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## INDIGENOUS PEOPLES & THE NAIMINA ENKIYIO FOREST IN SOUTHERN KENYA: A CASE STUDY



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## INTRODUCTION

### *Research Background*

The case study constitutes part of a larger project with two other components; a national policy and program analysis on climate change and REDD (Reducing Emissions from Deforestation and Forest Degradation), and an advocacy and awareness programme, all targeted at indigenous peoples in Kenya. Broadly, the case study endeavours to focus inquiry on a particular indigenous peoples' managed forest (Naimina Enkiyio) with the aim of gathering and analyzing in-depth data on Indigenous Peoples' Knowledge, Systems and Practices (IKSP) relevant in sustainable forest management, forest conservation, enhancement of carbon stocks and in the promotion of cultural and biological diversity. In doing so the research hopes to demonstrate and reinforce the indigenous peoples' holistic view and multifunctional use of forest (cultural, spiritual, biodiversity, source of food and medicine, etc.); argued to have a positive contribution towards efforts to mitigate climate change especially in the REDD context. Additionally, the research will seek to identify threats and obstacles that impede the practice of traditional forest resource management practices and the transfer of these practices and knowledge to the younger generations.

### **Research Conceptual Framework**

The research takes the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as the overarching framework for REDD in relation to indigenous peoples and particular rights of

indigenous peoples in their particular countries. The Ecosystem-based approach and SWOT (Strengths, Weaknesses, Opportunities, and Threats) analysis was also employed.

The research was conducted by a local indigenous researcher in collaboration with research assistants and documenters who were also members of the local indigenous community within the case study area. The research assistants were trained on the basic technical skills for conducting a case study type of research and oriented on the research objectives and tools for data collection. The training was a joint effort of a team of researchers from Tebtebba in the Philippines, and a Program officer from MPIDO (Mainyoito Pastoralists Integrated Development). The choice of local indigenous research assistants has a double benefit; first, it contributes to capacity building of indigenous peoples to enable them to conduct research within their localities, and the second, it facilitates and enhances a true reflection of indigenous peoples' world view of forests, traditional knowledge and customary institutions. This therefore ensured joint implementation of the case study with villagers with a long term view that indigenous peoples will soon use the acquired skills, techniques and innovations for their own gain, especially in the context of REDD.

## **The Maasai People**

The Maasai people of East Africa have been associated with nomadic pastoral livelihoods for many years. Prior to the advent of colonialism in East Africa, the community occupied greater portions of the now Kenya's rift valley province stretching southerly from Laikipia to the slopes of Mt. Kilimanjaro along the Kenya-Tanzania border. Historical and ethnographic literature indicates they were a people of both livestock/cattle and land with their pre-colonial territorial extent estimated at about 10 million acres (Tignor 1976 cited in Mwangi, 2007). Until the early 1930s, the Maasai were characterized by the Kenya Land Commission as being probably the wealthiest tribe in East Africa both in land and the stock they were able to sustain (Rutten 1992).

The colonial encounter and the subsequent Anglo-Maasai treaties of 1904/1911 resulted in the Maasai being pushed from

the highlands of the rift valley to the southern, much drier and semi-arid districts of Narok and Kajiado along the Kenya Tanzania border (Annex 1). Property rights to land in Maasailand were managed under customary law within the traditional social organizations/institutions (Lughes 2007; Mwangi 2008).

The community is organized into 12 main political and territorial sections (*Iloshon*), namely: *Kaputiei*, *Purko*, *Matapato*, *Kisonko*, *ildamat*, *ildalalekutuk*, *Keekonyokie*, *Loodokilani*, *Loita*, *Siria*, *Uasinkishu* and *moitanik*. Authority for decision making rests with the senior elders of each section, often in consultation with the *Ilmurran* (*warriors*)—the providers of security. Clan is one other key social organization of the Maasai. The members of each clan stem from the same male ancestor not far back in history. The clans are patrilineal and include the *Ilmakesen* (of baboon), *Ilaiser* (of rhinoceros), *Ilmolelian* (of elephants), *Iltaarrosero* (of hyena), and *Ilikumai* (of raven). Regardless of clan or family affiliations, all Maasai are also members of one of two moieties, one called *odomong'i* (the house of the red oxen) and the other *orok-kiteng'* (of black cattle) (Galaty 1981; Maundu et al. 2001; Mwangi 2007; Rutten 1992).

Besides the enormous land lost under the colonial regime, the community has equally lost expansive ancestral domains due to nationalization of land, as either wildlife conservation areas or forests, and encroachment by agricultural communities. Today they number about 500,000 with a birth rate of about 3.5 per cent and an infant mortality of eight per cent (Maundu et al. 2001). Although over the years the Maasai have undergone great changes in structure and organization, they are a unique ethnic group least influenced by the Western ideologies of modernity and “civilization.” Despite the enormous pressure for change, the community has managed to maintain its cultural and ethnic identity to a large extent—the Maa language, traditional mode of dressing, belief and value system and its customary institutions—often making it one of the key attraction for cultural tourism in the country.

Associated to this adherence to its cultural and indigenous identity is the Maasai belief system in relation to its natural environment. Until relatively recently the Maasai depended en-

tirely on their surroundings for their survival. Until today, their life is still intricately interwoven with the environment as evidenced by intimate knowledge of the environment acquired in the course of an individual's engagement in community life and by the existence of a richer diversity and higher density of flora and fauna in the region than that reported around areas settled by other ethnic groups in the country. Traditionally, social taboos prohibited the use of wildlife and other activities deemed destructive to environmental integrity. Perhaps, it is a combination of these factors that has contributed to this community being recognized by the UN as one of the indigenous communities in contemporary Kenya (Maundu et al. 2001).

Although there are areas of intersection and overlap across different sections of the Maasai, the project site is predominantly under the management of the *Iloitai* section. The above background explains both the present location of the Loita Maasai, and the broader social, cultural and political systems within which the community goes about with its livelihood endeavours. Living on a 2,000 m high plateau bound on the east by the Nguruman Escarpment, on the north by the Loita Hills and the Siana and Mara plains on the west, the Loita Maasai number about 25,000 people in the south-eastern part of the greater Narok district. Southwards, the *Iloitai* extend across the international border to the Loliondo district of northern Tanzania (Maundu et al. 2001; Zaal, M. and Siloma 2006).

Due to geographical remoteness, a difficult road access network (if any), minimal state service provision and poor communications facilities, this section of the Maasai has remained isolated from other Maasai groups and from many of the social and economic impacts of industrialization and associated notions of modernity, development and resource exploitation. While opinions may differ on whether this remoteness is a good or a bad thing, this isolation and remoteness has undoubtedly contributed to the Loitans retention of their cultural value system and practices much more than their counterparts elsewhere in Maasailand are perceived to have. The area is endowed with a rich diversity of wildlife, pastureland and forest resources.

The Loita Hills which rise over 2,600 m are covered by a dry forest with numerous forest glades. To the east they give

way to the spectacular Nguruman escarpment which drops more than 2,000 m in some places to the low undulating *Acacia* and *Commiphora* dominated lowlands of Magadi. The larger part of the Loita population lives in the open areas of the western edge of the forest, where they utilize the excellent grazing conditions in the open rangelands. Towards the forest the population declines as forest cover increases. The main forest area is only beginning to be occupied while its glades are important dry season grazing areas (Maundu et al. 2001).

### *The Forest of the Lost Child*

*Entim e Naimina Enkiyio* (the Forest of the lost Child) is one of the few non-gazetted and largely undisturbed indigenous forests in Kenya. The forest has been variously referred to as the Loita/Purko Naimina Enkiyio Forest (IUCN 2002), Loita Naimina Enkiyio Forest (Zaal M. & Siloma 2006), Loita forest (Maundu et al. 2001) and Naimina Enkiyio forest by different authors. This wide variety of names associated with the same forest reflects the historical evolution of the forest ownership and management and the contestation inherent in this evolution process. Although overlaps of ownership and control over sections of the forest do exist between the Purko and the Loita Maasai sections, a greater section of the forest falls within the Loita domain. For this reason, and for consistency purposes in the discussion, I shall henceforth use the term "Loita forest."

The forest is located at Loita, division, Narok south district in Southern Kenya. It covers an area of about 330 km<sup>2</sup> bordering the Nguruman-Magadi escarpment, Kajiado District to the east; the Osupuko Oirobi (Purko Maasai land) to the north, Tanzania to the south and the rangelands towards the Maasai Mara National Game Reserve to the west (Zaal M. and Siloma M. 2002).

According to Maundu et al. (2001) the forest is classified as a dryland afro-montane forest, rising to an altitude of about 2,300 feet above sea level within the Loita hills. Cedar and podocarpus are the two most numerous tree types. Other species include *Olea capensis*, *Olea africana*, *Pavetta gardenifolia*, *Juniperus procera*, *Zantholium usambarensis*, and *Warbugia ugandensis*. The

forested areas receive an average rainfall range of 600-1,200 mm per annum with the lower rangelands receiving much lower precipitation at 600-700 mm. The forest constitutes the main water-catchment point in the region, draining into the Ewaso Nyiro river, with its water catchment protection services value placed at Kshs 105 million (US\$1.3M) per year.

The forest supports a vast number of mammals and birds – elephants, buffalos, hippos, antelopes, lions, leopards, cheetahs, and approximately 100 bird species including some endangered species such as the Grey-crested Helmet Shrike. The Loita forest is also the only Kenyan site for the brown-capped Apalis and it also supports such globally threatened species as the Red-throated Tit, the Jackson's Widowbird and the Hunter's Cisticola. The forest has enormous tourism potential with 12 tour operators and educational institutions currently running 40-50 trips per year to Loita, with group sizes of between 3-20 and a total of approximately about 600 visitors per year. Presently the primary interest in the forest, besides indigenous uses, lies in its potential for tourism, which could earn up to \$40,000 per annum (IUCN 2002, 18). This compares unfavorably with the forest's catchment protection value of \$1.4 million and its existence value of \$80,000 per annum (Ministry of Environment and Natural Resources 1994). The forest provides other services that have not been quantified such as spiritual and cultural values, minor forest products, and grazing (IUCN 2002).

The significance of Loita forest in the context of climate change and REDD+ becomes clear when viewed within the context of the national deforestation rate of 1,200 ha per year resulting in a national forest cover reduction from 30 per cent of the country's total area at independence, to slightly above two per cent in 2010; and closer to home, the reduction of Mau forest cover by about 24 per cent (Kantai 2000.).

### *Loita Forest and REDD Plus*

The last remaining tropical forests – including Loita forest – in the developing countries are those which indigenous peoples

have owned or controlled. These forests have been protected and conserved mainly because forest-dwelling and forest-dependent indigenous peoples have persevered and fought against deforestation and forest degradation, and policies and programmes of governments as well as corporate interests that will displace them from their territories. Such strong defense and sustained protection of forests and resources is attributed to their deeply-rooted cultural and spiritual relationships with their lands and territories which persists up to the present, even amidst the various efforts of modern society to denigrate these.

The practice of reducing emissions from deforestation and forest degradation (REDD) is not new to indigenous peoples. It is an integral part of indigenous peoples' traditional knowledge and practice in terms of their indigenous forest and resource management systems which are strictly regulated by their customary laws and worldviews. Forests and natural resources of indigenous peoples remain managed and protected for generations because of indigenous values that are instilled throughout the generations in relation to the custodian and stewardship roles on sustaining the lands, forest and natural resources which also provide multiple benefits to the people. Such values are translated into concrete actions by indigenous communities to conserve biodiversity (including carbon stocks) while at the same time, managing and regulating the use of forests and natural resources for their daily livelihood need by customary laws. The conservation of Loita forest by the local indigenous Maasai community exemplifies this practice. These practices need to be supported and strengthened further through research and documentation, education and more advocacies for policy reforms.

The lands, forests and resources which indigenous people traditionally own and use are the very basis of their sustained traditional livelihoods, social organizations, identities and cultures. Thus, it is to their very own interests that they themselves see to it that these forests are conserved, protected and defended against any destruction by private or government interests. It also means that if indigenous peoples are fully and effectively involved in the processes of decisions on policies, designing, implementation and monitoring of REDD plus and other forest related programmes, and there can be a well-de-

financed and equitable sharing of the rewards and benefits from REDD projects and programmes. In this manner, a 'win-win' situation for the environment and for sustainable development can be realized. In turn, the abatement of carbon dioxide emissions will further increase and whatever benefits or rewards that indigenous peoples will gain from this can be used by them in their mitigation and adaptation to the adverse impacts of climate change and to alleviate their situation.

## FOREST OWNERSHIP AND USES

### *Indigenous Peoples' Views on Forests*

Local indigenous Maasai communities use a wide array of terms to describe the forest and resources within it. These terms provide a glimpse of how the indigenous communities view their relationships with forests in the context of their livelihoods practices. Some of the terms reflect the indigenous peoples' view of forests as a source of insurance and safety nets against droughts for example. Terms such as *saru-enkiteng* (that which saves the cattle) and *Saru Maa/saru tungani* (that which saves/redeems the Maasai community or mankind) exemplify this. Forests are a critical pastoral resource during the dry seasons as a source of both water and grazing land. Other terms connote the quality of forests' regulatory and provisioning services. *Mmenangi atua*, is a term which means "that which in its life is always preserved"; *Noo Nkariak pusi*, (that of blue waters) implies purity and pristine quality of the forest ecosystem, and *naigil akenyu*, ("that which has two mornings" or the "sun rises twice") which also implies minimal exposure to heat radiation from the sun. Further, the term *Osupuko le Mokompo* (the highlands forest of Mr Mokompo) introduces the spiritual dimension through its connection with Mokompo (the current chief prophet or seer of the entire Maasai community). In addition, some terms may simply refer to some of the key products derived from the forest. This includes terms such as *entim oo Naishi* (the forest of honey).

The terms listed in the preceding paragraph form but a small part of a rich diversity of indigenous peoples' description of their relations with forests. The terms do not only serve to describe indigenous peoples' relation with forest, but they equally inform management approaches and resource utilization. The terms, therefore, translate to differentiated forms of ownership, access and control of sections or specific products from the forest. This differentiation may include identification of grazing and watering areas for livestock use; sacred sites and trees for spiritual activities; sites for enactment of various cultural practices including rites of passages; sections for firewood and harvesting honey amongst others. The control of these sites could be under individuals, groups or the entire community. This would be determined by the socially ascribed roles to perform certain duties related to particular forest sites and resources and the centrality of particular practices in fostering community shared identity, values and norms.

## Grazing

The Loitans are predominantly livestock keepers, making pastoralism their primary source of livelihood. According to Maundu et al. (2001), the average livestock holding per household ranges between 10-20 head of cattle and 30-60 sheep and goats. Land ownership is still under customary tenure with individuals having the freedom to choose where to settle and utilize resources after consultation with community elders. During the wet season, grazing is limited to specified zones within the home range. This grazing range often corresponds to closely related villages or clans, granting them limited and differentiated rights of access. Livestock in Loita graze according to the rain regime. During the rainy season, livestock stay in the rangeland (*Olpurkel*), which has wide grassy plains and salt licks. The Loita Maasai understand the role that the forest plays as a water catchment area and water source during the dry seasons and episodes of drought, as all water sources in Loita emanate from the forest. It is uncommon to find community herds grazing in the forest during the rainy season. Even the community members living close to the forest resist this temptation.

Access to and establishment of permanent settlement close to and inside the forest is closely monitored and regulated. In the context of grazing, the forest only serves grazing area during the dry season grazing, thereby serving as an important source of security. Never before was this critical role of the forest exemplified than during the devastating drought of 2008/2010. Whereas the drought wreaked havoc on other pastoral livelihoods in the country, the Loitan stood out as an island of refuge with negligible livestock losses (if at all). The forest has been able to “cushion” the Loitans so well such that when the other areas of Maasailand reported mass deaths due to drought, as happens every so often, this is rarely the case in Loita. The area has also served as a popular in-migration grazing site for other Maasai section, even from across the Tanzanian border.

### **Firewood**

Firewood is the main source for energy for most of the households in this locality. The task of gathering firewood is often allotted to women who collect the firewood from the most convenient places, normally the nearest, and from areas where the specific species of interest, mainly where *oloirien* (wild olive, *Olea africana* ssp. *Europaea*) is aplenty in dry form. For each community or village, there are specific areas for firewood collection where most women go. According to Maundu et al (2001) when firewood from this particular tree is used by a woman, she is traditionally believed to endear herself to her husband. A great variety of species can be used as firewood but whatever their species, it must always be dry or dead wood.

### **Sacred sites**

The forest has considerable spiritual and emotional value and thus many rites of passage and other important rituals and ceremonies such as take place here. Examples of these are the women blessing ceremonies and inauguration of *Olorrip olassar*, two important indigenous peoples cultural practices. The women’s fertility blessings ceremony is done for women who are unable to give birth or barren. For men, the forest is the source of white used for soil for circumcision ceremonies. All

these cultural activities are regulated and guided by *Oloiboni*. Because of this, the Loita community sees the spiritual leader, the Laibon, (sic) as the custodian of the forest. The Laibonok (plural for Laibon) have permanent rights and access to certain areas of the forest for their functions. Certain resource types, like a tree referred to as the *oltukai*, are only meant for Laibon use for the performance of these traditional rituals (Karanja et al. 2002).

### **Watering Points**

Watering points belong to the whole community. These points are protected and their access regulated by elders. Specific points are identified and set aside for livestock watering and others for domestic water harvesting. Women in particular play a key role in monitoring water levels and quality for sources of water dedicated for domestic consumption while their male counterparts do the same for livestock watering points. Ensuring regular supply and controlled access/use of water for livestock is essential in the context of pastoralism because it influences availability and effective utilization of pastureland.

### ***Local Uses of the Forest***

#### **Construction**

Most of the indigenous peoples' structures that may require use of forest resources are often simple in nature and make use of mostly dry wood and twigs. In the context of the Loita Maasai—the major structures are the traditional houses and the livestock enclosure fences. Traditionally, it is the women who build the houses. A Maasai traditional house is a simple structure made up entirely of wooden poles, and interwoven twigs/branches and smeared/cemented with cow dung. Specific species are preferred for the different parts of the building.

The fence around the homestead and animal enclosure also uses branches of particular thorny bushes, rarely tree trunks. The traditional way of fencing is done by piling up branches of thorny acacias and *oleleshua* (*Tarchonanthus camphoratus*) or, where

thorny material is limited as in Ilkerin, by sticking *oleleshua* and *olmisigiyoioi* (*Rhus natalensis*) into the ground. Other species used for dead fences include *Maytenus heterophylla* (*olaimurunyai*) and *Mystroxyton aethiopicum* (*olodonganayioi*). Wood for such constructions is freely sourced from any part of the forest without having to obtain permission from official entities. Extraction of large quantities, especially of specific species, is however under strict control of the elders. Chief Laibon plays a key role in decision making regarding the extraction of large quantities (Maundu et al. 2001).

### Cultural and ceremonial uses

The indigenous Maasai culture and social organization reflects very rich and diversified customary systems and practices characterised by numerous ceremonies and rituals. In almost all of these ceremonies and rituals, the forest, specific species of plants/tress in the forest, and parts of trees and or plants play essential roles. These ceremonies include those associated with significant life cycle events such as the rites of passage—naming, circumcision, marriage and death—and are also held to fight disease, to combat infertility, make requests for blessings and to settle disputes.

Maundu et al. (2001) was able to identify a total of 24 species of plants used by the Loita Maasai during various ceremonies and rituals. The *oloiboni*, the spiritual leader uses a variety of plants to make charms for cursing, bewitching or treating people. The main ceremonial include:

**Table 1:** Ceremonial Plants and Functions

Maasai name	Scientific Name	Type of ceremonies	Function
<i>Oloirien</i>	<i>Olea europaea</i> ssp. <i>africana</i>	All ceremonies	Brings good luck
<i>Oreteti</i>	<i>Ficus thonningii</i> and <i>Ficus cordata</i>	Women fertility ceremonies	Symbol of fertility
	<i>Olea capensis</i>	Olorip-olasarr	Sacred tree
	<i>Cordia monoica</i>	Settling of disputes	Tree of peace
<i>olmagirigiriani</i>	<i>Lantana trifolia</i>	Livestock related	Olasarr <sup>1</sup> , Cleansing, aromatic smell
<i>olmisigiyo<sup>2</sup></i>	<i>Rhus natalensis</i>	Naming ceremony	Tree of Protection
<i>osinandei</i>	<i>Periploca linearifolia</i>	Naming ceremony	Tied on child's neck

**Source:** Table 1. Adopted from Maundu et al. (2001).

Most of the ceremonies are preceded by the brewing of large quantities of beer. The gourds (*emala*) in which the traditional beer (enaisho) is brewed, the substance (*osuguroi*) used to accelerate the fermentation process and the honey, all come from the forest and associated products. The beer is also served in smaller gourds (*endukuny*), from which several people may drink. All members of the society participate in these ceremonies with each gender playing specific roles.

### **Box 1.** Women Fertility Ceremonies

During *olamal loo ngituak*, (women procession) hundreds of women pass through an arc formed by the stem of a sacred *oreteti* (*Ficus thonningii*) deep inside the forest. When they come back to the village two elders, one with a milk gourd and the other with beer, use the leaves of *oltukai* (*Phoenix reclinata*) to sprinkle these liquids on the women as they enter. At the end of the ceremony the women feast on meat roasted by elders on *oloirien* sticks (*ngeshereteta*) and placed on *oloirien* leaves.

Construction of a ceremonial Warrior *emanyata* (settlement) is one other key area in which various types of trees and plants from the forest are used. Maund et. al (2001) and testimonies from indigenous peoples interviewed identified three types of *imanyat* (settlements), namely *emanyatta oor murran*, *e manyatta e ngeene* and *emanyatta oolorikan*. This ceremonial temporal settlements mark milestones in the life of men as they progress in life within the age-set system to elderhood. The researcher and a team from Tebtebba were privileged to visit one of these ceremonial settlements (*eunoto*) within the case study area. The establishment of this particular *emanyata* may involve the construction of slightly above 100 huts, usually by the mothers of the warriors. Specific tree and plant species e.g., *Oloirien* and *oreteti* are used in different components and contexts of *imanyat*.

## Food and medicinal uses

Just as there are many tree species and plants used in ceremonies and rituals within the community, the same is true in the context of food and medicine provisioning. Over and above the direct and indirect benefits from the role of the forest as environment regulator, a wide variety of plant species and parts serve as a direct source of food and nutrients. The parts of plants taken as source of nutrients, water, medicinal value, exercise for the jaws and to pass time, range from their stems, roots, barks, galls, tubers, leaves and fruits. Although consumed as snacks, fruits constitute a major part of the food utilized by all members of the community when herding, fetching fire wood or water out in the forest/wilderness.

### Box 2. Five most preferred fruits

- *Carissa edulis* (*olamuriaki*)
- *Vangueria apiculata* (*olgum*)
- *Pappea capensis* (*oltimigomi*, *orkisikong'o*)
- *Syzygium cordatum* (*olairagai*)
- *Flacourtia indica* (*oldongururwo*)

Other commonly used fruits include:

- *Rhus natalensis* (*olmisigiyioi*)
- *Scutia myrtina* (*osanangurut*)
- *Cordia monoica* (*oseki*)
- *Grewia similis* (*olnyalugwai*)

Maundu et al. (2001) identified about 90 species used for human medicinal purposes. The vast number is an indication of the important role played by forests/plants in the health of the local community members. The importance of medicinal plants among the Maasai can be seen in the name, *olchani*, which is used both as a general name for all plants as well as for medicine. Some species are used for the treatment of more than one disease.

As mentioned earlier, the local brew is a popular drink among members of the local indigenous community. Without the fermenting-catalytic effect of roots of *Osuguroi* (*Aloe* species), local beer making process would be a different story. As a result they are also valued for their water content. All soups are characterized by a slight sweet taste and a juicy consistency. *Acacia nilotica* is the most frequently used soup plant (*Olkiloriti*). This species is also used as a stimulant by warriors.

## Other uses

Needless to say, a variety of personal and household items are carved from various plant species derived from the forest. These items range from armor and weapons of war (including clubs, spears and machetes' handles, arrow shafts), to household items such as chairs and serving spoons amongst others. Other uses include livelihood options enhancing tools such as beehives and cattle troughs. According to Maundu et al. (2001) the most commonly used species are *oleleishua*, (*Tarchonanthus camphoratus*), *enchanie-embae* (*Allophylus* sp.) and *entulelei-entim* (*Erythrococca bongensis*). Beehives, mortars and troughs which need hollowing out are preferably made from trunks that are partially hollow. Most honey, however, is collected from trees in the forest or under rocks. On the other hand, clubs, tools for

branding animals, and sticks for walking, are made from tough wood.

Wood such as that of *Teclea* and *Olea* is made into clubs. Some species such as osokonoi (*Warburgia salutaris*) used as tooth-brushes are known to have a medicinal value as well. Other minor uses include certain species of trees as source of dyes and poison used with arrows for hunting and defence.

### **Forest as a key source and store of indigenous knowledge**

It is evident from the foregoing that a substantial amount of indigenous knowledge on environmental management, the relationship between the community's social organization, cultural practices and nature, has a strong and intricate connection with the forest. To the Loitans, the forest serves as a natural classroom through which all members of society learn not only about the forest and its physical resources, but also the intricate relationship existing between the environment and people lives. This knowledge is transmitted across generations through, oral narratives, shared values and norms, ceremonies and through personal experiences within the forest ecosystem. The knowledge gained not only empowers individuals for their basic survival, but also provide avenues for enhancement of shared community identity, vision and perpetuation of an indigenous worldview that promotes environmental integrity. Arguably, this shared value system, knowledge and world view is what has ensured sustained management and conservation of the forest long before scientific and global efforts to save forests such as REDD+ came into being.

The Maasai classification of plants is generally based on a combination of general morphological features, the habitat of the plant and its perceived character and use. According to Maundu et al. (2001) the factor that most influences the specificity of a name is its use. Plants with distinct uses have distinct names. The names are more consistent for plants that are commonly used: for example, *Pappea capensis*, a most useful plant among the Maasai, is known by the names *orkisikong'o* and *oltimigomi*. This is consistent throughout Maasailand.

## Conservation and Tourism issues

The positive co-existence between indigenous peoples and forests, and the environment more generally has been associated with high concentration of biological diversity the world over. Unlike most agricultural communities in the country who have dissipated wildlife within their localities to near extinction, the Maasai in general and the Loita Maasai section more than any other have co-existed with wildlife for millennia. This scenario is attributed to the traditional norms and taboos practiced and promoted by the community from time immemorial which foster positive co-existence with the environment. The location of most National parks and nature reserves within the country demonstrates this reality. Most of the Wildlife sanctuaries, Parks and Reserve are found within or adjacent to Maasai territorial domains. Wildlife accounts for 90 per cent of safari tourism and 75 per cent of total tourism earnings (Gok 2009; Lamprey 2004; Thompson et al. 2009).

Maundu (Gok 2009; Lamprey 2004; Thompson et al. 2009) observe that instead of often reaping benefits for being indigenous people who are the natural and primary conservationists in the country, the Maasai community have often paid a high price for this. This loss initially came in the form of their alienation from their land in the interest of wildlife conservation purposes under an exclusionary policy that saw human beings as a threat to wildlife, thereby reducing the grazing range for these pastoral communities. While community ranches and rangelands such as the Loita forest are accessible to Wildlife, the parks remain restricted and unavailable for livestock grazing. The presence of Wildlife in community grazing areas has often exacerbated human-wildlife conflict in these areas. The conflicts come in the form of direct losses of life and property, diseases brought by wildlife such as malignant cater fever (brought by wildebeest), competition for fodder, destruction of water points and a general disruption of daily livelihood activities, especially by elephants. These tensions have been reported to be on the rise, a situation that is partly attributed to climate change (Lamprey 2004; Thompson et al. 2009).

### ***Daily Indigenous Peoples' Livelihoods Activities and the Forest***

The forest is essentially at the core of the very existence of this indigenous community. There is hardly any activity undertaken by members of this community that has a direct or indirect relationship with the forest. The connection between the people and the forests transcends all social divisions of gender, age and other social stratifications within the society. Men and women; the old and the young alike are connected to the forest in unique ways in their daily livelihoods activities. *Oloiboni* (the spiritual) leader, for example, cannot perform any of his ascribed rituals, roles and duties without the forest. The forest and the diverse resources within it appear to provide the media/bond through which the *Oloiboni* can commune with the ancestors and the supernatural in his mediation role between the divine and the mortals.

The *Ilpayian* (adult males) and their livestock herding and grazing duties see the forest as the resource of ultimate security/insurance against drought and famine. It is the source of all waters and medicinal plants. The forest and all its provisioning services is at the centre of the Maasai social and cultural identity evidenced by the fact that all rites of passage from birth to death utilize some aspects of the forest. The small population of *Illtorobo* (hunter gatherers) found in Loita area, derive their livelihood directly from the forest. Here, they hunted and collected honey and have since settled among the rest of the Maasai, intermarried and become integrated into the Maasai culture, though without entirely rejecting the traditional mode of production.

Like their male counterparts, the forest holds great significance for women too. Women are the caretakers of members of the household on a day-to-day basis. The woman in the home builds her own house and looks after the children and the welfare of her family unit, including her husband. She is responsible for her portion of livestock from which she gets milk for the family. She is also responsible for gathering firewood which in Loita may be obtained from as far away as seven kilometers and loads of up to 60 kilograms are gathered up to four times a

week. The whole process of fetching, gathering and bringing firewood home may take up to two-thirds of the daylight time.

### **Warriors and the forest**

For varying periods, sometimes lasting up to seven years, the boys go into the forest to train and become educated in a variety of skills and knowledge, ranging from fighting techniques to the knowledge of medicinal plants and their uses. A selection of respected elders from the villages acts as tutors. A large initiation ceremony held in a specially constructed village of up to a hundred traditional huts in an isolated area (constructed by the mothers of trainees) marks the end of the warrior and training life. After this rite of passage, the young men are now allowed to marry.

The forest provides nutrients for children. It provides the best learning opportunities for children on matters related to nature, environment and general community livelihood through childhood activities such as looking after animals and the years spent as warriors. The forest provides a link between and among the generations. The fact that, the forest is named after a lost child – Naimina Enkiyo – it embodies a nostalgia for youth and childhood.

### ***Forests Benefits to Other Communities***

During the extreme drought of 2005-2006, almost all Loita animals were grazed in the forest. The Loita community has an indigenous tenure system that grants use rights of natural resources to various groups in and outside the community. The land, both the rangeland and the Loita Forest, has been shared by multiple users for grazing, traditional and cultural ceremonies, harvesting of medicinal plants, and construction materials and as a source of water. There are certain resource types and uses that are strictly controlled, while other resources are more freely accessible.

Since the Loita community does not live in isolation, there is a mixed pattern of grazing between them, the adjacent Purko community and the Loita Maasai of Tanzania. The Loita Maasai,

especially the ones bordering Tanzania, drive their cows to Tanzania during the dry season for pastures and salt licks because the rains start earlier there. The Tanzanian Loita, in turn, bring their cattle to the glades during prolonged dry seasons. The Purko Maasai drive their cattle to the southern glades of the forest during extreme droughts. As long as the boundaries of the territories are undisputed, the sharing of seasonal pastures by different Maasai sections poses no threat. It is a reciprocal right used during emergencies and regulated by customary laws. In this case and depending on the season, the Laibon and the herders have overlapping rights to use the forest for cultural ceremonies and grazing, respectively (Ole Siloma and Zaal 2005).

## FOREST THREATS & PROTECTION MEASURES

Land, like the forest, has always been regarded as a communal resource to be used by everyone. The local indigenous community has to a greater degree of success protected and managed the forest for years under their customary tenure system. This endeavour has not always been an easy one would have been imagined. Threats, both to the indigenous customary system and to the forest itself have mounted over time. While most of the serious threats are exogenous in nature, there is no lack of threats which are of an endogenous origin. These threats range from an ever-increasing frequency and intensity of drought; a rapidly growing population; a widening gap between the rich and poor Loitans; transformation of indigenous peoples worldview through notions of individual property rights and individual profit market-oriented transactions; encroachment by crop-farming and disputes of ownership and control between the locals and bureaucratic institutions of the state and International conservation NGOs.

### *Internal threats*

In recent years, more and more families have moved and settled at the edge of and even sometimes inside the forest in

order to be closer to the resources they need for their subsistence. This pressure on forest land is a result of diminishing resources, mainly firewood and construction material in the grassland areas and due to increasing competition for good grazing land. Besides a general movement of human settlement towards the forest, there is also a noted change in the style of construction of homesteads and houses which have evolved from simple structures requiring little wood to relatively elaborate and larger structures demanding more construction materials often derived from the forest. Instead of flat-roofed houses for example, houses are now built with slanting roofs thatched with grass, often with a square base reminiscent of Bantu styles of construction. According to Maund et al. (2001) these types of houses use split wood with specific characteristics for the roofs. For example, there is increased demand for wood from trees which grow straight, thus narrowing the range of choice of construction material to only a few species such as *oltarakwia* (*Juniperus procera*) and *olpiripiri* (*Podocarpus falcatus*).

The use of plants as a source of timber is fairly recent. Hand saws for carving logs into timber are also more available and have been reported to have been used in certain sections of the forest. The introduction of hand-saws has been linked to influence from non-Maasai timber poachers working in cohort with a few locals. Poles from plants which are strong and resistant to termite attack and decay are used to support the main structure of the house. Examples of these tree species include *Juniperus procera* (*oltarakwai*), *Olea europaea* ssp. *africana* (*oloirien*), *Acacia nilotica* (*olkiloriti*) and *Olea capensis* (*ololiondoi*). These modern homes and houses have emerged hand-in-hand with a new form of fencing wherein traditionally-used thorny bushes and branches are increasingly being replaced with more solid and high poles. It is evident therefore that modern construction puts a lot of strain on certain tree species in the forest and as more families opt for this type, the species are likely to diminish in the near future (Maund et al. 2001).

The human and livestock population is equally increasing, thus putting pressure on both the rangelands available for grazing and other forest resources necessary for both human and livestock survival. The region now has more livestock than ever

before. Grass and browse are become increasingly diminished earlier in the year, extending activity to forest grazing areas which are usually reserved for extreme drought conditions. In addition, bush encroachment has been responsible for diminishing grass resource. Large areas of what used to be grassland just a few years ago have now turned to bushland and woodland.

Related to these new forms of ideologies and notions of modernity associated with the demands of development as informed by western ideologies and value systems as well as influence from neighboring communities and population pressure, is the emergence of more and families practicing subsistence agriculture. Until a few years ago, the members of this local community hardly engaged in farming activities. A few people, mainly under the influence of the neighboring agricultural Sonjo living across the border southern in Tanzania, started irrigated farming at *Olmesutie* region in Loita division. They grew vegetables and maize. Maundu et al. (2001) observed that due to the abundant supply of water and fertile soils enriched by animal manure, harvests from the often 0.25 to two ha plots, turned out to be good despite the high labor input for fencing (protection from livestock and wild animals). This positive result in crop farming is attributed to the ever-growing interests in participation of community members especially in the cultivation of maize and beans. As more and more grazing land is planted to crops, pressure is exerted on the forest which livestock depend more on for grazing.

### **Forest fires**

Fires set intentionally by humans are a threat to many ecosystems, especially in the tropics. Our earlier research on National Policy and program analysis in Kenya indicated that fire outbreaks in forested areas of the country have become more frequent, leading to annual losses of more 5,700 ha per year (KFS). Pastoral communities including the Loita Maasai have often used fire as a pasture management strategy and also to control tick-bone diseases. Due to disruption of grazing patterns as a result of changing weather patterns and population

pressure, this practice is no longer effective.

Repeated burning over time has resulted in open glades with excellent pasture, which are often maintained by the use of fire. According to the local community, the glades still constitute part of the forest. Fire is also used by *Ilitorobo* and to a lesser extent by the other Loita Maasai during wild honey harvesting. *Oltarakwa* (*Juniperus procera*) is particularly susceptible to decimation by fire owing to the fact that it is the species most habituated by honey bees. Overall, the impact of fire on the forest is still minimal due to regulation by various customary institutions and belief system and the small number of *Ilitorobo*, who have since diversified their livelihoods from solely depending on hunting and gathering (Maundo et al. 2001).

Despite the existence of internal threats to the forests which should raise commensurate concern, the area has, to a large extent, remained one of the few well-conserved indigenous forests in the country. The internal threats appear at the household level targeted at satisfying local needs as opposed to large-scale market driven interests. The small sizes (2 acres) of agricultural plots, for example, are sustainable and compatible with forest and community interests if well coordinated and regulated. The greatest threats to the forest therefore is that from outside the community often driven with raw interest for profits and investment and lacking in the shared value system and worldview common among the local indigenous community members.

### *External Threats*

#### **Land ownership and Forest tenure threats**

Prior to the colonial encounter and the subsequent introduction of the state in Kenya, all land was managed by the different ethnic groups in the country under traditional customary tenure systems. The use of pastoral resources is based on a complex set of temporary or more permanent claims on pastures and on underlying principles of flexibility and reciprocity (Mwangi 2008). The contemporary relationship between the state and pastoral groups is a multifaceted and complex one, reflect-

ing conflicting tendencies of both parties. Whereas in the first half of the twenty-first century pastoralists occupied peripheral spatial position in marginal areas and witnessed minimal interference or control by the nation-states, this has since changed. The states' control was enhanced through improved modern means of transportation and military technologies relegating the to reduce nomads to a subservient position, and to gradually driving pastoralists into a socio-economic marginal position (Meir 1997).

Pastoral areas historically, have therefore formed the borderlands of their respective nation states and due to their seasonal migrations, pastoralists rarely recognize state borders. Pastoralists tend to view government as alien and unrepresentative of their interests and concerns. Furthermore, pastoral groups often form the minority of any country they occupy, and as minorities on the fringes of national economic life, pastoralists become disempowered and neglected by governments (Blench 2004; Galaty 1981; Fratkin 1998; Meir 1997).

In order, therefore, to contain pastoralists within restricted regional and State boundaries, policies on land tenure geared towards extinguishing of customary rights to land and replace these with individual and private property rights to land were established. To achieve this, the colonial administration introduced three broad categories of land tenure systems in the country which were later perpetuated by the postcolonial state, namely Public, Private and Communal and holdings. Communal tenureship was further divided into Group ranches and Trust lands.

Like the Loita forest—the main resource of the Loita Maasai—all land in Loita is held in trust by the Narok County Council on behalf of the government. Although the present-day Loita division where the forest is located became an adjudication section under the wider Cismara<sup>3</sup> in the early 1970s with the intention of progression into a group ranch and finally to individual ownership through land subdivision; to date, the community has resisted adjudicating their land into group ranches. This, they say will jeopardize their very survival strategy since the forest and the open rangelands are complimentary and hence could only be more beneficial when utilized as one

ecosystem. This transformation of customary rights to land into trusteeship under the control of local authorities (Narok county council in this case) set the stage for future/subsequent struggles over ownership of the forest and its resources. The trusteeship only applies to the areas covered by the forest leaving the plains to the south and west of the Loita forest under communal ownership ((Kantai 2000; Zaal and Siloma 2006).

Maundu et al. (2001) and M. Zaal and M. Siloma (2006) point out that the high potential of the forest as a tourist site and a conservation area, as well as its natural resources and its potential for farming have been the source of conflict which pitted different groups within the Loita Maasai, between the Loitans and the Purko; and between Loita/Purko Maasai and the Narok County Council.

### *The Case of Narok County Council vs the Local Community*

This case perhaps remains one with far reaching ramifications, because it threatened not just resources within the forest but it was an onslaught to the very legitimacy of ownership of the forest by the Loita Maasai community. By mid-1993 Narok County Council (NCC) announced its intentions to gazette the forest as a Reserve. The reasons advanced by the Council included the need to ease the tourism pressures on the neighboring Maasai Mara Game Reserve and subsequently generate revenue for the benefit of the entire Kenyan citizenry. The emphasis here was on the economic value of the forest resources with total disregard of what Zaal and Siloma (2002) refer to as “the non-monetary use value of the forest in the livelihood of the original users.” This, they say should be compensated for, not only through provision of adequate alternative sources of livelihood, but more importantly through effective participation; and I would add, including free, prior and informed consent.

This move was vehemently resisted by local residents who were concerned that this would lead to alienation of their rights over the forest and its resources. Likewise, it did not help matters that previous experience with the NCC as a custodian or trustee of communal resources was not perceived to be particu-

larly positive or beneficial to local communities. Closer to home for the Loitans, was the case of Kamorora<sup>4</sup> where the community lost hundreds of acres of land due to unsatisfactory stewardship of the NCC. There was also very little to show in terms of direct benefits to the community for the handsome sums of money generated from the Maasai Mara game Reserve other than the restriction of access to the park for grazing of livestock of pastoral communities, even under extreme drought situations. The level of deforestation and degradation witnessed at the Maasai Mau forest under the watch of NCC presented yet another direct and clear premonition of the fate of the Loita forest if disconnected from the indigenous community's values system that have contributed to its conservation for years (IUCN 2002; Zaal and Siloma 2006). The community had apprehensions that the forest might be invaded by loggers but more importantly, the community saw the move as an assault on their very existence over and above any economic losses.

In the struggle that ensued between NCC and the local community that lasted for a decade (Annex B), the community employed a diverse array of strategies to fend off the demands of the Council. The members of the community evoked their diverse identities to assert their rights and claims to/over the ownership and control of the forest. As citizens of the country, they instituted public litigation (court case), organized petitions and protests. As indigenous people, they utilized traditional institutions such as that of *Oloboini* (spiritual leader) and tapped into the international movement of indigenous peoples' rights. Community representatives, for example, had an opportunity to present their case during the second session of Intergovernmental Meeting on the Convention on Biological Diversity (CBD) in June 1992 and during the CBD meeting held in Nairobi in 1994. Intensive lobbying was also done in 1993—the UN Year of Indigenous Peoples (IUCN 2002).

The struggles also brought to the fore underlying differences and interests between the Purko and Loita Maasai section on the one hand, and between various interest groups within the Loita community itself and other non-governmental organizations interested in conservation such as International Union for the Conservation of Nature (IUCN) among others (Annex A

and B). As a result many other institutions emerged to either compliment the role of already existing traditional customary institutions or run parallel to these. According to IUCN (2002) and evidence adduced from interviews on the ground, the Purko-Loita differences stemmed from shared territorial ownership of different parts of the forest, and the sharing of benefits accruing from the existing limited tourism activities associated to the forest. This is due to the inappropriate allocation of parts of the forest by the Narok County Council for campsites, and ignoring the procedures that had been laid down. Despite the divergent opinions and other narrow interests of some local community groups, they were all in agreement that the Maasai communities living adjacent to the forest should own and manage the forest. International conservation NGOs cite what they term as ecological significance of the forest and threats to it, post by increased interest in development projects as the justification for external intervention to establish management systems that would integrate traditional knowledge and customary institutions with modern conservation and management techniques (IUCN 2002).

One of the Key institutions that emerged during the legal tussle over forest ownership is the Loita Naimina Enkiyio Conservation Trust (LNECT). Since the fight pitted the “legal” institutions of the state against the traditional customary institution, the community had to seek for a “legal” entity under which they could channel their claims in a court of law. It is under this hybrid institution which had brought together the traditional spiritual leader (*Oloiboni*), community elders, and NGO workers within the region, government representatives and politicians that the community took the Council to court in May 1994. In this case, the Loita Maasai held that it is they, not a government agency, who were— are—the real custodians of the forest. Therefore, they asserted, any decisions about the future of the forest should be made by them; after all the forest has been preserved all these years courtesy of their traditions (IUCN 2002, Kantai 2000; Zaal and Siloma 2006). While the council held that trust could only be vested on one body (read: the Council), the community argued that the trust previously bestowed on the Council has been abused/breached and consequently lost at the

moment that the Council made a unilateral decision to alienate the forest from the local indigenous community without seeking their full and effective participation in the decision making processes.

In a landmark ruling, the court overturned the Narok County Council's Minutes 69/93. The LNECT also obtained an injunction against any Council decisions over the Loita forest, thus barring the Council from turning the forest into a nature Reserve. A ruling on whether the County Council has the right to alienate the forest has, however, not been made. It appeared that the community has only won the battle but not the war. The case, nevertheless, set a legal precedent: for the first time customary law was pitted against statutory law and prevailed.

It remains to be seen whether the out-of-court settlement recently entered between the LNCET and NCC over the management and conservation of the Naimina Enkiyio forest will withstand the test of time. At a full Narok County Council meeting held on 6 August 2002, the Narok County Council rescinded its earlier decision to alienate the forest. It also decided to opt for an out-of-court settlement for the court case and to support a community based conservation of the same by the Loita and Purko Maasai communities living adjacent to the forest (Kantai 2000; IUCN 2002)

By the time the Loita forest ownership contest between the Local Maasai community and Narok County Council was gathering momentum, the indigenous peoples' discourse and movement, globally and nationally was also at its formative stages. The United Nations, through its resolution 48/163 of 21 December 1993 (UN.org 1995), had just proclaimed the International Decade of the World's Indigenous People, which was to commence on 10 December 1994. Around the same time, after the Rio Conference of 1992, the UN Convention on Biological Diversity (CBD) had recognized the close and traditional dependence many indigenous and local communities have on biological resources. Article 8 of the CBD not only recognizes the interrelationship between the natural environment, sustainable development, and the well-being of indigenous peoples but under Article 8 (j), Contracting Parties also specifically commit them-

selves to respect, preserve and maintain the knowledge, innovations and practices of indigenous peoples and local communities (Campese et al. 2009, 49).

The LNECT, and indeed the local community elites, saw this as another window of opportunity to lobby for international support under the indigenous peoples discourse to put pressure not only on the Local authority but also on the state, to recognize their inalienable rights of ownership and control over the forest. The principles of indigeneity – distinct cultural identity, original/first territorial occupation, socio-economic and political marginalization and self-determination – gave indigenous peoples the grounds to defend their case against a government that systematically neglected their right of access to traditional resources and threatened their indigenous cultural heritage. This indigenous peoples' perspective was received more positively in the global arena than in the state/Council's perspective that hinged on development discourse. Perhaps, the UNESCO-funded Loita Ethnobotany Project initiated in 1995 with the aim of enabling the Loita community to develop a locally directed management plan for Loita Forest, was one positive outcome of this international lobbying. This Project from which this research draws considerable insights was coordinated by the Loita Naimina Enkiyio Conservation Trust.

## FOREST GOVERNANCE: INSTITUTIONS AND REGULATIONS

### *Indigenous Institutions*

Four broad institutions of governance are central in the socio-political and cultural organization of the Maasai society, namely: *Olosho* (12 territorial section); *olgilata* (clan), *Olporr* (the age-set system) and *enkidong* (the guard, office of the prophet). Although each of these institutions has a clear jurisdiction, be it territorial, thematic, or lineage related, they also serve to reinforce each other while at the same providing checks and balances.

The institution of *olosho*, essentially encompasses a geographi-

cal region owned and controlled by one of the 12 sections of the Maasai ethnic society (described earlier in this paper). Four of the 12 sections are represented in the larger Narok district namely: *Ildamat*, *Keek-onyokie*, *Purko* and *Iloitai*. The governing organ of Olosho is the council of elders. All elders within the community are natural/default candidates for this office but often individual agency – wisdom, charisma, courage, integrity wealth, and other leadership attributes sets certain individuals above others.

The decisions made at these levels concerns interaction between one section and another, generally the section's relations with the external environment. Regulation of grazing patterns and management of other natural resources such as forests and water points falls within their jurisdiction. The Council of Elders is therefore akin to a community's judiciary, settling disputes and meting out punishment, usually in the form of fines (Galaty 1981; ole Siloma and Zaal 2005; Maundu et. al. 2001; Kantai 2000). The Loita Council of Elders (LCE) is thus a very critical indigenous institution in the management of the forest.

The Clan is an equally important customary institution. This social organization structure constitutes all individuals descending from the common, often male, ancestors. The social structure is diffused in nature, transcending territorial boundaries and age-set system limits. In general, there are nine such clans spread all across Maasailand. Unique to the Loita Maasai is the fact that, over and above the leadership based on the age-set system, similar to the rest of the Maasai sections; each clan has its recognized spokesman (*Olaiguanani*). The leadership decisions associated with the clan center around distribution of resources, inheritance and settling of disputes/conflicts within the clan. One classical example is the payment of *inkirro/iloikop* (blood-wealth). Once a kinsman murders another Maasai from a different clan than his own, it is the responsibility of the clan to settle the often very inhibitive penalty which meted out for the act. While the clan structure determines who and what may be inherited by age-set members; the ages-set system determines when they would inherit for sons become eligible heirs only after circumcision and affiliation with a specific age-set (Galaty 1981).

The age-set system is one of the most central structures of social and political organization among the Maasai. In short, age-sets organize men into groups of age-mates who pass through various stages of their lives together through ritual promotion. A new age group is opened approximately every seven years with the circumcision of young boys, ritually transforming them into *ilmurran* (loosely translated as warriors). Over a 14-year cycle, these successive pairs of age groups (identified as the left and right hand) merge through a ceremony (*enkang ooloriakan*) to form a single age-set and graduate together to become junior elders. From junior elders they graduate to senior elders and eventually to wise retired elders (Zaal and Siloma 2002). The three institutions listed above are also mediated at different moments in the society's social and political organization by the office of *oloiboni*.

Each age-set system has a set of leaders nominated by elders in consultation with *Oloiboni* during boyhood. "They are lifelong officials whose power stays throughout their lives," offered one respondent. As warriors, the age-group is in charge of ensuring the security of the community. They also serve as scouts who search for better grazing/pastureland, watering points and salt licks for livestock. The age-set provides an excellent social structure for learning the ways, cultures, indigenous knowledge and systems of the community. Decisions made within this institution center around distribution of resources within the age set ensuring the spirit of sharing and reciprocity—including reciprocity with nature. Decisions related to cultural practices, rituals and ceremonies are also made in consultation with the elders and *oloboini*. Each age-set is nurtured and mentored by an older age group one age grouping ahead referred to as *Olpiron* (fire-stick elders)

## **Iloibonok**

*Nkidongi* is the name given to members of a sub-clan that descended from Kidongoe.<sup>5</sup> From his stock, the Maasai believe that individuals from this family are endowed with divine power to foretell things, mediate between God and man; and prescribe remedies for impending calamities. This then gave rise to the

institution of *enkidong* or *enaibon*. The holder of such an office is called *oloiboni* (plural, *iloibonok*) and his powers are hereditary (passed on to male sons), though regulated through conferment by the incumbent. The *Nkidongi* clan is predominantly settled among the Loita Maasai. In fact, oftentimes the two names are used interchangeably to refer to the same Maasai section. Although there are several *Iloibonok* at any given time in Maasai land, often, only one of them is recognized as the great or Chief *Oloiboni*. They are consulted for advice during major events, and may prepare medicine for the treatment of ailments. They thus have social as well as spiritual control and command great respect in the community.

It is difficult to dissociate the of *Oloboini* from the forest. To begin with, *Oloboini* uses a gourd (*Lagenaria siceraria*), herbs and a collection of other paraphernalia both for healing, and for prediction of future events, all of which are found in the forest. Additionally, *Oloboini* performs his ritual duties in specific sacred sites in the forest. The forest is therefore not just an economic resource but also a spiritual cathedral of the community. The current and most respected spiritual leader Mokompo ole Simel, an Iloitai, lives at the edge of the Loita Forest and serves as the spiritual leader of the entire Maasai community. His duties range from those of presiding over rituals and ceremonies such as the age set initiation and cleansing rituals to those of generally overseeing all major traditional events including blessing the paraphernalia required for rituals. By virtue of his position, he is the overall caretaker of the Loita Forest. He is believed to possess the power to stop malpractices in the forest, such as over-exploitation of a specific species. The institution of the *Oloboini* is, therefore, central to the conservation of Loita Forest. This is also evidenced by the fact that Mokompo ole Simel the chief *Oloiboni*, presently heads the Loita Naimina Enkiyio Conservation Trust (Maundu et al 2001; Kantai 2000; Zaal M.) and sits in the Loita Council of Elders.

When the research team visited him at his home at *Olngarua*, the now elderly man became lyrical and poetic and eloquently described what he perceives to be the precious jewel that is the Loita forest which is given protection by the powers that he wields. courtesy. He asked, "Koree apa ilkulikae supuki, koree

apa Osupuko le mao?" ("What became of other highlands forests, such as Mao?"). He added: "osupuko le Mokompo ake oitashé; enchilishil nimidol" ("Its only the highland forests of Mokompo that remains standing; you may desire it but you'll never get it!"). He takes pride in being able to forestall the moves of the council to take over the forest and he is not alone in this endeavor. Community members who were interviewed believe that his supernatural powers influenced the initial positive high court ruling in favor of the forest and the community.

### *State Institutions and Agencies*

Kenya has two levels of political representation; parliamentary at the national assembly level, and civic at local authority or county council level. Loita division (where the forest is found) forms part of the greater Narok south constituency and district, represented by one Member of Parliament. At the local authority level, the division has two wards and hence two councillors from the region representing the community in NCC with a total of 46 councillors.<sup>6</sup> Running parallel to this system of political representation is the so-called provincial system of administration under the office of the President. Established by the colonial regime and perpetuated by the successive independent governments, the system divided the country into provinces, districts, divisions, locations and sub-locations with respective administrative offices/officers to go with it; i.e., provincial commissioner, district commissioner, district officer, chief and sub-chief respectively.

Under this system of provincial administration, Loita division is divided into five locations and eight sub-locations with a corresponding number of chiefs and sub-chiefs. Overall, the system of provincial administration promotes implementation of all government policies, and the establishment of law and order within the locality. The officers act as ex-officio members in most development institutions in Loita.

The officers derive their mandate not from the local people but from the appointing authority – the Office of the President. It follows then, that they are also accountable to the central gov-

ernment. Because of these, the system has often been criticized as being more pro-establishment than pro-people—a legacy that has its roots in the British colonial philosophy of divide and rule. Nonetheless, the system remains a critical institution in the management and distribution of rights and privileges to resources, including forest resources at the local level.

Evidently, these structures of governance related to the emergence and establishment of state in Kenya were superimposed on existing indigenous customary institutions of the local communities. Oftentimes they complement each other; other times however, they are antagonistic in nature. Arising from the power inherent in the concept and structure of the state, modern bureaucratic institutions often undermine the traditional institutions of local communities. According to Zaal M. and Siloma M. (2006) government officers often assume responsibility over resource management at the local level. With the legal and resource backing of the state, these institutions have an upper hand in influencing decision making at the community level. Balancing national interests of revenue generation and distribution at the macro-level; and local community interest at the micro-level, remains the major challenge of such a multi-layering of institutions. The provincial system of administration runs parallel with that of local authorities.

The local authority at the district level represents a devolved form of political representation and governance structure. Being in Narok district, the two Loita wards have two democratically elected councilors to the Narok County Council. Presently, the Council has a total of about 50 councilors (elected and nominated), most of whom come from the more populous Purko Maasai section and a few others from the neighboring Kalenjin community. The top decision-making organ of the Council for local resource distribution is the full Councillors' assembly. The administrative issues are handled by the council clerk, who is appointed by the Minister for Local authorities. Decisions are therefore in the form of Council resolutions, and numerical strength becomes critical in lobbying and advocating for specific interests—a strength the Loitans do not have.

The local authority, acts as custodian and or trustee of all

land under customary tenure, administered under the Trust Land Act. The Loita Forest is legally “protected” as Trust land forest held by the council in trust of the local indigenous community recognized as original owners. Thus, the council’s role in the management of the forest and associated resources is very crucial. It is these powers of trusteeship that the council evoked through a council resolution of minutes 69/1993 to advance her intentions of gazetting the forest and by extension alienating it completely from the local communities and subsequently opening it up for commercial mass tourism activities.

Under the present circumstances nothing within the law can deter the Council from negotiating and entering into agreement with any private developer interested in Carbon trading or emission offsets or REDD+ for that matter, with regards to Loita forest. In fact, the Trust Lands Act empowers the council to alienate land under certain conditions. The Act stipulates under articles 13.(1): “In pursuance of section 117 (I) of the Constitution, a council may set apart an area of Trust land vested in it for use and occupation...for public purposes, extraction of minerals or mineral oils, and to benefit the persons ordinarily resident in that area” (Kenyalaw.org). Although the Trust Lands Act clearly stipulates procedures to be followed during this delineation process, in reality this is hardly the case.

### *Other Emerging Institutions*

Other key players with enormous influence in the management and conservation of the Loita forest include the Ilkerin Loita Integral Development Project (ILIDP),<sup>8</sup> Loita Development Foundation (LDF) and the Loita Council of Elders. ILIDP as a local development NGO is managed by a Board of directors composed of traditional indigenous leaders’ representatives and local regional (PCDAs) representatives among others. It thus taps into all types of the established institutions in the division. ILIDP is the longest serving and most influential NGO in the region. It has played a critical role especially in external lobbying and advocacy, the establishment of the “new” version of the Loita Council of Elders and documentation during the struggle over ownership and control of the Loita Forest be-

tween the community and NCC (ole Siloma and Zaal 2005; Maundu et. al. 2001).

The most powerful institution in Loita is the Loita Council of Elders (LCE), which has come to play a key role in development activities and the management of natural resources, including the Loita Forest. The council has evolved from the traditional fluid Elders' council without a clearly defined membership, to one that has a recognized membership drawn from all relevant customary, government and elected leaders in Loita, though still retaining its informal nature.

The new broadened and enriched council, makes the major decisions in Loita, including land and natural resources issues. The ability to bring together the traditional knowledge, systems and practices as experienced by the clan, age set leaders and the *Oloboini*, with that of modern and scientific knowledge from NGOs, the elected local politicians and government officers, makes this institution most encompassing and influential. It is this institution that was later transformed into the Loita Naimina Enkiyio Conservation Trust Co., registered as a local trustee in charge of forest management.

This hybrid institution is a result of strategic engagement by local indigenous customary institutions with the contemporary and more powerful institutions (in the context of the state) to access broader social and political networks so as to attain control over their threatened resources. This process is anticipated to keep evolving with the subsequent changes in social, economic, political and environmental dynamics. The challenge with these institutions often remains the source and guarantee of its legitimacy within the law; especially when its goals are deemed to be in opposition with state interests, and with the state retaining the power to (de)register them (Siloma and Zaal 2006). This case demonstrates how traditional institutions governing access and use of resources, may be mobilized and linked to higher-level institutions with the goal of securing local interests in the context of emerging contestation and competition over scarce, threatened and diminishing environmental resources.

LDF<sup>9</sup> is an NGO currently undertaking livestock and conservation/tourism development related activities in Loita division. Some of its board members still sit in the LCE and ILIDP. Through its extensive network of management of veterinary shops in the division the organization has established a strong reputation and presence in the community. Its attempt to establish an eco-lodge at the periphery of the Loita forest was initially objected to, on account of what some community members interpreted to be less participatory and consultative process leading towards the establishment of the project. Some of the locals interviewed who seem to support the eco-lodge idea expressed the desire to enhance current tourist-related activities such as walking safaris, hill climbing and hiking in the forest, outdoor survival, map reading and navigation, horse riding, donkey trails, and cultural exchanges, and small tented camps. This they say, if well designed and implemented to guard against the temptation of mass tourism and targeted at exclusive environmentally friendly activities instead, would serve to supplement their livelihoods options and contribute to sustainable management and utilization of the forest ecosystem.

In line with the struggle over forest ownership, NCC commissioned IUCN, to undertake a study on the quality of the Loita forest resources with the ultimate goal of establishing a management plan that would cater to all the competing interests of recognized stakeholders in the perspective of the council. At some point the LCE supported this idea and IUCN was invited to undertake the project between 1998-1999 (Siloma and Zaal 2006). However, the proposed plan did not go well, especially with a group calling itself the "Concerned Loita Citizens" (CLC) who opposed this process. An unfortunate result of protest actions initiated by the group was the death of one individual who was shot and several others wounded when the police tried to hold off a skirmish (Siloma and Zaal 2006). Other NGOs such as KENGO and EAWLS also joined the fray demonstrating their unequivocal support for the local communities to be allowed to manage their sacred forest and strongly opposed the gazettement proposal by the Narok County Council (Annex A IUCN 2002).

The biggest threat to the council of elder's power had been lurking within the country's statutes for decades. It only came to the fore during the dispute between the Loita and the County Council. While written Kenyan law recognizes the authority of customary law, it only does so as long as there is no conflict between the latter and the former. Considering that formal Kenyan law has its origins in colonial law, whose objective as far as environmental and land tenure issues were concerned, was to exploit resources rather than to manage them, it becomes clear that conflict is inevitable.

### *The Place of Women in Forest Management*

As demonstrated elsewhere in this paper women are not passive players in this whole enterprise of environmental and natural resource management and utilization. As resource users, healthcare providers of the sick members of the households, traditional birth attendants (TBAs) and participants (directly or indirectly) in all indigenous cultural and ceremonial practices within the community; women remain right at the centre of this discourse both as indigenous knowledge generators and holders and as immediate victims of negative impacts of environmental changes, including climate change.

#### **Box 3:** A song by the Loita women in fight for their forest

We belong to the illuminated highlands, Our highlands of Karsayia which Our culture and education shall defend, Or together we perish We belong to the illuminated highlands, Where Mokompo\* resides We shall never cede you to outsiders

Regions and regions have disappeared, The hot plains of the Mara The cool highlands of Mau, Let us hold onto that of Loita Regions and regions have disappeared, I hear of unpleasantly, The well-lit Loita highlands, You only equal my eyes

We the Loita Community have counselled our messenger ole Sonkoi,\*\* To communicate with those of ill hopes and motives, And tell them to swallow their pride and Desire to conquer the Loita highlands

**Source:** Forest of the Lost Child, LNECTC (1994).

In the context of the Maasai, women are known to be involved in harvesting traditional herbal medicines, especially as TBAs, mothers taking care of their young ones and as traditional medicine healers (*Enkaiyukoni*) – treating several ailments using herbs from the forest. Furthermore, during certain rites of passage such as naming ceremonies, women are assigned specific roles of gathering branches of the particular tree species to be used in this ceremony (*Ilatimi*). Through the women fertility ceremonies (*Emayian oo nkituaak*) which are conducted in sacred sites in the forest and which also make use of several tree species (as indicated elsewhere in this paper), provide an essential connection between women and the forest. During this ceremony, women perceived to be barren receive prayers and blessings from the elders for fertility.

Women's role as day-to-day caretakers of households, e.g., food preparation and general hygiene provision, brings them to closer interaction with the forests more than their male counterparts. As they fetch water, gather firewood and medicinal and plants for ceremonial uses, women come to develop and appreciate the critical value of forests in the local community's indigenous livelihoods. As these services become increasingly scarce and further away from the original human settlements, women are not only the first to notice; they are also the ones who pay the highest price. These special roles played by women – indigenous knowledge holders and immediate victims of negative environmental changes – are rarely recognized and least of all addressed.

Although, it may seem that women to have very little role to play in the public arena, especially with regards to decision-making over use and access of natural resources, this is not to say they are entirely locked-out. During one of our meetings with the Local Council of Elders, one of us inquired why there were no women representatives in the meetings. In response, an elder said, "Olmurani lai, keetai apake enkiguana naji enolchoni" ("My son/warrior, for ages we've always made reference to a debate with the 'hide/bed.>"). It turned out women often contributed to decision-making processes indirectly through their husbands and or sons. Beyond this, the women in Loita division have also been organized into a Local Women's

Council in the fashion of the Council elders. While much ground remains to be gained in entrenching full women's participation, this is a bold step in the right direction.

If there is anything that the struggles over ownership of Naimina Enkiyio forest have demonstrated, it is that women are not just passive observers but are, in fact, active players. Women have played a major role in crucial decision-making in the past, including decisions on whether or not to engage in warfare. An important mechanism through which women can influence decisions is through the composition and singing of provocative songs (See Box 3 for an example of a song that was very popular among the Loita community, which used to be sung by women when the court case began, as well as influence opinion at the level of the household.).

### *Customary law and Regulations on Forest Management*

In the course of this upsurge of different players claiming a stake in the ownership and control of the forest, the local Loita Maasai community who consider themselves original stakeholders and the present users of the forest have organized and strengthened regulations and access rules, thereby enhancing forest management and conservation. The regulations at the Loita Community level are based on customary law. It is an all-encompassing law as long as people continue to live within the strictures of Maasai life and law and as long as the outside world does not encroach on the inner, traditional one (Kanati 2000). The institutions discussed earlier in this paper—the clan, age-set system, Council of Elders, LCNET, local NGOs, *Oloboini* and the community at large—all participate to contribute to the adherence to these regulations which are often unwritten.

Of all the identified institutions *Oloiboni* stands out as the chief conservator/guardian of the forest. *Oloboini* is believed to possess powers, not only to impose curses and, in the severest cases, ostracize an individual from the community for abuse of the forest and its resources. Further and more importantly, they have the ability to “see” (in the metaphysical, psychic sense)

those who contravene the laid down regulations. The fact that the Oloiboni can “see” without being physically present at the scene of a given outlawed activity makes him a key figure in the forest conservation endeavour. His role as guardian of the forest is enhanced through social norms and taboos relating human relations with nature. Whoever hunted wildlife for food, for example, was equated to an *Oltoroboni* (plural—*Iltorobo*), hunter-gatherers who were looked down upon by the Maasai, and were permitted to hunt wildlife because they held no cattle like the Maasai. To reinforce this, the community believed that if any Maasai who owns livestock still chooses to engage in hunting, his lactating cows will cease to give milk. The rules and regulations depended on the resources in question.

Herbal medicines are collected by specialists who possess knowledge of the relevant species and the specific ailments they cure. The skill is transmitted across generations through apprenticeship, oftentimes within particular families. Both men and women practise it. Majority of the women who practise this are the traditional birth attendants. In the practice of traditional medicine, uprooting entire plants is strictly forbidden. Only the lateral roots are harvested and the taproot is never uprooted. After harvesting the roots the soil is returned so that the plant can continue growing. In cases where the bark of a tree is the part with the medicinal value, only a vertical strip is removed and debarking the entire bole is prohibited. After debarking the exposed part is smeared with wet soil to allow for a quick healing process. This regulation also applies to *Illoibonok's* herbs (*Intasimi*). These medicine men, who hold as a tight secret the nature of plants they use for the treatment of illness and other social maladies; e.g., as antidotes to or ingredients for curses; are not allowed to uproot, remove all leaves, or completely debark trees. Also, although harvesting of honey from the forest is permitted, the culling of trees or use of fire in to harvest honey is prohibited.

Plants and trees used during traditional rituals and ceremonies including *Olkiteng Loolbaa*, *Emowuo olkiteng*, and *Olamal loo nkituak* are highly respected and their harvest, regulated on account of their roles in the social and cultural reproduction of the Maasai society. Such tree species include Podo, Ficus, Olive, and

*Phoenix reclinata*. These tree species are hardly ever cut, and their usage is mainly for these rituals.

The regulations around the use of forest products as firewood and fencing materials are also spelled out. All the firewood used is from fallen deadwood and therefore nobody is allowed to cut standing trees for firewood. The same principles apply for fencing poles. Besides forbidding the felling of standing trees, sourcing of poles is also limited to particular species, in this case mostly cedar posts, which are durable and termite-resistant. For fencing of traditional homesteads, use of acacia branches (a tree found outside the forests on rangelands) is encouraged.

Water points are one other most regulated and protected forest sites. Water points are equated with human reproductive organs. They are sacred because they are means through which life is perpetuated through time and generations. Their value for livelihood in the downstream areas and as reserves for dry-season grazing and watering is recognized and as such, these areas are protected as well. Cultivation and grazing around the water points is prohibited. There are special points which the livestock can go for water.

Like all other forest's products harvesting of logs and timber-sawing for whatever purposes are strictly monitored and controlled by the village elders or the village forest committee. Although individuals are presently using timber for personal/family construction needs, constructions for community-related projects such as classrooms and administration offices takes the larger chunk of timber-harvesting from the Loita forest. Outsiders are prohibited from harvesting timber.

*Grazing and cultivation* are also highly regulated livelihoods activities. In the case of cultivation it is only practised close to the homesteads and prohibited in the forested areas. Forest grazing is open to all the local community members especially as dry-season grazing reserves.

The forest is generally central to all cultural and ceremonial practices within the community. The forest and its resources are necessary for the performance of the main rites of passage for community members. Some of these ceremonies are held in cer-

tain parts of the forest. For instance the meat-eating festivals of certain age groups are held in any place convenient to the group, whereas others are held in very discreet places known to just a few elders.

## **CLIMATE CHANGE, REDD+, OPPORTUNITIES AND CHALLENGES**

The IPCC (Intergovernmental Panel on Climate Change) reports indicate and confirm that the Earth's climate is changing. Like other indigenous peoples around the world, indigenous peoples in Kenya are among the most marginalized, impoverished and vulnerable section of the population. Added to this historical vulnerability is the extra burden occasioned by the negative impacts of climate change within a context of minimal access to coping resources.

For indigenous peoples, climate change threatens cultural survival, exposes them to more unfamiliar risks, and undermines human rights with minimal opportunities for livelihood diversification. Climate change affects management and conservation of wildlife and forests, thereby affecting the customary uses of culturally and economically important species and resources. Policy makers often overlook the rights of indigenous peoples as well as their potentially invaluable contributions from indigenous' knowledge, systems and practices in the global the search for climate change solutions.

Increasingly, international and national climate change mitigation strategies such as REDD plus pose an additional threat to indigenous peoples territories and coping strategies through possible displacement, mono-cropping plantations for agro-fuels and exclusion from decision making processes by the newly established institutions to address climate change at all levels—local, national, regional and international.

The Loita case study, demonstrates that to indigenous people climate change is more than just a matter of physical climate changes in their local environments. It is, more importantly, a threat to their very existence. Beyond the negative impact on

the natural systems from which they derive their livelihoods, climate change may also result in erosion of social life, traditional knowledge and cultures, hence compounding vulnerabilities of indigenous peoples, worsening economic and political marginalization, land and resource encroachments, human rights violations and discrimination.

It is also evident that indigenous people are active agents of change in the context of climate change. Their dependence on natural ecosystems, which most often has been unstable and unpredictable, means that indigenous peoples have always adapted to changing environments. Therefore, they observe, interpret and react to climate in creative ways, drawing from the indigenous knowledge systems and practices to find solutions. However these adaptation strategies are hampered by limited resources, lack of technology, and various legal and institutional barriers (IIN 2008).

### *Indigenous Peoples and REDD+*

REDD (Reduction of Emissions from Deforestation and forest Degradation) presents opportunities, risks and challenges to indigenous and local communities. The indigenous Loita Maasai community is no exception. Like many other indigenous and local communities; the Loita (rightly) point out that they have historically helped preserve and protect tropical forests long before the new REDD schemes were designed. Current REDD regimes, they assert, should therefore compensate them for their role in forest conservation. There is, for example, growing concern that REDD programs could undermine some of the ecosystem services that the forest provides locally, such as providing food, fuel and medicine to the millions of the poor who depend on forests. Some of the potential risks associated to REDD/REDD+ include but may not be limited to the following:

- REDD could create incentives for states to restrict indigenous people's access to forest. The insecurity of land tenure for many indigenous and forest dependent communities, especially the case of Loita and its relation to the Council, may make them especially vulnerable to

this risk. This may eventually lead to violations of customary land rights and harsh enforcement measures leading to loss of access to forests for subsistence and income generation needs, land use conflicts and physical displacement;

- Marginalization through new land use zoning exercises may also occur, thereby negating any gains made towards decentralized community based forest management as provided by the Kenya Forest Act 2005 and new Kenyan Constitution;
- Decoupling forest carbon rights from forest management or ownership rights will result in blocking communities' legal rights to financial benefits accrued from new forest carbon programmes;
- Inability to participate in conservation payment programmes due to lack of property rights, lack of information, high implementation and transaction costs may ensue;
- Exploitative carbon contracts leading to uninformed acceptance of terms may result in unknowingly accepting terms that sign away land use rights, assuming liability for forest loss, or acceptance of payments that undervalue the true opportunity costs of land use and the concomitant effect of exacerbating food insecurity; and
- Absence or weak forest governance structures may precipitate the problem of elite capture.

However, as mentioned earlier, a well-designed and governed REDD+ mechanism may provide opportunities to enhance indigenous peoples' livelihood options by:

- Encouraging governments to secure and formalize land tenure for forest dwellers to provide incentives for conservations to those closest to the resource;
- Enhancing revenue generations which could be channelled to social services for local communities to address social inequalities such as in the areas of education, healthcare and water;

- Creation of new income streams for local communities and forest dwellers through their participation in the global effort as sub-national sellers in carbon markets, participants in conservation payment programmes, recipients of carbon funds distributions, or monitors of forest areas;
- Maintaining forests' regulating ecosystem services, which may enhance adaptive capacities in a changing climate where risks of extreme weather and diseases are projected to increase; and
- Maintaining forests' provisioning ecosystem services (fuel wood, medicine food), which may also help buffer communities from the shock of reduced agricultural risks and livestock losses, which are presently occurring due to climate change.

## RECOMMENDATIONS

The Country's Vision 2030 recognizes not only the social and economic challenge presented by climate change in the context of weak national coping mechanisms; it equally underscores the fact that the country's economy is heavily dependent on climate-sensitive sectors, such as agriculture, tourism and livestock. The strategy paper observes that over 70 per cent of natural disasters affecting the country are weather-related (Gok 2009).

The stated vision for the environmental sector is "a people living in a clean, secure and sustainable environment" (Gok 2007, 127). Further, the policy document points at the determined government's effort to intensify conservation efforts to achieve a 10 per cent forest cover by 2030. However, the broader goal is to increase current forest cover by 50 per cent. Additionally, current environmental challenges arising from governance and institutional constraints are spelled out and a commitment has been made to enforce all environmental regulations and standards and to attract at least five Clean Development Mechanisms (CDM) projects per year in the next five years. For indigenous peoples in the country, the following areas of concerns

needs to be addressed if mitigating climate change through REDD is to be beneficial to these indigenous and local communities.

## **Land Tenure**

Security of land tenure is the single most important factor in the sustainable management of natural resources. Whether discussing management or ownership, the tenure regime will dictate the rights and responsibilities of the various stakeholder groups and any tenure that denies local communities assured access to the forest for the various goods and services they have been drawing from the forest will be received with great resistance. If such rights are not assured, this can result in loss of livelihood for the local indigenous communities who hunt, harvest honey in the forest and allow their animals to graze, rely on the forest as a water source, and for timber resources. The prevention of access to forest land in such a scenario can only contribute to an increase in poverty levels.

Our national policy and program analysis aspect of the research has demonstrated that Kenya's policies and legislation are often weak and conflicting when it comes to natural resources management and ownership. The subservient position occupied by customary law in relation to written English/common law as embodied in the Trust Land, Group Representative Act and the Constitution, is critical in the context of the REDD+ mechanism, particularly with regards to the Loita forest and community. In the Loita forest case for example, it is this inadequacy of policies and legislation that has partly contributed to the unusually long court litigation process, since the court can only interpret the customary rights under the Trust land Act, and the Constitution.

Securing the tenure of the forest and surrounding lands is vital for the future integrity of land use management and livelihood security. Efforts must be made to ensure security of land tenure for local communities whose contribution towards conservation of forests based on their customary law and value system has remained phenomenal. The only secure land tenure that the Loita Maasai can be accorded is the right to own and manage their resources, including the Naimina Enkiyio forest and the surrounding rangeland (IUCN 2002).

## **Benefit sharing**

Benefits accruing from natural resources such as Naimina Enkiyio forest should be equitably distributed amongst all the members of communities living and protecting the area. Mogaka et al. (cited in IUCN 2002) reports that sustainable forest management needs to improve local economic welfare, and generate local economic benefits to sufficient levels and in appropriate forms to counterbalance the opportunity costs incurred. Any REDD mechanism targeted at the Loita forest should uphold these principles.

## **Non-economic uses of forests**

The Loita forest case study has perhaps demonstrated the diverse and elaborate non-economic uses of forest by the local indigenous communities. It is clear that social, cultural and ritualistic uses of forests far outweigh the direct economic uses. The carbon markets ideology that only sees forests as tradable carbon stocks does not fully take into consideration the complexity of the relationship with the land as embodied in indigenous peoples' holistic view of nature. These indigenous uses of forests range from sacred sites and tree species for rituals and rites of passage; to sources of herbal medicine amongst others. It is made worse by the fact that the locations of some of the sacred sites are a closely guarded and kept secret with only one person per age-group being shown their location. These practices are at the core of the local community's social formation and identity. Any REDD intervention in this region must take account of these dynamics if it is to succeed.

## **Indigenous knowledge**

A lack of recognition of the role of the indigenous knowledge, systems and practices in natural resources management at the local level, had contributed to the increasing tensions between the Loita community on the one hand and the stakeholders, including the local authority and other state agencies, development/conservation NGOs and researcher's/research institutions on the other. Thus, indigenous peoples are active

agents of change in the context of climate change. They often respond to climate changes in innovative ways, thereby accumulating knowledge and experiences in the process. This knowledge is passed on through the generations. Besides the knowledge generated and shared; the forest also acts as both a natural source and store of knowledge. REDD intervention within indigenous peoples' localities have to make deliberate efforts to seek synergetic and effective consultative approaches to tap into this enormous indigenous knowledge.

Capacity building is essential to enable local communities participate effectively in any REDD processes. There is need, for example, to carry-out resource mapping of Carbon stocks and Reference emissions levels, account for dry season grazing and identify and document cultural/sacred sites (non-economic uses). Additionally, there is need to recognize and strengthen indigenous peoples' institutions for negotiations in REDD contracting and for Monitoring, Verification and Reporting (MRV) (e.g., Council of elders, Oloiboni). Equally important is the need for codification of customary laws and regulation utilized by indigenous peoples in forest management.

## Endnotes

<sup>1</sup> The blessings of both livestock upon returning from far distant grazing lands or blessing of a new homestead by Oloiboni (spiritual leader).

<sup>2</sup> Also used to protect livestock against diseases such as foot and mouth under eanata oo nkishu ritual.

<sup>3</sup> Legal Notice No. 100 of 1969.

<sup>4</sup> A section of land hived out of the larger communal land and allocated to some members of the community as a private collective (group ranch in 1970s), with minimal, if at all, involvement of the greater population under the watch of NCC contrary to the Trust land Act.

<sup>5</sup> One of the myths around the origin of Iloibonok is that Kidongoe was found by warriors in meat feast encampment.

<sup>6</sup> Area of representation under the Local authority/Council; represented by a councillor.

<sup>7</sup> Trust land Act (CAP) 288 of 1968.

<sup>8</sup> A local non-governmental organisation that was started in 1968 as a joint venture between the Loita Maasai, the Catholic Diocese of Ngong and the Dutch Catholic co-financing agency for development programmes CEBEMO (now Cordaid).

<sup>9</sup> Key partner with MPIDO under the current NORAD project, especially the Case Study of Naimina Enkiyo Forest.

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## ANNEXES

### Annex A

Primary Stakeholder	Interest/Stake in Forest
<p><b>Primary Stakeholders</b> – individuals or organizations who have a direct interest in, or impact on, the Loita/Purko Naimina Enkiyio Forest</p>	
<p><b>The Local Communities:</b>                      These comprise of the local people and their institutions who depend on the forest for their existence and as a source of livelihood. In Loita, these include various forest user groups, Local Maasai (Loita and Purko sections) community; Community-based organisations such as Loita/Purko Naimina Enkiyio Forest Conservation Trust Company, Ilkerin Loita Integral Development Project, Concerned Loita Citizens, Inkidongi Development Society, Olmaa Development and Welfare Association, Middle Ground Group, Loita Women Council, Loita Youth Association, Osupuko Oirobi Development Group, Loita Council of Elders, and Sub centre Development Committees (six in total).</p>	<p>Ownership of the forest by the local community as provided for under African customary law;</p> <ul style="list-style-type: none"> <li>• Continued management having access and rights to, and being responsible for the forest as has been since time immemorial;</li> <li>• Uncontrolled access to the forest to practice their traditional and cultural ceremonies in the designated sacred sites, and protect them against any desecration;</li> <li>• Dry-season and drought grazing and source of water in the forest for their livestock;</li> <li>• Continued access to the forest for products such as grass, herbs, building posts, honey, etc. as regulated by their unwritten customary rules;</li> <li>• Benefit from the low-scale tourism activities presently taking place that are in harmony with their culture and traditions;</li> <li>• Conserving their forest</li> <li>• Continued regulation of the micro-climate by the forest, for instance, groundwater recharge which ensures flow of water to areas further away from the forest and for long duration over years; and</li> <li>• Preserving their cultural identity as their Deity lives in the forest for posterity.</li> </ul>

<p><b>Government:</b> Both local and central, mandated with the responsibility of natural resources management policies formulation and implementation, and include the Narok County Council, Ministry of Local Government, Forest Department, National Museums of Kenya (The Kenya Resources Centre for Indigenous Knowledge), Kenya Wildlife Service Provincial Administration (Locational and Divisional Environmental Committees).</p>	<p>Revenue generation from tourism and logging activities;</p> <ul style="list-style-type: none"> <li>Continued conservation and protection of the forest as an important water catchment, and a refuge for wildlife through gazettement;</li> <li>Direct management of the Loita/Purko Naimina Enkiyio forest ("command and control" system) to ensure continued flow of revenue.</li> </ul>
<p><b>Secondary Stakeholders and Interested Parties</b> - Individuals or organizations that have an interest in, or impact on, the Loita/Purko Naimina Enkiyio forest</p>	
<p><b>Non-Government Organizations, and donors:</b> These can be categorised into three subgroups</p> <ul style="list-style-type: none"> <li>International conservation organizations, e.g., IUCN – The World Conservation Union, The World Resources Institute (WRI), The African Centre for Technological Studies (ACTS);</li> <li>Donors e.g., Bilance (presently known as CORDAID), UNESCO, and the EU;</li> </ul> <p><b>Local conservation organisations,</b> e.g., Kenya Energy and Environment Organisations – KENGO; Bank Monitoring Unit, a policy research institution of the Africa Water Network in Kenya, East Africa Wild Life Society (EAWLS)</p>	<p>Continued conservation of the forest as a very important water catchment;</p> <ul style="list-style-type: none"> <li>Biological diversity conservation;</li> <li>Local communities benefiting from conservation and using such benefits to improve their conditions of living;</li> <li>Involvement of relevant stakeholders in the management and conservation of the forest;</li> <li>Funding conservation interventions;</li> <li>Raising the capacity of involved stakeholders for the better management of their resources;</li> <li>Raising awareness and lobbying (advocacy) for the rights of the local communities to manage their natural resources;</li> <li>Improvement of gender relations to uplift disempowered groups within the Loita Maasai community such as women; and</li> <li>Playing the role of mediators in case of conflicts between resource-users and decision-makers.</li> </ul>

<p><b>Private Sector:</b> Commercial and Business oriented firms, mainly tourism companies and groups such as National Outdoor Leadership School, Africa Expeditions, Safaris Unlimited, and Nature Tour Guides.</p>	<p>High returns from eco-tourism as a result of the naturalness of the forest and the Maasai culture;</p> <ul style="list-style-type: none"> <li>• Some your firms support community-development projects out of the profits made from the eco-tourism in the Loita forest and environs;</li> <li>• Continued use of the forest for cultural activities attracts tourists; and</li> <li>• Banning and controlling destructive activities such as logging as these would keep away nature tourists who are environmentally-conscious.</li> </ul>
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Adopted from: IUCN 2002, 7.

## Annex B

*Chronology of the efforts made by the Loita Maasai community members against the gazettement of Naimina Enkiyo Forest, and the court case that ensued in 1993*

DATE	EVENT/NEWSPAPER /PUBLICATION
Aug. 1992-	Letters, meetings, and communication between the Loita people (through their lawyer) and the Narok County Council, challenging the gazettement
Oct. 9 1992	Letter from the then Director of Forestry to the Ilkerin Loita Integral Development Project (ILIDP) suggesting a draft memorandum of understanding with the Forest Department
Dec. 24 1992	Articles of Association of the Loita/Purko Naimina Enkiyo Forest Conservation Trust Company were made and the Trust incorporated
July 31 1993	Supplement in the Standard Newspaper by Narok County Council concerning an amendment to the forest gazettement notice
Aug. 18 1993	A press statement by 28 Loita Maasai elders led by the Chief Laibon in the Kenya Times & the Daily Nation protesting the gazettement
Aug. 20 1993	Letter By the Loita Community's Lawyers to the NCC contending the gazettement
Aug. 24 1993	Article in the Daily Nation citing a letter from the Loita Community to the Narok County Council about the lack of consultation

Aug. 28 1993	Article in Kenya Times from a press statement by Loita elders petitioning the President of Kenya
Aug. 30 1993	Article in the Kenya Times on discussions about the forest in Narok and Loita
Aug. 31 1993	Letter by the NCC to the Loita Community Lawyers justifying gazetting the forest
Sept. 1 1993	Letter By the Olmaa Development and Welfare Association to heed the request by the Loita people to manage their forest
Sept. 8 1993	Article in the Daily Nation and the Kenya Times, based on KENGO statement to requiring the gazettelement to be rescinded
Sept. 9 1993	A commentary of the Loita forest saga in the Kenya Times, and article in the Kenya Times that highlights the instructions from the Loita elders to their lawyers
Sept. 10 1993	Article in the Standard and Nation Newspapers highlights the local importance of the forest to the Maasai of the area
Sept. 11 1993	Letters to the Editor Daily Nation) by the Middle Ground Group argues that the forest should be left under the stewardship of the local Maasai through a trust
Sept. 13 1993	Article in the Society Magazine by H. M. Lempaka, argues for better management of the Maasai Mara, and to discuss with the Loita Maasai on what the benefits would be
Sept. 16 1993	Article in the Kenya Times highlights the allocation of some Loita forest land in 1971 by Narok County Council, which was later sold on to foreigners
Sept. 17 1993	Letter from (Kenya Environment and Energy NGOs) KENGO to the Minister for Local Government arguing that Kenya is a signatory to the CBD (and in particular highlights articles 8j and 10c), which supports the rights of indigenous peoples
Sept. 20 1993	Issue and Facts Report by East Africa Wildlife Society that recommended that the Loita community be supported to own and manage their own forest
Sept. 21 1993	Article in the Kenya Times discusses some of the internal disagreements among the different groups in the Loita area
Sept. 26 1993	Article in the Kenya Times by the ILIDP highlights the role play by the Ilkerin Loita Integrated Development Project
Nov. 1993	Background paper, prepared for the EAWLS by the Middle Ground Group discusses the "pros and cons" of different arrangement for the management of the forest
June 1994	Statement by the ILIDP issued at second session of the Intergovernmental Meeting on the CBD

June 1994	Flyer/Newsletter issued by Loita/Purko Naimina Enkiyio Conservation Trust Company, second session of the Intergovernmental Meeting on the CBD
June 15 1994	Letter by Loita elders to the President of Kenya, highlighting their problems
June 29 1994	Article in Eco 5, June 29, 1994 argues that the Loita Case highlights what Article 8j and 10c is trying to achieve
1995	The Loita Ethnobotany Project as a community based research project under UNESCO
1998	The Loita Integrated Conservation and Management Project, Preparatory Phase to initiate a participatory management planning process for the forest

**Adopted from:** (IUCN 2002, 7).