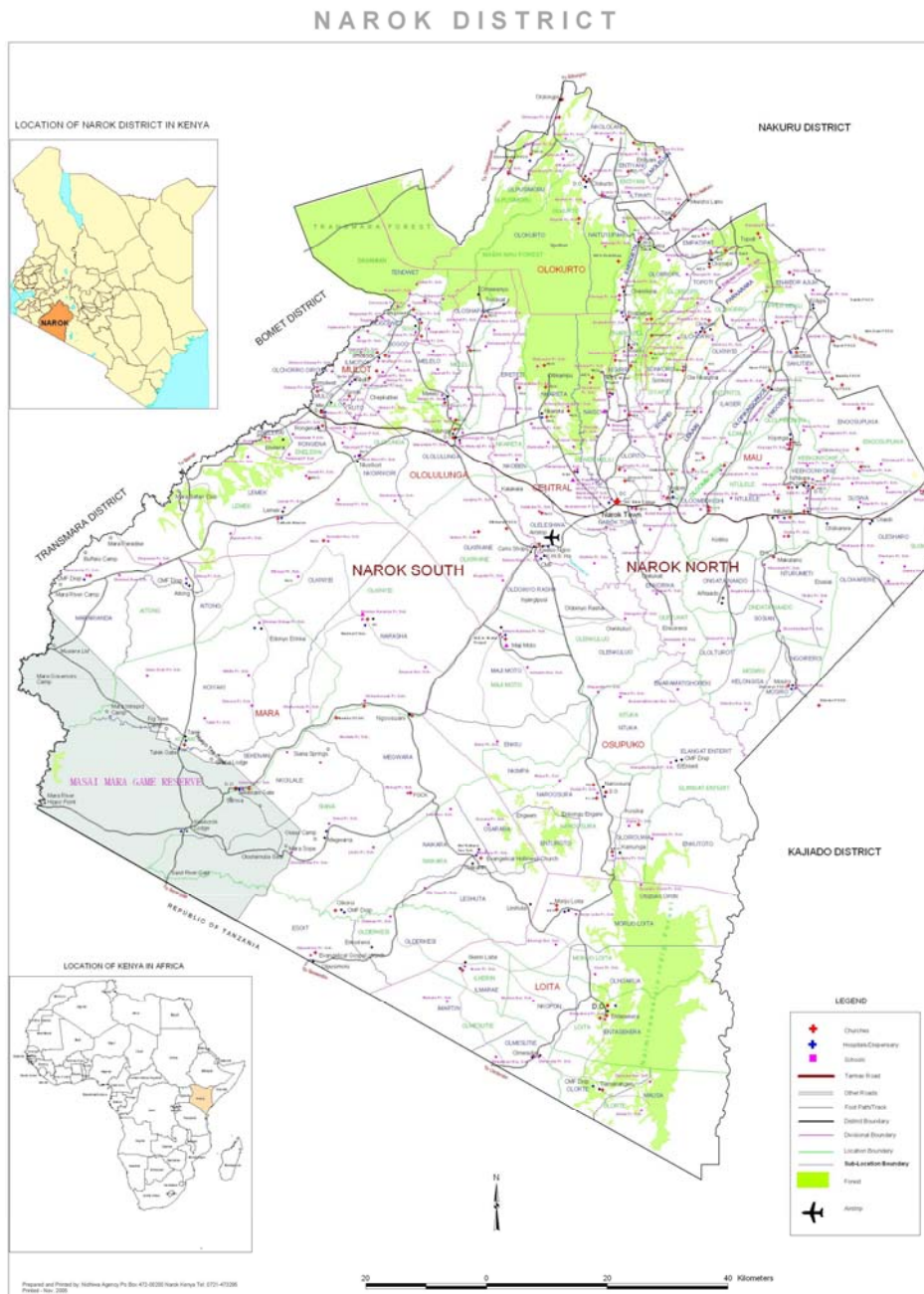
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Figure XX

Map of Loita division and the Loita Naimina Enkiyo forest in the southern part of the Division..



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- i The evidence for this paper was collected during a fieldwork period between October 2005 and March 2006. Its presentation is based on the assumption that much of it can actually be stated as fact, but some information is based on data presented by the interviewees only. It is often their personal opinion and private view of what happened during the period of the conflict. We will state as clearly as possible when this is so. We tried to represent the opinions and views of both camps in the conflict, but invite anyone who feels wrongly represented to add to the evidence, so that as truthful a picture as possible can be painted from which the role of conflict in development can be studied. The capitals indicating the various persons in the text do not necessarily indicate the first capitals of their names.