

LAND OWNERSHIP AND CONFLICTS IN ISIOLO DISTRICT, KENYA

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Declaration

I Saafo Roba Boye , hereby declare that the content of this thesis are original, and that this work has not been submitted to any other university degree, other than the Norwegian university of life sciences, for any type of academic degree. The use of materials other than my own has been acknowledged to the authors.

Saafo Roba Boye

Date and place 15th May 2007 Ås

Supervisor, Randi Kaarhus

Date and place

Dedication

Dedicated to my late father Roba Boye

Acknowledgment

My special appreciation and gratitude is owed to my supervisor Randi Kaarhus for the kind and close supervision that she offered me to make this work a success. My gratitude also goes to my Co-supervisor Professor Gufu Oba for his support and guidance on my work. I also thank him for the hospitality and fatherly advice through out my stay in Norway. My special appreciation and thanks goes to Norwegian Government for the Quota scholarships which made my study period and stay in Norway a success. I also thank the NFR project (community participation in the implementation of the global environmental conventions and poverty alleviation) for partly financing my fieldwork. My special gratitude goes to the Noragric Librarians Ingeborg and Liv for their assistance in literature search.

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Abstract

Land is at the heart of conflicts in many parts of the world. Competition and violent conflicts over land have intensified leading to deaths and loss of properties. In Isiolo District multiple interests and categories of people have come into play and impinge on one another as they seek to acquire, defend and exercise claims on Land. This study assess key historical and socio-political dimension of land conflicts, factors causing conflicts, the procedures of acquiring land and interventions applied in land-based conflicts in Isiolo District. Oral testimonies, key informants interviews, focus group discussion and group discussion were used to collect the data. Archival materials were also used to complement the views of the informants. Views of different ethnic group were presented and analyzed using 'stakeholder' analysis as tool. The State was also considered as a 'stakeholder' due to its various roles in land administration and management. It was found that in addition to various factors underlying the cause of conflicts in the area, land ownership was the major issue of conflict among the different ethnic groups in Isiolo District. The conflict in the pastoral area has always been assumed to be caused by scarce resources (pasture and water), however, the study established that the main cause of conflicts such as in 2000 was because of land. Other factors underlying the conflicts were colonial and post colonial policies, alienation of land for other uses by the government, politics, land laws (Customary vs. Statutory) and irregularities surrounding the land allocation procedures. Neither the modern, nor the traditional mechanisms were effective in solving land conflicts in Isiolo. However, whereas isolation of either of the legal systems may further complicate the problem, a combination of methods may bring about better results. Therefore, the customary system of conflict resolution should be revitalized and harmony created between the two legal systems in order to better address rampant conflict in the area.

Table of contents

| | |
|---|-------------|
| Declaration | v |
| Dedication | vi |
| Acknowledgment | vii |
| Abstract | viii |
| Table of contents..... | ix |
| List of Figure..... | xi |
| List of Tables..... | xii |
| CHAPTER ONE..... | 1 |
| Introduction | 1 |
| 1.1 Research Objectives | 3 |
| 1.3 Ethical issues | 3 |
| 1.3 Kenya’s administrative system in relation to Land | 4 |
| CHAPTER TWO..... | 7 |
| Theoretical Frameworks and Perspectives on land | 7 |
| 2.1 Historical perspectives on land and land laws in Africa | 9 |
| 2.2 Land Laws and Land Tenure System in Kenya | 12 |
| 2.2.1 Private tenure..... | 12 |
| 2.2.2 Public Tenure | 13 |
| 2.2.3 Customary Tenure | 13 |
| 2.3 Property regime and legal tenure in Isiolo | 13 |
| CHAPTER THREE | 15 |
| Description of the study area and data collection methods..... | 15 |
| 3.1 Background to the Study Area | 15 |
| 3.2 Ethnic groups in the study area | 17 |
| 3.3 Data sources and collection methods | 23 |
| 3.3.1 Sampling design | 23 |
| 3.3.2 Oral testimonies..... | 23 |
| 3.3.3 Key informant interviews..... | 24 |
| 3.3.4 Focus group discussions..... | 25 |
| 3.3.5 Group interviews | 25 |
| 3.3.6 Observation | 26 |
| 3.3.7 Secondary sources | 27 |
| 3.4 Limitations of data collection..... | 27 |
| 3.5 Data analysis | 28 |
| CHAPTER FOUR..... | 29 |
| Isiolo District in historical context..... | 29 |
| 4.1 Historical setting of the district boundaries and tribal occupancy | 29 |
| 4.2 The creation of Isiolo District administrative boundary during colonial period..... | 29 |
| 4.3 Tribal occupancy as described by Northern Frontier Commission..... | 31 |
| 4.4 The Politics of Northern Frontier District and the secessionist war | 32 |
| 4.5 The Boundary Review of 1962 | 34 |
| 4.6 The Disputed Areas | 36 |

| | |
|---|-----------|
| 4.6.1 Waso Borana Area | 36 |
| 4.6.2 The Isiolo town..... | 37 |
| 4.6.3 The Isiolo leasehold Area..... | 38 |
| 4.6.4. The Meru Concessional Area..... | 40 |
| CHAPTER FIVE..... | 41 |
| Whose land? Views of different ethnic groups | 41 |
| 5.1 Views of the Borana..... | 41 |
| 5.2 Views of the Somali | 45 |
| 5.3 Views of the Turkana | 47 |
| 5.4 Views of Samburu | 48 |
| 5.5 Views of Meru..... | 49 |
| 5.6 Analysis of competing claims and sources of ‘Stakeholders’ legitimacy | 51 |
| 5.6.1 ‘Stakeholders’ relations..... | 54 |
| 5.6.2 Results of the ‘stakeholders’ conflict analysis | 56 |
| 5.6.3 Relations among the land managers..... | 57 |
| 5.7 Discussion | 58 |
| CHAPTER SIX..... | 62 |
| Land allocation procedures | 62 |
| 6.1 How is land allocation done in Isiolo? | 62 |
| 6.2 Conflict Resolution | 66 |
| CHAPTER SEVEN | 70 |
| Concluding Remarks..... | 70 |
| Appendices | 72 |
| References | 88 |

List of Figure

Figure 1: Map of Isiolo District..... 16

Figure 2: The abandoned Livestock Marketing Division (LMD) Facility.....39

Figure 3: ‘Stakeholders’ relationship over land in Isiolo District.....55

Figure 4: Land managers’ relationship in Isiolo District55

Figure 5: Photo of enclosures.....64

List of Tables

| | |
|--|----|
| Table 1. District population distributions and density by Division..... | 17 |
| Table 2: ‘Stakeholders’ interests and perceived sources of legitimacy..... | 53 |

CHAPTER ONE

Introduction

The land questions concerning ownership and access rights have continued to be a contested issue in many parts of the world. Mounting competition and conflicts over land and its resources are on the increase in many areas even leading to loss of lives and properties destroyed. This thesis deals with land conflicts in Isiolo District of Northern Kenya. In Isiolo multiple interest and categories of people have come into play and impinge on one another, as they seek to acquire, defend and exercise claims on land. Such diverse claims by the contesting groups have brought about ethnic animosities and on several occasions violent conflicts. For instance, in the year 2000 more than one hundred people were killed in Isiolo town alone following the land clashes between the Borana and the Somali (Daily Nation, 20th May 2000). Many people were injured and properties worth thousands of shillings destroyed.

The question of who owns land, particularly in Isiolo town, is a big issue for the ethnic groups in Isiolo District. The main reason for this is that Isiolo town is the focal point of the District with better infrastructure, employment opportunities, and commercial activities. It hosts the Local Government (County Council) and Administration offices which also deal with land allocations in the Districts. This means that the district's physical resources and services are concentrated in this area. The politics of the district revolves around the County Council; it was said that whoever dominates the County Council dominates the economy and politics of the district.

Conflicts over land are not endemic to Isiolo alone. In Kenya, Land is at the heart of conflicts in many parts of the country. Competition over land has occurred at all socio-economic levels in the society (Okuro 2002: 24). In 1997, politically instigated ethnic clashes over land in the Rift Valley, Coast, Western, and Nyanza Provinces alone claimed 5000 lives about 20,000 displaced, and property worth an estimated Kshs. 5 billion destroyed (Nabutola 2003:8). Currently, the violent conflicts over land have intensified in Mount Elgon District with loss of life and property and displacing around five thousands people who now seek refuge in a neighboring Uganda (Daily Nation of 17th and 19th April 2007). In Northern Kenya, inhabited by Pastoralists, conflicts

among the pastoralists group are common (Markakis 2004). These conflicts often involve land and its resources.

The issue of land and violence between the pastoral groups in Kenya and Isiolo, in particular, has always been reduced to a single factor of scarce resources (pasture and water) by the media reports and the Government. However, no empirical research has been done to understand the real cause of conflicts. Therefore, this thesis aims to bridge this gap by seeking to understand the underlying causes of land conflicts. Five major ethnic groups (the Borana, Somali, Samburu, Turkana and Meru) in Isiolo District make the focus for analyzing the land conflicts in the District. The thesis will seek to understand land conflict in historical and contemporary perspectives using both oral sources and documented materials to address the problems.

The thesis is divided into seven chapters. Chapter one introduces the problem and describes the research objectives. The chapter also introduces Kenya's administrative system in relation to land to give a better understanding of some of the terms used in the text. Chapter two describes the theoretical framework that was used in analyzing the data. It also gives historical perspectives of land laws to explain the current land issues followed by an over view of current land laws and land tenure system in Kenya. Chapter three describes the study area and gives background on the ethnic groups in the area. It also gives a detailed description of the methods of data collection.

Chapter four presents the historical setting of the district boundaries and tribal occupancy during colonial times. This gives information on the creation of the District. The chapter also highlights and discusses the disputed areas. In chapter five a narrative description of the views of the five ethnic groups is presented followed by detailed analysis of their views. The views are analyzed using a 'stakeholder' analysis model followed by discussion. Chapter six describes land allocation procedures; the possible conflicts caused by this procedure or lack of it, and highlight the conflicts solving mechanism in the District, followed by conclusions in chapter seven.

1.1 Research Objectives

This study was aimed at investigating the link between land ownership and conflicts in Isiolo District. The following were the objectives of the research.

1. To understand some key historical and socio-political dimension of the land conflicts in Isiolo.
2. To identify the problems associated with land rights and access to land in Isiolo
3. To examine the present procedures of acquiring land in Isiolo.
4. To identify the interventions applied in land based conflict management.

Linked to the above outlined objectives the following issues were addressed.

- What are the historical and socio-political perspectives of land conflicts in Isiolo district?
- What are the causes of land conflicts in Isiolo?
- What procedures are in place in allocating land in Isiolo?
- What are the resolutions and institutions used for land-based conflict management in the area?

By addressing these questions the research has brought into light some of the underlying factors that will be used in analyzing the land conflicts in the District. It is believed that the solution in reducing the conflicts among these groups lie in addressing the root causes of the problem rather than the *ad hoc* interventions provided by the Government, which has failed to address the recurrent conflicts.

1.3 Ethical issues

Since the land issues remained politically sensitive and culturally complex the author has decided to keep the names of the informants anonymous even though some of them wanted to be quoted. The author is also aware of the ‘suspicion’ because for conflicting group, revealing the truth is part of the conflict and the idea of conflict is also perpetuation of falsehood. Each side has its own story to tell. This study has to some extent avoided this presumptive bias by using diverse

methods and sources to collect the data as well as involving people from all the ethnic group and government officials to answer the questions. The researcher has also tried to give equal voice to all the groups. However, the author takes the responsibility of any errors in interpretation or misunderstanding.

1.3 Kenya's administrative system in relation to Land

Before we go further, we need to understand some concepts as used in the thesis and also clarify how different government departments relate to land and how each of them affects land administration.

Kenya's administrative system relate to land in several ways. All the three arms of government (executive, legislative and judiciary) are in some way linked to land issues in Kenya. However, out of the three arms, the executive is the one most involved with the land issues.

The power over land management rests with the state executive hierarchy. To begin with the President of the Republic of Kenya has power to allocate Trust land at will, the Minister for local government imposes Government decisions on County Council, the Commissioner of Land has various administrative powers over land and Minister for Land and Settlement has the power to declare any Trust Land an 'adjudication' area to be subdivided and privatized (Constitution of Kenya, 1963). The Ministry of Land and settlement has several departments undertaking different activities within it, such as planning, surveying, registration and issuance of title deed/allotment letters. The Commissioner of Land approves on the adjudication and allocation of land. However, the Commissioner of land may decide to allocate land to individuals or corporate institutions without consulting, but giving orders to the officials at the District level. This is normally not the right procedure, but it is believed to be stemming from malpractices such as corruption.

In the hierarchy below the central government there is a province. A province is the region marked for administrative purpose below the central government. The Provincial Commissioner is the head of the Province and represents the government at the provincial level and chairs all the committees dealing with land and attends to all the crucial matters about land in the area of his/her jurisdiction. The District is the administrative unit that comes immediately below the

Province. It is headed by the District Commissioner who is the chairman of all land committees including the allocation committees. Below the district there are divisions. The lower administrative levels are the location and then sub locations. The head of the Division is the District Officer. The location is headed by the chiefs and sub-location by the assistant chiefs. All these administrative officers represent the Government at different administrative levels on land matters. At the location level the chief in collaboration with the elders decide on land matters. However, on many occasions the decisions of the chief or other administrative officers overtake that of the local elders. However, this power has been misused by the Provincial Administration to expropriate land at the expense of the local people. In other words the government is in control of the land and the land effectively belongs to the state.

There is also a system of local authority with the Ministry of Local Government at the top. The Local Authority is classified as City, Municipality, Town or County Council. The Local Authorities in Kenya are the bodies controlling local governance. Currently, Kenya has one Authority with city status, Nairobi. Municipalities and Town Councils are other forms of urban authorities while the County Council is generally rural; each District has a maximum of one County Council such that they cover areas that are not covered by urban authorities. The County Council is often named after the respective district, which often bears the same name as its District Headquarter, for example, Isiolo County Council in the Isiolo District. It is run by both elected and the executive officials. The executive arm deals with the policies.

Local Authority Administration consists of a Mayor and Councilors. The number of councilors depends on population and area of each authority, and they are elected by the public during the Kenya general election held every five years. Authorities are divided into wards and each ward elects only one councilor (ward is defined as a division of a town for administration and election purposes). The County Clerk is responsible for the executive arm of the council and provides administrative supports and maintains official records of council meetings and activities. It also provides clerical and the logistical support to the council in performing its legislative activities.

The county council is the trustee of the land categorized as Trust Land. It also collect land rents, and allocates land in collaboration with Ministry of Land and Provincial Administration. However, this trust has been betrayed by those in authority, and the cases of land grabbing and

corruption over land is rampant in Kenya and often spearheaded by those in charge of land administration.

CHAPTER TWO

Theoretical Frameworks and Perspectives on land

There exist various views on conflicts over land. But in many parts of Africa the causes of increasing competition and contestation over land seems to have been similar (Berry 2002). The recent debates on land have it that rapid population growth, environmental degradation and slow rate of economic development have transformed Africa from land abundance in the first half of the twentieth century to one of increasing land scarcity by its end (Okuro 2002). A number of theories have been advanced to explain causes of land related conflicts. The Malthusian theory emphasizes the discrepancy between population, growth rate and that of the natural resources. The implication of such a position in relation to land issues and ownership is that the population will out-grow available land and this causes competition over land leading to conflicts. However, other sources indicates that, while demand for land differed from one locality to another and from rural to urban, depending on the value of the land, the conflicts in Africa have not been limited to regions of acute land scarcity (Andersson 1999). Contested claims over land have occurred at all socio-economic levels, in urban areas as well as in rural areas, among the pastoralists, between farmers and pastoralists and among farmers themselves and even between family members. Researchers in land conflicts have pointed out that many of the current conflicts across Africa, which range from sporadic, localized violence to protracted civil and cross-border wars, are linked simultaneously to preoccupations about land and to contest over political power (Medard 1996; cited in Peters 2004: 271).

With the change in land ownership from communal to private holding, competition over land is commonly assumed to increase. This means that change in the land tenure system explains the cause of conflicts over land. In many parts of Africa privatization of land increased landlessness, where some vulnerable group in the society such as women lost the right to access and use land. This created conflicts not only between neighbours but even between the family members (husband vs. wife or father vs. sons).

The land-based conflicts may also be explained using the relationship between the individualized (formal) and customary (informal) tenure systems. The individualized land tenure is supported by

the neo-classical economic theorists stating that titling of the land improve productivity and increase security of tenure (WorldBank 2003). On the other hand, the theorists of customary tenure argues otherwise, and in such country as Kenya where intensive land reform has been undertaken since 1950s, the research has raised doubts about the effectiveness of titling in enhancing agricultural productivity and security of tenure (Okoth-Ogendo 1991; Bruce and Migot-Adholla 1994). According to Kanyiga (1998), in Kenya the practice of individualizing public land has created more people without land and has generated new types of disputes over ownership. Nevertheless, the statutory or private tenure has continued to hold a privileged position over the customary tenure in Kenya. Usually, the relationship between the two is asymmetrical in the sense that the power vested in the former is dominant over the latter and it is enhanced through the judiciary. Where the customary law is subordinated to the state law, a situation of centre-periphery relationship is created. Political interference and patronage may also come into play. For example, the issue of who should get access to land and who should have control and on what terms has been a topic of debate among the citizen and politicians (Berry 2002: 640).

Another view is that of multiple 'stakeholders' where there exist various claims of ownership and access. The stakeholder presents differing interests and takes positions over claims to the land, often causing resources-based conflicts. The problem becomes more complex when different legal systems are applied to arbitrate land use without taking into consideration the historical dynamics of how each stakeholder became the claimant (Boku and Irwin 2003). In many parts of Africa the multiple users have always given different views why they thought the land belongs to them. Some base their claim on national policies while others base it on the history of indigeneity (who are indigenous to that land) as in the case of Ghana (Lentz 2002), parts of Southern Africa and Eastern Africa just to mention a few.

The conflict situation in Isiolo may be looked at from various angles but the presence of different claims between several groups inhabiting the area makes stakeholder analysis tool more appropriate framework for analyzing the land ownership conflicts in Isiolo (see chapter 6).

2.1 Historical perspectives on land and land laws in Africa

During the pre-colonial period, the land in Africa was not centrally governed. Almost all ethnic groups had their traditional institutional systems that governed their resource use and management. Under this system, as such the members had rights to access and use the resources (Little 1980). The rights to the land they occupied were mostly governed by customary law, and access rights to land were contingent upon membership to social groups and on allegiance to traditional authorities (Okoth-Ogendo 2006, Alden 2006). For farming communities, one usually acquired land by clearing virgin land or by inheritance (Twaib 1996: 85). For the pastoralists, each member had the right to access the grazing land and its resources. Customarily land and its resources were perceived as a communal property belonging to the collective patrilineal descent units or groups, the clan and the lineage members. And among many ethnic groups both men and women had right of access and use of land and its resources. Land could not be owned or claimed exclusively either by an individual or as a family holding nor can it be sold (Getatchew 2001). However, far from being a pre-colonial form of land use system, “the notion and practice of customary law were produced out of colonial misunderstandings and politically appropriations and allocations of land” (Peters 2004:272). The colonial masters took an advantage of the customary law and promoted the idea that Africans could only have usufruct rights over land (Alden 2006:18)

The colonial administration imposed a new system of land laws that was contradictory to African systems. In all colonial land law systems, the collective rights of clans or ethnic group to ‘unused’ land were cancelled. Africans possessed land only if they settled or cultivated it. Land was lost through the creation of ‘crown land’ or direct expropriation. The new law disregarded the African practice of shifting cultivation or nomadic ways of life (Okoth-Ogendo 2006). According to Berry (2002), when Africans cultivated unoccupied land which was classified as crown land or state-owned land, they were often tolerated in practice. Legal recognition, however, was denied, and their rights to hunt, graze or collect wild fruits were ignored. This in turn disrupted the livelihood system of the Africans.

In many colonies, people were moved from one place to another and boundaries between native as well as colonial jurisdiction were demarcated (Lentz 2002). This was to strengthen the

colonialists control by grouping the subject population into clearly delineated spaces under well defined hierarchies of traditional or colonial authorities. According to Chanock (1991:64) the colonial authorities assumed that customary rights over land were derived from political authority. Therefore, chiefly jurisdictions were defined, both to clarify territorial spheres of chiefly authority and to distinguish natives (assumed to have automatic right to local land) from strangers whose access to land was contingent on chiefly approval. In practice, however, as Colson (1971) contends, social boundaries, which were fluid and contrary to official expectation, bore no consistent relation to territorial division.

Berry (2002) further states that colonial states consolidated their power and elaborated the legal and administrative apparatus of their rule and formalized conditions of tenure on lands set aside or left for African use, usually according to what they understood to be native law and custom. This resulted in racialized systems of property rights, under which non-Africans owned land as private property while Africans held theirs collectively, as members of customary communities or tribes. African land use system such as shifting cultivation and nomadic pastoralism were controlled. And people were concentrated into a permanent settlements (Richards and Mann 1991: 61). Measures were designed to strengthen colonial governance as well as to protect the environment against “primitive” African methods of farming and practice. Thus, Colonial powers appropriated broad administrative powers over land (Roberts and Mann 1991).

Over a large part of colonial Africa, the Colonial Government replaced the indigenous structures that pre-existed the advent of colonialism (Chanock 1985; cited in Chanock 1991). The development of the concept of a leading customary role for chiefs with regard to the ownership and allocation of land was fundamental to the evolution of the paradigms of customary tenure (Chanock 1991). In this process the chiefs were seen as the holders of land with right of administration and allocation. The consequence of this is that right to land was acquired only through political allegiance.

The ‘permit to occupy’ was the strongest title granted by the British in East and southern Africa and by the German administration in East Africa and French West Africa (Twaib 1996, Okoth-Ogendo 2006). Land under customary law was not centrally allocated. In many cases the

intermediary power of the chiefs to allocate land was consolidated and even extended. In case of any land disputes in the African reserves, the chiefs were given powers to deal with them, and conflicts were only in exceptional cases resolved by colonial institutions. In rural areas however, the legitimate institutions for settling disputes often operated at chiefs' discretion (Berry 2002). Nevertheless, Customary land tenure remains the predominant model of land holding in rural Africa today, and for most or all African indigenous people it has been the dominant system used to assert rights to land (Mamdani 1996).

The customary regimes are regional and inter-ethnic and provide differentiated rights of tenure or access to different social groups (Nelson 2004), while in some places customary tenure would be seen as individual or family property because some people have defined rights to specific areas of land, put enclosures and denying others access, for example in Malawi (Peters 1997 cited in Pauline 2004) and parts of Kenya, increasing the rate of conflicts over land.

In early 1950s, the Colonial Government in Kenya, embarked on Land reform starting with the Swynnerton Plan (Swynnerton 1954) that envisaged elimination of indigenous land tenure and imposed a tenure regime of private property rights, based on English laws. This was followed by the Report of the Royal Commission on Land and Population of East Africa (1955 cited in Pauline 2004) whose recommendation was similar to that of Swynnerton Plan. In many parts of Kenya the land adjudication, registration, and titling were undertaken. The reform was meant to improve agricultural productivity, access to bank loans, secure property, and reduce conflicts by individualizing the land property. However, research has shown that the result was not as intended (Okoth-Ogendo 1976, Shipton 1988, Bruce 1993) but rather a failure, since it encouraged speculation in land by outsiders, thus displacing the locals who were supposed to acquire increased security through titling, and led corruption, fraudulent titling and expropriation of land. Consequently, it aggravated conflicts and created landlessness by creating patterns of unequal access based on class, age, gender and ethnicity. It also contradicts the customary ownership of land, leading to disputes among the local people and even between family members. Despite this, the Kenyan Government upholds and encourages statutory land laws over the customary laws.

2.2 Land Laws and Land Tenure System in Kenya

Rights to land are not just a source of economic production but are also a basis of social relationships, cultural values and a source of prestige and often power (FAO 2002). As a socio-cultural asset land defines community locations and individuals' social position. For these reasons, land holding and control is of importance for social formation in any given community. Land administration whether formal or informal comprises an extensive range of systems and processes to administer (ibid).

Kenya has an elaborate system of rules that govern the relationship between people and land, and between citizens and the state with regard to land ownership and use. These rules comprise a complex system of both formal and informal legislation (Okoth-Ogendo 2006). Traditionally, land rules and regulation were set by elders and land was communally owned by the 'tribe', clan or ethnic group (Obara 1994). Individuals had rights over communal land for example to graze, to till and the right to other resources. Thus individual autonomy to land matters was alien to pre-colonial Kenya (Okuro 2002). However, this communally owned land has undergone tremendous changes since the colonial period and various land tenure systems based on English laws were introduced.

In Kenya there are three typologies of land tenure systems: private, customary and public tenure system.

2.2.1 Private tenure

In Kenya the Private land tenure is based on the notion of the English laws of land ownership and control. It means that an individual or corporate entity has an exclusive right to the land. This includes all land held on freehold or leasehold by individuals, companies, co-operative societies, religious organizations, public and legal bodies. Private land may be a result of alienation under the Government Land Act, the Trust Land Act or Adjudication Act, and determination of claims under the Land Titles Act by sell-off through the settlement fund trustees (Constitution of Kenya 1963). Holders of Private land title are free to utilize their piece of land in a manner they deem fit subject to the land use laws. The law applicable to this land is embedded in the Registered Land Act (Cap 300 Section 27 and 28) under the Constitution of Kenya

2.2.2 Public Tenure

Public tenure establishes control over forests, national parks, open water, townships and other urban centers as well as alienated and un-alienated government land. In effect, this tenure arrangement designates the Government as a private land owner. This land is supposed to be reserved by the government for public purpose, unless and until it has been privatized to an individual or corporate entity through a presidential grant.

2.2.3 Customary Tenure

The customary land tenure is not adjudicated, consolidated or registered. Under customary tenure, land belongs to a clan, ethnic group or a community as a whole. Each person in the community has a right of access depending on the need of the individual and the political authority in a given community. An individual or community by virtue of their membership in some social unit of political community has a guaranteed access to land and other natural resources.

Rights of control are vested in the political authority of the community (chiefs, heads of clan or heads of family). Areas under customary tenure system are designated as Trust Land. The communities' right to own land is implicitly recognized by the Trust Land Act (Cap 288). This tenure type is prevalent in Kenya in pastoral lands where the grazing land is 'owned' by the people but held in trust by the Government.

2.3 Property regime and legal tenure in Isiolo

The major property regime that exists in Isiolo is Trust Land. The statute associated with this Act is Trust Land Act (Cap 288). Trust land refers to all land that is vested in the County Council and is held in trust for the people ordinarily resident on that land. Trust Land is mainly unsurveyed and unregistered, thus people occupy land under their customary rights without registered title deeds. The Act recognizes certain rights under customary law applicable to Trust Land in relation to occupation. Thus, where such land has been occupied under customary law, subsequent acquisition of such land is subject to compensation being made to the occupants. The Act also

gives tribes, groups, families and individuals under customary law, right of occupation, use, control, inheritance, succession and disposal of Trust Land subjects to the Act and any other law for the time being in force (Constitution of Kenya Chapter IX). Thus, Trust Land Act does not give the legal right of ownership and disposal but merely use rights. The Act is also ambiguous in the sense that it does not define properly who owns and controls land in Trust Land areas, and lack policy guideline, hence open to manipulation by those in authority. About 70% of the land in Isiolo is Trust Land.

Other forms of property regimes also exist in Isiolo but to a lesser extent, these are Government Land and Private Land. The category of government land in Isiolo includes National Parks, Game Reserve, Military Barracks, Townships and Open Water. The District has four National Parks/Game Reserves and four Military Barracks where huge chunks of land in Kina and Central Divisions were alienated for this purpose and it covers about 20% of the District.

The security of tenure under private land is vested with an individual through leasehold title deeds. The process of individualization of land results in registration under the registered Act (cap 300) and confers an absolute title on the proprietor irrespective of the manner of acquisition of the land and any previous right whether customary or other wise. This form of ownership exists in Isiolo Township and comprises of 10%.

CHAPTER THREE

Description of the study area and data collection methods

This chapter describes the study area and gives a background to the five ethnic groups that have claims over land in Isiolo. In the later part of the chapter a detailed description of data collection methods and sources are presented. Let's begin with the study area.

3.1 Background to the Study Area

Administratively, Isiolo is located in Eastern Province and covers an area of 25 698 km² . It borders Marsabit District to the North, Garissa and Wajir Districts to the South East and East respectively. It also borders Tana River, Nyambene and Meru Districts to the South and Laikipia and Samburu Districts to the West. It is geographically located between longitude 36° 60`E and 38° 50` E and Latitude 0.5° N and 2° N. It is divided into six administrative divisions namely Central, Kinna, Garbatulla, Sericho, Merti and Oldonyiro. The District has two constituencies Isiolo North and Isiolo South. Isiolo north comprises Central, Oldonyiro and Merti Divisions while Isiolo south comprises Kinna, Garba Tulla and Sericho divisions. There is one local authority in the district, i.e. Isiolo County Council. The land in Isiolo is a Trust Land and it is entrusted to Isiolo County Council.

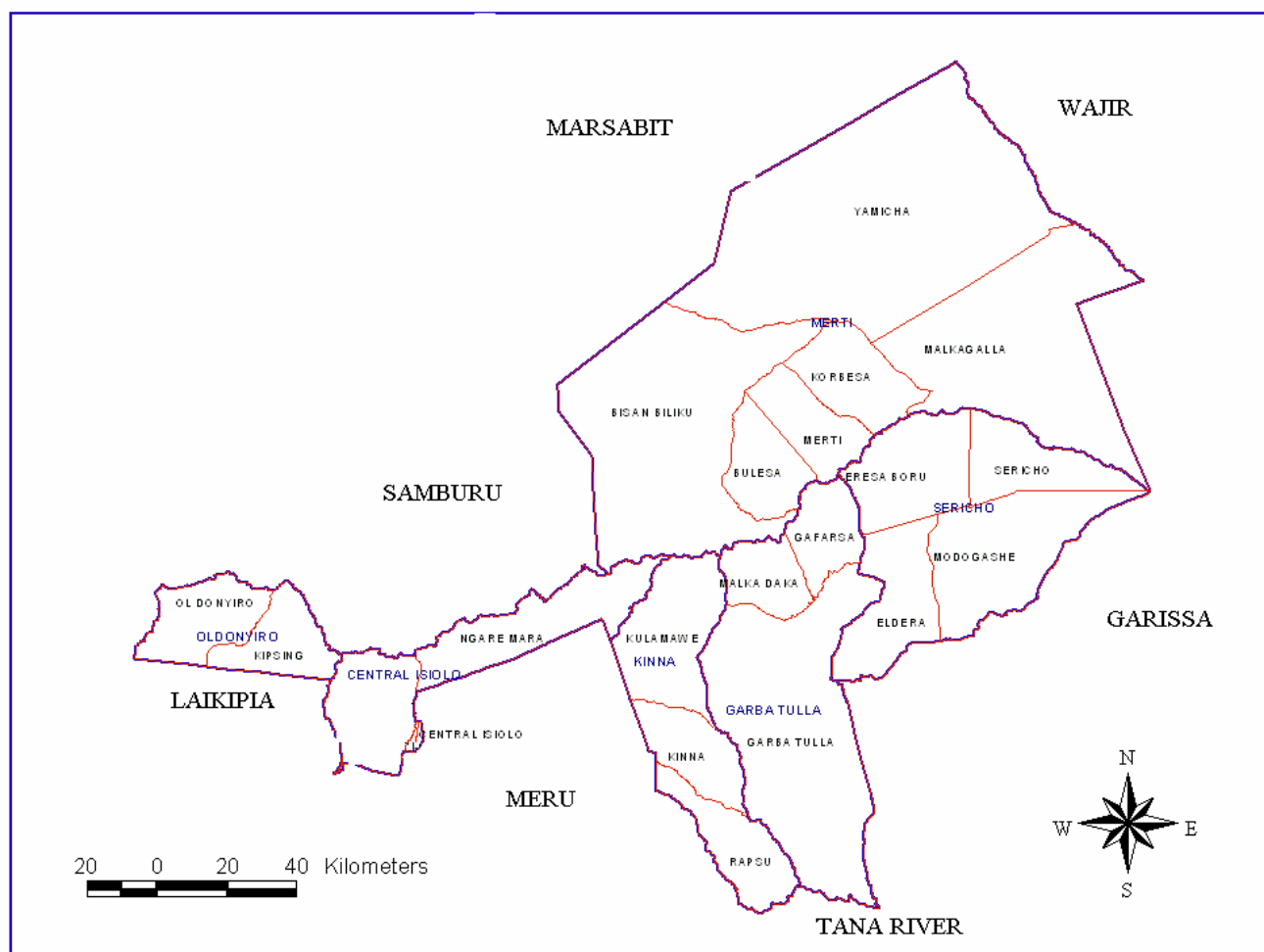


Figure 1: Map of Isiolo District

Source: Modified from Arid Land Resource Management, Nairobi.

According to the last census report (Kenya 1999) Isiolo district has a population of 100 861. Isiolo Central Division is the most densely populated Division in the District as shown in Table 1. This is mainly because of its well-developed infrastructure compared to other parts of the district. It is also the commercial centre and a gateway to all other urban areas including the capital city Nairobi.

Table 1. District population distributions and density by Division

| Division | Area (KM ²) | 1999 | | 2002 | |
|--------------|-------------------------|------------|---------|------------|---------|
| | | Population | Density | Population | Density |
| Central | 1411 | 52280 | 25.0 | 58,282 | 27.9 |
| Oldonyiro | 1161 | 9669 | 8.2 | 10,772 | 9.1 |
| Merti | 12,377 | 15,771 | 1.3 | 17,570 | 1.4 |
| Garbatulla | 3,759 | 7,010 | 1.8 | 7,809 | 2.0 |
| Kina | 2516 | 7133 | 3.3 | 7947 | 3.7 |
| Sericho | 4,381 | 8,998 | 2.4 | 10,024 | 2.6 |
| TOTAL | 25,605 | 100,861 | 3.9 | 112,364 | 4.4 |

Source: The District Statistic Office (2001).

3.2 Ethnic groups in the study area

The ethnic composition of Isiolo includes pastoralists, agro-pastoralists, some urban based pastoral groups and a pocket of agriculturalists. Although at present Isiolo District is predominately occupied by Borana pastoralists who, apart from Central Division, occupies Kina, Garba Tulla, Marti and Sericho; other pastoral groups inhabiting the District includes Samburu who occupy Oldonyiro, Turkana and Somali who occupy part of Central Division. Another group that occupies Isiolo is the Meru people who lives in Isiolo town and do commercial activities, such as retail shops as well as farming.

Borana

The Borana pastoralists live in southern Ethiopia and northern Kenya. The Borana traditional homeland is in Southern Ethiopia where Borana culture, political and religious activities are generally active and where they practice their ritual and political circle known as *Gada*¹. The Borana are guided by shared rules and the decisions are made according to these rules. The Isiolo Borana do not generally participate in the *gada* ceremonies but subscribe to it through a practice of *aada seera Borana*², which dictates Borana way of life particularly in the areas of resource utilization and management (Hogg, 1986; Baxter, 1996; Dahl, 1979).

¹ A generation class that assumes ritual, political, religious responsibilities for an eight-year term of office.

² *Aada seera Borana* means laws and custom of the Borana

The Isiolo Borana generally referred to as Waso Borana, named after a river which dissects the district into two from west to east, consists of two sub-groups, the Borana Gutu (Borana proper) and Sakuye. The Borana Gutu descends from Ethiopia while the Sakuye have their links to Somali. The Borana Gutu largely keeps cattle with small stocks such as goats and sheep, while the Sakuye formerly practiced a camel production system, before they were reduced to a destitute situation. They lost all their camels during *daaba*³ mainly between 1966 to 1968. The Sakuye now make the larger part of the population of agricultural settlement schemes and they are major destitute group in the town. The Borana's way of life was destabilized by the *shifita* war (Kenya-Somali border conflicts). The *shifita* war was mainly caused by Somali irredentism vis-a-vis greater Somalia policy. The Waso Borana joined the conflict and bore the brunt of the Kenya armed forces. The district was put under emergency and in 1966-1968 Borana and their animals were concentrated into camps of 5 miles radius. They were forced into the three centers of Garba Tulla, Mado Gashe, and Merti and were not allowed to move out of these camps. The Borana refers to this period as *gaaf daaba*, 'the time of stop'. This has had a great negative impact on Borana economy and social system. The majority of the Borana were reduced from prosperity to destitution. Stock loss was through disease, lack of fodder as well as confiscation and shootings (Hogg 1986) (also see chapter 4).

Customarily, Borana own land communally and thus resources within their territory are accessed by all members and where necessary by neighbors. Land can not be owned or claimed exclusively either by an individual or as a family holding nor can it be sold. This system of ownership was strictly governed by elaborate customary rules enforced by the Borana traditional leadership structures under the '*dheeda*' concept of resources management. Another important task of the '*dheeda*' elders is to resolve disputes that occur over access to land and resources. The Borana neighbours traditionally negotiate with the *dheeda* elders on the access to resources (pasture and water). According to Borana elders these rules and regulations were undermined by the Somalis once they established themselves in the area. This access for outsiders has had implications, since immigrant Somali clans from the neighboring districts, have claimed land ownership in Isiolo. In addition conflicts on land occur when other groups sharing resources with Borana do not abide by the *aada sera* established by the Borana. Currently, the Borana have

³ *Daaba* is a Borana term which means 'when everything stopped'. It was the period during which the Kenyan government subjected the Waso Borana to death and misery.

conflicts with all the groups both in communal grazing areas and in Isiolo Central Division where they have settled permanently.

Somali

The Somali are the pastoralist group occupying the Horn of Africa inhabiting the Republic of Djibouti in the north through the Ogaden region in Ethiopia extending to Somalia. Some Somali clans migrated to Kenya from Abyssinia following the maltreatment by the Abyssinian government and settled in northern Kenya, by becoming *shegat*⁴ to the Adjuran who were allies of Borana during that time, and occupy Wajir. The Somalis came into Northern Frontier District from two directions; the Degodia came from Abyssinia and the Ogaden from Juba Land. They settled in Wajir which was then a Borana land (Jennings 1933). In 1913 and 1924 there was an influx of more Degodia from Abyssinia following ill-treatment and oppression in that country. In 1925, the British proposed to repatriate the Degodia who came over in 1923 and 1924 to Abyssinia, but this was not to be as troops were required to deal with tension between the Mohamed Zubeir and the Herti clans (ibid). The Degodia further penetrated into Borana area which culminated into serious inter-tribal fighting in 1931. To reduce this tension a new line was made between the Borana and Somali and thus the Borana were removed from Wajir. However, this did not bring a permanent solution to the tension between the Borana and Somali.

The Somalis are organized according to clans, and they occupy a certain area as a clan. The Somalis (Herti and Isaak) were originally brought to Isiolo by the colonial Government for their service in the British army in the First World War. These groups currently inhabit Isiolo town. The Adjuran, Murule, Gari and Asharaf are immigrants from the north eastern Province. Currently, the conflicts between the Borana and the Somali in Isiolo District are at two levels: conflicts over grazing land and over land ownership in Isiolo town. The Somali also have conflicts with the Samburu over the grazing land around Oldonyiro.

⁴ *Shegat* is a system or custom which appertains amongst the Somali and kindred nomads where a section of a tribe may be allowed to attach itself to a stronger or more powerful tribe.

Turkana

Traditionally, the Turkana inhabit the area west of Lake Turkana and southward in the low land along the Rift Valley in the Kerio Valley. They practice nomadic pastoralism and keep camel, cattle, and small stocks. Where possible they supplement pastoralism with farming.

According to Hjort (1979), in the first years of colonization the Turkana were in the process of expanding to the south-easterly direction into the Samburu area. The main reason for this expansion was the severe drought in the Kerio Valley around the end of 19th century. In the early years of Colonial Administration some individual Turkana who were forced by calamities (droughts, epizooties) to leave pastoral economy migrated to Isiolo in search for employment⁵.

According to the Northern Frontier Commission report (1962) the Colonial Government did not want the Turkana to live in Isiolo, save for those who were employed in the household of the business elites. The record shows that Turkana people living in and around Isiolo town were repatriated to their home land in Turkan District three times, the last one in 1958. At independence when the government announced non restricted movement it was a joyous moment for the Turkana in particular. It was a long awaited opportunity and therefore they utilized it. This is because the Turkana District is generally dry and the environment is harsh both for human beings and the livestock compared to Isiolo District which is a semi-arid area. Secondly, there was plenty of pasture and water in Isiolo District as compared to Turkana District. Thirdly, the Turkanas were affected by many epizootic diseases and droughts that killed their livestock; therefore, they migrated to Isiolo district to look for alternatives. Fourthly, the Turkana worked in Somali household and for other business elites such as Indians, and in the whites' farms. This improved the livelihoods for the Turkana. A majority of the Turkana in Isiolo is destitute but a few of them keep cattle and small stock while others practice farming. Currently, the Turkana are in conflict with the other pastoral groups over the grazing areas especially around Gotu and Kipsing with the Borana, Samburu and Somali. They have also put up enclosures around Ngara Mara and along Isiolo-Kula Mawe road which is currently causing tension between them and the Borana. On the other side they are also in conflict with the Meru who were claiming part of Ngara Mara location, an area dominated by the Turkana.

⁵ Interview with Turkana elders, see also Hjort 1979

Samburu

Traditionally, the Samburu occupy the area along Lake Rudolf (Lake Turkana) and Ewaso Ngiro River. Some Samburu live in the Leroghi plateau, the area formally inhabited by the Masaai before it was taken over by European settlers (Spencer 1965:1). According to Kenya land Commission report (1933) the Leroghi plateau was given to Samburu by the colonial government for being obedient to them. Currently, they occupy Samburu District and part of Isiolo District on the Western side. The larger population of Isiolo Samburu lives in Oldonyiro Division with a few of them living in Isiolo town. The Samburu keep cattle, goats, and sheep for their livelihood.

Traditionally the Samburu have practiced communal ownership of land before the onset of group ranch in some part of Samburu District. Any Samburu herd owner has the right to live anywhere and with whom he wanted. Certain areas may be associated with certain clans which are well represented in that particular area, but any person of Samburu origin is free to migrate to these places (Spencer 1965:5).

The Samburu and Turkana have had a bad relationship since time immemorial. In the early years of the colonial administration, the Turkana pastoralists migrated towards the south into the Samburu land which caused disturbances between the two groups. Traditionally, the Samburu also had hostile relationship with the Somali and Borana⁶. This was manifested by frequent cattle raiding. Currently, the Samburu are in conflict with the Somali and Turkana in the grazing areas in former leasehold area.

Meru

The Meru people belong to the Eastern Bantu group. They occupy the areas around Mt. Kenya and practice farming. Traditionally, the Meru people own land on a clan-based system. According to Hjort (1979:163) land was clan property and the rights to cultivate it were allocated by clan elders. Anyone who could claim membership could also claim the right to farm unoccupied land within clan territory.

⁶ Interview with Samburu elder

The individualization of land in Kenya started in 1940s with the introduction of more permanent crops such as coffee (Okoth-Ogendo 1976). In Meru area, people were allowed to grow coffee unlike in other areas where the Africans were restricted to grow cash crops. According to Hjort (1979) the introduction of coffee created unrest in Meru land because anyone with coffee farm could claim individual ownership to the land contradictory to customary law. The registration of land resulted in an individualization of land rights which also led to land fragmentation and landlessness in Meru areas (Nyambeni hills). This in turn contributed to the migration of some Meru people to Isiolo District.

When the secessionist *shifita* war reached its climax, some Somali traders left Isiolo town. Meru people from Tigania and Imenti joined their Nyambene counterparts in Isiolo to replace the Somali traders (Hjort 1979). This resulted into a high population of Meru people in Isiolo town. Others settled along the Isiolo River and do irrigation farming.

The Meru people claim part of Isiolo Central Division, and have conflicts with the Borana and Turkana over the boundary of Nyambene District and Meru District. The Meru who are Isiolo residents consider the area they occupy in Isiolo to be part of Meru District thus occupying the land that is rightfully theirs.

The ethnic groups described here have histories of animosities, but the relation is sometimes a complementary one. For instance, some Somali clans may make alliances with Borana and sometimes the relation is characterized by competition, conflicts and violence. The same applies to other pastoral groups. The Borana and Meru had something like a symbiotic relationship during the early years of colonial regime. The Borana were free to graze in Meru land during the dry season but this relation deteriorated when the district boundaries were created and people and their livestock confined to designated areas. However, no violence conflicts have ever been reported between the Borana and the Meru although the level of hatred for each other is quite visible and well pronounced.

3.3 Data sources and collection methods

This thesis is based on both primary and secondary data. The primary data were collected through oral testimonies, key informants interviews, focus group discussion and group interviews as well as observation. The secondary data were drawn from archival materials, legal and policy documents and media reports. The data was collected during a three months period from 3rd October 2006 to 10th January 2007.

3.3.1 Sampling design

A purposive sampling approach was used to select the sample communities with special attention to ethnic groups with claims over land. These were Borana, Somali, Samburu, Turkana and Meru. Purposive sampling was used because the research concern was to understand the linkages between land ownership and conflicts among groups with land claims. In addition, cultural diversity, immigrant versus non-immigrant population, ease of access and finance were also considered.

Key informants were identified and interviewed on the account of their knowledge. The identification of the key informants was done through the village committees. Since the research project included historical perspectives on current issues, the selected informants were mainly the knowledgeable elders in oral history from all the selected ethnic groups, as well as those in position of leadership. The key informants also comprised officials from the local County Council, the Ministry of Land and Settlement at the district level, and the political leaders. Some informants who were either directly or indirectly affected by the land conflicts were also interviewed. The same elders selected as key informants were also asked to give oral testimonies.

A total of 70 informants were interviewed; In addition, two focus group discussions and 3 group interviews were also carried out. The data was complemented with archival materials for cross-checking and verifying the data to avoid biases and limitations in the information.

3.3.2 Oral testimonies

The land issue in Isiolo cannot be understood without putting it into a historical context; therefore, it was given paramount importance to understand the historical perspectives of land claims. The village committees were used as contact persons to identify the key elders who have the ability to recall the

past events and have oral skills. On the other hand, the interviewed elders acted as a link to other knowledgeable elders and the researcher was able to have contact with many elders.

Information gathered included land use system, the original inhabitants of the area and the relationship between these communities over the years. This was important as the land change hands over time. To understand territorial claims and counter claims, each ethnic group with claims in the area were represented by the key elders and all were asked the same questions. The elders were selected to give an oral testimonies about how they came to Isiolo, when and who occupied the land prior to their arrival, and how they relate with other groups. Moreover, the researcher was also interested to learn about conflicts between various groups, and what methods were employed to resolve them. The aim was to understand whether the conflicts were caused by land ownership claims or by other factors. The method was used to answer objective one and two⁷.

3.3.3 Key informant interviews

The interviewees included local leaders, both the current and former political leaders, community elders, County Council officials and officials from relevant government line Ministries through direct contacts. The interview with the above group was to get information on the current dimension of land issues and conflicts.

Prior arrangement on when and where to meet with the informants was made through the contact persons. Upon meeting the interviewees, the researcher introduced herself and explained the purpose of the research. The consent of the informants to participate in the interviews was sought and the elders were willing to do so. For many, this was an opportunity to express their views on the problems that they were facing pertaining to the land, hoping that this might help in reducing the land problems in future. The interview questions were prepared in advance and the questions were asked according to the set guide line, all the informants were asked the same questions. The informants were free to answer the way he/she deemed fit. Besides, probing and prompting was done to get an in depth information.

The questions asked were, on the causes of land conflicts, whether conflicts over land ever contributed to violence and what approaches were applied to resolve them, whether immigrants own

⁷ Interview guide is in the appendix

land in Isiolo and how they obtained the land, whether there were competition over land and under what circumstances they contribute to violent conflicts, who allocate land and if there were criteria for land allocation, who manages land and whether the managers of land were doing as required of them. The discussion was carried out in the language that the informant feels comfortable with. Most of the informant understood and spoke well in Kiswahili and Borana, the language that the researcher also speaks well. Where necessary, an interpreter was also used. This method was used to address all the objectives.

3.3.4 Focus group discussions

With the help of the village committees, three villages were purposively selected for focus group discussion. In each of the selected villages, both men and women were randomly selected into groups of 12. The names of the selected informants were obtained from the records of the village committees. The names were written on small papers and were folded and put in a bowl, from which 12 folded papers were randomly picked.

One focus group discussion was conducted in each village. The villages were Township, Tullu Roba, and Kiwanjani. The meetings were conducted where convenient. For township it was conducted in Mid Kenya Hotel, for Tullu Roba it was done at one of the informant's house and for Kiwanjani in Sun Rise primary school. All the meetings lasted for 3 hours. The issues discussed were procedures of plot allocation, how they claim ownership, whether their plots were registered and whether they had title deed/Allotment letter, if there were conflicts over plots and why. Their views, attitudes and perceptions about the conflicts, and what they perceive as the main causes of land conflicts and how it affected them as a community. What was their opinion about the land managers? Another topic of discussion was the intervention method applied to deal with Land conflicts and whether the traditional conflicts solving institutions were still functional. The method was used to answer objectives two, three and four.

3.3.5 Group interviews

Deliberate efforts were made to have group discussions with women because women in Isiolo tended to perceive land issues as concerning men only. Some women informants referred the researcher either to their husbands or other men if the researcher wanted to know issues about land. Therefore,

the researcher tried to look for opportunities to meet an organized group of women rather than individuals so that their opinions were also incorporated. Thus, the researcher got an opportunity to attend an Annual General Meeting organized by a local NGO whose members are women teachers, civil servants, and businesswomen. The group composed of 20 women of different age group and the discussion was conducted in Sun Rise Primary School classroom. The women were asked if they owned plots and how they got those plots; if there are conflicts and what they perceived as the causes of conflicts, and how they were affected by the land conflicts if any.

The researcher also got an opportunity to sit in the meeting organized by the immigrants group from Moyale and Marsabit, generally referred to as 'Badole' by the Isiolo Borana. The group comprised of fifteen men and four women. The researcher sought the consent of the members to participate in the discussion. The purpose of the research was explained to the group and the discussion took two hours. The topic was if there was any problem over land and whether they had equal access to land with the host group in Isiolo and whether they had any conflicts with any group in Isiolo because of their origin. The researcher also had the same kind of discussion with the immigrant Somali groups (10 people). This was intended to find out the relationship between the immigrant and the non-immigrant group. Two group discussions that were planned to be held in Livestock Marketing Division area⁸ and Bulla Pesa with the Turkan and Meru respectively failed twice due to the rains that made the road impassable even by foot. This method was used to address objectives two and three

3.3.6 Observation

Observation was also pertinent to this research. The researcher visited some common places such as market, hotels, county council office and other public offices to observe how people behaved, what they did and listening to their conversations concerning land. Sometimes the researcher walked in the villages mainly to establish whether conflicting groups lived in the same neighborhood or they have their own zones. The method was used to address objective two.

⁸ The area allocated for the livestock marketing division (LMD) to hold livestock on transit in early 1940s but now occupied by some recent immigrant groups. The area is now named LMD.

3.3.7 Secondary sources

Various historical and legal documents were studied to verify and complement the views of the informants.

Colonial records

Studying the colonial records was important to this research. Therefore, two weeks was spent at the Kenya National Archive in Nairobi, also to find out the relationships of the communities during colonial times and whether there were conflicts caused by land claims. Documents reviewed provided information pertaining to boundaries and conflicts brought about by these boundaries, tribal occupancy, and socio-economic activities of the groups, town planning and development. The archival documents that were studied include the report of the regional boundaries commission, Northern Frontier District Commission, District annual reports, and handing over reports by the District Commissioners.

Legal and policy documents

The Constitution of Kenya both the current and the draft one, were studied to understand the land laws that are applied in the country. In addition the draft national land policy which is in its final stage was studied. This was mainly to understand the merit and demerit of the current land policies, and what the draft policies was intended to provide once implemented.

Media reports

Other documents reviewed were two major newspaper articles, Nation and Standard newspaper archives which mostly featured the past events of the violent conflicts between the different groups in Isiolo. The most recent violent conflict over land in Isiolo that was reported in the media was in 2000-2002 and this was mainly studied as evidence of the violent conflicts over land in Isiolo.

The archival materials were used to answer all the objectives.

3.4 Limitations of data collection

The heavy rain that caused floods in the district in November and December 2006 made it difficult for the researcher to visit some of the selected areas on time. This also made the distance long and strenuous as the researcher had to walk to some far places on foot. Also while they were

willing to give information, the officials at the County Council and administration office were not ready to let the researcher use their archives. This limited access to written sources especially on how land was allocated and who were the major beneficiaries. In addition, even though the researcher was allowed to use the data stored at the Isiolo Law Court it was difficult for some reason to have access to all the required data. The researcher was also not able to get a good map with detailed information about all the areas where the interviews were carried out and where most of the land disputes occurred, for example, Tullu Roba.

3.5 Data analysis

The data used to write this thesis were mainly of a qualitative nature. Oral narratives and recorded historical data were analyzed using historical interpretation. The views of each ethnic group will be presented in a narrative form and analyzed using a ‘stakeholder’ analysis model. The model will be briefly presented in chapter 5 and discussed prior to its use in analyzing the views and claims to land of the different ethnic groups in Isiolo.

CHAPTER FOUR

Isiolo District in historical context

This Chapter discusses the historical formation of Isiolo District and its boundaries. It gives an account of various ethnic groups in Isiolo District during the colonial period: when each group came to Isiolo, how and why. Various colonial records and views of the knowledgeable elders have been incorporated into present historical accounts in order to understand the claims and current conflicts over land.

4.1 Historical setting of the district boundaries and tribal occupancy

The boundary of Northern Frontier District (NFD) was established in 1909 as part of the Juba Land British territory with headquarters at Meru. Later in 1929, the headquarters was moved from Meru to Isiolo. The NFD comprised the six administrative districts of Moyale, Marsabit and Isiolo, currently part of Eastern province, and the district of Garissa, Wajir and Mandera in North Eastern province.

The Northern Frontier District was treated as a single district and internal boundaries defining areas administered by each of the District Commissioners were not gazetted, hence, no attempt was made to indicate on the map the boundaries between the six districts⁹. Records indicate that this case was of little importance in comparison with tribal grazing areas, which do not necessarily coincide with administrative divisions (Kenya 1962a). NFD was isolated from the rest of Kenya by the colonial laws passed in 1902 and in 1934, which restricted the movement of all persons and livestock entering or leaving the district. In 1929, the boundary of Isiolo District was defined within NFD.

4.2 The creation of Isiolo District administrative boundary during colonial period

When the headquarters of NFD was moved from Meru to Isiolo in 1929, concurrently Barsaloi (Samburu) and Garba Tulla Districts were amalgamated to form Isiolo District. The district was

⁹ Map of NFD appendix 3

intentionally created to compensate the Borana for loss of grazing land and water wells in Wajir District to the Somali (Hogg 1986, 20), and to prevent further expansion by the latter from the north east. To the west and north of Isiolo town, land was reserved for Samburu who were also pushed out of Isiolo by the colonial administration (Hjort 1979, 21).

Before 1928 Isiolo was no more than a base for Kings African Rifle¹⁰. Later, it was considered to be taking a strategic position, hence, became the headquarters of NFD (Hjort 1979, 19). The factors behind this was its proximity to the doorway of Northern Frontier, its position as a stock trading depot and veterinary station or holding ground for cattle, and its proximity and the fact that it lay on the direct line of advance between the province and urban areas of Kenya. In the same year, Isiolo town became headquarter of the new Isiolo District which was the amalgamation of Garba Tulla and Barsaloi Districts. This was in line with the colonial policy to combine the less viable districts owing to economic situations.

The Administrative boundaries were created through fixed boundaries by reference to points through a geodetic¹¹ network (Dima 2004), while the determination of boundaries and fixing of locations of parcels of land was done through land survey. Isiolo district, just like many other districts of Kenya, was formed through annexation of parcels of land perceived to be belonging to ethnic communities by the colonial governments.

The colonial government under “Special Districts Administration Ordinance (Cap.45 Laws of Kenya)” on 13th day of May 1961¹² confirmed the administrative and physical boundaries of Isiolo District¹³, which consist of Waso Borana area, Isiolo leasehold area and Meru concession area.

¹⁰ Kings African rifle was a multi-battalion British colonial regiment raised from the various British possessions in East Africa from 1902 until independence in the 1960s. It performed both military and internal security functions within the east African colonies as well as external services.

¹¹ Geodetic is determination of the size and shape of the earth and the precise location of points on its surface.

¹² Vide order LXII signed by P.E. Walters, Provincial Commissioner, Northern Province

¹³ Detailed information about these areas is in appendix 3

4.3 Tribal occupancy as described by Northern Frontier Commission

In October 1962 a commission of enquiry was set up by the Secretary of State for Commonwealth relations and the colonies to ascertain and report on public opinion of the people on whether they wanted to be part of Kenya or Somalia (Report 1962b,1). The following facts and opinions involving people, their locations and territorial integrity are ascertained and documented as follows:

The report indicates that the main occupants of NFD were mainly nomadic pastoralists and include the Somali, Borana (Borana proper, Sakuye, Gabra, Orma, Wata) and other minority groups such as Rendile, Pokomo, Elmolo, Merille, Burji and Konso. Burji and Konso were not considered indigenous to NFD as they came in recent times to provide labour (Report 1962a:4-5). According to the report, the section of the Somali found in the NFD consists primarily of the Darod and Hawiya Clans. There are also other section of the Somali in the region referred to as alien Somali, the Isaak and the Herti. The two clans were formally from Aden and Kismayu respectively, which is not part of the NFD. The report indicates that Borana are the second biggest ethnic group after Somali in the region.

According to the report, movement across administrative or international borders dividing people of the same ethnic group was fluid, and the population never became fully stabilized. Grazing and water was regulated by a system based upon powers contained in the Special Districts Administrative Ordinance of 1934, under which defined areas of grazing and water can be allocated to specific ethnic groups in order to avoid clashes and to protect the right of weaker tribes.

The report further states that Isiolo District, headquarters of NFD was predominantly occupied by Borana pastoralists. Other groups that were confirmed to be present by the Commission report include the Herti and Isaak clans of the Somali ethnic group, and Samburu. It also states Turkana and Meru as the recent arrivals in the District. A section of the report read as follows:

In and around Isiolo township (headquarter of NFD) there are some 3000 alien Somali (Herti and Isaak) who are mainly settled in a 'class c leasehold area' of over 1000square miles. These people are the descendants of soldiers and others who arrived in the early days and come from outside Kenya. Their relationship is engaged in various forms of trades throughout Kenya, but although they have little blood connection with their distant kinsmen in the rest of northern frontier district they are in political agreement with them. In addition the number of Turkana in Isiolo Township has, as a result of famine in Turkana district recently risen from 400 to well over 2000 and there is also a sprinkling of other tribes such as the Meru, whose country borders on this part of the northern frontier districts (Report 1962a: 6).

The commission further established that more than 80% of the people in the region desired to be part of Somalia. Despite that, the Colonial government in March 1963 announced that NFD will remain under independent Republic of Kenya (Lewis 1963). These led to war between the Kenyan government and the people of Northern Frontier District after independence.

4.4 The Politics of Northern Frontier District and the secessionist war

Before 1960 the people in this region were not allowed to associate with any political party. In 1960 Kenya lifted the ban on NFD political parties (Castagno 1964:175). The parties that were active and vigorously campaigned for secessionist were Northern Province People's Progressive Party, the Northern Province Democratic Party, the People's National league and the National Political Movement (based in Nairobi).

Both the NFD Commission report and the Regional Boundaries report were publicized simultaneously in December 1962. The Regional Boundaries Commission recommended an administrative division of NFD and creation of a new seventh Province of Kenya, North Eastern Province(Report 1962b). The Government of Somali Republic and the majority of NFD people protested immediately and violence broke out. However, the rest of Kenyans and Ethiopia were happy about this decision (Castagno 1964).

The so-called secessionist war was directly linked to the larger conflict between Ethiopia and Somalia (which is beyond the scope of this thesis). For the Somalis, however, the states boundary creation was determined without consulting the local people or rather created against their will; hence a cause to fight for Greater Somalia. At the local level in Isiolo it was due to the general

feeling of insecurity on the part of alien Somalis (Herti and Isaak) who had no formal permanent land rights because the colonial government was reluctant to register any land in their name as promised before the First World War¹⁴.

The Kenya Government on the other hand also took a tougher line on the secessionist and several people were killed by the Kenya army and a number of political leaders were arrested¹⁵. The Borana District Commissioner (D.C.), Daudi Dabasso Wabera and Chief Galma Dido Doyo were slain when they were ambushed by Somali *shifta*¹⁶. This was mainly because the D.C. was against the secessionist group. In May 1963, the Somali and Muslim Borana boycotted the first general election and Somali leaders vowed not to co-operate with the Kenyan Government at a conference held in Wajir (Castagno 1964: 180). According to Constagno (1964), Jomo Kenyatta, the leader of Kenya Africa National Union (KANU) party and the first president of the Republic of Kenya threatened that “Kenya would not give an inch of its territory and that Somali could ‘pack their camels’ and leave”. The situation deteriorated further and a state of emergency was declared in the NFD in December 1963 as guerillas became firm.

In Northern Frontier Districts people were settled at 15 different “Concentration camps”, enclosed by barbed wire and thorn-bush fences. In Isiolo District such camps were established at Sericho, Merti, Garba Tula and Isiolo town¹⁷. Those who moved one mile from the camps were considered as *shifta*. The war became to its toll when the secessionist guerrillas introduced land mines on large scale. Elders said for every lorry that was blown up by the mines, the Kenya army subjected the locals to severe collective punishments in the form of large scale confiscation of cattle, some of which were exported to the Nairobi market and ranches in Kenya’s urban areas. Camels and some of the cattle were shot immediately if there was no ready transport to Nairobi. According to Dahl (1979), in Isiolo over 5000 head of cattle were killed only on a single day in 1967 after they were brought in from rural areas.

¹⁴ Interview with Borana and Somali elders

¹⁵ Interview with Borana and Somali elders, see also Constagno 1964, Hjort 1979

¹⁶ The secessionist guerilla

¹⁷ Interview with Borana elders , see also Hjort 1979, Hogg 1986

The war left a permanent scar on Isiolo residents and introduced a new dimension to land conflicts in the district. For example, since the Borana and Somali were supporting the *shifita* movement, the government favored the Meru and urged them to settle and replace the Somalis who were told to 'pack their camels and leave the District' while the Borana were kept in a concentration camp. Following the Somali eviction the Meru replaced them and took over all the commercial premises and residential areas in Isiolo town. In addition, when the Borana boycotted the election in 1963, their positions both in the political and administrative system were taken by Meru and this also had long term effects on land ownership and claims in the district.

4.5 The Boundary Review of 1962

Subsequent to the independence, the Kenya government reviewed the administrative boundaries of NFD to re-align the ethnic feelings of the secession movements and to curtail particularly the Somali influence in the region. The recommendation of the Regional Boundary Commission of 1962 was implemented and Northern Frontier District was divided into two administrative Provinces. Thus, Wajir, Garissa and Mandera (predominantly inhabited by Somali) were to form a newly created North Eastern Province, and Isiolo, Marsabit and Moyale (predominantly inhabited by Borana) formed part of Eastern Province.

During the review the majority of the Borana and Somali did not participate. By that time the mood was for the ambition to secede, and the campaign to create awareness among the local communities was in full gear. They thought the region would never be under Kenyan administration and thus there was no reason to participate in the review. Those who gave their opinion during the review (the Meru), however, benefited by presenting some of the disputed areas as belonging to them, for example, the Kina-Meru boundary (the boundary passed through Meru National park previously but during review it was decided to be wholly part of Meru District), and Meru Concessional area was annexed as part of Meru.

The elders and local leaders (with exception of Meru), contend that it was during this period that the independent Kenyan government unilaterally changed the District boundaries to favour the Meru ethnic group who claimed 'Meru concession area' together with other grazing land with high ecological potential. The areas that were affected by the claim, and which in the opinion of

Isiolo people still disputed areas, are Isiolo leasehold area (currently livestock holding ground), the Meru concession area, part of Isiolo township and part of Waso Borana resource border areas.

4.6 The Disputed Areas

In Isiolo there are several areas that are currently disputed. They are claims and counter claims over the same land and this has caused tension between the groups. The disputes are sometimes between the ethnic groups in Isiolo or between Isiolo and the neighbouring districts. The following is a presentation of the disputed areas in Isiolo district.

4.6.1 Waso Borana Area¹⁸

The Waso Borana area, according to the colonial record, was set apart for the use of Isiolo Borana. The boundary was defined and confirmed in 1961¹⁹ by the Government. The conflict over this area started during the colonial period when the drawing of Kina-Meru boundary was seriously contested by the Borana elders. This was because the Borana lost some of their prime grazing areas and watering points, such as Bisan Adi and Bisan Guracha, to Meru. During the boundary commission the disputed border issue between Kina and Meru was decided to be part of Meru because the Borana did not participate in the review to present their claim. This has manifested itself as conflicts between Meru and Borana.²⁰

Part of the recently gazetted Nyambene National Reserve falls in Kina and Central Divisions of Isiolo District. The Government, in its National Wildlife Reserve legal notice No.86 of June 6th 2000 annexed 640.6 km² from Isiolo district for the development of this reserve. The local communities through National and local NGOs put a court injunction against this move.

In addition, there has been a border conflict between the North Eastern region (Somali) and Waso area. In 1997, the Somalis who border Borana on the eastern side have crossed into Isiolo District in search of pasture and water. Many times the elders (Borana and Somali) negotiated access to these resources. The conditions were to adhere to the rules and regulation of Borana resource management, and that the Somali to go back to their District after the situation becomes better in the North Eastern region. The Somalis, according to the Borana, never follow these rules once the

¹⁸ The four Administrative Divisions of Kina, Garba Tulla, Sericho and Marti Divisions were known as Waso Borana during colonial period, the Borana still use it when they refer to these areas.

¹⁹ The definition of the boundary is in appendix 3

²⁰ the complain letters over boundary creation is in appendix 5

access is granted. Nor do they go back to the North Eastern Province even after the conditions become better. This has implications as the Somalis now claim ownership to parts of Waso and other parts of the District. This in turn led to violent conflicts between the two ethnic groups in 1997-2000.

4.6.2 The Isiolo town

The boundary between Isiolo town and Meru has been an issue of contention since the colonial period. In the early years of independence the beacons to the south west of the town along Isiolo-Meru-Nanyuki road was removed and placed within Isiolo town by Meru people. In retaliation, the Borana moved the beacons back. Later the Meru moved it again. The beacon which was moved back and forth was according to the records eight miles away from Isiolo town but now about two miles away. According to majority of the informants this has been a major problem between the two districts and the two ethnic groups.

The Meru claim that large part of Isiolo town fall in Meru reserve. They claim part of the Isiolo town including Isiolo airport, Isiolo General Hospital up to '78' army barracks, Gambella and Ngara mara (all areas within 5 km radius of Isiolo town). To justify their point, the Meru argue that even Isiolo market was under the Meru market as an extension of the Gakoromone market in Meru, and Isiolo African District Council was paying revenue to Meru African District Council during the early years of colonial regime.

According to the Government notice No. 374 of 25th May, 1933, the boundary of Isiolo trading centre, was actually cancelled²¹ during the colonial period. This cancellation was due to the fact that Isiolo town was five miles within Meru Reserve, and therefore the Meru people were not happy about it. Thus, it was repealed. However, the colonial records also state that the creation of Meru boundary itself was ambiguous. Mr. V.G. Glenday in his memorandum presented to the Kenya Land Commission in 1933 stated the following.

It was discovered that, owing to a somewhat ambiguous wording of the Meru boundary, both new location and actual site of the station buildings were about five miles within the Meru reserve. An offer of an exchange of land to meet this station was refused by the Meru.

²¹ Delineated in red on boundary plan No.234,survey record office, Survey of Kenya, Nairobi

However, this problem still prevails even after it was repealed, creating controversies between the two districts of Meru and Isiolo as the Meru still claims part of Isiolo town.

Recently, in 2005, the proposed expansion of Isiolo airport brought controversies as the airport was said to be five kilo meters within Meru District. According to majority of Isiolo residents, the expansion of the airport was a form of grabbing Isiolo resources. Consequently, one of the biggest protest marches ever was organized in Isiolo town against the government plan. The Government was silent about people's plea on the location of the airport. The government position was that the project was to go on as planned and that revenues, if any, will be shared between the two County Councils of Meru and Isiolo Districts. For many, the expansion of the airport was not a priority as it was prompted by security reasons. The government plan was apparently to relocate the 'miraa'²² or 'khaat' transport to Somalia from the Wilson airport in Nairobi to Isiolo. The claim is supported by Managing Director of Kenya Port Authority who said that "Flights from Somalia remain a security risk and we want them removed from Nairobi."²³

According to Meru people Isiolo town was still within Meru District, however, the Isiolo residents and the Government records indicate otherwise. Such arguments have brought about more confusions and tensions in Isiolo, especially between the Borana and Meru and between the two Districts administration and county councils.

4.6.3 The Isiolo leasehold Area

This land was set apart around 1930 to settle the ex-Somali soldiers who participated in the First World War. In the early 1860s, the land had been occupied by the Laikipiak Maasai and Samburu. The Maasai were moved to the southern part of Kenya in 1911 following the agreement between the Maasai leader (Lenana) and the Colonial Government. The Samburu were pushed to the West and North of Isiolo District. In the early 1940s, the land was allocated as a livestock marketing division under the Ministry of Livestock. The current claim by Somali is

²² A toxicant drug that is chewed

²³ Standard News paper of 11th February 2005

that, the Samburu and Turkana have later occupied the land at their expense. The Samburu on the other hand claim it as their indigenous land. However, according to the County Council the land was said to be a government land and more so property of Ministry of Livestock and is used as holding ground for livestock on transit to the market in the urban areas. According to Isiolo County Council and the Ministry of livestock, the previous owners were compensated for the loss of the land and therefore the land belongs to the Ministry of livestock. Recently, the Ministry issued a notice telling people to vacate the area. The government plan was to utilize the once abandoned facilities (figure 4) and construct a slaughter house and the fund was said to be under way. However, the people were not willing to move and expressed fear that the government might evict them by force. This is an indicator that conflict might emerge between the government as land holder and the people.



Figure 2: The abandoned Livestock Marketing Division (LMD) Facility

4.6.4. The Meru Concessional Area²⁴

Much is not said about the Meru Concession Area in the colonial record. Most of the existing records are recent ones written by the administration at Meru and the Ministry of Land on how to return the said land and allocate it to Meru people who are Isiolo residents. The claimed land is about 96,000 acres. It passes through Waso Borana, part of Isiolo Central Division including Isiolo town the (District headquarters). The Meru people hold that the land was leased from them, and an agreement signed between Njuri Ncheke (Meru elders) and the colonial Governors in 1960. However, the record does not show any evidence of such claim, for example, according to one of the letters by the Commissioner of land in 1970, it was stated that:

Isiolo special leasehold area is a Trust Land vested in Isiolo County Council as shown on boundary plan No. 178/6. The area was set apart in around 1935-1940 for the purpose of settling ex-war Somali soldiers and alien Somalis who had settled illegally in townships all over Kenya. It was later degazetted in 1963 and declared trust land together with the rest of the land in the North Eastern Province.²⁵

On 13th February 1970 the Meru elders (Njuri Ncheke) presented a memorandum to the Minister for Land and Settlement, (himself a Meru), asking him to allocate land to landless Meru who were residents of Isiolo District. The Minister accepted the request and asked the Commissioner of Land to “adjudicate land” to the east and north of Isiolo (meaning the Isiolo Concession area) to the Meru. However, in a reply to one of the letters to the Ministry of Land, the Commissioner of Land reminded the Permanent Secretary in the Ministry of Land of the irregularity surrounding the adjudication of the proposed land²⁶. Despite this interjection, the adjudication went on and Meru people benefited from land allocation at the expense of the Borana. This allocation is not however, considered legitimate by the Borana, and they (Borana) continued to agitate for the return of what they considered their land.

²⁴ Sometimes referred to as Isiolo special concession area in the colonial records, therefore the name is interchangeably used to mean the same parcel of land

²⁵ J.A. O’Loughlin Commissioner of Lands

²⁶ See the copy of the letter from the Commissioner in the appendix 6

CHAPTER FIVE

Whose land? Views of different ethnic groups

Different groups provided contrasting views as to why they thought the land they claimed belonged to ‘them’ and not to ‘others’. In this chapter a narrative description of their views is presented. In the part that follows, the narratives are analyzed using a ‘Stakeholder’ analysis model and then discussed.

5.1 Views of the Borana

Apart from Central Division the Borana occupy four of the six divisions of Isiolo district (Kina, Garba Tulla, Sericho and Marti). The Borana perceived that they are the sole owners of Isiolo district as a whole. The Borana oral history has it that the Borana lived in Isiolo long before the colonial period and used Waso River. One key informant explained the history of Borana in Isiolo District in the following way:

I heard from elders the Borana fought with the Laikipiak (Kibia)²⁷ Maasai during the reign of *Gada* of Liban Jaldesa²⁸ and displaced them but did not settle in Isiolo during that time. The fighting continued for one *Gaada* and one year (nine years altogether). During that time the area now Isiolo town, Kipsing, Oldonyiro and Leroghi plateau were occupied by the Laikipiak Maasai and Ndorobo (a lower caste group). During the colonial era the boundary were demarcated and each ethnic groups were moved and assigned to a particular area. The Maasai were moved completely out of this place. The Samburu (Kore) occupied the area north of Ewaso Nyiro River and around Mount Ngiri towards Marsabit but occasionally grazed up to south of Ewaso Nyiro River together with Rendile. The Borana also fought with Samburu. They suffered a devastating blow at the hands of Borana who were better equipped than them at that time. We have Horses and we use our Horses to fight our enemies. Before colonial establishment the Borana settled in Wajir and part of now Isiolo District but removed from Wajir. We were given exclusive right to what is now Isiolo District. The District was created for us by the colonial Government and we contributed a lot in building the District as a whole. We constructed roads by providing food (Bulls for slaughter) to feed the workers. We provided transport such as Horse, Donkeys and Camel to carry materials. We also provided unskilled labour without

²⁷ Boran refer to Laikipiak Maasai as Kibia

²⁸ Borana ritual and political leader

payment because the colonialists were poor that time. Do you know these Africans (Turkana, Meru) used to carry white people on their back? They were treated like slaves. We provided our Horses and Camels and removed them from their back. They all know but they don't say. The colonialist brought some Asians to Isiolo town for commercial purpose, before then there was nothing like a town and it was just an open land after Laikipiak Maasai were removed. The Borana (Proper and Waata) occasionally graze and hunt around this area.

The group that was living in Isiolo town was made up of Asian businessmen whom the colonialists brought to Isiolo. The Somalis were not 'indigenous' to Isiolo according to Borana. The Herti and Isaak clans of Somali were the ex- British army in Somaliland, and thus they were considered alien just like Asians. Borana elders state that the Herti and Isaak were first settled in Garba Tulla until the then Borana chief of Isiolo Fayo Halake requested the colonial masters to relocate the Somali to Isiolo town since they were not in good terms with the Borana. The Somali were therefore settled in Isiolo town in 1948 in an area called Bula pesa and 'Kambi Garba' (named after the place where the Somalis were evicted from: Garba Tulla). And by then the Borana were allowed in Isiolo town only by permit, following the chief's request to restrict their access, mainly because there were wild animals in and around Isiolo town and the Borana were said to be known poachers (by the colonialists). Secondly, it was to separate the Borana and Somali for the security purpose. Elders said during those days the chief was held responsible when his ethnic group fought with others, so the Borana chief was trying to avoid the blames and the only way out was to restrict Borana from settling in Isiolo town. However, the chief 'boma' homestead was in Isiolo town. The elders added

The Herti and Isaak signed an agreement with Isiolo District Commissioner, in front of the Borana Chief Fayo Halake and other Borana elders that Isiolo is for Borana and the Somali should not under any circumstance claim any right over land in Isiolo District even in future. The record is at District Commissioner's office even today.

The Borana argued that the Turkana were recent arrivals in Isiolo. "They were brought to Isiolo by the colonial government to construct roads and by the Somali as their servant workers." Thus, Turkanas are not indigenous to Isiolo District. They also argued that Meru people are new arrivals to Isiolo and they were only a few of them who came for the purpose of doing petty trades or work as house help during the Colonial Administration. Even then they only worked during the day and in the evening they went home since they were not allowed in Isiolo. It was

after independence, particularly during *daaba* that Meru people settled in Isiolo with the help of the government. One Borana elder gave an account of how Meru people came to Isiolo.

Meru people were not Isiolo resident at all. It was during 'daaba' that they took advantage and settled in our land. They were allocated part of Isiolo town, Kachuru down to Shaba, Ngara Mara, Tullu Roba upto Isiolo airstrip, Maili Nane up to Isiolo River, Lewa down to Nanyuki by the Kenyatta Government. The Minister for Land and Settlement, the late Jackson Angaine, himself a Meru, allocated our Land to his people. The Borana protested against this move but because the government is theirs they managed to grab our land.

About a claim that they dominated the County Council the Borana elders disagreed with the other groups that they are not the sole beneficiaries of plot allocation as claimed by others. If anything they are at loss. They argued that the fact that Borana councilors were majority in the County Council did not mean they were the only beneficiaries. They gave an example of Tullu Roba where majority of the people living in the area were Borana and how they faced eviction from the County Council for a long time. According to Borana if they were sole beneficiaries, then they would not be a victim of eviction all the time.

The Borana argued that prior to the *Shifta* war, pastoral production was sustainable. Drought seldom caused permanent destitution as recovery was rapid. Poverty among Borana was, therefore, directly related to loss of grazing land and loss of livestock during '*daaba*'. According to Borana, there was orderly resource utilization before independence and they had enough land for grazing. There were clearly recognized dry and wet season grazing areas all round the year. The dry and wet season grazing areas were Kina and Bisan Adi, Rahole and Ewaso Nyiro River respectively. This resource base has been shrinking ever since due to the establishment of Bisan Adi game reserve and the annexation of part of Bisan Guracha into Meru National Park. The Borana were not compensated for the loss of this land. They added that even the County Council was not earning revenue from these parks and wondered why they should not be allowed to utilize the parks.

According to Borana elders the state of insecurity has heightened due to Somali encroachment (Degodia, Murule and Ogaden clans) from North Eastern Province, who has come to graze their large herds of livestock in their territory. These groups have also settled in Isiolo central around the livestock holding ground and Kipsing. They have also established shops in Isiolo town thus

competing with the indigenous group for markets and other services. One key informant explained how the immigrants Somali settled in Isiolo.

In 1970 the Somali asked for land to settle because their land was bare, Waqo Hapi Tano (elder) called for the meeting and it was agreed that the Somali be allowed to graze until the conditions in their homeland improve, because they are also Muslims. So they settled all the way from Sericho to Kina. They made exclusive use of our resources because all our livestock were killed and confiscated by the Kenya Government during *daaba*, Somali took this opportunity. A few years later the Ogaden clan mobilized all the Somali clans to fight and displace Borana completely. However, the Degodia and Adjuran who were allies of Borana during the time refused, and leaked out the information to Borana. On 15th January 1983, nine Borana men all of them from the Digaalu clan were killed by Ogaden and the war broke out between the two ethnic groups. In 1992-1995 there was a fight between Borana and Adjuran. In 1997-2002 it was between the Borana and Degodia and Murulle. The war is about land and not pasture and water as always reported. We lost Hadado, Hade Misajida, Bokole, Garse Koftu, Harba Jaan, Buna, Basiri to Somali and they still want more land. Six locations are already gone and our leaders are not taking any action. Believe me; this war is not going to end in the near future.

The Borana argued that these immigrant group sought consent so as to graze during the dry season, but even after the dry spell were over, they have continued to reside in the District and they are the cause of major conflicts and insecurity in Isiolo District. The Borana elders argued that the groups were encroaching on their territory with a goal of claiming land and resources. 'Running from drought was just a cover up'. They argued that this was the cause of the fighting in the year 2000 where the Herti and Isaak clans combined force with the immigrants Somali to fight Borana. The Borana holds the view that the Somalis and Meru use money and powerful politicians in government to obtain land in Isiolo. A majority of the Borana who were interviewed accused the political leadership for the return of Somali in Isiolo District. They argue that it was usual for the politicians to attract the immigrants if their popularity were fading out so as to get more votes during parliamentary elections.

The Borana bitterly complained over the locations and wards that were created for the immigrants Somalis by the politicians and the Provincial Administration, they argued that the immigrant groups have their own chiefs and councilors and that they use this as the base for claiming land. In addition, the Borana were not satisfied with how these immigrants group became members of vetting committees that give identity cards:

The department of registration of persons is danger to Isiolo District. And it is bound to cause conflicts and insecurity if they continue giving identity cards to ‘immigrants’. The number of these foreigners is surpassing those of indigenous people and the immigrants are now using the ID cards to claim our land.

Through this committee, which according to Borana was vulnerable to manipulation by the politicians, majority of the immigrants have managed to get identity cards. This gives them legitimacy to claim land and other services in the District such as employment. The Borana feels insecure and threatened by this but they have vowed to stand for their ‘right’.

5.2 Views of the Somali

The Herti and Isaak hold the view that during the colonial times, they were the sole owners of the Isiolo Central Division which they were given by the colonial government in return for their participation in the First World War. They argued that other communities were not allowed to enter Isiolo without pass or permits save for Herti and Isaak, whereas the Turkana first came to Isiolo in 1940s as their servants and workers. Two key informants point out “Gootu, Isiolo Central, Kipsing, Longoitu to Oldonyiro is our land”.

The Somali argued that they owned the whole of Isiolo leasehold area (including Livestock Marketing Division Holding Ground), currently property of Ministry of Livestock. They claimed that their lease of land was gazetted in 1957 under gazette notice number 657. Part of this land was declared game reserves (Shaba and Buffalo Springs) as wildlife sanctuaries. The remaining land was turned into Livestock holding ground (to hold livestock on transit). “The government did not compensate us for the loss of our land, the land was leased to us and the government should compensate us. They paid Borana instead of us” argued Somali elders.

According to the County Council, the Ministry of Land and Ministry of Livestock officials, 1.6 million Kenya shillings was paid by Ministry of Livestock to 357 claimants including the Herti and Isaak clans in 1972 for the loss of the land which is now Livestock Marketing Division.

The Somali also argued that the border of Isiolo-Meru was tempered with by the post-independent government to reward the Meru and to punish the Somali and the Borana for agitating to secede from Kenya. The Somali elders explained that beacons separating Isiolo and Meru Districts on the southern part of Isiolo District were at Meru-Isiolo-Nanyuki Junction (8

miles away from Isiolo town) during colonial times. It was removed by the Meru people and placed inside Isiolo. They added that several beacons were moved from all sides to give the Meru people more land. This, they said, was done with the support of the Government:

The government killed Somalis; we were condemned because we wanted to be part of Somalia. The government took our land, the land which was given to us by colonial government, now we don't have anything. The government finished all our elders and young men in the Isiolo mosque in 1963 while they were praying morning prayers claiming that we were all *shifta*.

The Somali argued that the secessionist movement and the outbreak of *Shifta* war complicated their claims to land in Isiolo.

The Somali elders indicated that there were conflicts over land in Isiolo as all the groups claimed ownership. The elders complained of marginalization by the County Council which they said is dominated by Borana, thus the majority who benefited from plot allocation and other services including employment were the Borana. One elder expressed fear:

We fear we might be displaced very soon; the Borana are everything here because they dominate politics, they dominate local county council, if you see around most of the plots are for Borana. The plot allocation in this town is done without plan, this county council is weak, majority of the councilors are illiterate and they don't understand what their responsibilities are. They are corrupt, so anyone can get plot if you give them something small.

Currently, the Somalis are the major immigrant pastoralist group in Isiolo and occupy the area around the LMD²⁹. The membership of this LMD is currently dominated by immigrant Somalis from north eastern province. The Herti and Isaak³⁰ Somali who were granted leasehold land in this area lost the land in 1963 when it was declared Trust Land under Isiolo County Council. In early 1970s the area was set aside as Livestock Marketing Division to hold Livestock on transit and those settling in the area were compensated. The Somalis deny this compensation and still claim the land. While the compensation if given, must have been given to the individuals or some Somali who were living in the area at that time of compensation, rights of groups converted to objects with a price often entails conflicts and problems.

²⁹ LMD is a government land under the Ministry of livestock used as livestock holding ground, now the area itself is called LMD and in this text I will refer to LMD as the name of the area.

³⁰ The two clans are the ones referred to as inhabiting Isiolo. The rest are current immigrant.

5.3 Views of the Turkana

The opinion of the Turkana elders is that the Turkana were first brought to Isiolo by Herti and Isaak clans of Somali who went to Turkana land to buy donkeys and other livestock, as well as to recruit some Turkana young men as herders. Another group of Turkana was brought in by the then District Commissioner of Isiolo, Mr. Whitehouse, in 1940s as ‘bagas’ (labourers) to construct the Isiolo-Marsabit-Moyale-Mandera roads and the Isiolo-Wajir-Mandera roads. After road construction they settled in Isiolo, though this was not the intention of the colonial administration. Their first settlement was at Adome village and later at Chechelis and ‘Kampi ya’ Turkana (now Livestock Marketing Division Holding Ground). The elders explained that the Colonial Government attempted to remove them from Isiolo District several times. An elder described past eviction attempts as follows:

We were evicted from Isiolo more than three times and we felt insecure, our government is better than the British now we have freedom to live in Isiolo.

According to Turkana elders, their resource border stretches from Ewaso Nyiro River up to Gootu. The land was said to have plenty of pasture and water for their livestock. During that time there was ‘peaceful co-existence’ between communities compared to the current situation where all the communities are at conflict with each other. One key informant argued:

We are squeezed, all our land has been taken by game reserves, and it seems the animals are more important than us, the area now covered by these game reserves was our grazing land (Buffalo, Shaba), we can’t go beyond Ngara Mara because of insecurity, and we fear Borana and Somalis. Kambi Turkana (now part of LMD) is our land, now we are told its government land. The war is now between us and Ministry of Land, they have given us notice to vacate.

The Turkana also bitterly complain over a continuous encroachment of the Meru community on their grazing land. One of the Turkana leaders posed:

Have you heard of Nyambene game reserve? That is part of our land. The government has taken large chunks of land from us for the benefits of Meru, this Meru want to take Isiolo District as a whole and government supports them.

Currently, most Turkana families are highly impoverished and depend on forest resource, mainly charcoal burning for household survival. They argued that insecurity, persistent drought and shrinkage of their resource access have led to this level of poverty. One key informant argued:

We have no access to the parks, we don't take our livestock to these parks for grazing, we do not get fire wood, we do not get building materials from there and we are often fined for trespassing in the parks and yet we are not compensated by Government when our livestock are killed or farms destroyed by wild life. This life is becoming difficult.

The Turkana perceived that County Council is dominated by the Borana and linked this to unfair treatment in the plot allocation, unemployment at the County Council, unfair allocation of school bursaries and other Services provided by the County Council. They argued that there is a lot of hatred and fear mainly caused by claims over land and land based resources in the district. The Turkana expressed fear that they will be displaced from Isiolo District sooner or later.

5.4 Views of Samburu

Apart from Central Division which is cosmopolitan, the Samburu dominate Oldonyiro Division sharing it with only a few Turkana and Ndorobo families. Just like other groups the Samburu also claim ownership of part of Isiolo. One Samburu key informant argued:

We were the original inhabitants of Isiolo during pre-colonial period. The colonial government evicted us and put a line to separate us and Borana. In 1956 the British even pushed us further beyond Ewaso Ng'iro River and set up a police post to prevent our eastward movement to Isiolo. The names Isiolo, Oldonyiro, Ngara Mara, are from our dialects. Some of these areas are now occupied by the Somali and Turkana. These groups came the other day and now they are claiming our land. In my opinion, they don't have anything to claim in Isiolo.

During the colonial period, the Samburu were only allowed in Isiolo town by permit. Before colonialism the Samburu said their land extended to the east, bordering the Borana and Meru. They further claim that the Buffalo and Shaba game reserve were created only after they were pushed away from their dry season grazing land. According to Samburu they had enough land and resources such as water and pasture for their animals, and recalled that droughts were not as severe as it is these days. They also said that security was good as no one was allowed to cross the tribal grazing line put up by the British. Thus, cattle rustling and banditry was low. Another key informant pointed out:

The recent Somali immigrants such as Gari and Murule clans from north eastern have now settled in Kipsing in Oldonyiro Division claiming ownership of this land. The government have given them location (with their own chiefs) and even wards. This means they have settled permanently on our land. They use money to buy our land.

In the year 2000 the Samburu in alliance with the Borana fought a bloody battle with the Degodia and Murulle clans of Somali over this land and many of the immigrants were killed and their animals confiscated. Those who survived moved back to North Eastern Province. However, the Samburu argued that they are slowly coming back because they were encouraged by the current Isiolo North Constituency Member of Parliament to come back mainly for 'votes'. They argued that the Somali use money to influence the, Politicians, Provincial Administration and the County Council to settle on their land.

5.5 Views of Meru

The Meru also claim ownership of land in Isiolo. They claimed the former Meru Concessional area and part of Isiolo town. They argued that Isiolo town and part of the district were leased from them by the colonial government to settle the alien Somali at a cost of Khs.50cts per cattle. The Meru argued that Isiolo African District Council (now Isiolo County Council) paid revenue to the Meru African District Council during colonial times. According to them Isiolo market where barter trade was carried out was an extension of Meru market and that was why Isiolo paid revenue income to Meru African District Council. "Isiolo was until 1944 under Meru County Council," elders said.

According to Meru, the Borana, whom they blame for dominance of the Isiolo County Council, are recent immigrants to Isiolo and their home base was in Waso and not Isiolo town. They see the Borana as marginalizing other groups in the district and as sole beneficiaries of the plot allocation in Isiolo township. One key informant argued:

Ownership in Isiolo is a problem. It follows kinship, the Borana stand a better chance than others because they have authority. It is even hard to get land documents because they block it if one is a non-Borana. The Borana refused land adjudication office in 1970 because they wanted communal ownership and the Government accepted. But us Meru, we want land adjudicated. It was only in 1992 that the council used a systematic way of allocating land. Tribalism plays a lot, even the authority itself is not interested in doing this work (opening up of land for allocation) the council is totally biased towards Borana.

They gave an example of recent balloting of 2005 where they said that Borana got around 2/3 of plots that was allocated. According to Meru it was only in 1992 that the Isiolo County Council followed the right procedure for allocating land adding that many people benefited including people from other parts of Kenya. For Meru people land in Isiolo should be opened to all

Kenyans because the government policy allows Kenyans to settle anywhere in Kenya and according to them what the Borana did (restricting others) was wrong.

5.6 Analysis of competing claims and sources of ‘Stakeholders’ legitimacy

A closer look at how various groups’ make claims to land and how they relate to one another may shed some light on the dynamics of current conflicts in Isiolo District. A ‘Stakeholder’ analysis is conducted to illustrate and analyze the interests of various ‘stakeholders’ and their perceived sources of legitimacy to disputed land. The Overseas Development Agency (ODA 1996) defines a ‘stakeholder’ as any person, group, community, or body who has something to gain or lose from a change in management of certain resources. They suggest that ‘primary ‘stakeholders’ have a right and secondary ‘stakeholders’ have interest. This definition is, however, problematic in the context of land conflict in Isiolo, because deciding who has a ‘right’ to land involves value judgment at the outset. In this case the different ‘stakeholders’ cannot easily be classified into primary or secondary, but the framework is useful for mapping out relations and nature of conflicts between different groups. Boku and Irwin (2003: 24) warn against applying the blanket concept of ‘stakeholder’ to the context of conflicts over resources. They further suggest the importance of considering history and processes that resulted in the evolution of the current resource user into a ‘stakeholder’, in this case Borana, Somali, Samburu, Turkana, and Meru.

In this context, ‘stakeholder’ analysis can be defined as a tool for identifying and describing the land contesting group on the basis of their attributes, interrelationships and interests related to land. Therefore, the five ethnic groups and the State are considered as the ‘stakeholders’. On the one hand, the State was included because of its role in making land policies and its overall management of land administration. This may have an impact on how people relate to land, and these policies might have affected them either positively or negatively. It is also important to understand if the state’s land policies have played any role in how the groups relate to land, and how it affected their relations. In addition, the State is a stakeholder in the sense that it owns land and it is the custodian of the land (Trust Land) on behalf of its citizens. Four main institutions (the Elders, County Council, Provincial Administration and the Ministry of Land) with varying interests and responsibilities were identified as managing the land. Therefore, it is also important to understand how they relate to each other, and how their relation may contribute to the land conflicts. The following were identified as the responsibilities of each institution.

- Elders- custodians of common range land and represent interests of various ethnic groups and solve conflicts that arise over resources within their ethnic location or group
- County Council- represents government at local level, custodian of the land, land registration, allocation and collection of revenue.
- District Commissioner (D.C.) represents Provincial Administration at the District level, which is under the Office of the President, and chairs all the meetings on the land matters including land allocation.
- Ministry of land- planning and surveying of land, facilitating land titling and forwarding information to the Ministry of Land headquarters.

Table 2: ‘Stakeholders’ interests and perceived sources of legitimacy

| ‘Stakeholder’ | Interests, claims, and perceived rights | Claimed source of legitimacy |
|---------------|--|--|
| Borana | <ul style="list-style-type: none"> • See themselves as rightful owner of the whole district including grazing land and water points. • Have control of socio-economic and political interest of the District | <ul style="list-style-type: none"> • Customary holding rights • Defined rules governing resource management • State law |
| Somali | <ul style="list-style-type: none"> • Claim access to key resources, control of Isiolo town and business • Claim sole owner of Central Division | <ul style="list-style-type: none"> • Colonial policy of settling the ex-war Somali soldiers in Isiolo town • Post independence state policy of settling anywhere of ones choice. |
| Samburu | <ul style="list-style-type: none"> • See themselves as rightful co-owners of land with Borana • Have access to key resources (water and pasture) | <ul style="list-style-type: none"> • Names of places, • Being an indigenous people in Isiolo during pre-colonial period |
| Meru | <ul style="list-style-type: none"> • Claim as the rightful owners of part of Isiolo District. • Dominate trades and farming areas | <ul style="list-style-type: none"> • State concession • Past administrative divisions and decisions |
| Turkana | <ul style="list-style-type: none"> • Rightful owners of part of Isiolo District | <ul style="list-style-type: none"> • Post-independence state law of settling anywhere of ones choice. |
| State | <ul style="list-style-type: none"> • Revenue collection • Political interests • Custodian of Trust Land | <ul style="list-style-type: none"> • State Constitutions • Sovereign powers |

Source: Summarized from field interviews

5.6.1 ‘Stakeholders’ relations

The characteristics of relationships between the ‘stakeholders’ are presented in (Figure 3). While the relation between the land managers are presented in (Figure 4). Some of the groups are at conflict with each other although the level of conflicts may differ; some may have experienced violent conflicts, whereas, others are on the verge of it. The relationships are classified into five types: alliance, conflicting, fluctuating (conflicts and alliance), strong conflicts and strategic relationships

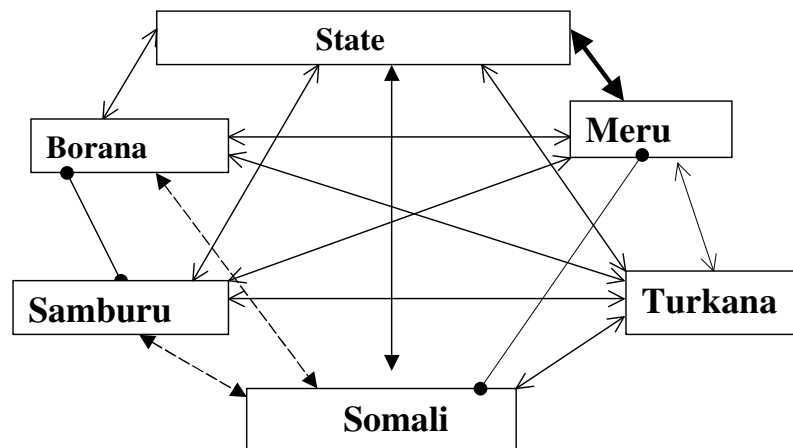


Figure 3: 'Stakeholders' relationship over land in Isiolo District

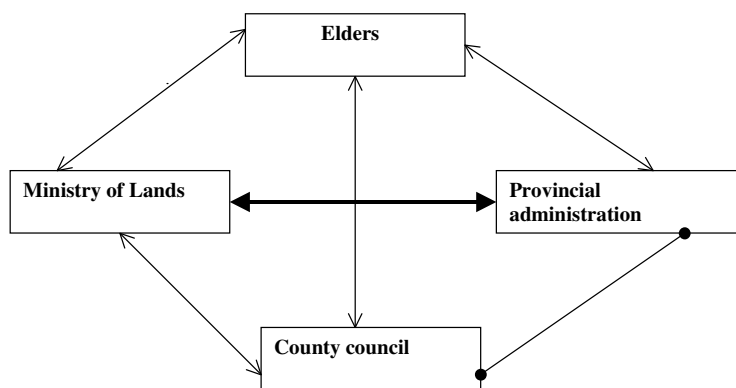


Figure 4: Land managers' relationship in Isiolo District

Key

-  Alliance relationships
-  Conflicting relationships
-  Fluctuating (Conflicts and alliances)
-  Strong conflicts relationships
-  Strategic relation relationships

5.6.2 Results of the ‘stakeholders’ conflict analysis

According to the relationship mapping presented in (Figure 3), Isiolo is a conflict ridden area where nearly all the groups are in conflicts with one another and in some case the conflicts turns violent. The Somali have experienced violent conflicts with the Borana and the Samburu, while the relation between the Borana and Samburu was that of conflicts and sometimes alliances. The alliance was against the Somali clans.

The relation between Somali and Borana over land and its resources has a political dimension. The conflict was linked to politics and regional dominance, where the leaders of both groups pursue different avenues to lobby for their ethnic groups. They negotiate with the Government officials and Provincial Administration as well as Politicians to influence decisions. The Borana elders argued that the influence of the Somali has sometimes countered the decision made by them on access right to Borana resources and this has caused tension.

The relation between the Borana and Meru was also characterized by tension, based around disputed district borders of Isiolo and Meru Districts. The Borana claim to have lost land during the boundary review at independence, in which they did not participate as they were anticipating to secede from Kenya. The conflict between the two was intensified by what Borana regard to as a ‘false’ claim by the Meru over the agreement signed by them and the colonial governors in 1960 and 1962 over the land, which according to Borana was part of Isiolo District. The conflict was further intensified by the gazettment of Nyambene National reserve in an area which is a portion of Isiolo District, whereby 640.6km² was curved out of Isiolo District. The said game reserve affected part of Isiolo Central Division (the District headquarter), Kina and Merti Divisions. It was claimed by the rest of the ethnic groups that the claim by the Meru seems to have a political backing (Government support). Due to population pressure and landlessness in Meru District and Nyambene, the Meru ethnic group has continued to migrate to Isiolo District and claimed land for farming and commercial purpose. Consequently, the government plan and support for agricultural intensification have helped the Meru to get support from the government at the expense of the pastoral group whose way of life is seen as uneconomical since colonial period. Although there was no violent conflict between the Borana and Meru, the study has shown that the real and long lasting conflict is between the two ethnic groups because of the

boundary disputes which are left unresolved by the successive Government and the continuous annexation of part of Isiolo District into Meru District.

The Turkana feels insecure and displaced by all the other groups. Their claimed area is also surrounded by the National reserve (Buffalo and Shaba) and the recently gazetted Nyambene National Reserve. The Turkana claimed that the Government denied them access to resources within these reserves. Thus, their relation with the State and other group was bad.

The State seems to have conflicting relations with the pastoral groups but a good relation with the Meru. However, all groups with exclusion of Borana consider that the County Council (local government), which is the custodian of the land in Isiolo, is dominated by the Borana. According to them, the Borana used this power to exclude others. For the Borana it was a fact that they were the majority in the County Council but they denied the issue of dominance and exclusion. At the county council the officials argued that everything including financial resources were allocated according to the wards, and because the Borana were the majority in Isiolo District and have several wards they gets more share and thus, there is no inequality.

However, the Borana seemed to have taken a hard stand over the other groups that claim ownership right holding that Isiolo is not a “no man’s land” where anyone can claim ownership.

5.6.3 Relations among the land managers

The ‘stakeholder’ analysis (figure 4) identified conflicting relations between the four groups of land managers, apart from the Ministry of Land and Provincial Administration. The County Council is the custodian of the land in Isiolo and responsible for the land matters at the local level. It is supposed to work in collaboration with the Ministry of Land Office. However, the relation between the two also appeared to be conflicting. The County Council accused the land officers (Physical Planner and the Government Surveyor) of interfering with land allocation in the area. The officials at the County Council claimed the land officers have gone beyond their jurisdiction. According to the County Council the land office in Isiolo is under the County Council, and should not take any decision on land matters without consulting the County Council but claimed that this happens. At times the Commissioner of land at headquarters in Nairobi may also make decisions over the Trust Land without even consulting the authority at the local level (County Council). This can in turn lead to conflicts at the local level.

The elders felt that they were not consulted when decisions on land are made, and this has worsened the relation between the elders and the County Council on one hand and the elders and the Ministry of Land on the other. According to the elders, it was wrong for any institutions to allocate land to ‘intruders’ without their knowledge. The District Land Board where the representatives were selected from each Division in the District was not yet functioning. According to Borana elders, the County Council and the Ministry of Land Office were selling ‘their land’ to immigrant Somali clans and Meru.

The elders do not trust the politicians and Provincial Administration over the land matters. The two were blamed for the large number of immigrants in the area. The immigrants have managed to settle in Isiolo because of the politicians who want votes, they claim. For example, the Gari, Asharaf (refugees from Somalia) and Adjuran clans are now permanently settled. The three have got their own wards within Isiolo Central Division and have their own councilors and chiefs. This means that they are now recognized residents of Isiolo by the Government.

The Provincial Administration represented by the District Commissioner, who is the Chairman of all the Land Committees, was also accused of land misappropriation. The District Commissioner, according to the elders, sometimes uses his power to influence the council officials and even the politicians to give land and access right to resources for the ‘immigrants’ group. The officials together with the District Commissioner were accused of taking bribes and giving out lands. It was claimed that corruption has played a major role in land expropriation in Isiolo District, both in town and in grazing areas outside the town.

5.7 Discussion

All the five communities above have claimed to have land right either in part or in the whole District. The Borana have claimed to have the sole ownership of Isiolo District while the Somali, as well as the Turkana claimed to have ownership right to Central Division including part of Oldonyiro Division, while the Samburu claimed the former leasehold area and Oldonyiro Divisions. The Meru have claim over the so called Meru Concession Area and part of Isiolo

Central Division. The claims by the ethnic groups are based on either customary rights or interests or government policies.

The Borana and Samburu base their claims on customary right, which are to some extent recognized in the Constitution of Republic of Kenya. However, the law does not define the customary tenure properly, leaving it vague and subject to interpretation and local adjudication. The Borana and Samburu, consider the other groups as 'immigrants' even though in theory the national policy deny the existence of the District boundary to exclude others.

The Turkana, Meru and Somali's (the others consider them as immigrants) claims to land rights in Isiolo are based on government recognition of freedom to settle anywhere of one's choice. However, the citizen's constitutional right to live anywhere in the country when it comes to exercising the right in relation to customary rights holding communities may lead to conflicts. This is because the constitutional right might be subjected to manipulation by self-interested individuals and groups or even the government and politicians as in the case of the recent fighting over land in the Rift Valley and Western Kenya has revealed.³¹ Furthermore, it might be promoted or denied in accordance with political interest and generally override customary norms. Just as the freedom of movement is recognized by the Kenyan Constitution, so are the Customary Laws. Thus, the two bodies of law contradict each other at the local level, putting the claimants against each other resulting into multiple claims which in turn lead to conflicts. This has caused major conflicts not only in Isiolo but in many parts of Africa too (Alden 2006).

Today, many Kenyans are angered by what they term as injustices as a result of colonial policies which the independent government has decided to retain. Most of the Government's post-independence policies were inherited from the colonial government. Some communities were wholesome displaced from their land as the case of Maasai (Lumumba 2004), while others were affected by the arbitrary boundary creation like the case of Meru and the Borana. Many of the politically ignited land clashes in many parts of the country and the invasion of the settler farms

³¹ See The Daily Nation and The Standard, editions of the 17th and 19th April, 2007

by the Maasai in 2004-2005 are a manifestation of deep rooted grievances.³² Communities have been moved and settled in one place or the other, and through this many communities have lost their land even though others may have gained. Traditionally, the pastoral groups had access right to neighbours' resources; however, this has generally been curtailed through policies which have ignored the critical distinction between customary ownership and access rights. Through government policies, individual ethnic group were assigned to a particular area of which the land was stamped as belonging to them where sometimes the group themselves traditionally acknowledged the land belonged to others and to which they possess seasonal use rights only (Johnson 2003). The many conflicts in pastoral area particularly in Eastern and Central Africa have links to these policies (McAuslan 2006).

The case of the Herti and Isaak Somali clans is even more complex. They are not historically 'indigenous' to the modern state of Kenya. However, they were promised to have permanent land right in Isiolo for their service in the British Army during the First World War. The promise was never fulfilled and they were left a lone to fight it out, which was not easy. Today, neither their claim to land right nor citizenship is recognized by the government. Their case is similar to that of Nubians who were brought from Sudan for similar purpose but denied land right and citizenship by the successive Kenya governments (Lumumba 2004). The case of the Herti and Isaak represents historical injustices put on them by the successive governments. Both the colonial and post-colonial governments left their land case unresolved. Generations have passed since these groups were brought to Kenya and new generation knows no other country apart from Kenya as their home land.

The Kenyan laws states that the State is the owner of the land in Kenya, and thus has the power to alienate land, particularly from the Trust Land if it deems fit. The alienation of land for other uses has displaced people from their land, making them squeezed in areas of limited space. This has further aggravated the problem of land in Isiolo. The successive governments did not embrace any deliberate policy for this region, affecting land and pastoral resources. They indeed continued treating the region as a frontier of expansion for high potential areas, army barracks

³² See The Daily Nation and The Standard, editions of 9th and 16th September 2004, and Pambazuka News Weekly Forum For Social Justice in Africa on Land and Land Rights 16th September 2004, (www.pambazuka.org) accessed 24th of April 2006

and wildlife sanctuaries emanating in current resource-based conflicts. The government plan to make Isiolo town a tourist resort city is under way, and this may lead to even more competition and conflicts over land.

CHAPTER SIX

Land allocation procedures

The Government Land Act (Cap 280) and Trust Land Act (Cap 288) provide for procedures of land allocation. This Procedure requires a person to make an application to the District plot allocation committee of which the District commissioner is the chairman and the clerk to the County Council is the Secretary (Members are the District Land Officer, Physical Planner and District Surveyor). The application is then forwarded to the Town Planning Committee (composed of Councilors, Physical Planner and Clerk to the County Council). Then the County Council authorizes the physical planner through the council Minutes to draw an Approved Development Plan (ADP). The ADP is used for land alienation for a specific purpose either residential or commercial. The plan is circulated and published in the gazette notice or even daily papers for comments from the public. The Minister for Land and Settlement approves after it is circulated in the Kenya gazette and if there is no objection it is forwarded to the Commissioner of Land for approval and allocation.

However, it is reported that these procedures have been routinely ignored, by-passed and disregarded by the land managers, resulting in illegal and irregular allocation of public land (Njuki 2001). This has jeopardized both security of tenure and land use planning.

6.1 How is land allocation done in Isiolo?

The majority of those interviewed in Isiolo argued that land allocation procedures were not followed, and if followed it favoured one against the other, thus causing disputes. How does this cause disputes? Land in Isiolo is entrusted to Isiolo County Council which is also responsible for the allocation of land. According to the informants, there is clear division of interest as perceived by the different group in the area. For instance, what was a fair deal for the Meru was the opposite for the other groups particularly the Borana who perceive ‘their land’ was unfairly allocated to ‘outsiders’. One Borana woman points out:

Opening our land (Isiolo) to the larger community of Kenya by advertising in the daily newspaper is not fair; all the communities have their own district why should ours be for all?

In Isiolo, legal land allocation procedures were according to most interviewees rarely followed and instances of double allocation and misappropriation of land was on the increase. Some people allocate land to themselves and in some areas it was done by village elders. The physical planner and the surveyor also issue plots without the knowledge of the County Council, which is the custodian of the land. About 98% of those interviewed including the County Council officials points out that, procedures of land allocation were not followed at all. And 90 % of the informants point out that the County Council has failed in undertaking its responsibilities. One key informant has this to say about the County Council:

Isiolo County Council is weak and the councilors seem not to understand why they are elected. The executive arm has all the power. Many people have no documents for plots and one day they will be squatters on their own land. Already we have lost so much land. You see outsiders are just putting up enclosures on our land and no one cares.

People feel that corruption over land was rampant; those who have money and the well connected individuals are seen as the major beneficiaries of land in Isiolo. Others who have money can also buy from the poor at a throw-away price. One key informant said:

Only last year (2005), five thousands plots were issued out to people mostly with money and many of these plots are already occupied. One plot can be allocated to 3-4 people and no one has legal papers, for example, Borana in Tullu Roba are now squatters since those plots were allocated to other people in 1992 when balloting was carried out, even in the ballots they were some 'unofficial' deals many who benefited are the elites both from within and from outside.

Another man added:

County Council is the one issuing land; those who have money gets land because the council is corrupt. The DC is the land allocation chairman and he manipulates the illiterate councilors. During the late Jafar (the former County Clerk) this could not happen. The DC allocates land by colluding with councilors and they sell the lands. In 1992 there was an open ballot which was publicized in Daily newspapers and majority who got the plots during that time were outsiders. All the head of departments who were not locals were given both residential and commercial plots for free.

According to informants the land goes with the highest bidder. In some part of Isiolo Central Division elders are the ones issuing land, but charging people, the money goes into their pockets; from there it was the responsibility of the individual allottee to survey his/her plot and do all the necessary things that should be done. In many instances, these lands were not surveyed because the private surveying which the Council also preferred was expensive for the majority of the people. This means that they are legally squatters. However, some people bribe the council

officials or even the government surveyor and get fake documents to show that the plot has been surveyed. Other astonishing instance was where people allocate land to themselves by putting up enclosures not caring whether that land belongs to somebody else or not. For example, along the Isiolo-Kula Mawe road enclosures have been put up and the authority seems not to care. This has caused more disputes over land especially in Central Division.

Turkanas are putting enclosures all over, the enclosed land opposite Gadise Hotel is 78 acres and it is for one person. Somalis and Merus are doing the same; we reported to the county council but no action has been taken, this is how people grab our land. We will not let it go like that; we must fight over this land.³³



Figure 5: Photo of enclosures

More than five thousands plots were issued out by county council in 2005, but no one has been shown his or her plot yet. Six hundred People were to be compensated for the plots which they lost for the expansion of the airport but over four thousands people were said to have benefited from compensation. These issues will further complicate the land problem in Isiolo.

³³ Interview with Borana elders

Tullu Roba in Isiolo town was the most affected area by the land allocation procedures in Isiolo, where the group of people living there has now become squatters. The land was set apart in 1992 as an open land and allocated to other people, mostly from outside Isiolo. Currently, the area is disputed; the customary land holding group has resisted to be evicted and those with the title were still waiting for these people to give them chance. The people of Tullu Roba sued the County Council in 2000 and the case was still pending in court in 2006. The County Council attempted to evict them on several occasions but in vain. An informant argued:

The Council wants to evict us and give our land to the rich people. In February 2006 they put a notice that we should vacate the place or else they would use force but we were not ready to move and we shall never be, let them kill us.

On the other side, the county council is also feeling the pinch. One senior council official has this to say:

Squatter is the biggest challenge for Isiolo county council, majority of the people in Tullu Roba were affected by the 1992 ballot and we do not have alternative land for them. They are also irregularities in title deeds. Some people have fake titles sold to them by the officials in the Ministry of Land headquarters.

In Isiolo town where private ownership of land is recognized, only a few people have title deeds or even allotment letters. While 99% of the informants say they understand the importance of having a title deed, only 5% of those informants have either the title deed or the allotment letter. One major reason is that the area itself was not well planned in accordance with the legal framework, the process of getting a title deed was also cumbersome discouraging even those with economic capacity to get the title deed. Secondly, the majority of the people still hold their land under customary rights; this means the land is not registered. Therefore, without registration Kenyan law does not allow one to obtain title deeds. Still others were not interested since according to them there were no incentives.

The management at the Ministry of Land and Settlement at the local level in Isiolo was trying to facilitate the process of obtaining either the title deed or allotment letter. One officer interviewed said:

To ensure that people get title deed we are trying that the area is planned. The master plan is already in place. We are collecting information and forwarding to Nairobi so that people get allotment letters. We are encouraging those with allotment letters to go to Commissioner of Land for title deed. I agree the process is cumbersome; for example, the

gazette notice takes sixty days, Survey part and authentication also takes three months. After one is issued with a letter of allotment he or she is given 30 days to make the payment. If the payment is not completed within this time, the plot allocation is null and void. This discourages many people.

Thus, the long, bureaucratic and cumbersome process has blocked many of Isiolo residents from getting this vital document. In addition, the majority of the informants did not know where to get these documents or even the procedures to be followed. Some they acquired their plots through improper ways and therefore, did not want to expose themselves.

For the land managers in Isiolo, the procedures are just on the paper, and even when they are used the process was not transparent thus creating more conflicts than solution.

Isiolo is a Trust Land; and Trust Land is sometimes subjected to other property regimes. The land is actually open for adjudication whenever the government deems fit. This means the land ceases to be under customary laws. In Isiolo town where private ownership exists it is subject to the towns' Master Plan. Through this, the customary holders such as Tullu Roba residents are displaced, hence the customary right of occupancy and the granted rights (statutory) come into conflicts. Because the state is biased towards statutory rights, the customary landholders easily become victims. This may not only create a state of landlessness but can also deny the customary holders their means of livelihood.

The imposition of property laws alien to customary right regimes may leads to clashes of tenure resulting in conflicts, which even the judicial system has never been able to resolve (Twaib 1996). The various property regimes have also led to overlapping claims and institutional conflicts with regards to land use issues (Mwangola 2001). Kenya's Constitution seems to lack the necessary directive principles about the land questions.

6.2 Conflict Resolution

Conflicts may arise over land ownership disputes and unclear use rights, and solutions are attempted by using different methods. The methods may range from heavy reliance on a single legal system (state or customary) in isolation from the other, to the combination of the two.

Whereas isolation of either of the legal systems may further complicate the problem, the study indicates that a combination of the methods may bring about better results.

Most land disputes in Isiolo District were taken up in court and a few solved by the elders.

In Isiolo, it was multiple allocation of land that often contributed to disputes. According to Isiolo County Council and the Ministry of Land office the disputes over plots allocation were solved by use of the allotment letters to establish who the first allottee was and look for alternative plot if the case was genuine. However, it was rare that people have the required land documents to be used in verifying who got the land first. At the district land office there was a District Physical Planning Liaising Committee. This committee listens to aggrieved parties, and the committee decides whom to give the disputed plot or give an alternative plot to the other party. In Isiolo there was no land tribunal to look into land issues; and the one formed in 2004 was not functional. The members of this tribunal which was yet to be established were District Commissioner (Chairman), Clerk to County Council (Secretary), four civil society organization, religious leaders, and chairman to the County Council.

The land conflicts between the ethnic groups were not handled by any institution. It was assumed that such conflicts were caused by scarce resources (pasture and water) according to the government authorities. However, 90 % of the informants argued that the main cause of violent conflicts such as the one in 2000 was land and not pasture and water. The only intervention applied by the government was armed intervention when the violent conflicts broke out. Some ethnic groups have institutions of managing their resources and solving conflicts arising over these resources. However, these are not applicable to others and they do not respect it. For example, the resolution passed by the *dheeda* elders in Borana may not be respected by others to be used in conflict resolution over the grazing land.

Majority of the elders interviewed argued that they no longer have a say in land allocation issues while those that are taken to court rarely get settled. The court records show that most land cases are kept pending. For example, two cases both filed in mid 1980s (1985 and 1986) were still pending and it was only once that the hearing was done. The researcher got an opportunity to talk to both of the accused persons after seeing the court file.

It was as good as I won the case because it was long since the case was taken to court and no action has been taken ever since.

The other person said:

Actually, I got an empty land and developed, after I developed it, a Meru woman claimed that the plot was hers, but she could not verify who allocated it to her. I got all the necessary documents from the County Council and am waiting for the court to set for the hearing date. I am not really bothered about it because I have the documents.

Out of the thirty files that the researcher got access to, it was only in one case that the dispute over the plot was decided and the plaintiff who was a title holder got the plot, while the one with customary right was evicted by a court order. Since the land in Isiolo is Trust land which means majority of the people hold land under the customary rights, decisions always takes long. This is because the law governing it is not clear and judges postpone making decisions. However, when the case is between title holders (statutory rights) and customary holders, it was evident that it was easy for the judges to rule and mainly in favour of the statutory holders.

Across Africa there are enormous numbers of disputes over land which remain unresolved (McAuslan 2006). According to Alden (2003), there are about 26,000 land cases in Ghana, and a similar number exists in Kenya and Lesotho. The problem of the land is embedded in the land laws themselves where a plural system of land administration are applied, and each of them with its own challenges. During the colonial period, disputes involving the customary tenure were kept away from the regular courts. The established traditional institutions such as chief or native tribunals were used to deal with the disputes (McAuslan 2006). However, in independent Kenya up to 1990, this system rarely dealt with land disputes. This was mainly because Kenya attempted to abolish the customary land tenure with the aim of individualizing the tenure based on British Land law and registration Law (Okoth-Ogendo 2006). Despite this attempt the customary tenure prevailed, so did the customary disputes settlement mechanisms. Since the problem of the land cases overwhelmed the court system, Kenya enacted a law in 1991, which established tribunals whose role was to handle land disputes associated with customary law even in registered land. These tribunals were established in all the Districts in Kenya. However, as already mentioned above the tribunals are not yet functional in many Districts, including Isiolo.

One thing that should be noted is that at the Local Ministry of Land in Isiolo, there is Land Dispute Liaising Committee comprising elders and officials from Ministry of Land. Although not

strong, this committee hears from both parties and decides whom to give the disputed land, but looks for an alternative land for the other. This approach may restore social equilibrium than the court system whose outcome is rather a winner-loser.

In Kenya there are no pastoral land policies, unlike in some African countries, such as Niger, where the Government in its *Code Pastoral of Niger* has taken a positive step to solve the conflicts between the pastoralist and sedentary farmers (MCAuslan 2006). In Kenya such policies are missing, since the colonial mentality of marginalizing the pastoral tenure and its way of life have been carried on. Therefore, positive policies of disputes solving mechanisms need to be adopted and traditional system also strengthened to reduce a mounting land cases in the country.

CHAPTER SEVEN

Concluding Remarks

This thesis has identified and assessed land conflicts in the Isiolo District of northern Kenya. Land remains the most contentious issue in Isiolo. The factors contributing to the land conflicts are many and varied. One major reason is that Kenya has been without a clearly defined national land use policy since the Colonial period. The problem persists because the governments of independent Kenya inherited both colonial land policies and administrative system, which brought about controversies and conflicts in land matters. Lack of a clearly defined land policy, particularly lack of effective recognition for and protection of the customary land rights, has in turn resulted in controversies over land since multiple ‘stakeholders’ with varying interests, sources of legitimacy and values have come into play to exercise claims over land, often leading to conflicts. The conflicts have been either latent manifested in the form of ‘ethnic hatred’, or sometimes degenerating into violent wars that have resulted in the loss of life and property in poverty prone regions. Land administration in Kenya is complex, and the complexity emanates from the existence of dual legal systems, which appear to be incompatible. The seeming incompatibility is attributable to a power relationship existing between the statutory and customary laws due to a persistent colonial legacy. This is evidenced by the fact that in Isiolo District, the majority of the people occupy land under the customary law, but the same land has sometimes been opened for adjudication and allocation based on statutory laws. Due to unequal power relationship, the State has also alienates land in the Trust Land and put it to other uses at the expense of the customary holders, such as pastoralists. This has created insecurity in the customary tenure. The role of malpractices such as individual interests for political election and other personal gains in land expropriation can neither be overlooked. The complex land administration system has also complicated dispute settlement over land. On the one hand, there is a reliance on the State law for conflict resolution. On the other hand, the court system is not only inefficient in settling land disputes, but also inaccessible to the majority of the people, specifically the rural population. Therefore, the customary systems of conflict resolution should be revitalized and harmony created between the two legal systems in order to better address

rampant conflict in the area. With revitalized customary institutions, inter-‘stakeholder’ negotiation can take place. This is hoped to promote peace in the area.

Appendices

Appendix 1: Research question

1. What are the main causes of land conflicts in Isiolo?
2. Under what circumstances may competition over land degenerate in to conflict?
3. What procedures are in place in allocating land in Isiolo?
4. What coping mechanism and institutions have been used for land-based conflict management in the area?

Appendix 2: Interview Guide

Respondent Name.....
Age.....
Sex.....
Occupation.....

Key informants

1. Historical (Knowledgeable elders)
 - When did you (ethnic group) came to Isiolo and why?
 - Whom did you found on your arrival?
 - Can you please give me a brief history about Isiolo?
 - Who are original inhabitants of Isiolo according to you? Why?
 - Were there conflicts during those days? If yes what was the cause of conflicts?
 - What approach was used to solve the conflicts?
 - Can you please tell me about land use system in Isiolo?
2. What are the main causes of land conflicts in Isiolo?
 - What do you think is the cause of land conflicts in Isiolo?
 - When did the conflicts over land started?
 - Are the conflicts over land ethnically based or between family members?
 - Does all the Isiolo people have access to and ownership over land if yes how, if no why?
 - Has conflicts over land ever lead or contributed to violence?
 - Do you think any immigrants own land in Isiolo, if yes, how did they obtain their land?
 - Is there any absentee land lord in Isiolo?
 - Is the conflicts over land between immigrants and non-immigrants
3. Under what circumstances may competition over land degenerate into conflicts?
 - Is there any competition over land?

- If yes, who do you think are the competitors over the land in Isiolo?
- Isiolo district has a vast land compared to some areas, why do you think people compete?
- How many ethnic groups live in Isiolo? Do they all have equal rights to land?
- Has competition over land ever contributed to conflicts?
- When did you settle in Isiolo?
- How did you obtain land here? Did you buy, inherit from your parents or got as a gift?
- Is it easy to obtain land in Isiolo?
- Have you ever been evicted from your land, if yes, why and what action did you take to resist the eviction?

4. What procedures are in place in allocating land?

- Who allocates and/or distribute land in Isiolo?
- Who are the beneficiaries of land allocation in Isiolo?
- What criteria are used in allocating and/or distributing land in Isiolo?
- What shows that you own the land? Do you have any title deeds?
- What is your perception about the title deeds, do you think everyone has the capacity to obtain the title deeds?
- What is your feeling about the county council as the custodian of the land in Isiolo?
- Do you think they do their work as required of them? Are they fair in allocating land?

5. What coping mechanisms and institutions have been used for land-based conflicts managements in the area?

- Which intervention methods were used to reduce land conflicts?
- How are the land-based conflicts being resolved?
- Who intervenes?
- Is there any institution that deals with land conflicts in Isiolo?
- Is there any traditional conflicts solving mechanisms? How effective is this
- How effective are the modern institutions in solving land conflicts?

Interview guide for County council and Ministry of Land officials (in addition to the above interview guide, the County council and ministry of land officials were asked the following questions)

- Who manages land in Isiolo?
- You are the custodian of the land, can you please tell me briefly about Isiolo District?
- Who allocates land in Isiolo?
- Do all the people in Isiolo have equal access to the land? If yes how, if no why?
- What are the procedures of land allocation? Is the procedure similar for residential and commercial plots?

- Does conflicts of interest sometimes arise over land allocation, how do you handle this as the custodian of the land?
- How is your relation with the county council/ Ministry of land?
- Is there any other institution dealing with the land? What are its responsibilities?
- Do Isiolo people have title deeds? Who issues title deed?
- Which areas are disputed and what are your plans to reduce the conflicts?
- Isiolo town is a cosmopolitan area; do you think there is any problem of claims by these different ethnic groups? How do you handle the disputes over land?
- Who deals with the land disputes?

Appendix 3: Boundaries of Isiolo District

The colonial government under “Special Districts Administration Ordinance (Cap.45 Laws of Kenya)” on 13th day of May 1961, vide order LXII signed by P:E:Walters, Provincial Commissioner, Northern Province confirmed the administrative and physical boundaries of Isiolo district as follows.

Boundary of Waso Borana

In exercise of powers conferred upon me by section 16(1)(a) of the special Districts Administration ordinance I hereby reserve for the use of those members of the Waso Borana tribes of the Isiolo District whose name appear on the Tax Register of the district commissioner, Isiolo, the following area and all the grazing and watering facilities therein- detail of this boundary is in the appendix.

From a point on the North bank of River Tana known as malka Kora;

- thence by the stock track to the point where the Benane- kora Road crosses the kora lugga.
- Thence northward by that road to point where it meets the Golana Gof at Benane.
- Thence downstream by the Thalweg of the galena Gof to mado Gashe.
- Thence north-east by the main Isiolo road-Wajir road to Habaswein bridge.
- Thence north-north west along the boundary cut to the Haddado cross roads.
- Thence east along the merti-wajir road to the point where the road crosses the lag Bor.
- Thence upstream by the thalweg of the lag Bor, for a distance of approximately 25 miles, to the point at which the laggas is intersected by the Degodia Boundary cut.
- Thence north westwards by that cut to its intersection with Arba jaha-Buna road.
- Thence northwards by that road for a distance of approximately 31 miles to its intersection with the boundary cut running west ward from Alati pan in the area of Arbajahan.
- Thence from arba jahan by a straight line west-south-westward to Maddo Dedertu.
- Thence by a straight line to maddoDelbek.
- Thence by a straight line to the hill bar karunyu, adjacent to Barchuma guda.
- Thence to sebbei road.
- Thence southwards to the south west corner of funan kurkum.
- Thence south-south-eastwards to a point on the kom lugga lying between kom lola kom galla known as maddo burkuke.
- Thence southwards in a straight line to the summit of the hill ogotu.
- Thence in straight line to the chanlers falls on the uaso nyiro .
- Thence by a straight line southwards to magado crater.
- Thence in a south westerly direction along the border of the Meru native land unit to its intersection with Tana River.
- Thence down stream by the Tana River to the point of Commencement.

Provided that the waters at Dololo Basiri and at Arba jahan shall be common to the Balada section of the Ajuran and to the Borana, (Vide order LXXXVI).

Further provided the Borana shall have exclusive right to usage of the water at maddo Dedertu, maddo Delbeke (Sakite Dadacha, Didimtu and Kote), Maddo Barchuma Gudda, Barambati and yamicha but shall not have any right of usage at Koya, maddo Qoni and Barchuma Dika.

Boundary of Isiolo Township

Proclamation No. 32 of 10th December 1951

Commencing at a beacon A which lies on a true bearing of 114° 41' 43" at a distance of 50,055.7 feet from the trigonometrical beacon Lengishu;

Thence to a beacon B bearing 222° 58' 24". Distance 12,340.2 feet.

Thence to a beacon C bearing 270° 50' 14" distance of 13,585.2 feet.

Thence to a beacon D bearing 010° 32' 09", distance 27,182.1 feet.

Thence to a beacon E bearing 090° 01' 28", distance 15,070.7 feet.

Thence to the point of commencement bearing 173° 43' 50", distance of 17,993.4 feet.

Boundary of Isiolo leasehold Area.

Ref. Schedule to L.N. 68/61 of 31st January 1961

Commencing at the trigonometrical beacon Mukogodo situate on the boundary of Nanyuki district.

Thence by a straight line through a trigonometrical beacon Lendili extended to its intersection with the Uaso Nyiro River,

Thence down stream by that river to chanlers falls,

Thence downstream due to south by a straight line to its intersection with the generally north-western boundary of the Meru land unit,

Thence southwesterly by that boundary to its intersection with the Isiolo River,

Thence upstream by that river to its intersection with northern boundary of Isiolo Township,

Thence westerly and southerly by part of the northern and the whole of the western boundaries to the south western corner of that township,

Thence by a straight line north-westerly towards the summit of Oldonyiro Lessos to its intersection with the Ngare Ndare River.

Boundaries of Meru Concessional Area

Ref. schedule to government notice 627/1946

All that area bounded on the north by the Meru- northern frontier districts boundary from Shaba to the Isiolo River

Thence by the Isiolo River from the point where it is met by the boundary upstream to the point where it is crossed by the Nanyuki-Isiolo –Wajir road

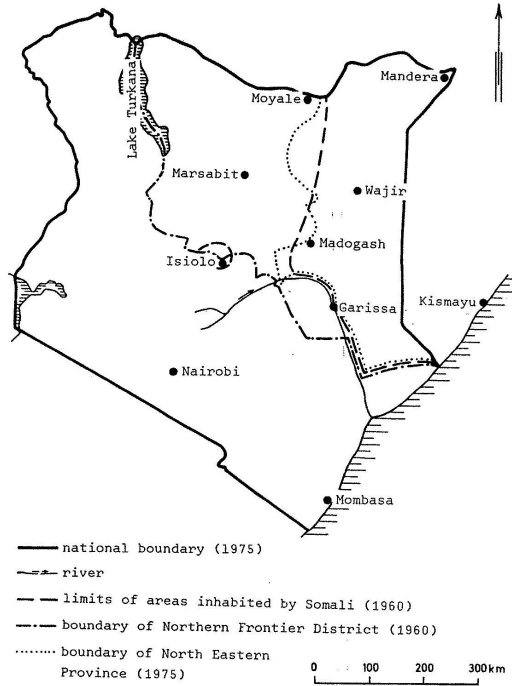
Thence by that road approximately northwards and eastwards to a beacon at mile 20 from Isiolo and

Thence by line from that beacon to the point of commencement.

Appendix 4

33

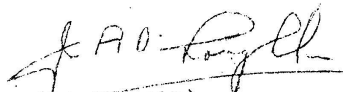
MAP 1.3: The former Northern Frontier District (NFD) of Kenya



Appendix 5

- 3 -

With regard to the Memorandum submitted by the Meru Elders I understood from the meeting the Minister had on 13th February, 1970, that the landless Meru were to be given "adjudicated land" in the Meru County Council situated to the east and north of Isiolo and that the amount of such land was to be laid down by that Council. It will be recalled that attention has already been drawn to the irregularity of this proposed "adjudication" to which however there appeared to be a precedent in Meru County Council area.


(J.A.-O'Loughlin)
COMMISSIONER OF LANDS

c.c. The Director of Land Adjudication,
P.O. Box 30297,
NAIROBI.

The Town Planning Adviser,
P.O. Box 5025,
NAIROBI.

The Special Commissioner of Squatters,
P.O. Box 30450,
NAIROBI.

Files 31587,
31560/IV,
66250 &
LND.3/1/4/5.

The Permanent Secretary,
Ministry of Lands & Settlement,
NRS.

'ISIOLO - LAND ADJUDICATION'
Your Ref. No. LND.26/7/1167 of 27-7-70

In his letter No 30924/11/4 of 15-7-70 addressed to you by the Commissioner of Lands, copy of which you have sent to me, the Commissioner has voiced anxiety on the delay by this office to set apart land intended to be demarcated. has
This district has no county council Local Land Board previously. I am in the process of forming one according to Section 14 of Cap. 288.
As soon as this Local Board is formed the necessary work of setting apart land will be undertaken. D.C.

Appendix 6

Telegrams: "CONFUR", Meru
Telephone: Meru 31
When replying please quote

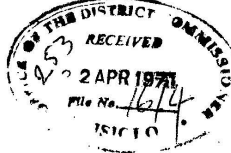
Ref. No. MCQ/ADM/2/3/2/172.
and date



OFFICE OF THE MERU COUNTY COUNCIL
P.O. Box 3
MERU, KENYA

16th April, 1971.

The Clerk,
Isiolo County Council,
ISILOLO.



Pa.
27/4
201

Dear Sir,

DISTRICT BOUNDARY

Ref: your ISO/CC/ADM/3/2/Vol.11/12
of 22nd March, 1971.

I refer to your Min.No. 20/71 of your Council Minutes of the Agriculture Water, Community Development and Social Committee of the meeting held on 27th and 28th January 1971

The Sign Board referred to in your Minutes is marking the Boundary of Isiolo and Meru District, and it would not be appropriate for your Council to make any alteration of the District Boundary without consultation with the District Commissioners of both Districts, otherwise you will have the County Council of Meru passing a Minute to remove the sign Board towards your end and this will cause un-warranted disturbances for no reason.

If there would be any district boundary dispute, it is always good to tackle them through the provincial administration.

Yours faithfully,

GKM/JKN

G. K. MWOBODIA
(G.K.Mwobodia.)
Ag. Clerk of the Council.

C.C.

The District Commissioner,
MERU.

The District Commissioner,
Isiolo District,
ISILOLO.

(VISIT MERU COUNTY COUNCIL GAME RESERVE)

①
Telegrams: "PROVINCER", Embu
Telephone: Embu, 5, 10, 14, 60 and 75
When replying please quote
Ref. No. A.1651/173
and date



OFFICE OF THE PROVINCIAL COM.
EASTERN PROVINCE

PRIVATE, SAC

EMB

1st March, 1969

The District Commissioner,
ISIOLO.

MERU CONCESSIONAL AREA
Ref. your LND.16/4/193 of 5.2.69

The then Meru A.D.C. and Njuri Ncheke approved in December 1960, the Government proposals in respect of Meru concessional area for the grazing of alien Somalis of Isiolo stock set on certain conditions:

"The Chairman informed the Council that the Government had prepared the plan to remove all Somalis from the concessional area. This plan involved the rehabilitation by means of grazing control of both the leasehold and the concessional areas and the charging of a fee of Shs. 6/= per head of stock in conjunction of the imposition of rules. These rules were summarised to the Council and it was further explained that the grazing fees collected in the concessional area be used on control and improvements within the area. However, it had not proved possible to move the Somalis within the five years stipulated by the Meru A.D.C. since it would not be possible to complete rehabilitation of the leasehold area within that period and the sudden influx of more stock would spoil the scheme. It was, therefore proposed that one third would move in 1965, one third in 1967 and the remainder in 1969."

2. The Government appreciated that Meru was being denied the use of the land in this period and it was therefore agreed that they should be paid an amount of 50 cts. per acre, i.e. £2,400 up to 1965; £1,600 for 1965/67 and £800 for 1968/69.

3. The area of the Meru concessional area is 96,000 acres and as has been seen from the above minute that one third will be returned in 1965, one third in 1967 and the remainder in 1969 and that during the first phase £2,400 will be paid to the Meru District and £1,600 for the period 1965/67 and £800 for the period 1968/69. For the first period £2,400 was paid to the Meru A.D.C. and Njuri Ncheke and it was decided in this office in 1965 and we agreed on the second phase i.e. the second one third to be returned and the rents due to the County Council be paid i.e. £1,600. This was subject to a very long correspondence and in the end a Mr. Omino of the Office of the President decided that no rent shall be paid. If the third part is now returned in 1969, a further payment of £800 has got to be made. All this was stipulated that the Somalis who would be using the concessional area will be paying grazing fee (The Trust Land, Meru Concessional Area Rules, 1961); Legal Notice No. 267.

4. I have not been able to see the agreement of 1960 between the Government and the Meru County Council but the position is as stated above. As regards the future plan for the Meru concessional area, I also feel that it is for the Meru County Council and the D.C. Meru to decide. As the area would be very good for ranching scheme, I am also of the opinion that a formation of a large scale ranching project will raise the economy of the area.

④

(169)

EXTRACTS OF MINUTES OF THE 5TH MEETING OF THE EASTERN
REGIONAL ASSEMBLY HELD AT EMBU ON 3RD-5TH MARCH, 1964.

APPENDIX 'A'.

MINUTES OF THE MEETING OF THE EASTERN REGIONAL
ASSEMBLY'S LAND, AGRICULTURE, ANIMAL HUSBANDRY AND
FORESTS COMMITTEE HELD AT EMBU ON 11TH FEBRUARY, 1964.

MINUTE 7/64 - MERU CONCESSIONAL AREA.

The Civil Secretary reported that the above area was some 96,000 acres in extent and was occupied by Somalis whom could not be controlled. The Civil Secretary suggested that $\frac{2}{3}$ of area should be returned to the Meru County Council and that $\frac{1}{3}$ the Somalis be restricted to the remaining $\frac{1}{3}$ in the area known as Kampi ya Chumvi and that this be returned to Meru County Council after the Somalis had been resettled in a rehabilitation scheme near Isiolo.

2
LND.16/4/193

5th February,

69

The Provincial Commissioner,
Eastern Province,
Private Bag,
Babru

193
MERU CONCESSIONAL AREA:
Ref. Your A.1651/170 of 24/1/69

In reply to your letter quoted above, I have to inform you that the ten year period agreed between the Meru County Council and the Central Government that the Somalis should leave the Meru Concessional area for the Meru, is expiring this year. Under the Agreement it was stipulated that 1/3 of 96,000 acres was to be returned to Meru in 1965 another 1/3 in 1967 and the remainder in 1969. And, also in the first phase some amount of money was to be paid to the Meru County Council and the rest to be paid in 1965/67 and 1966/69 respectively for the loss of right to use the land.

The details about the agreement of 1960 between the Government and the Meru County Council will be found in files in your office and the District Commissioner's office Meru and perhaps the Meru County Council. The terms contained in the Agreement have not been wholly been adhered to perhaps, because of the Emergency in the District and Perhaps, because of change over from Colonial Government to our Government during the period under reference.

I hear there are some Meru gradiers at Ngare Mara in the Concessional Area, but I have not visited the area.

As to what plans are envisaged for the development of the Concessional Area, it is not for me to say but the Meru County Council and the District Commissioner, Meru.

I am not sure whether it is the right proposition to confine the scheme if any in the concessional area to a large scale ranching projects as you presume it would raise the economics of the area and as such more beneficial to the country. What is needed before any final decision is taken on Ranching is for the Agricultural Officer Meru and the Veterinary Officer including the District Commissioner, Meru and County Council of Meru, representatives to visit the area and see what it looks like. There are areas within the concessional area which are good for cotton growing and also Katumani maize. Arable areas could be left for subsistence crops for those who would be grazing in the Ranches.

When you have a large membership in a single large scale Ranch as opposed to groups of let say 5 or 10; the decisions which are essential for effective management of such Ranches, hampered, may be some members may not be resident in the Ranches and to call them, it takes time. I would rather have a few individual Ranches and those owned by the groups ranging from 5 to 10 members for the reasons I have mentioned.

(S.M. MUGAMBI)
DISTRICT COMMISSIONER,
ISIGILO

c.c. The District Commissioner,
Meru.

The Asst. Director of Veterinary Services,
Babru.

ISO/CC/LND/13/49.



16th April, 71

The Permanent Secretary,
Office of the President,
P.O. BOX 30004,
NAIROBI.

DC

Dear Sir,

RE: BOUNDER DISPUTE WITH MERU DISTRICT:

I am writing to you to enlighten you of dispute which exist between Isiolo and Meru Districts.

During 1962 when there was boulder commission no representation from this District was made as the people of this District by could the whole thing as a result of claiming to have succession to Somalia. As a result, no representation from this district and the Meru people took the opportunity of being alone and grubbed the whole land which used to be apart of Isiolo District. The people of this district has been using this land for 70 yrs.

The places we have dispute with are as follows:

1. The so called Meru concession area- this used to be apart of Isiolo district leased to people of Isiolo District by the Gov't. Now it is to my understanding that, that part of area is with Meru District.
2. The other part is, along the road going to Nanyuki, this District boundary used to extend up to 5 miles but at present the boundary only passes two miles to Isiolo.

In actual fact Isiolo looks more of western Baringo where it is enclosed by another country. So Isiolo is enclosed by the so claimed Meru land.

Unless action is immediately taken to rectify the matter a mistake some bad feeling might erupt between the neighbouring tribes.

I hope you will as soon as possible appoint a commission to review the boundaries and the Meru people should also be told stop interfering with the above said areas until the commission looks into it.

Yours faithfully,

Mohamed Ibrahim
(Mohamed Ibrahim)
Chairman,
ISIOLO COUNTY COUNCIL.

JTB/FAW.

C.C

Provincial Commissioner,
Eastern Province,
E M E U.

The District Commissioner,
P.O. Box 3,
ISIOLO.

DISTRICT COMMISSIONER'S OFFICE,
PRIVATE BAG,
MERU.

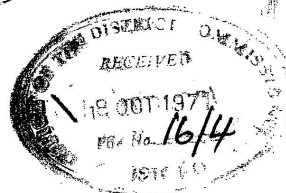
203

Ref.No.LND.16/1/Vol.I/101

15th October, 1971

DC
The Assistant Commissioner of Police,
Eastern Province,
ISIOLO.

204



MERU/ISIOLO BOUNDARY

Please refer to our discussion M/S Muasya/Mwangi during your last visit in my office when I informed you that it had been reported to me that the Meru boundary sign post beyond Isiolo on the way to Marsabit had been removed and that it was thought that either the Berans or Somalis had maliciously removed it. This is likely to cause inter-tribal conflict because the Meru people here are very much disgusted by the removal and particularly after reading the Isiolo County Council minutes No.20/71. Would you please take action to see that the board is replaced.

P. J. MWANGI

(P. J. Mwangi)
DISTRICT COMMISSIONER
MERU.

c.c. The Provincial Commissioner,
Eastern Province,
EMBU.

The District Commissioner,
Isiolo District,
ISIOLO.

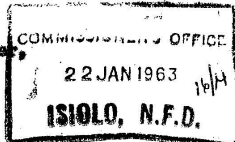
LND. 16/1/2/11/1/30

161

21st January,

63

The Provincial Commissioner,
Central Province,
P.O. Box 33,
NYERI.



MERU/ISILOLO DISTRICT BOUNDARY

Ref. CB/8/468 of 14th January, 1963 from the Director
of Surveys to the Secretary, Trust Land Board and copied
to you and this office.

I am also concerned about a number of aspects of this matter and the Doran have severely criticised the procedure of partial physical demarcation of the new boundary without a "Beating of the new Boundary" safari by the appropriate elders from each district, accompanied by their respective Administrative Officers.

2. One notes from paragraph 2 of the letter under reference that apparently the District Commissioner, Meru gave some form of tacit approval to the alteration of the line of a section of the new boundary in the vicinity of Locadema. There is no record on my files that this point of doubt was either discussed or agreed with the District Commissioner, Isiolo?

3. I agree with the Director of Surveys that the correct and early demarcation of this boundary has enhanced significance in terms of the future, and this aspect has been referred to you in separate correspondence. In the meantime may I propose that the District Commissioners Isiolo and Meru, accompanied by the appropriate elders of both tribes, and armed with the "Risley Judgment" and maps, be instructed to "beat this bound", discussing, agreeing and marking points of doubt as they arise? It would be useful to have a representative of the Surveys Department present at the same time?

4. When this has been done I feel we should get the entire line marked in at once, and arrangements agreed for its periodic maintenance?

PROVINCIAL COMMISSIONER,
NORTHERN PROVINCE.

Copies:- The Secretary,
Trust Land Board,
P.O. Box 2412,
NAIROBI.

The Provincial Surveyor,
P.O. Box 202,
NYERI.

The District Commissioner,
P.O. Box 3,
ISILOLO.

The District Commissioner,
Private Bag,
MERU.

104

with copy of the letter under
reference and with reference
to my LND. 16/1/2/11/1/18 of
25th June, 1962.

with copy of letter under
reference.

To,
The
District Commissioner,
ISIOLO.

FROM: ALL COUNCILLORS of THE ISIOLO AFRICAN
DISTRICT COUNCIL.

13th July 1962.

Dear Sir,

Re-BoRAN AND MERU BOUNDARY.

Thank you for your letter Ref. No. LND.16/4. of 18th June 1962. We should like to point out that, we do not agree about the boundary line constructed by your order.

Since this matter take place, we have informed you so many times that, we shall not agree the boundry alteration till we and Meru meet and the boundry be shown to us, ~~we~~ suprisingly you constructed a boundary line between us and Meru., without our knowledge.

Though you mentioned and regarded the construction as the final judgement we do not regard it as true or justice decision.

To our opinions, this means that you dispe~~se~~se us, that is why you gave our country to the people without our knowledge, also we have ~~spoken~~ spoken the matter in A.D.C. meeting as resulation, but it was written as opinion.

We ~~exp~~plain you that, we do not regard that construction as a boundry.

We being the councillors of the Isiolo African District Council have no confidence on this matter.

YOURS FAITHFULLY.

D.C.

Signed.

1. gal'cha gal'na 15.
2. Abdi mahomed Bulhan 16.
3. Mhoro Gop' Juma 17.
4. ABDULKADIR Gony 18.
5. Bida Nakata
6. GURA ROKA
7. WAKO, WARIO
8. Juma
9. AV. Juma
10. Jatan: Huka
- 11.
- 12.
- 13.
- 14.

19

The Northern Province People's Progressive
Party Garba-Tulla Branch.

10th June 1962.

To,
The District Commissioner,
Isiolo.

Dear Sir,

We have recently discussed with you about the boundary between Boran and Meru, but you did not give us a satisfactory reply on the subject.

We are very much disappointed on the anti-action of the Meru tribesmen on the ~~xxxx~~ boundary basis between Boran/Meru, Meru people constructed a boundary road in our area without our knowledge, also the place where they are constructing now ~~xxx~~ is not the place which we misunderstood or disagreed with them, the place was beyond the new construction.

Secondly, we are very much disappointed and surprised about Meru people concerning the ~~judgement~~ ^{the place became theirs} the boundary construction, it seems that they have received a copy of the judgement ^{if so, let me know}, if not this matter will bring a confusion to the public or even obstruction may arise if you do not take a serious step on the matter.

Thirdly, you have promised us that, you will give us the copy of the judgement, so, we want you to send us the judgement without altering it.

If, we could not receive a copy of the judgement, we have no ~~confidence~~ confidence or will never trust any thing-else than that copy of boundary judgement.

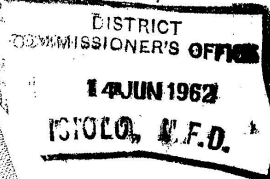
We should be very delighted if you could send us the copy of the boundary judgement fully detailed by the judge.

We hope to receive a delightful reply from you.

Yours Faithfully.

Jatani Wako (Vice-Chairman)

M. G. Jatani
M.G. Jatani (Secretary).



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