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# Competing Claims and Contested Boundaries: Legitimizing Land Rights in Isiolo District, Northern Kenya

Safo Roba Boye, Randi Kaarhus

**Abstract:** People from five different ethnic groups share the territory that is Isiolo District, situated in northern Kenya. This article gives an account of the different groups' claims to land in this inter-ethnic setting, which is located in the border area of the vast drylands southeast of the Sahara. Presenting contemporary claims in a narrative form, the authors illustrate how these claims seek legitimacy through reference to historical processes, to first-comer status and to former governments' decisions, to citizenship dues, as well as to "tribal" group rights. Taking into account the fact that the broader constitutional, political and social contexts related to these narratives and claims are, at present, in a state of transition, the article seeks to situate the local people's perspectives and local land dynamics within broader discourses on land conflict and land policy reform in Africa. In this way, it also provides context for the series of new inter-ethnic clashes that took place in Isiolo District in 2011.

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**Keywords:** Kenya, land tenure, land law, social conflicts, reforms

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When violent clashes and locally initiated evictions followed the contested presidential elections of December 2007, land conflict in Kenya soon became an issue of international concern. Mounting competition and conflict between different ethnic groups over access to land – both in the densely populated rural districts of the Rift Valley and in the urban slums of Nairobi – was highlighted by the media as being an important driving force behind the confrontations and killings that were being reported. Hence, the post-election crisis of 2007–2008 again demonstrated that the recurrent conflicts in central and southern Kenya had their roots in complex – and sometimes hostile – relations over land ownership. In 2011, a new wave of violence affected Isiolo District, the gateway area to the predominantly pastoralist drylands of northern Kenya. In this case, the national press referred to a “volatile” setting of “constant raids and killings”,<sup>1</sup> with people fleeing attacks “as rival pastoralist communities fought in renewed violence”,<sup>2</sup> and in which “heavily armed raiders” were teaming up with “bandits”.<sup>3</sup> Inter-ethnic conflicts in northern Kenya tend to be couched in terms of rival pastoralists being involved in raids and competition with each other over water and pasturing. What we have found through our own research, though, is that these clashes also represent conflicts over land.

Our argument is that the most recent clashes correspond with the post-election upheaval. The 2007–2008 upheaval was only one episode in more than a century of active hostility, as well as latent conflicts over land in Kenya. Seeking to explain why violent crisis had affected “peaceful Kenya” in 2008, Kameri-Mbote and Kindiki argued that the state’s inability to manage conflicts led the citizenry to “congregate around their ethnic grouping as a source of security and guaranteed access to resources such as land” (Kameri-Mbote and Kindiki 2008: 167). An immediate outcome of the 2008 crisis was the political power-sharing agreement that was negotiated through the intervention of former UN Secretary General Kofi Annan, which resulted in a “National Accord” being signed by both sides involved in the turbulent elections. The National Accord mandated a review of the constitution, and spelt out the need for urgent land reform. Furthermore, its so-called “Agenda Four” pointed to the need to redress historical injustices perpetrated with regard to access to land – “the most emotive and culturally sensitive issue in Kenya”.<sup>4</sup> In December 2009, a final version of a new National Land Policy – nearly six

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1 *Daily Nation*, Kalonzo calls for calm in volatile Isiolo, 15 October 2011.

2 *Daily Nation*, Residents seek refuge in lodges as violence returns to haunt Isiolo, 23 October 2011.

3 *Daily Nation*, Three more killed as violence rages in Isiolo, 18 October 2011.

4 James Orengo, minister for lands, in the foreword to the publication of 2009 on National Land Policy (Ministry of Lands 2009: L3).

years in the making – was adopted by the Kenyan parliament. By August 2010, a new constitution had been approved by a majority of Kenyans through a national referendum and was signed into law.

In this article, we focus on what is currently happening on the ground in northern Kenya. While delineating a local setting of multiple claims and counter-claims to land ownership, we also provide a background to the most recent spate of inter-ethnic clashes. We show how property rights have been managed locally, within a national context where the access to land has been shaped by the frameworks that were established under the colonial regime. The national milieu is also the context for the intersecting local narratives that we have collected. Included in the form in which they were presented by “authoritative voices” in each of the ethnic groups currently inhabiting Isiolo District, these narratives represent the diverse, overlapping and partly conflictive interests over the land question in the local setting. The broader constitutional, political and social contexts related to these narratives are, at the time of writing, in a state of transition. In this article, we seek to inscribe the local claims and counter-claims that have been voiced in a predominantly pastoralist setting into the more general discourse on conflictive relations and the legitimization of land claims in Africa. At the same time, we describe the connections and intersections between the – sometimes violent – conflict and the policy-reform processes.<sup>5</sup>

## Theoretical Tools for Understanding Current Land Conflicts

The methodological tools for understanding African systems of rights to land and natural resources have been further developed over the last few decades, both from analytical perspectives and through analyses of specific cases. One strand of interdisciplinary scholarship has been specifically concerned with pastoral populations in dryland Africa, showing how heterogeneous and temporally variable resources are – or were – managed by pastoralists under flexible tenure systems (Ellis and Swift 1988). An influential conception emerged from this body of research – namely, that access to land and pasture is ruled by complex sets of “overlapping rights that are continuously contested and re-negotiated” (Scoones 1995: 23). Access to land in sub-Saharan Africa has also, more generally, been described in terms

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5 We would like to express our gratitude to our informants in Isiolo District, as well as to our colleagues at Noragric, UMB, for their useful contributions and input. Finally we would like to thank the *Africa Spectrum* reviewers for their constructive comments and suggestions.

of complex, variable and fluid relations (Shipton and Goheen 1992: 318). However, while analytical frameworks that sought to capture negotiability and flexibility in adaptive customary systems have been very influential (Peters 2004: 270), a growing body of research has also revealed an ever-intensifying competition over land, including the deepening of conflicts between ethnic and regional groups (Peters 2006: 88).

With increasing pressure in the relationships between people over land – and between people and the land – these phenomena are being expressed both as competing claims and through conflict. When people’s vested interests in the land are not clearly regulated by legitimate institutions – or when the regulating institutions are themselves contested – such claims may also spiral into conflict. In this article, we will focus on how claims are articulated through accounts that “belong to” specific ethnic groups, accounts that are formulated in a setting where land claims are strongly identified with group identities. These accounts are themselves part of the larger narratives through which people organize memory and construct order within particular contexts (Riessman 1993). According to Somers (1994), the analysis of narratives is, more generally, a way of historicizing identity. If we see narratives as both “constructed” and “given” – in other words, not simply of our own making – organizing memory and experience into a meaningful story involves “selective appropriation” (Somers 1994: 617). A narrative claim about land further requires that such accounts present messages that others “find persuasive as grounds for the claim asserted” (Rose 1994: 25). In our account, it is essentially the members of one’s own ethnic group who are actually persuaded. As we will show, counter-claims couched in other ethnic groups’ narratives represent contestations to the legitimacy of the land claims of one’s own group, producing a situation which, when unmediated, can result in conflict – potentially of a violent nature.

## Isiolo District: Geographical Location and Brief Historical Background

Northeast of the fertile mountain slopes of Mount Kenya, Isiolo District is located at altitudes varying between 200 and 1,200 metres, and at a latitude of between 0.5 and 2 degrees North. Isiolo District is a territorial and administrative unit at the fluctuating southern boundary of the drylands south-east of the Sahara, a boundary which also constitutes the traditional border between agriculturalists and pastoralists in the region (Hjort 1979: 16). Administratively, Isiolo District is today part of Kenya’s Eastern Province and covers an area of 25,698 square kilometres. To the northwest, Isiolo District borders the districts of Marsabit and Samburu, both predominantly inhab-

ited by pastoralists, as are the districts of Wajir and Garissa to the east. To the south, Isiolo borders the district of Laikipia and the predominantly agricultural Meru District, as well as, to the far south, the Tana River District.

As a district, Isiolo is subdivided into six administrative divisions: Central Isiolo – including Isiolo Town – in addition to Garba Tulla, Kinna, Merti, Oldonyiro and Sericho. Since Kenyan independence in 1963, the local authority in the district has been the Isiolo County Council. With the implementation of the new Kenyan constitution, its authority will be substantially strengthened, and its legitimacy in the area may – and hopefully will – increase as a result of the outcome of local elections. The population of Isiolo District has grown in recent years, particularly due to immigration from neighbouring districts and the expansion of Isiolo Town. The Statistics Office for the district reported a population of 112,364 in 2001, which had grown to 143,294 by 2009, according to the national census for that year. Crossing the whole district from west to east, the Ewaso Nyiro River provides watering points for pastoralists' herds as well as opportunities for some irrigation agriculture (in those years when there is sufficient rainfall), in addition to serving as a borderline between the different administrative divisions.

The European colonization of Kenya began immediately after the Berlin Conference of 1884–85, and in 1895 the whole of present-day Kenya was declared a protectorate of British East Africa (Syagga 2006: 294). In the southern highlands, colonization was accompanied by the large-scale dispossession of lands belonging to the native African population. The creation of the Northern Frontier District – as part of the British Protectorate – in 1909 was, however, more a response to the ongoing southward expansion of the Abyssinian (Ethiopian) Empire, in a region subject to rival imperial ambitions (Hogg 1986: 319). As one of the major pastoralist groups in the region, the Maasai had suffered a series of blows: Epizootics had killed their herds, and they had also been victims of serious drought, a smallpox outbreak and internal strife. As a result of this situation, a large group of Maasai accepted, through a formal agreement with the British, a move from the Rift Valley to a “specific reservation” in (present-day) Laikipia, as well as to parts of Isiolo (Kameri-Mbote and Kindiki 2008: 178). Lands in the Rift Valley were thus made available for the agriculturalist Kikuyu, who had been forced off their lands in order to make room for European settlers in the so-called “White Highlands” (Adhi 2009: 95). As a result of growing demands from white settlers, the leader of the Maasai was, in 1911, forced to sign a new agreement, which resulted in the relocation of the Laikipia-based Maasai to a new reservation located in the south of the country (Syagga 2006: 295). In the now-vacated rangelands, Isiolo Town was set up as a base for the Kenyan Battalion of the King's African Rifles, a colonial military regiment. Occupy-

ing a strategic location on trade routes between North and South, and as a gateway to the northern territory, Isiolo Town was, in 1929, also established as the provincial headquarters of the Northern Frontier District (now the North Eastern Province) (Hjort 1979: 17). At the same time, Isiolo District was created as a separate administrative and territorial unit.

## People and Land in Kenya: A Brief Overview

When Kenya was formally declared a British colony in 1920, all land was regarded as “Crown land” (Okoth-Ogendo 2000: 123). Following an 1899 reinterpretation of ancient statutes in English land law, British authorities understood themselves in acquiring a territory to also simultaneously be acquiring full jurisdiction over that land. It could be then subsequently allocated to groups or individuals, as “supporters of the new sovereign” (McAuslan 2000: 80). These legal arrangements should, contends Mattei (2000: 10), be interpreted in light of ideas dating back to European feudalism, according to which all land belonged to the sovereign ruler. For twentieth-century colonialism, this was interpreted to mean that the Crown “in uncivilized protectorates where the land had not been appropriated in private title” was authorized “to declare such land Crown land and to make grants, etc., in it”.<sup>6</sup>

The acquisition of Kenya by the British led to the subordination of existing rules of tenure and property rights of the different native groups to the “received law” of the colonial administration (McAuslan 2000: 80). At no point was a genuine attempt made to incorporate the customary rights of the indigenous inhabitants into this legal system (Okoth-Ogendo 2000: 123). What was called “customary law” was generally seen as an archaic stage in an evolutionary process, which over time would progress into, or be replaced by, modern English land law (Chanock 1991). This general, underlying evolutionary thinking was also influenced by a three-stage model (hunter/gatherer – pastoralist – cultivator), which further shaped and influenced the attitudes of the British administrators toward pastoralists in the Northern Frontier District (Spencer 1983: 113).

By the 1930s, the British administration had experienced various problems in the “relation of the Crown to the native community in regard to the land”.<sup>7</sup> In the period 1932–34, the Land Commission worked on revising policies and defining “functional classes” (A–D) of land for further economic development. To that end, the drylands of the Northern Frontier Dis-

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6 Memorandum on the “Vesting” of the Native Reserves, Trust Land etc. (Secret and Personal), dated 1960-1962, NA (British National Archives) – CO 1015/2187.

7 Origin of native trust land policy, 1952, NA – CO 959/7.

trict were generally categorized as being in Class D.<sup>8</sup> The colonial subdivision of the Class D drylands into “tribal” territories was consolidated, with the colonial state, as a result, playing a significant role in “the production of ethnic boundaries between social groups” (Broch-Due 2000: 55).

The category “trust land” was introduced in the 1930s as “a remedy to the natives’ feelings of insecurity in their tenure of their lands”; this insecurity arose “from the right of the Administration to make grants to non-natives” of lands that lacked legally defined ownership or title.<sup>9</sup> The trust land category can also be seen as an attempt to solve the constitutional problem through “the application to land administration in these territories of English land and English notions of title”; however, these notions “tended to recognize only private or individual titles and thus left the native lands [...] without recognized legal status”.<sup>10</sup> In 1938, a new distinction was drawn in colonial land administration policy between Crown land – “for which titles could be granted” – and “native lands”, which were “held in trust by the Crown for those in actual occupation” (Okoth-Ogendo 2000: 123). In practice, registered land titles and individual freehold rights were granted only to white settlers, while native people, in principle at least, were granted rights of occupancy on land held “in trust” by the Crown. Certain areas were also reserved for exclusive use by Africans. Increasing pressure on resources and land scarcity within these “African reserves” was an underlying factor behind the Mau Mau revolt that erupted in 1952 (Syagga 2006: 296–97). One response on the part of the colonial administration to this uprising, as formulated in the so-called “Swynnerton Plan” of 1954, was to establish procedures for the conversion of native (agricultural) land into individually registered “freeholds”.

When Kenya became independent in 1963, the government essentially adopted the policy principles of the Swynnerton Plan by facilitating “the extinction of customary tenure, through systematic adjudication of rights and registration of title, and its replacement with a system akin to the English freehold tenure system” (Okoth-Ogendo 2000: 126). These principles – and the registration and privatization reforms – were, in practice, applied primarily to areas with considerable potential for agricultural development. What Syagga has referred to as a “largely neglected regime of customary property law”, was still applied to areas that were now classified by the Ken-

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8 The Kenya Land Commission Report, 1934, NA – CAB 24/248.

9 Argument developed in a note by L. Branney on “Origin of native trust land policy in East and Central Africa”, 1952, NA – CO 959/7.

10 Origin of native trust land policy, 1952, NA – CO 959/7.

yan government as being of “low potential”<sup>11</sup> (Syagga 2006: 310) – namely, most of the pastoralist land in the Northern Frontier region.

In Isiolo District today, 100 per cent of the land area is classified as “low potential”. Since independence, approximately 70 per cent of land in the district has been, in legal terms, trust land. The rest has been designated “government land” or “private land”. Government land includes national parks and game reserves (of which there are four in the district) and military barracks (also four), which cover about 20 per cent of the territory of the district. Private land has essentially been restricted to Isiolo Town, while the vast majority of the land in the district has been administered under the Trust Land Act (Cap 288) of 1963.

The Kenyan Constitution of 1963 states: “All Trust land shall vest in the county council within whose area of jurisdiction it is situated.”<sup>12</sup> The land is thus held “in trust” by the local authority for the people who ordinarily reside on that land. After Kenyan independence, it was the county council that was vested with that power and responsibility. According to the 1963 constitution, the county council was to hold the land in trust “for the benefit of the land” and make valid rights and interests that “under the African customary law for the time being in force” could be vested in “a tribe, a group, a family or an individual”.<sup>13</sup>

While the 1963 Trust Land Act provided local people with rights of occupation, use and inheritance with regard to land, it did not give the occupiers and users legal property rights. Land is predominantly unsurveyed and unregistered, and people occupy and use land by reference to customary rights, mostly without title deeds. The Trust Land Act has also been perceived as ambiguous, as it did not clearly define who actually controls the land. It gave the county council the responsibility to “give effect to” local people’s rights and interests, but, nevertheless, it has been widely recognized – including in the National Land Policy of 2009 – that “there has been widespread abuse of trust in the context of [...] the Trust Land Act” (Ch. 3.3.1.2).

## Data Collection Procedures and “Authoritative Discourses”

Today, there are five discrete ethnic groups in Isiolo District whose members claim land there through reference to “tribal” or “group” rights. The field research on which this article is based was carried out primarily in 2006, by one of the present authors. Using a “purposive sampling” procedure,

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11 Defined as land with less than 612.5 millimetres of annual rainfall.

12 Kenya Constitution (1963), Chapter IX, Cap. 282–115.

13 Kenya Constitution (1963), Chapter IX, Cap. 282–116.

informants who were identified as being particularly “knowledgeable” were selected from all five of these ethnic groups: Borana, Meru, Samburu, Somali and Turkana. The first set of key informants from each group came from village committees in three distinct localities, which are all marked by ethnically diverse populations.<sup>14</sup> These informants provided links to other knowledgeable individuals. Since historical perspectives on current issues were of special interest to the research, many of the selected informants were elders who were carriers of oral histories. This category of key informants consisted of individuals who could speak with a locally acknowledged authority about historical matters. They were interviewed individually and asked to give oral testimonies about how and when their respective groups first came to Isiolo District, who occupied the land prior to their arrival, how their group related to other local groups during the colonial period, and what characterizes their relationships to the other groups at present. Further oral testimonies were given by Borana and Somali individuals in larger group interviews carried out in Isiolo Town. The interviewer and interviewees were seated in a circle, and individual statements were listened to, and commented upon, by those present.

In treating these statements and accounts as part of each (group) narrative, and by looking upon them as “authoritative discourses”, we draw upon the interpretation of Dreyfus and Rabinow (1983) with regard to Michel Foucault’s “archaeological” analysis of discourse (Foucault 1972). This approach focuses on the type of discourses that are produced by – often “privileged” – speakers in contexts that allow them “to speak with authority beyond the range of their merely personal situation and power” (Dreyfus and Rabinow 1983: 48). What makes it further possible to identify specific statements as belonging to such discourses are the discursive regularities that Foucault labels “rules of formation” (Kaarhus 1999: 57). In a “traditional” setting where oral history is (re)produced, both narrative form and expectations about recognizable story lines contribute to the enforcement of such rules. In our inter-ethnic setting, one could say that the “rules of formation” vary between groups, resulting in a “selective appropriation” of history (Somers 1994). The oral narratives draw upon a broader history, one that is also documented in writing. But, as the selective appropriation differs between groups, it produces narratives that are highly consistent within each ethnic group while simultaneously fostering competing accounts between the different groups. The statements cited in this article are thus, we would

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14 These were Isiolo Township, Tullu Roba and Kiwanjani; all located in Isiolo Central Division (Central Isiolo).

say, representative of the accounts that were given by individuals belonging to each of the five ethnic groups present in Isiolo District.

In addition to oral testimonies, more conventional qualitative interviews were used to engage with another category of key informants. These were certain officials from the local county council as well as from the Ministry of Land and Settlement, at the district level, who were interviewed in their public offices; current and former political leaders from the community level were also approached. A number of individuals identified as being directly or indirectly affected by land conflicts were also interviewed; the total number of people interviewed amounted to 70. Many said this was an opportunity to express their views on problems that they were currently facing, in the hope that this might help reduce problems over land in the future. All the interviews were conducted in the language with which each informant felt comfortable. Most informants spoke either Borana or Kiswahili; these are languages that the researcher also speaks well. Only on one occasion was it necessary to use an interpreter, and in this case the recorded translation was later cross-checked with statements from other members of the same ethnic group.

Focus group discussions were organized in the three localities where we had also identified “knowledgeable elders”. The discussions were organized with (mixed) groups of twelve men and women randomly selected from the records of the village committees. The issues that were discussed were: procedures for plot allocation; how land ownership claims are staked; whether plots are registered; if participants had title deeds or allotment letters; and, whether there were conflicts over plots (and, if so, why). As women in Isiolo District tended to perceive land issues as being a topic that only concerns men, efforts were also made to have specific group discussions with local women and to attend meetings that had been organized by women in Isiolo Town. The land conflicts that we focus on in this article are those that were identified in our local informants’ accounts. In 2007 and 2008, fieldwork data was complemented by the consultation of archival material in the Kenya National Archive in Nairobi, as well as in the National Archives in London. The documents that were reviewed provided further background information on boundaries, conflicts and policies. In the following, archival material is also complemented by the findings of earlier studies that focused on Isiolo District (such as Hjort 1979, Dahl 1979, and Hogg 1986, 1989).

## Ethnic Groups and Historical Contexts for Current Land Claims in Isiolo District

The majority of the inhabitants of Isiolo District are pastoralists, belonging to the Borana, Samburu, Somali and Turkana ethnic groups.<sup>15</sup> A fifth ethnic group, the Meru, are by tradition sedentary farmers. At present, small-scale commerce and/or wage-based employment are pursued as means of livelihood by individuals from all of these groups, while many pastoralists are also engaged in small-scale agriculture. Somali – and increasingly Meru – traders have tended to dominate the large-scale and long-distance trade, while the Borana are the majority holders of local administrative and political positions. The Borana are also the largest ethnic group in the district as a whole.

The Borana occupy the northern parts of Kenya's Eastern Province, extending into southern Ethiopia. According to Borana oral history, in pre-colonial times they occupied parts of what is today Isiolo District as well as sections of the Wajir District to the east. In the early years of the twentieth century, they were forced to move out of the Wajir District as a result of attacks by Somali groups. As the Borana see it, the colonial government at the time authorized the Borana's exclusive rights to what is today Isiolo District so as to compensate for their loss of land and resources in Wajir District. According to the written sources, in 1909 the British granted the Borana "exclusive grazing rights" in what is now the Merti Division of Isiolo District and then subsequently extended such rights to the Garba Tulla Division as well. By the 1920s, the Borana were in control of much of the entire district (Hogg 1989: 20). At present, they essentially occupy four out of the six divisions in Isiolo District: Garba Tulla, Kinna, Merti and Sericho. This area is also called "Waso", after the Ewaso Nyiro River, and the major Borana group who consider themselves indigenous to Isiolo District are often called "Waso Borana".

When Isiolo District was established by the British in 1929 it was, according to Hjort, as a "Borana district to prevent further expansion by Somali groups coming from the northeast" (1979: 21). At the same time, platoons from the King's African Rifles were dispatched to intervene in the sporadic fighting and cattle-raiding between Borana groups and the Somali clans of Degodia and Adjuran. While the provincial commissioner in the Northern Frontier viewed the "unrest" as being "due to the fact the Boran

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15 "Ethnicity" can be seen as a feature of social organization which involves the construction of (ethnic) boundaries, as well as cross-boundary relationships; while an "ethnic group" should be understood as being characterized by both self-ascription and the ascription of others as being a distinct group (Barth 1994).

had not yet been disarmed”,<sup>16</sup> the reactive policy of the colonial government was to impose restrictions on the movement of all pastoralist groups. In 1934, a formal Somali–Boran dividing line was established. This division now marks the eastern boundary between Isiolo and the districts of Wajir and Garissa, which are still mostly inhabited today by Somali groups. Further dividing lines were created in the early 1930s to the west and south of Isiolo District, in order to prevent “Boran westward expansion into Samburu District and their customary use of grazing and water in Meru District” (Hogg 1989: 20). Here is the history of what happened, according to one of our Borana informants:

I heard from elders that the Borana fought with the Laikipiak Maasai [...] and displaced them, but did not settle in Isiolo. [...] [D]uring that time the area that is now Isiolo Town and [the areas further west ...] were occupied by the Laikipiak Maasai and Ndorobo [groups]. During the colonial era, the boundaries were demarcated and each ethnic group was moved and assigned a particular area. The Maasai were moved completely out of this place. The Samburu occupied the area north of the Ewaso Nyiro River [...] but occasionally grazed up to the south of the Ewaso Nyiro River, [...] and] the Borana also fought with Samburu. They suffered a devastating blow at the hands of the Borana, who were better equipped than them at that time. [...] [B]efore the colony was established, the Borana settled in Wajir and part of what is now Isiolo District, but were removed from Wajir. We were given exclusive rights to what is now Isiolo District. The district was created for us by the colonial government and we contributed a lot to building the district as a whole. We constructed roads by providing food [cattle to slaughter]. [...] [T]he colonialists brought some Asians to Isiolo Town for commercial purposes; before then, there was nothing like a town, it was just an open land after the Laikipiak Maasai were removed.

In this account, the Somali group are not explicitly mentioned, but relations with the colonial government, the Laikipiak Maasai and the Samburu ethnic group are. Today there is a separate Samburu District to the northwest of Isiolo District, and within the latter the Samburu dominate the westernmost Oldonyiro Division.<sup>17</sup> Here is, according to a Samburu informant, the historical basis for the Samburu presence and current land claims in Isiolo District:

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16 Memorandum of 18.03.1931, NA – CO 533/409/15.

17 The majority of the approx. 200,000 Samburu in Kenya now live in Samburu District (Lesorogol 2005).

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

Our interviewee thus introduces the Somali and the Turkana, but holds that they came too late to have any legitimate land claims in Isiolo District. Regarding the so-called “alien Somali” there are various written sources on this topic. A commission appointed to report on “problems of Somali settlements in Kenya” in 1954 wrote to the Colonial Office in London that the term “alien Somali” refers to “those Somalis who are living in the Colony, but who belong to tribes not normally resident in Kenya”. They were “enlisted men in the King’s African Rifles”, and, as the report continues, “in the early days of East Africa they proved of great value on account of their bravery, hardihood and superior intelligence”.<sup>18</sup> When their employment with the King’s Rifles came to an end, the agreement was that the British would grant them land on which to settle in Kenya. Between 1924 and 1931, some alien Somalis moved to Central Isiolo and, as pastoralists, “took stock with them and rapidly acquired more”. But, according to the 1954 report, it soon became apparent that the land originally reserved for the Somali “would be hopelessly inadequate for the large herds of stock”.<sup>19</sup> Hjort (1979: 23) contends that the motives behind establishing Isiolo Town in 1929 were strategic, but that this creation also came about because the British needed a place to settle Somali ex-soldiers. The Somali who came to settle in Central Isiolo had been recruited from two different clans, Herti and Isaak. In Hjort’s account, when plots for the alien Somali were finally going to be demarcated in 1930, it appeared that the boundary between Isiolo and Meru Districts had been ambiguously defined by the colonial authorities, so that Isiolo Town had “mistakenly” been laid out just outside the district border. At the time, this discovery ground to a halt the work on establishing formal land rights for the alien Somali (Hjort 1979: 25).<sup>20</sup>

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18 Report of May 1954, NA – CO 822/819.

19 Op.cit., NA – CO 822/819.

20 Hjort’s source is “Handing Over Report Isiolo District” (1930). Other colonial records indicate that the “mistake” was rectified at a later stage. Still, the border has remained contested up to the present day. However, it is beyond the scope of this article to give a full account of all the conflicts over land and borders in Isiolo Dis-

Another commissioned report, submitted in 1962, stated that in the early 1960s there were “some 3,000 alien Somali (Herti and Isaak)” in and around Isiolo Town. According to this report, they were mainly settled in a “Class C leasehold area of over 1,000 square miles”.<sup>21</sup> This was the rangelands area that had earlier been used by both the Laikipiak Masaai and the Samburu. With the establishment of Isiolo Town, the Samburu had been pushed further west and north, and the land was allocated by the colonial power to the alien Somali. Informants from the Herti and Isaak clans gave, in 2006, the following brief account:

During colonial times, the Herti and Isaak were the sole owners of the Isiolo Central Division, which they were given by the colonial government in return for their participation in the First World War. Other communities were not allowed to enter Isiolo without a pass or permit, only the Herti and Isaak. The Turkana first came to Isiolo in the 1940s as servants and workers for the resident Somali.

When Turkana elders in Isiolo District were interviewed in 2006, they confirmed that some Turkana had been brought there by members of the Herti and Isaak clans. Somali traders from Isiolo Town had travelled to what is today the Turkana District in the far northwest of Kenya to buy donkeys and other livestock, and they also recruited some young Turkana men to work as herders. Another group of Turkana was brought in by the district commissioner of Isiolo in the 1940s to work as labourers on road construction. When the road was finished, these Turkana people also settled in Isiolo District. In 2006, Turkana elders revealed that the colonial government had attempted to remove Turkana people from Isiolo District several times.<sup>22</sup> Independence had, however, explicitly led to it being stated in the constitution that any citizen had the right to live anywhere they chose to in the country. This right was highly valued by our Turkana contacts in Isiolo District. Still, post-independence adversities have left most Turkana families in Isiolo District impoverished. They have mostly lost access to the land that they occupied and used for grazing outside Isiolo Town; one informant affirmed, “We are squeezed!” A Turkana elder, nevertheless, posited that their present situation is better than it was during colonial times:

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trict. Among those that are not discussed here are, for example, the conflicts related to protected areas in the Nyambene Hills, on the southern border of Isiolo District.

21 Report by the Northern Frontier District Commission, 1962, p. 6, NA – CO 896/1.

22 Cf. Broch-Due (2000), which gives a detailed account of how thousands of Isiolo Turkana were forced, in 1958, to leave Isiolo to be “repatriated” to Turkana District. Her account also describes Turkana people’s use of land resources in Isiolo District in the pre-colonial era.

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

In Isiolo Town, the land that the British had originally allocated to the Herti and Isaak Somali was reallocated after independence by the local authorities to a unit existing under the Ministry of Agriculture called the Livestock Marketing Division (LMD). The area was designed to serve as a holding ground for livestock in transit from north to south in the country. However, when this holding ground was eventually abandoned by the LMD unit, groups of (landless) Turkana and Samburu moved into it with their animals. The Samburu have also continued to claim it as their indigenous land. Both groups are actually among the most “squeezed” in Isiolo District, and have also been asked to vacate the area by the Ministry of Livestock, which still holds a formal title deed to the LMD.

According to interviewees from Isiolo County Council in 2006, in statements that are supported by local officials from the Ministry of Land and Ministry of Livestock, a total sum of 1.6 million KES was paid in 1972 as compensation to 357 claimants to LMD land – including representatives of the Herti and Isaak clans. Hjort, during his own fieldwork, noted that the LMD residents had been invited to claim compensation, but that this was “an opportunity which in practice only the most affluent and educated seem to have been able to make use of” (1979: 61). According to our Somali informants in Isiolo District, they never received such compensation, and they argue that it was given only to Borana claimants, not to Somali ones. In the words of a Somali:

The government took our land, the land which was given to us by the colonial government. Now we don't have anything.

Among the Somali who now actually claim rights to LMD land, there are, however, also members of clans other than the “alien” Herti and Isaak. Their claims are based on affiliation to the Somali ethnic group as a “tribe” with vested rights and interests in land in Isiolo District. Today, Somali people in Isiolo District include members of several “non-alien” Somali clans – Adjuran, Asharaf, Degodia, Garri and Murulle. They moved into Isiolo from the districts further east, after the patrolling of the “tribal division lines” practised by the British was abandoned in the wake of independence. As groups with a long-term pattern of flexible resource exploitation over larger areas, their negotiation and re-negotiation of access to land in Isiolo District has resulted in several instances of conflict and contested land use, especially from the Borana people's point of view. The Somali groups' relationships with other ethnic groups in Isiolo District today cannot, how-

ever, be understood without reference to the so-called Shifta War,<sup>23</sup> which followed the declaration of Kenyan independence in December 1963.

In 1962, a “Commission of Enquiry”<sup>24</sup> was set up by the British to report on whether people wanted this region to be part of Kenya or Somalia after the granting of independence. The commission concluded that more than 80 per cent desired that the region be part of Somalia. At the same time, a second commission,<sup>25</sup> which had been set up to give recommendations on regional boundaries, advised an administrative division of the Northern Frontier into two provinces – both within Kenya. In March 1963, it was officially announced that the whole region would remain part of the independent Republic of Kenya. At the time, the Somali population in the region vigorously campaigned for “secessionism” and for joining “Greater Somalia” (Castagno 1964: 180). In May 1963, both the Borana and the Somali in Isiolo District boycotted the first general elections. Later the same year, open conflict broke out with secessionist guerrilla (*shifita*) units attacking police and army posts (Dahl 1979: 201). When a state of emergency was subsequently declared, the local population was forced to settle into 15 “strategic villages” – called “enclosures” by local people and considered to virtually be concentration camps.<sup>26</sup>

According to Hogg (1989: 22), it was the Borana who “bore the brunt of the fighting” during this conflict. The Somali were able to move their herds out of the conflict zone and across the border into Somalia. After the state of emergency ended in 1969, they brought their livestock back, and were thus able to take control over much land that had been left empty as a result of the Borana herds being destroyed during the war (Dahl 1979: 23). Borana people had prior to the Shifta War based their livelihoods almost exclusively on herd ownership, but their patterns of land use changed afterwards, when many found “high-risk farming” to be their only realistic livelihood option (Dahl 1979: 33). Irrigation agriculture was also actively encouraged by the Kenyan government as an alternative to pastoralism (Hogg 1989). Here is the story of what happened after the war, as told by a Borana elder (in 2006):

In 1970 [during a drought,] the Somali asked for land to settle because their land was bare [...] [A Borana elder] called a meeting, and it was agreed that the Somali be allowed to graze until the conditions in their

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23 *Shifita* – literally “bandit” in Amharic – refers to the secessionist guerrillas operating in Kenya during the 1960s.

24 Called the “Northern Frontier District Commission”.

25 Under the name “Regional Boundaries Commission”.

26 The conflict affected the whole region and had many dimensions which are beyond the scope of this article.

homeland improve [. . .] So they settled, all the way from Sericho to Kinna. They made exclusive use of our resources. Because all of our livestock were killed and confiscated by the Kenyan government during *daaba*,<sup>27</sup> the Somali took this opportunity. A few years later, the Ogaden clan mobilized all the Somali clans to fight and displace the Borana completely. Though the Degodia and Adjuran, who were allies of Borana during that time, refused [, . .] on 15 January 1983, nine Borana men, all of them from the Digaalu clan, were killed by the Ogaden, and the war broke out between the two ethnic groups. From 1992 to 1995, there was fighting between the Borana and the Adjuran. From 1997 to 2002, it was between the Borana and the Degodia and Murulle [clans]. The violent conflict is about land, and not about pasture and water as is always reported.

This source thus firmly states that conflict is – now – about land, which, in contrast to herds, exists as “non-mobile property” (Oba 1989: 39). Our Somali informants perceived the expropriation of LMD by Kenyan authorities as being a direct consequence of the war. “We were condemned because we wanted to be part of Somalia” and then “the government took our land”. Hjort (1979: 37) reveals that after the Shifta War many of the alien Somali who had established themselves as long-distance traders were forced to evacuate Isiolo Town. In their absence, people from another ethnic group – the Meru – were able to establish themselves in the trading business.

Traditionally, the Meru were small-scale farmers in the Nyambene Hills, located just southeast of Central Isiolo. Fertile lands made it possible for intensive forms of agriculture to be developed in the area, and the introduction of coffee in the 1940s as a permanent crop initiated a process of individualization in land rights (Hjort 1979: 160). In this period, Meru people began migrating to Isiolo Town. This migration from Meru District was, according to Hjort, directly related to changes in land tenure. In contrast to the district of Isiolo, land in Meru was not held and managed under the Trust Land Act. One result of this was that the policy of establishing individual title deeds to land – as designated in the Swynnerton Plan of 1954 and enacted in the Registered Land Act of 1963 – was systematically implemented in Meru District. With an individual title deed being the only lawful basis for a claim to land, individual family plots in Meru were inherited according to patrilineal principles, preferably without further subdivisions. With families trying to prevent the further fragmentation of their land plots, the result was that many younger sons were often left landless (Hjort 1979:

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27 *Daaba* – literally “enclosure” – referring to the “strategic villages” set up during the Shifta War, but the term was also used by local informants to refer to the state of emergency during that period.

163). Both younger men and many women, hence, found migration to Isiolo Town to be a means of securing a livelihood.

Among the Meru, it is claimed that part of Isiolo Town falls within the original Meru District – the border has remained a point of contention up to the present day. Meru informants referred to the archival records of revenue collection in Isiolo Town that was carried out by colonial authorities in Meru, and see this as evidence that Isiolo Town was originally “under Meru administration”. The Meru spoken to referred to the Borana who have moved into Isiolo Town from the Waso area – in the aftermath of the Shifta War – as “recent immigrants”, who have, as the major ethnic group, nevertheless dominated the county council. Among the Borana, the Meru who have settled in Isiolo Town are, conversely, seen as “recent arrivals”. The Borana actually referred to the abuse of power by the post-colonial national government as being the explanation for the current presence of the Meru in Isiolo District. According to a Borana elder:

Meru people were not Isiolo residents at all. It was during *daaba* that they took advantage and settled on our land. They were allocated part of Isiolo Town [...] by the Kenyatta government. The minister for land and settlement [...] himself a Meru, allocated our land to his people. The Borana protested against this move, but because the government is theirs, they managed to grab our land.

In practice, the Meru in Isiolo District today primarily claim rights to land there as Kenyan citizens, through the aforementioned constitutional right to settle in any locality of their choice. Given the long historical background of formalized individual titles deeds in Meru District, it is not surprising that Meru residents also make claims to individual land titles as private land when settling in Isiolo District. Hjort (1979) had in 1971 found that the majority of registered plots in Isiolo Town were in the names of Meru owners.<sup>28</sup> According to one of the Meru we spoke to:

Ownership [of land] in Isiolo is a problem. It follows kinship, and the Borana stand a better chance than others because they have authority [in the county council]. It is even hard to get land documents, because they block [the process] if one is a non-Borana. The Borana rejected [the establishment of] a Land Adjudication Office in 1970 because they wanted communal ownership, and the government accepted. But we as Meru, we want land adjudicated. It was only in 1992 that the

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28 Hjort (1979: 54) reports that he found 1,301 “registered plots” in the county council’s files in 1971, of which 76 per cent were registered under Meru names. At the time, the Meru may have constituted about 20 per cent of the total population in Isiolo Town, according to Hjort (op.cit.).

council used a systematic way of allocating land [...] but the authority is not interested in doing this work [allocating land to individuals], as the council is totally biased towards the Borana.

The 1992 allocation of land mentioned here was an initiative by the Isiolo County Council – wherein it used its powers given by the Trust Land Act not only to manage communal land but also to allocate plots to individual title holders as private land. In 1992, this was done on a fairly large scale. The procedure used was the making of a public announcement in the national newspapers on the future allocation of land plots with individual title deeds, to take place in a pre-defined area (Tullu Roba) within Isiolo Town. Following that announcement, many of the plots were in reality allocated to people who were not then residents of the district, while the people living in Tullu Roba were asked to move out. Even though they refused to do so, the county council continued to allocate private ownership titles to contested plots in other parts of Isiolo Town. An informant from Tullu Roba (without a registered title deed) told us the following:

The council wants to evict us and give our land to the rich people. In February 2006 they put out a notice that we should vacate the place, or else they would use force, but we were not ready to move; and we never will be!

## Claims and Rights – With a Legal and Institutional Framework in the Making

Only a fraction (5 per cent) of our informants actually held title deeds to land in Isiolo District. The Kenyan Central Bureau of Statistics has in fact listed 87 per cent of the households in Isiolo District as being “landless” (Syagga 2006: 319), indicating that communal rights in trust land have thus far not been considered property rights by the Kenyan government. Our study shows, further, that the land allocation procedures used by the county council – while holding most of the land in the district “in trust” for the people resident on that land – had little legitimacy among and for the local residents. They generally believed that those who received land through allotment procedures had paid bribes. As a Borana informant told us, “those who have money get land, because the council is corrupt”. This view has been corroborated in other studies that show how post-colonial government in Kenya vested ownership of communal land in “partially elected and demonstrably unaccountable agents of [the] state” (Wily 2008: 5).

In describing the local dynamics – ones of partially overlapping and conflictive claims to land – in Isiolo District, we have indicated how a series

of crises and insecure livelihood conditions have shaped people's lives as well as their livelihood opportunities. Under such conditions, land is often perceived as a source of security and relative stability, as has also been asserted by Berry (2002: 639). In Isiolo District, locally perceived vulnerability and insecurity are related to concerns over the use of land not only for earning livelihoods, but also for settlement. This is especially the case in localities with relatively high pressure on the land, such as Isiolo Central Division – where individual titles have also been allocated on trust land. This has, not surprisingly, contributed to increasingly contested property rights, with the emergence of overlapping claims to the same plots, and with people both fearing and resisting evictions.

More generally, the claims that have been given narrative form in the various accounts presented here can be said to express an interest in land at three distinguishable levels of society. There are both individual claims and claims at the clan level. Above all, however, claims are made by the different ethnic groups through accounts that we consider to be “authoritative discourses” articulated from within each group. Through our data collection in the field and subsequent analysis, as well as secondary sources, we have also been able to verify their nature as being both typical and representative of narratives alive within each ethnic group. In Figure 1, we give an overview of the diverse, contested, overlapping and, in part, complementary land claims that have emerged from these accounts. Together, they constitute the complex web of relationships to the land that are perceived as legitimate by the different actors and inhabitants of Isiolo District today.

Figure 1: Claims to Land in Isiolo District According to Ethnic Group

	Land claims and perceived rights to land	Sources of legitimation for claims
Borana	<ul style="list-style-type: none"> <li>• Rightful ownership of land in the whole district</li> <li>• Exclusive claims to grazing land and water points in the Waso area</li> <li>• Rights to land management in the district</li> </ul>	<ul style="list-style-type: none"> <li>• Pre-colonial occupancy of the area</li> <li>• Customary rights confirmed by colonial government</li> <li>• Colonial policy of tribal separation and confinement within defined boundaries</li> <li>• Traditional Borana tenure rules governing land and resources</li> <li>• Trust Land Act</li> </ul>
Somali	<ul style="list-style-type: none"> <li>• Access and user rights to key resources (land, pasture and water for herds)</li> <li>• Exclusive ownership rights in Isiolo Central Division</li> </ul>	<ul style="list-style-type: none"> <li>• Customary rights to negotiate access and use of resources</li> <li>• Agreement between colonial government and ex-soldiers on land rights in Isiolo Central Division/Town</li> <li>• Constitutional right of Kenyans to settle and own land anywhere in the country</li> </ul>
Samburu	<ul style="list-style-type: none"> <li>• Rightful ownership (or co-ownership) of land with Borana in Isiolo District</li> <li>• Indigenous rights in Isiolo Central Division</li> <li>• Access and user rights to key resources (land, pasture and water for herds)</li> </ul>	<ul style="list-style-type: none"> <li>• Being the indigenous people of Isiolo during pre-colonial times</li> <li>• Samburu place names in the district, indicating the Samburu were the original inhabitants</li> </ul>
Turkana	<ul style="list-style-type: none"> <li>• Rightful claims to land to settle and keep herds in parts of Isiolo District</li> </ul>	<ul style="list-style-type: none"> <li>• Presence in the district since early colonial times</li> <li>• Constitutional right of Kenyans to settle and own land anywhere in the country</li> </ul>
Meru	<ul style="list-style-type: none"> <li>• Rightful ownership to part of Isiolo Central Division</li> <li>• Individual titles to land in Isiolo Town</li> </ul>	<ul style="list-style-type: none"> <li>• Colonial district boundaries</li> <li>• Land allocation by post-colonial government</li> <li>• Constitutional right of Kenyans to settle and own land anywhere in the country</li> <li>• Registered Land Act</li> </ul>

## Preliminary Conclusions: At the National and Local Levels

The constitution of 2010 established three distinct categories of land in Kenya: public, community and private. The new category of “community land” will also include land “held as trust land by the county governments” (Constitution Ch. 63.3). The Land Policy of 2009 (Ch. 3.3.1.2) stated, furthermore, that the Trust Land Act would be repealed. If the reform process continues, the Trust Land Act will, by 2015, have been replaced by a new Community Land Act.<sup>29</sup> The Land Policy also delineates a series of “land issues requiring special intervention”, which include both “historical injustices” and “pastoral land issues” (Ch. 3.6). Historical land injustices are defined, in the policy, as “grievances which stretch back to colonial land administration practices and laws” (Ch. 3.6.2); more specifically, this concerns grievances dating back to 1895 – in other words, the year that British East Africa was formally established. The policy states that the government will “establish a suitable legal and administrative framework to investigate, document and determine historical land injustices and recommend mechanisms for their resolution” (Land Policy Ch. 3.6.2.176). Concerning pastoral land issues in particular, the policy stipulates that the government will redress the problems deriving from “the deprivation of land-management rights from the traditional institutions” during the colonial and post-colonial eras. This will be done by establishing “suitable methods for defining and registering land rights in pastoral areas while allowing pastoralists to maintain their unique land systems and livelihoods” (Land Policy, Ch. 3.6.3.180).

These policy statements no doubt give the different groups new hopes for the redress of what they perceive as being historical, as well as contemporary, injustices. New spaces have thus been opened for the claiming of rights and, moreover, for the capturing of positions – through either politics or force – in the on-going quest to both present and enforce legitimate, contested, and opportunistic land claims. The new wave of violence that has emerged in Isiolo District in 2011 seems, thus far, to have involved clashes between those people who are among the most destitute in the district – such as the Samburu and the Turkana – and those who look upon themselves as being victims of a diversity of historical injustices. This is happening during a time when neighbouring Somalia is caught up in the twofold crisis of civil war and serious drought – circumstances resulting in groups of

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29 The new constitution (Ch. 5.63) states that parliament will enact legislation to validate the new category of community land; a time limit of five years has been set for this new legislation to be enacted (Ch. 18).

Somalis entering the district from the east in search of survival, water, pasture and, more problematically, land. This is, hence, a volatile setting, and the claims that have been presented in this article may very well be given revised narrative representation in the future accounts – in response both to the changing legal framework concerning land rights in Kenya and to the shifting power relations on the ground.

We have argued that these narratives form part of the “authoritative discourses” within each ethnic group. However, outside of our research, they do not – at this point – constitute part of a common “discursive field” (Kaarhus 1999: 61). To date, there have been no public institutions with either the mandate or the legitimacy to hear the “authoritative” narratives that have been given a voice and reproduced by members of these ethnic groups. The creation of such a common discursive field will be necessary if any negotiated agreement solving these conflicts over rights and access to land is to be reached. A new legal platform on which to do this has already been created in Kenya; the challenge is, then, figuring out how to use it while taking all these different narratives and competing claims into account – and, ultimately, establishing the process of making them negotiable and resolvable legal claims.

In a situation that is marked by the legal and institutional frameworks being very much in transition, and one that is simultaneously intersected by occasionally violent clashes between people who belong to groups that have, at least in part, competing claims to the land, the development of procedures for the new category of “communal land” in Kenya is an extremely demanding task. More than ever it will require the establishment of sufficiently representative and, above all, legitimate local institutions, so that complex and conflictive claims and relationships to the land can be addressed and resolved in areas such as Isiolo District.

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## **Konkurrierende Ansprüche und umstrittene Grenzlinien: Die Legitimierung von Landrechten im Isiolo-Distrikt in Nordkenia**

**Zusammenfassung:** Menschen aus fünf unterschiedlichen Ethnien teilen sich das Land im Isiolo-Distrikt (Nordkenia). Dieser Beitrag gibt einen Überblick über die Landansprüche der unterschiedlichen Gruppen in diesem ethnisch komplexen Gebiet, das sich an die großen Trockengebiete im Südosten der Sahara anschließt. In narrativer Form werden aktuelle Ansprüche präsentiert, die dadurch Legitimität beanspruchen, dass sie sich auf historische Prozesse beziehen, auf den Status als zuerst Gekommene, auf Entscheidungen früherer Regierungen oder auf Bürger- wie auch „Stammes“-Rechte. Die Autorinnen stellen den transitorischen Charakter des derzeitigen verfassungsrechtlichen, politischen und sozialen Umfeldes in Rechnung, in das sich die Erzählungen und Ansprüche einfügen, und beziehen die Sichtweisen der in der Region lebenden Menschen auf die breiteren Diskurse um Landkonflikte und Landreform in Afrika. Zugleich stellen sie einen inhaltlichen Zusammenhang her zu der Serie neuer interethnischer Zusammenstöße, die sich im Jahr 2011 im Isiolo-Distrikt ereigneten.

**Schlagwörter:** Kenia, Grundbesitz, Bodenrecht, Sozialer Konflikt, Reform