

Lund University
Department of Human Rights Studies

MRSM01
Spring 2010
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Trouble in Paradise

A study on the identity and recognition of indigenous peoples
in Kenya

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This study has been carried out within the framework of the Minor Field Study (MFS) Scholarship Programme, funded by the Swedish International Development Co-operation Agency (Sida).

The MFS Scholarship Programme gives Swedish university students the opportunity to carry out fieldwork in a Third World country. The extent of the work can lead to Bachelors or Masters Degree. The studies focus on areas and issues of relevance for development problems, and are conducted in countries supported by Swedish development assistance.

Sida's main purpose with the MFS Scholarship Programme is to stimulate the students' interest in, and increase their knowledge about, as well as their understanding for, developing countries and development issues. The MFS scholarships provide the students with practical experiences of the conditions of development. A further aim for Sida is to strengthen co-operation between Swedish University Departments, Institutes and organizations in countries in Africa, Asia and South- and Central America.

The Department of Social and Economic Geography at Lund University is one of the departments that administer MFS Programme funds.

Abstract

Based on a Minor Field Study conducted in Kenya 2009, this thesis discusses the relationship between identity and recognition regarding indigenous peoples, focusing on the Endorois community located in the Rift Valley province in Kenya. Viewed from a social and legal perspective, elements of the Endorois community's identity and their relationship to the Kenyan state and society are analyzed. The results suggest a strong link between the social and legal recognition of indigenous peoples and the preservation of their identity. Assimilative policies, conceptual misuses, ignorance on indigenous issues, negative stereotypes, and marginalization are some of the consequences of the lack of recognition that the Endorois as well as other Kenyan indigenous communities have faced. However, a legal case in the African Commission filed by the Endorois community against the Kenyan state was outlined as an opportunity for indigenous peoples in Kenya to improve their situation, and to increase the social and legal recognition of their identity.

Key words: Kenya, indigenous, identity, recognition, culture, ethnicity

Abbreviations

| | |
|------------------|--|
| ACHPR | African Commission on Human and Peoples' Rights |
| ASAL | Arid and Semi-Arid Lands |
| AU | African Union |
| CBO | Community Based Organization |
| CDF | Constituency Development Fund |
| CEMIRIDE | Centre for Minority Rights development |
| EWC | Endorois Welfare Council |
| KCHR | Kenya Human Rights Commission |
| ILO | International Labour Organization |
| IPPF | Indigenous Peoples Planning Framework |
| KLA | Kenya Land Alliance |
| KNCHR | Kenya National Commission on Human Rights |
| MRG | Minority Rights Group International |
| RECONCILE | Resource Conflict Institute |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |

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1 Introduction

Questions on how our identity is shaped within us as well as by people and institutions around us have been discussed for many years. Within this discussion there is an additional question of what role identity should have in the public sphere, especially when considering societies with great cultural diversity. In what sense should our identities have a public meaning, and could a neutralization of this sphere better protect everyone's freedom and equality? In the introduction to Charles Taylor's essay "Multiculturalism and the Politics of Recognition", Amy Gutmann argues that a democratic state is bound to recognize the cultural diversity within its borders, and to help misfortunate groups to protect their culture against assimilation into the majority or the mass culture. Interference in their cultural distinctiveness should further be avoided in order to secure an equal recognition of all different groups in society. (Gutmann, 1994, pp. 18-19)

The discourse on indigenous issues has dealt with these questions for many years as well. The title of this thesis is taken from a campaign launched by the Minority Rights Groups International (MRG) concerning the human rights situation of an indigenous community in Kenya called the Endorois.¹ While learning about the community and their situation, I came to realize that a major underlying factor to their difficulties tended to be a lack of recognition of their very identity as an indigenous community. The importance of this factor is confirmed by a recent report on the situation of indigenous peoples² in Africa:

World-wide, indigenous peoples are faced with injustices such as dispossession of historical land and resources and forced assimilation into the way of life of dominant groups. Indigenous peoples in Africa face even bigger challenges as a result of the fact that African States have been reluctant to acknowledge the very existence of indigenous groups within their territories. (ACHPR, ILO, 2009, p. 3)

1.1 Purpose of the study

This thesis aims at analyzing external influences on the identification and recognition of indigenous peoples in Kenya, viewed from a social and legal

¹ See www.minorityrights.org for further details on the campaign.

² The use of "peoples" instead of "people" is partly a way to recognize that there are real differences between different indigenous peoples. It is also argued for by indigenous activists because of the right of peoples to self-determination. (Smith, 2006, p. 7)

perspective. Elements of indigenous identity relevant to the Kenyan setting will be contextualized through examples from the Endorois community. The social perspective refers to the social interactions between the community and other individuals and collectives in society, and the legal perspective refers to Kenyan politics, laws, development strategies, and policy making processes.

1.1.1 Research question

The following research question will guide the thesis:

- How is the identification of the Endorois as an indigenous community affected by Kenyan social and legal politics of recognition?

1.2 Structure of the thesis

The following chapter aims at providing the reader with a short empirical background of the Kenyan context, as well as an introduction to the Endorois community. In the methodology chapter I present my methods used prior, during, and after the field study, where some ethical considerations and personal experiences from the field also will be discussed. This is followed by a chapter introducing the theoretical framework, which includes aspects and concepts relevant for the study. The fifth chapter presents my findings in the field, which are further discussed and intertwined with the theoretical framework in the analysis chapter. The thesis ends with some concluding remarks, and a list of references.

2 Introducing the context

In order to provide the reader with an empirical background relevant for the subject of the thesis, this chapter aims at briefly discussing the post-colonial political history of Kenya, followed by a short introduction to the country's indigenous peoples including the Endorois community. Field material has been intertwined with secondary research material.

2.1 Post-independence politics and ethnicity

Kenya gained its colonial independence from Great Britain in 1963, also the year when the current Constitution of Kenya entered into force.³ In general, circumstances from the past tend to have had a major influence on the creation of a post-independence political order. Ethnicity can for example be considered a factor that has prevailed long after Kenya's independence, where the history of inequalities between the country's different ethnic communities can be traced back to colonial policies and laws, as well as to post-colonial practices that entrench colonial discrimination. (ACHPR, ILO, 2009, pp. 46, 55-56) The policies of the colonial Government emphasized Kenya's various districts as separate units, isolating ethnic groups from each other and inevitably heightening the Kenyan people's awareness of their ethnic identity. Social and cultural distinctions became defining characteristics that separated the many ethnic groups, which further led to the groups gaining uneven political development, and unequal integration into the farming economy. After the independence, the most fertile areas which had been lost to the colonial regime were regained mainly by the majority groups in the country. (Stavenhagen, 2007, p. 6)

Even today, the two social forces at the core of Kenyan politics can be identified as ethnic groups and political parties. In the absence of strong political ideologies the ethnic element provides the focus for party loyalty. Parties and ethnic groups often overlap, and ethnicity has to a great extent influenced the shaping of Kenya's current political economy, and the definition of the country's social, economic, and political institutions. Ethnic polarization thus remains as

³ On the 4th of August 2010 the Kenyan people voted with 67 % in favour of a new Constitution of Kenya, which will enter into force in 2012. (www.nation.co.ke) Since my field study was conducted long before the election, I have not included this new element of Kenyan politics into the thesis. However, the Constitution is likely to have effect on the country's indigenous peoples, for example due to its new land provisions.

one of the country's biggest challenges to further democratization and political mobilization, fuelled with conflicts over land and resources inherited from the past. (MRG, CEMIRIDE, 2005, pp. 23-24)

According to the Kenya Census 1989 the country comprises of forty-two ethnic communities,⁴ however, the validity of these numbers has been questioned due to the identification of many more groups than these forty-two. Secrecy around the results from the Census in 1999 has additionally contributed to suspicion and mistrust among the population over the politicians' real intentions regarding the mapping of ethnic groups in Kenya. There were even predictions on the likelihood of violence not far from the surface in the run up to the 2007 General Elections due to a rise in political temperatures – predictions not far from the reality. (MRG, CEMIRIDE, 2005, pp. 23-24) The post-election violence in 2007/2008 turned Kenya into a land of chaos, resulting in approximately a thousand people killed and up to 600 000 internally displaced persons. After political agreements were made and a grand coalition created the violence ended, but it did not seem to further enhance the political mobilization, and President Kibaki and Prime Minister Odinga have at times had severe difficulties in communicating and cooperating on various national issues. (Amnesty International, 2009)

2.2 Indigenous peoples in Kenya

The groups in Kenya who normally are identified as indigenous peoples in the international context are the small pastoralist and hunter-gatherer communities, living mainly in the arid and semi-arid lands (ASAL) of the country. They include pastoralist communities such as the Endorois, Borana, Maasai, Pokot, Samburu and Somali, and hunter-gatherer communities such as the Ogiek, Sengwer and Yakuu. (Stavenhagen, 2007, p. 6) There is no legal recognition of these peoples in the current Constitution of Kenya, and the state has not ratified any of the international human rights instruments targeting indigenous peoples: the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal People, or the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).⁵

⁴ The ethnic groups in Kenya can be broken down into three main ethno-linguistic groupings: Bantu-speaking, Cushitic-speaking, and Nilotic-speaking. Within these, the largest ethnic groups are: Kikuyu (21 %), Luhya (14 %), Luo (13%), Kalenjin (12%), Kamba (11%), Kisii (6%), and Meru (5%). Apart from these there many small ethnic communities, as well as other non-African groups such as Kenyans of American, Arabic, Asian and European origin, plus a number of Africans who have become citizens of Kenya. (Kenya Population Census, 1989)

⁵ The ILO Convention No. 169 entered into force in September 1991, and is the only international legally binding instrument on indigenous peoples' rights. To date twenty-two countries have ratified the convention, and in April 2010 the Central African Republic became the first and only African state to ratify the convention. (www.ilo.org) The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in September 2007,

Common characteristics for nearly all of the Kenyan indigenous communities are the discrimination of their livelihoods and cultures, and the sense of marginalization further confirmed by the legal, economic, and political set-up. This is often followed by difficulties for them to access public services due to the fact that they are located in remote and inaccessible areas, a situation especially hard on women and children who already may suffer from gender inequalities and internal discrimination. Other principal human rights issues indigenous peoples face relate to historical land injustices; the loss of land and natural resources as a result of dispossession in the colonial or post-independent periods; and inappropriate development and conservationist policies which further aggravates the violation of their economic, social and cultural rights. (Stavenhagen, 2007, pp. 8-9) Since illiteracy is high among these communities and the awareness of the institutions and instruments that may be available in order to protect their rights is low, it becomes difficult for them to seek redress for violated rights. Additionally, due to the high level corruption in the country and biased application of the law, the consequences for indigenous peoples' rights claims tend to be negative. (MRG, CEMIRIDE, 2005, pp. 20, 28-29)

2.2.1 Pastoralism

The ASAL in Kenya, home to the majority of the country's indigenous pastoral communities, are characterized by low population density, periodic droughts and low rainfalls. The communities are today facing poverty, lack of economic opportunities, intractable conflicts, low education rates, and poor infrastructure. Pastoralists have for centuries used their knowledge to devise coping and adaptive strategies, and in order for this system to be productive and sustainable they keep large herds of animals, such as cows, goats and sheep; take periodic movements in search for water, salt licks and pastures; and practice rotational grazing to avoid over-grazing. To date, however, there is no substantive Kenyan law or policy that effectively protects the pastoralist communities to use and develop the lands they occupy, or that grants them access to natural resources vital for their subsistence and reproduction. Laws have instead favoured individual land titling, opposed to recognizing the collective nature of pastoralist communities' claims. (Stavenhagen, 2007, p. 7; interview no. 8)

with 144 states in favour, 4 votes against, and 11 abstentions where Kenya was one of these. The declaration is not legally binding but has the potential of setting an important standard for the treatment of indigenous peoples. (www.un.org/esa/socdev/unpfii/index.html)

2.3 The Endorois community

The Endorois is an indigenous agro-pastoralist community with a population of approximately 60 000 people. They were originally grouped under five Tugen clans within the larger Kalenjin group, and in turn consist of over twenty sub-clans. For centuries the Endorois lived around Lake Bogoria, one of the larger lakes in the Rift Valley province,⁶ and known for its hot springs and rich population of flamingos. This constituted the community's ancestral land, providing them with sacred places as well as with the necessities their lifestyle demanded. However, in 1973 during the era of former President Moi, the Lake Bogoria area was without notice gazetted by the Kenyan state and declared a game park, and within a couple of years the establishment of the Lake Bogoria Game Reserve was carried through. This necessitated the removal of the Endorois community from the area and they were consequently evicted from and lost possession of their ancestral lands, a process which did not include any consultation of the Endorois. The community was scattered over a large area, and since 1978 they can be found in four various districts; Baringo, Koibatek, Laikipia, and Rift Valley. Today, Lake Bogoria is one of Kenya's major tourism sites, where people from all over the world come to experience the hot springs, flamingos, wildlife animals, and the recently built Lake Bogoria Hotel and Spa Resort. The Endorois have not been given any adequate compensation for the evictions, something which was promised by the Government at that time. Additionally, they claim that twenty per cent of the total income from the game park revenues as well as eighty percent of the employment was to be given to the community, an agreement which yet is to be fulfilled by the Government. The vast majority of the Endorois community live in severe poverty, with many being consistently dependent on relief food. Neither can they afford social services or education, and have little or no electricity or running water. (Interview no 3; www.minorityrights.org)

To address the Endorois' cultural, social, political and economic situation the Endorois Welfare Council (EWC) was formed by community members in 1996, and was registered as a community-based organization (CBO) in 2007. The board represents people from each of the sixteen locations where the Endorois live. From the office in Nakuru town the four EWC staff members conduct advocacy work on issues of community land rights, which revolves around petitioning the Kenyan Government to compensate the community so that their natural resource-based livelihood can be improved. The organization further promotes social development and poverty eradication for the community through capacity building, documentation, and information dissemination. (Interview no. 3)

⁶ The Rift Valley province is one of the few areas in Kenya where almost all ethnic communities are represented, making it vulnerable in times of ethnic-based conflicts such as the post-election violence in 2007/2008.

2.3.1 The Endorois in the African Commission

It was the EWC who initiated the legal struggle against the Kenyan Government on the violated rights of the Endorois community, which seeks restitution of their historical lands with legal title and clear demarcation, as well as compensation for their losses. In 1998 a long process was begun, which ultimately led to a judgement in 2002 by the High Court of Kenya dismissing the Endorois' case on technical grounds, stating that all necessary provisions of law had been adhered to when the disputed land was set aside for the use as a game reserve. The judgement was further critical to the identity of those persons bringing the claim, stating that "in any case, there is no proper identity of the people who were affected by the setting aside of the land to form the game reserve". (Morel, Singoei, 2004, p. 11)

After exhausting all local remedies the Endorois took further action with the help of the Centre for Minority Rights Development (CEMIRIDE). The African Commission on Human and Peoples' Rights (ACHPR) has increasingly come to be an important forum for indigenous peoples in Africa, and although the African Charter does not explicitly deal with the rights of these peoples it is generally accepted that the concept of "peoples" in the Charter applies to and encompasses indigenous peoples.⁷ Kenya is a party to the Charter, whereby the state automatically accepts the right of individuals to submit communications to the African Commission, which is what the Endorois community did in 2003. To date three communications have dealt with indigenous peoples' rights, the Endorois community versus Kenya being the case most clearly linked to the alleged victims' membership of an indigenous group of people. (ACHPR, ILO, 2009, p. 28; Morel, Singoei, 2004, pp. 2-3)

On February 4th 2010 the African Union approved a decision by the ACHPR, which found the Kenyan Government guilty of violating the rights of the Endorois community by evicting them from their ancestral land in order to make way for the wildlife reserve. The outcome of the case is seen as a landmark for indigenous peoples all over the African continent. (www.achpr.org)

⁷ The African Charter is unique in its kind compared to other existing regional human rights instruments in the sense that it explicitly acknowledges the right of "peoples", thereby including individual as well as collective rights. (ACHPR, IWGIA, 2006, p. 20)

3 Methodology

Methodology can be explained as a part of the paradigm that guides the research, and is based on assumptions of ontology and epistemology. Methods are the particular tools or techniques that the researcher uses to gather data (Wilson, S., 2008, pp. 33-35). This chapter aims at presenting the methodological approach and methods I have used for the study, including some ethical considerations as well as personal experiences and reflections prior, during and after the study.

3.1 Ethics in the field

In contrast to pure desk-based methods, a field study necessitates a great amount of sensitivity towards the subject, the data collection, and the relationship between the researcher and the environment studied. Research is not an innocent or distant academic exercise, but an activity that occurs in and affects by a set of political and social conditions. According to Ken Wilson, to research in an ethical manner includes considering the processes and situations you are involved in; enabling the future reader to hear the voices and appreciate the actions of as many of the people involved as possible; and to comprehend the context of local process. Within the social sciences, the engagement in value-free research has remained an important tradition in terms of controlling personal opinions and biases, and writing oneself out of the account. However, the difficulties in conducting such a fully value-free research are widely recognized, along with the realization that underlying ideologies and assumptions always affect the nature of the study and its results. (Wilson K., 1992, pp. 180-187) Shawn Wilson claims if aware of these limitations of objectivity, the researcher may be able to reduce the presence of biases in the study. Thus, personal emotions and motives neither can nor should be removed in the research:

[...] Humans – feeling, living, breathing, thinking humans – do research. When we try to cut ourselves off at the neck and pretend an objectivity that does not exist in the human world, we become dangerous, to ourselves first, and then to the people around us. (Hampton, E., 1995, cited in Wilson S., 2008, p. 56)

The data collection itself raises some ethical question on the form and content of the process, where the fieldworker initially needs to explain to the people being researched the purpose of the study, how the data will be collected, and how the results will be used. Additionally, considerations on the study's anonymity,

confidentiality, consent, and how people generally are involved in the study are important within the process.

3.1.1 The indigenous research paradigm

For a long time indigenous peoples worldwide have been accustomed to extensive research in their community, research which they sometimes neither have asked for, nor which has had any specific relevance to them. The term “research” itself, is by many considered as inextricably linked to European imperialism and colonialism. Thus, there are factors to be aware of when non-indigenous researchers aim at studying these communities, and certain sensitivity towards doing research on “others” needs to be present in the research methods. Shawn Wilson argues that no matter how objective the researcher and the methods used claim to be, an own set of biases from an outside perspective is always brought into the study, often leading to a proliferation of negative stereotypes on indigenous peoples. Though, within the past decades more and more is being done to bring indigenous peoples into the research process, and the usefulness of the research is becoming more visible and beneficial to the communities. Several indigenous scholars have emerged within the discourse, and they have increasingly come to assert their power with the aim of avoiding “others” to speak in their stead. While articulating their own research paradigm they demand that research performed in their communities follows their codes of conduct, and incorporates their systems of knowledge, worldviews, epistemology, and ethical beliefs. (Wilson S., 2008, pp. 15-17)

As a non-indigenous researcher I can only take these recommendations into account. Realizing I will not be able to approach the subject of my study with anything but a non-indigenous perspective, I will however keep these recommendations in mind as well as other more general ethical consideration during the process. I arrived in Kenya with a pre-understanding of what characterizes an indigenous community and the reality of such community, based on my knowledge and experience of the Swedish context. This understanding was to a great extent re-shaped in the Kenyan setting due to the context-specific features, and I believe this has contributed to me being able to discuss the subject without allowing the pre-knowledge and presumptions to shine through. However, I am still aware of the difficulties in trying to analyze and understand the identity and worldview of peoples with whom I cannot identify myself with, and I will always remain an outsider with a different worldview and epistemology.

3.2 Methodological approach

My method for this study has been a qualitative research, which by Shawn Wilson is described as “multi-method in focus, involving an interpretive, naturalistic approach to its subject matter.” (Wilson, S., 2008, pp. 39-40) Within social

sciences the basic methodological techniques for qualitative fieldwork is the one-to-one interview, supplemented by other methods such as group discussions and participant observations. (Devereux, Hoddinott, 1992, p. 28) My way of collecting and interpreting the field material has been of great importance for the guiding and findings of the thesis. The approach has not been one where the theory comes first and is later followed by the material, but it has rather been a constant interaction between pre-knowledge, theoretical discussions, field material, and complementary literature. After using a combination of methods in the field, including qualitative interviews, participant observations and informal discussions, I analyzed the data collected when returning from Kenya in order to find common themes and statements that supported one another as well as my secondary research material.

3.2.1 Choice of subject and respondents

Prior to applying for an MFS scholarship, my choice of country was already decided based on earlier experiences from Kenya. While searching for a subject for my master thesis and Minor Field Study, I learned about the Endorois community and became interested in their situation. It seemed to be of the same character as many other indigenous peoples worldwide, but it also included a unique element; their struggle against the Kenyan authorities on historical injustices leading them to the African Commission, the first case of its kind. Additionally, even though this study focuses on the Endorois community and the fact that there are some specifics that are pertinent to them, many of the issues are also relevant to other indigenous communities in Kenya. The use of the Endorois' situation is thus a case to illustrate broader questions of indigenous peoples' identity and recognition.

After contacting the EWC's Programme Officer I received a formal invitation and was welcomed to their office in Nakuru, from where I would be able to collect data on the Endorois community and gain a local perspective on indigenous peoples' situation in Kenya. I thereafter contacted the Kenya National Commission on Human Rights with the aim of gaining a national and policy perspective on my study, and was directed to the Commissioner in charge of the Commission's minority programme. During my time in Kenya I further became acquainted with other organizations working within the field of indigenous issues, for example the Resource Conflict Institute (RECONCILE), an organization mainly working with pastoralism issues and resource-based conflicts, and which gave me great help in my data collection. Additionally, for my informal conversations I had no preferences on the respondents except for their non-indigenous identification, and they mainly consist of local people living in the urban area of Nakuru.

I have followed the recommendation on anonymity by Ken Wilson, who sees no virtue in revealing peoples' names unless they are very prominent. This consequently makes it difficult to provide the reader with the context for a person's activities without revealing the person's actual identity. (Wilson, K.,

1992, p. 187) No such prominent person figures in this study, and therefore I decided not to use the real names on my informants. It is possible to reveal their names through some research, however, I hope the reader is satisfied with considering what people have said rather than the name of who said it.

3.2.2 Disposal of time in the field

The study was carried out in the cities of Nakuru and Nairobi between April and August 2009. Normally, for a Minor Field Study the recommendation is to spend eight to ten weeks in the field. My reason for staying longer in Kenya was that I combined the study with volunteer work at a children's home in Nakuru, something which was planned before I received my MFS scholarship. Through earlier experiences of Kenya I was already acquainted with the environment, however, these experiences were gained through the eyes of a volunteer and traveller, and not through the eyes of an academic researcher. Factors which I then had appreciated, such as the often relaxed attitude towards time, became occasionally elements of frustration during the study. It was not always easy to book meetings and interviews and to conduct these in an effective manner. However, I believe the long time spent in the field increased my knowledge of the context and the subject of my thesis. Devereux and Hoddinott also promotes it as a good way of increasing the study's validity, in terms of allowing greater flexibility in the research schedule, and adding time to the investigation of topics and to get close to the respondents. (Devereux, Hoddinott, 1992, pp. 35-37)

On a daily basis I followed national political debates and discussed them with local people, which altogether gave me a better understanding on the political climate and social relations in society. Apart from this, my main activity was to visit the EWC's office in Nakuru where I was able to follow the work of the four staff members. However, it was not always easy to get access to their time, and it was difficult to pre-plan interviews since I did not know in advance when they were available. Therefore, I had to put trust on the more spontaneous conversations with them. Some interviews were additionally conducted at the KNCHR in Nairobi, where I also participated in a regional seminar regarding indigenous issues. Two other workshops held in Nakuru were also included in the field activities, which will be discussed later in the chapter.

3.2.3 Qualitative interviews

Interviews can be regarded as focused discussions, enabling the researcher to gather information directly from the point of view expressed by the research subject. In order to allow for the greatest sharing of information, the interviews ought to be open-ended and dialogue-based. (Wilson S., 2008, p. 41) Qualitative interviews normally take a structured shape, typically questionnaires, or a more unstructured shape with no formal questionnaire. Another alternative is for the researcher to use a combination of these two approaches, the semi-structured

interview, which may be useful if the researcher has a specific focus for the interview within a range of other methods employed in the study. (May, 2001, p. 123) Consequently, this is the approach I chose for my data collection in the field. Where a series of topics as well as some explicit questions are introduced to the respondent there is also room for follow-up questions, and the end-result of every performed interview can differ based on the variation in variables. To adopt a variety of approaches to the same issue is a good way of cross-checking data, since different questions, similar questions asked at different times, and different respondents all contribute to a more transparent and valid written result. Its negative features relates to their relative unrepresentativeness, where good case studies and quotes often are produced but the responses are difficult to compare when each individual is asked different questions, or leads the discussion towards that person's own interest. (Devereux, Hoddinott, 1992, pp. 30, 35-37) However, I believe the semi-structured approach has increased that the chances of the conclusions growing out of this thesis being relevant to the setting and actors involved in the study. This type of setting is seen as friendlier as and less intimidating than a formal and structured interview, and is especially useful at an early stage of the fieldwork. My interviews at the EWC can for example be defined as open conversations on topics of special interest, where my aim was to create a relaxed atmosphere in order for the respondents to talk freely. For the same reason I did not use a tape recorder, but took notes and wrote a summary afterwards.

3.2.4 Participant observation

Participant observation constitutes an important part of this thesis, and is a method which widely has been described as:

[...] a characteristic blend or combination of methods and techniques that [...] involves some amount of genuinely social interaction in the field with the subjects of the study, some direct observations of relevant events, some formal and a great deal of informal interviewing, some systematic counting, some collection of documents and artefacts, and open-endedness in the direction the study takes. (McCall, Simmons, 1969, cited in Devereux, Hoddinott, 1992, p. 31)

The use of participant observation depends largely on the research topic and particular fieldwork circumstances, and where appropriate it can be used to provide insights into events or activities that would not have been understood if the researcher had remained strictly an outsider. (Devereux, Hoddinott, 1992, pp. 31-32) Shawn Wilson describes it as “learning by watching and doing in a scientific manner”, where the aim is to gain closeness to people and events and to observe and analyze why they are doing things in their way. (Wilson, S., 2008, p. 40) Additionally, the creation of relationships based on mutual respect and openness is essential for ethical fieldwork, and for the researcher's opportunities to find out about local peoples' concerns and receive knowledge on how to

address these. (Wilson, K., 1992, p. 191) Thus, the question of which role the researcher should take is constantly present in the field work, and how to combine a professional role with a personal engagement in the environment and lives of the people in the study. Such dual engagement demands ethical considerations as well as responsibilities, and emphasizes the respect the researcher needs to have for the rights of the people involved in the study, including avoiding negative stereotypes, unfounded theories, and over-simplified notions. (Wilson, K., 1992, pp. 179-180) In my experience it was practically impossible to separate my professional and personal role in the field, where initially the very choice of my subject and setting reflected personal values and engagement, and a completely value-free research was therefore not an option. Participant observations have for example been important for the results of this study, since taking part in activities and interactions between different actors often revealed more useful and interesting information than a normal interview did. However, such observations may be considered as influenced by my personal opinions on the most relevant impressions to absorb.

Additionally, the three workshops which I attended are parts of my participant observations. The first workshop was a Training Programme held in Nakuru by the EWC, with the agenda of educating community representatives in the work for the community's legal, social and political development, and encouraging them to discuss and outline important features of the Endorois' present situation. The second workshop was organized in Nairobi by the KNCHR and the ILO, and aimed at gathering indigenous and non-indigenous representatives from the African continent in order to share experiences and discuss the best practices on indigenous peoples' rights in Africa. At the workshop a unique report on the human rights situation of the continent's indigenous peoples was presented by the University of Pretoria, a report which has been of great use in this thesis. Finally, a national workshop on pastoralism in Kenya was held by RECONCILE in Nakuru, with representatives from both pastoral communities and state institutions. A common theme for all the workshops was the presence of Endorois community members, and their legal case was a part of the various agendas. The workshops further included interesting group discussions, and gave me perspectives on the work on indigenous issues on the local, national and the regional level. Through all of them my aim was to intervene as little as possible, and minimize the effects of my presence on what was said and done. At the EWC Training Programme this turned out to be quite impossible since I attracted a lot of attention from the Endorois participants, who were interested in my background and doings in Kenya as well as the Swedish context concerning indigenous peoples. However, I still consider my influences on the outcome of the workshop as minimal.

Additionally, one part of my participant observations was a community visit to the Endorois' former homelands around Lake Bogoria, where I was accompanied by the EWC Programme Officer and one of the community's Counsellors. The field visit may not have provided me with much concrete and relevant data for my study, but gave me a better insight in and understanding of the community's situation, for example in terms of their access to social services.

3.2.5 Working with the field material

A strength with a field study is the primary rather than secondary research being performed by the researcher, resulting in an analysis undertaken by the person who actually collected the data. The closer the field researcher is to the data source, the better understanding of its strengths and limitations is received. This, however, is not to say that the process is neutralized in terms of personal values or preconceptions, since the journey from the data collection to the final paper can be regarded as a construction where the researcher's own subjectivity inevitably is included. When the researcher is to analyze the field material, his or her assumptions will affect what should be highlighted, and which conclusions to be drawn. The researcher can for example choose to highlight the conversations, the observations, the scientific problems, or the personal experience. (Wilson, K., 1992, pp. 179-181)

I have aspired to include all these features in the thesis. Returning from Kenya I was initially overwhelmed by my experiences and encounters with people, and also faced with an array of data collected in the field. Gradually, and with the help of a critical distance to the Kenyan experience, I began the challenge to intertwine my field material with the secondary material, and to transfer events and details of people's lives into academic data. In the end I hope to have succeeded in delivering both an academic and a "real life" aspect to the results of the thesis, and without losing the core essence of field material. I also aim for the results to be considered as relevant to the indigenous discourse, which as discussed earlier in this chapter often not has been the case with traditional research on indigenous peoples. Receiving an MFS scholarship you are encouraged to share the results of the study with as many people and organizations in the field as possible. Even if the sharing is done after the concluding of the thesis, I still consider it a positive way of ensuring that the respondents and informants are a part of the study, and that they can use it for various purposes.

3.3 Limitations of the study

Conducting a field study for the first time is a learning process where you simultaneously learn about the subject and context, and about your role as a field researcher. I believe this is an important purpose of the MFS scholarship, since no earlier field experience is required of the applicant. Inevitably I am sure to have made some new beginner's mistakes due to my inexperience and which may have affected the results of the study. Additionally, a field study is a selective process, where the researcher is relatively bound to the material being "offered", since pushing people into talking about things may affect the objectivity and validity of the research. A selection of elements within the indigenous identity and recognition discourse has been made based on the context-specific Kenyan setting, leaving other important elements out due to time, availability and space limitations.

A difficult task in the field was to receive a state perspective to certain questions, or Government information about the approaches towards indigenous issues in the country. I did not succeed in meeting any of the authorities relevant within these issues, and the closest I got was the contact with the KNCHR. I was prepared for this from the beginning, but still I was disappointed since it meant I would not be able to add that perspective to the results of my study. Thus, the only way to observe official approaches towards indigenous peoples was through analyzing the authorities' non-actions rather than their actions.

3.3.1 Language as a barrier

Where the language spoken among the local population sometimes can be a barrier for the field researcher, I did not experience this during my study. The majority of those I met in the field spoke English fluently, since it is one of the official languages in Kenya. However, at the EWC Training Programme many of the participants were Endorois community members lacking English speaking and understanding skills. Therefore, some parts of the workshop were conducted in Kiswahili and I had a person who translated for me. Due to this I may have missed some parts of the agenda, and I have not been able to receive a written report from the Training Programme afterwards.

4 Theoretical framework

My choice of theoretical framework aims at providing the reader with a discussion relevant for the understanding and analysis of the field material. The connection between identity and recognition will initially be discussed, and in order to bring this discussion into the indigenous discourse I will thereafter highlight some elements specific for indigenous peoples' identification and recognition, including the conceptual development of the term "indigenous".

4.1 The dialogical relationship between identity and recognition

People generally identify themselves in many ways, and the identity may change over time, making the identification a process that is never complete. Weaver argues that "identities are always fragmented, multiply constructed, and intersected in a constantly changing, sometimes conflicting array." (Weaver, 2001, pp. 240-245. In order to highlight the connection between identity and recognition, the dialogical character of human life should according to Taylor be taken into account. We become full human agents, capable of understanding ourselves and defining our identity, through our acquisition of rich human languages of expression. These modes of expression are learned through exchange with others, and we are introduced to them through interactions with other who matter to us – the "significant others". The shaping and sustaining of our identity remains dialogical throughout our lives, where one's identity is negotiated through dialogue, partly openly and partly internal, with others. (Taylor, 1994, p. 32) Therefore, while we on the one hand possess unique individual identities and on the other hand share aspects of our identity with others as part of our collective identity, the identification process is also formed and maintained through social interaction with other individuals and collectives, and through difference in relationship with others. (Weaver, 2001, pp. 240-245)

Taylor further argues that identity can be regarded as in part shaped by recognition, by the absence of recognition, or by the misrecognition by others. He expresses his thesis as the following:

[...] Our identity is partly shaped by recognition or its absence, often by the misrecognition of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Non-recognition or misrecognition

can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being. (Taylor, 1994, p. 25)

The identity does not receive recognition automatically but has to obtain it through exchange. On an intimate level, such as the private sphere, we are aware of how identity can be shaped or negotiated through the contact with significant others. On a social level, such as the public sphere, we have a continuing politics of equal recognition, and the understanding that identities are formed in open dialogue has made this politics more central. Taylor claims that there is a great need, or sometimes a demand, for recognition within a number of strands in contemporary politics, for example illustrated on behalf of minority or “subaltern” groups, and in what today is called the politics of multiculturalism, where the demand in these latter cases becomes meaningful through the supposed links between recognition and identity. (Taylor, 1994, pp. 25-26, 34-37)

Groups who are being subjected to non-recognition or misrecognition have often been exposed to negative images of them. Taylor claims that if they are unable to resist the adoption of such images, the self-depreciation of these groups may become the most efficient instrument of their own oppression. This point has been made in relation to indigenous and colonized people in general, where Europeans for centuries have projected an image of such people as inferior and “uncivilized”. Within these perspectives, misrecognition shows not just a lack of due respect, it can also cause grievous wounds. Taylor describes equal recognition not just as the appropriate mode for a healthy democratic society, but also that its refusal can inflict damage on those who are denied it. (Taylor, 1994, pp. 26, 36-37) Especially for marginalized groups the aspect of how others perceive them is important since identity formation always involves power; the power of one group to establish its way of life as normative. Additionally, the failure to accord appropriate recognition to groups may lead to tensions and to their assimilation into larger groups, thus risking the very survival of the identity of these groups. (McCar skill, Rutherford, 2005, p. 150-153; Slimane, 2003, p. 5)

4.2 The indigenous discourse

To a great extent the nature of indigenous peoples’ political, economic, and social relationship with the state and other more dominant groups in society shapes their various claims for recognition and rights. (Corntassel, 2003, p. 84) The MRG states that these peoples not only have the perception of being disadvantaged through non-recognition, but are de facto excluded from political power and from administration in public matters, and therefore risk the extermination of their cultures and at times even their very existence. The MRG concludes that recognition – or the lack of recognition – can be regarded as the core identification criteria when creating an environment in which indigenous peoples can enjoy their status. Acknowledging that recognition is the priority for any efforts aimed at promoting and protecting human rights it can contribute to the

preservation of indigenous peoples' identities, and enable them to receive equality with other groups within the state. (MRG, CEMIRIDE, 2005, pp. 9-10)

4.2.1 Indigenous identification

Since elements of importance within the process of indigenous identification vary from context to context, it tends to be impossible to define an indigenous identity which applies on all indigenous peoples worldwide. Weaver claims that there exists little agreement on precisely what constitutes an indigenous identity, how to measure it, and who truly possess it. Though, an initial element is the strong sense of membership in a community linked to their identity, which can be put in contrast to the common practice of members of majority groups in a society who instead mostly identify themselves by their professional affiliations. (Weaver, 2001, p. 245) Additionally, there is a conflict between the right to unlimited self-identification and external identification. Indigenous identity has during the history repeatedly been defined by majority groups in society, and mainly from a non-indigenous perspective, raising critical questions about authenticity: who decides who is an indigenous person? Could someone else's law define who "we" are? Weaver argues that there is often a considerable variation as how to indigenous peoples are defined, definitions which often are in conflict with those expressed by the state and dominant groups in society. Common opinions on indigenous identity are often stereotypical and inherited from the past, still, these may have the power to influence identity issues and how indigenous peoples view themselves.

The way we choose to define ourselves is often not the way that others define us. [...] While it makes sense that a community should define its members, it does not make sense for an external entity to define indigenous people. [...] It is not up to the federal Government or any dominant society institution to pass judgement on the validity of any individual's claim to an indigenous identity. (Weaver, 2001, pp. 246-248)

The principle of self-identification, where the peoples themselves acknowledge their distinct cultural identity and way of life, is advocated by scholars, international organizations, and indigenous peoples worldwide. It is regarded as having great importance for the definition and recognition of indigenous peoples in national as well as international discourses, due to the lack of any universally accepted definition of the concept of "indigenous". (Quane, 2005, pp. 657-659) However, despite that self-identification policies during the years increasingly have become an accepted international legal practice, Quane argues that many of the states hosting indigenous peoples within their borders have generally contested such an open policy. Arguments from these states concern that the principle could allow a wide range of groups to claim certain rights and benefits on the basis of defining themselves as indigenous, and that if standard setting is to continue, then various declarations and documents concerning indigenous peoples must clearly define these peoples. These arguments exemplifies some of the

dilemmas in the debate on establishing definitional standards versus an unlimited right to self-identification. (Quane, 2005, pp. 658-659)

4.2.2 Elements of indigenous identity

Within the indigenous discourse, the process of defining indigenous identity characteristics is narrowed to down to a few areas of importance. The word indigenous in its Latin original means “born of the land”, or “springs from the land”, illustrating indigenous communities’ often close relationship and dependence on land and natural resources.⁸ This relationship constitutes an important component of their cultural identity, spiritual and social well-being, while at the same time it often relates to their very survival in terms of providing them with means of economic survival. (ACHPR, ILO, 2009, p. 162) Shawn Wilson affirms that land is paramount for all indigenous societies, since their relationship to land shapes everything that is around them. Being indigenous is about having a literally “grounded” sense of identity:

The ground and environment from which we came is what makes us. [...] So our continuing connection to the land, and fulfilling our role within that ongoing relationship, is centred on our specific environment and the relationships that it holds, rather than on events that may be seen as historically important to others but hold only tenuous connection to our land. (Wilson, S., 2008, p. 88)

Continuing with the discussion on cultural identity, Weaver defines it as reflected in the values, beliefs, and worldviews of indigenous peoples. It is further connected to a sense of peoplehood intrinsically linked to sacred traditions, ancestral homelands, and a shared history as an indigenous people. (Weaver, 2001, pp. 240-244) It often refers to a way of life, including the type of work and survival strategies of a group. The protection of indigenous peoples’ distinct cultures is regarded as a central element for these peoples’ survival, where respect for their culture often will depend on respect for their physical world, including the land on which they live on, and the natural resources on which their livelihood

⁸ In the UNDRIP one can find the relationship between indigenous identity and land, which undoubtedly influences its provisions on land and natural resources which (in turn) recognise the right of indigenous peoples to own, develop, control, and use lands and territories they traditionally have owned, occupied, or used. If their lands, territories, or natural resources have been confiscated, used, or damaged without the indigenous peoples’ free and informed consent, they have the right to restitution. If this is not possible, they have instead the right to compensation in the form of lands, territories, and resources equal in size, quality, and legal status. On the international area, some states support the objectives of these provisions, however, most states have expressed reservations about the way in which the provisions are drafted. While some states are unwilling to accept the provisions in its current form, others argue for greater flexibility to allow for national solutions to land ownership. Several states argue that the ultimate control over land must lie with the Government, and that land rights have to be considered within the framework of national laws and policies on strategic resources, nature conservation, and state security. (Quane, 2005, pp. 676-677, UNDRIP Article 25-28 for example)

may depend. Religious practices play an important role in the cultural life of indigenous communities, practices that often emphasize a link between the people and their natural environment, and between one generation and another. The denial of cultural aspects to an indigenous community could inevitably threaten the identity of that community. For example, to value national unity over cultural diversity could lead to a cultural homogeneity and the diminishing of indigenous values, traditions, knowledge, and culture. (ACHPR, ILO, 2009, pp. 84-90) According to Groenfeldt a powerful obstacle to the appreciation of indigenous values is the promotion of Western-style economic development initiatives, which rarely acknowledges values outside the materialist-rational paradigm. (Groenfeldt, 2003, pp. 917-918) Increasingly though, there is a questioning of such initiatives in favour of more flexible, localized and sustainable strategies which involve the local people in meaningful decision-making processes. (McCarskill, Rutherford, 2005, p. 149)

4.3 The conceptual development of “indigenous”

Groups identifying themselves as indigenous have traditionally been, and in many places still are, grouped together with other minorities in societies. While it is true that indigenous groups often also are minority groups, there are differences between the two concepts.⁹ This element, as well as the need to correct the historical use of “indigenous” together with demeaning labels such as “savage” and “uncivilized”, has led to the development of the concept into a widely accepted term used in various forums worldwide. The expansion of the indigenous movement from Europe, Oceania and the Americas to include the African continent further necessitated an extension of the concept, in order to account for the experiences of peoples who live in places where aboriginality no longer is regarded as the key to indigenous identity. (Igoe, 2006, p. 402) However, some states still argue that the term indigenous applies only to certain regions, and therefore it cannot be used universally. The African continent is for example still subject to widespread state-based resistance in dealing with indigenous questions. (Quane, 2005, pp. 657-659)

The development does not further seem to have included a neutralization of the term, but has instead often evolved into a politically and socially sensitive

⁹ While there are some overlaps between groups identified as “indigenous” and groups identified as “minorities”, the nature of the types of rights ascribed to indigenous peoples and minorities differs considerably in international law. The specific rights of minorities, including their right to enjoy their own culture, to use their own language, and to participate in national affairs, may be exercised by persons belonging to minorities individually as well as in community with other members of their group. Indigenous rights are collective rights, even though they also recognize the foundation of individual rights, where some of the most central elements in the indigenous rights regime are the collective rights to land, territory, and resources. (ACHPR, IWGIA, 2006, pp. 13-14)

question. The dilemma over who is indigenous has according to Shawn Wilson become increasingly politicized as indigenous peoples have attained a distinct legal standing under international law. (Wilson S., 2008, p. 34) To date the international community has not adopted a common definition of “indigenous”, and the use of the term is by many actors regarded as controversial.¹⁰ An explanation given by Corntassel to this is that while the definitional debate on the term has developed almost exclusively within the academic sphere, indigenous organizations, Inter-Governmental Organizations (IGO) and Non-Governmental Organizations (NGO), little discussion has actually taken place *between* these various forums of experts. The attempts among various academic fields to formulate a single and over-arching definition of the concept have become increasingly “sophisticated”, but on the other hand have little in common with the definitions devised by indigenous organizations, IGO, and NGOs. (Corntassel, 2003, pp. 77, 85) Another explanation concerns the historical and ethnic complexity involved in the matter, making it practically impossible to promote a definition that could cover all appropriate situations. The term “indigenous” is problematic in that it appears to collectivize distinct populations whose experiences are very different. (Quane, 2005, pp. 657-659) Too strict and definitional attempts could according to Corntassel lead to the exclusion of some indigenous groups from the very protection they need, and a quote by Roland Niezen concludes that “a rigorous definition [of indigenous peoples] would be premature and, ultimately, futile. Debates over the problem of definition are actually more interesting than any definition in and of itself.” (Niezen, 2003, cited in Alfred, Corntassel, 2005, p. 600)

¹⁰ Quane illustrates this by an example from the discussions taking place in the United Nations on the drafting of the UNDRIP, where some states were reluctant to using the term in the declaration due to its possible implications under international law. In particular, these states were concerned that the term indigenous would imply that these peoples have a right to self-determination, since this is a right exercised by a people. (Quane pp. 657-659)

5 Field findings

This chapter will account for the findings I received through my data collection in Kenya. Interviews, informal discussions and observations have been intertwined with reports and documents collected in the field. The interviews are numbered according to the list of references.

5.1 The identification of Kenyan indigenous peoples

In order to receive a better understanding of the general attitudes towards indigenous peoples in Kenya I initiated my field study by following an advice given by the Commissioner at the Kenya National Commission on Human Rights (from hereon referred to as “the KNCHR Commissioner”); to ask all people I would come to meet about their perceptions on the indigenous question in Kenya. During informal conversations with local Nakuru inhabitants who neither identified themselves as belonging to a specific indigenous community nor worked within this field, I received the answer “all black-skinned Kenyans are indigenous” almost every time I asked the question “who are the indigenous peoples of Kenya?”. Those specific communities identifying themselves as indigenous were often spoken in terms of “no more indigenous or special than the rest of us”, and one citizen with British heritage even claimed that they [the British] as well as the black Kenyans were indigenous to the country. Strong opinions on indigenous issue were common, and people’s main reactions towards them were negative. However, almost no one could further define an indigenous person or community, or explain what these peoples’ aspirations and claims really were based upon. Opinions and knowledge varied so much during the conversations that it did not seem to exist any mutual understanding or consensus on indigenous issues in the country.

A representative from the Kenya Land Alliance (KLA), expressed his opinion on the issue at the EWC Training Programme:

Kenya has never solved the issue of indigenous peoples. All blacks and Africans are indigenous – the rest are not. This is a very common view in Kenya.

When asked about a small indigenous community called the Endorois, only a handful of my informal respondents had heard about them, and not in terms of constituting an own distinct Kenyan ethnic group. This was despite the fact that the community has received regional and international attention in various human rights forums lately due to their case in the African Commission, as well as the

fact that the community's former homelands around Lake Bogoria today is one of Kenya's major tourism attractions. To some extent they tend to have been overshadowed by the more "famous" Maasai community, but also by the Ogiek, a small indigenous hunter-gatherer community who had received the nation's attention due to a conflict between community settlers and the Kenyan authorities on access to the Mau Forest in the west of the country, where an important water resource is located.¹¹

When discussing these issues with the EWC staff, one of them was of the opinion that:

[...] After the post-election violence in 2007 the Kenyan people don't want to distinguish any group from the rest, instead they have a wish to feel proud over being Kenyans. Generally the people don't want anyone to be more special than the other, and when it comes to indigenous they fear that it includes some kind of special treatment. (Interview no. 6)

To avoid fuelling these widespread attitudes an important task is according to the staff member to educate the Kenyan people on indigenous issues, and further to define the concept of indigenous when discussing the matter, and to encourage people to continue using this definition. (Interview no. 6) Additionally, at a round table meeting in 2006 held in connection to the initiation of a special minority programme within the KNCHR, it was argued that there is an urgent need to explore and adopt a context specific and practical working definition of indigenous peoples in Kenya. This would aid in devising effective advocacy strategies and policy interventions in pursuing the promotion and protection of indigenous peoples in the country. (KNCHR, CEMIRIDE, 2006, p. 5)

The outcomes of the informal conversations and observations were further confirmed by the KNCHR Commissioner, who additionally claimed that the notion of all black people in Kenya being indigenous is common not only among the Kenyan people, but also among state officials and leaders. Even in these forums there is a lack of consensus on the matter, since at times the Kenyan Government has either explicitly or implicitly made certain statements on indigenous issues, while individual state officials may have expressed different opinions. The Commissioner further argued that:

[T]here is an uneasy use of the term indigenous in Kenya. Instead, the concepts of minority and marginalized are widely accepted. (Interview no. 1)

¹¹ The two largest newspapers in Kenya, The Nation and The Standard, published numerous articles on the Ogiek and Mau Forest question during my time in Kenya. These are available electronically, via www.standardmedia.co.ke and www.nation.co.ke.

One of the staff members at Reconcile connected “indigenous” with the term “tribe”:

[...] In Kenya the term indigenous has many negative connotations, and today it is the same as saying tribe. Tribe in itself has been demonised [...]. Before, it was simply a fair way of trying to identify where you were coming from, and who you were. Later, however, with a description of being primitive and that kind of backwardness, people started to feel that if you ask for tribe that means a community that differs from the Kenyan. (Interview no. 8)

However, avoiding such issues is not a solution according to the KNCHR Commissioner:

[E]thnicity and indigenous questions should not be called sensitive. Calling it that is not an excuse for not handling the problem. In Kenya there is a great need of dealing with the question instead of denying it. If people consider it a problem, then it will be a problem. (Interview no. 1)

To blame every problem on ethnicity is not defensible; instead the strengths of ethnicity and ethnic belonging rather than its divisive capacities should receive the greatest attention by the authorities as well as by the population. (Interview no. 1)

When discussing the identification of indigenous peoples in Kenya, the Reconcile staff member argued:

[T]oday, if you come to Kenya and you say you want to talk to an indigenous person. From your own perspective, what you already are thinking about are those people who live in the forest, the hunter-gatherers, the Endorois, and all those people. Therefore, indigenous in my interpretation refers to some special minority groups who are kind of unique in their lifestyle, whose livelihoods are dependent on some sort of natural resources. Not very many people would want that. (Interview no. 8)

One of the exercises at the KNCHR/ILO workshop was for the participants, representing a large number of indigenous communities, to discuss the identification of indigenous peoples. Through group discussions they outlined three elements consistently used to identify indigenous peoples, and which can be applied to the Kenyan context: (1) The profound extent of marginalization suffered; (2) self-identification; (3) the dependence on land and natural resources for their collective survival as peoples.¹² The KNCHR Commissioner highlighted the principle of self-identification as the primary determinant for indigenous peoples. However, a denial of this principle tends to exist in Kenya, something which the Commissioner questioned:

¹² These identification criteria are similar to those outlined during earlier national workshops held in Kenya on indigenous issues, the first one in 2006 and another one in February 2009.

[W]ho has the right to deny the peoples their self-identification? Self-identification is basically the only way for indigenous peoples in Kenya to identify themselves as indigenous because there is no state recognition of the concept, and it becomes the only weapon that indigenous peoples have. (Interview no. 1)

This was also discussed at the EWC Training Programme where one of the participants was of the opinion that:

People shouldn't challenge us for being indigenous, we were there when Lake Bogoria was created and who can deny that?

Many of the community members identified themselves as simply as "Endorois". This was clear during the group discussions, but also through an evidentiary video to the African Commission case which was shown at the Training Programme. The following quote from the video further reflects the importance of culture and a traditional way of life for the community's identification process:

What makes me know that I am an Endorois is my way of life, and other things my community does, like cultural ceremonies. These are things that make me belong to the Endorois. [...] What distinguishes us from others is our culture. These are practices that are part of the upbringing of every Endorois. (AC evidentiary video)

5.1.1 It all comes down to land

My interviews and conversations often ended up in the question of land. Whether identifying oneself as indigenous or not, this question has for a long time had great significance for the Kenyan people, and have been a widely disputed element in national politics. Many of my respondents were of the opinion that in order for Kenya to become stable, cohesive and peaceful, the land issue needs to be solved. Regarding the country's indigenous people their special connection to land was highlighted. One of the participants at the KNCHR/ILO workshop argued that:

It is essential to know and understand the deeply spiritual special relationship between indigenous peoples and their lands.

The representative from KLA discussed this importance of land at the EWC Training Programme, and to be indigenous means to be connected to a specific territorial space:

[...] Indigenous starts with a territory. With land comes dignity which in turn leads to development. Without land a people have no dignity, and it will not lead to development. Where are the Endorois? Do they have land? Are they dignified? Do they have development? [...] Civil and political rights are hard to achieve if land, dignity, and development are missing.

The Endorois community holds land in high respect and assert their right to land as a collective, meaning that the land belongs to the community and not to the individual. Prior to the dispossession of and eviction from their ancestral land, the community had established and for centuries practiced a sustainable way of life on the shores of Lake Bogoria. The land not only secured their subsistence and livelihood, but is additionally seen as sacred and inextricably linked to the cultural identity of the community. Additionally, the Endorois are seen as the trustees of the land for future generations, which these quotes from evidentiary video to the African Commission gave examples of:

I would have wanted to see our land returned to us, so that we can guarantee the survival of the children, grandchildren and the future generations of the Endorois community. (AC evidentiary video)

It would be so grateful if we are given our rights, and given back the land where our people lived, given back what is ours. Our blood and bodies will feel good about being in a nice place, as our grandparents had chosen. (AC evidentiary video)

Only recently has the Endorois community once again received some access to the various spiritual or revered, traditional, and religious ceremonial sites around the lake, and during my visit to the Lake Bogoria I became acquainted with a few of these sites. Two of their blessing rituals are traditionally performed at the lake, with one taking place at a hot spring where tourists from all over the world nowadays come to boil eggs in the hot water. The eastern side of the lake is seen as a point of healing, and the western side is said to be a place of blessing.

Our children cannot access where we used to perform all our ceremonies. We cannot access our religious sites. We used to bring beer, milk and fat from a ram and give it to the ancestors, we would spill oil all over and then it rained. The land became blessed. (Endorois community member)

Many of the Endorois community's ancestors are buried around the lake, and the community used to visit their graves for children's naming ceremonies and other rituals. The spiritual connection to the ancestors is important for the well-being of the community:

When you are removed from sharing space with your ancestors' graves there's nothing you can ever achieve and you are extremely violated. That's why we want to go back to Lake Bogoria to reunite with their spirits. (Endorois community member)

5.2 Indigenous peoples in national politics

At the KNCHR/ILO workshop the participants identified the not per se recognition of indigenous peoples in Kenya as one of the main challenges these peoples face. During the EWC Training programme the importance of the Endorois being officially recognized and visible in Kenya was repeatedly highlighted. This was promoted by the leaders as a crucial element not only in the community's struggle for justice and rights, but also for the preservation of their identity as an indigenous community. To date they have rarely been acknowledged as anything other than a sub-group assimilated into the Kalenjin tribe. The Endorois community is little represented in local Government and other decision making processes, instead, they are represented by neighbours and other dominant ethnic groups in the local and central administration. After the evictions they were scattered over a large area, and today they can be found in four different districts, making it difficult for them to upbringing a sufficient number for political representation in each of them.

The Commissioner argued that fear lies behind the Government's ignorant position towards recognizing the indigenous peoples, since Kenya is coloured by many powerful elements which all may pose "sensitive" problems for the Government. For example, high-level corruption, tribalism, and nepotism were mentioned as such elements which to some extent have gained increased significance after the post-election violence in 2007/2008, and which the indigenous question can be placed among. However, the Commissioner stated that:

[I]t is a necessity for the indigenous peoples in Kenya to be recognised by the Government in order for it to fully protect their rights and interests. [...] They have been neglected of their collective rights because the state has not signed declarations on indigenous peoples. (Interview no. 2)

This refers to the fact that the Kenyan Government has not yet ratified the two major international instruments aimed at protecting indigenous peoples; the ILO Convention No. 169 and the UNDRIP. When asked four years ago whether the Government would ratify the ILO No. 169, Martha Karua, then the Minister for Justice and Constitutional Affairs gave the answer: "Absolutely not!".¹³ In contrast, Kenya is currently implementing various World Bank projects, within which an Indigenous Peoples Planning Framework (IPPF) has been developed by the Government¹⁴. However, due to a lack of domestication and follow-ups the

¹³ I have not been able to find the original source to this quote. This secondary reference is taken from the article "Kiai warns Kenya against Census as tension rises" in the national newspaper *The Nation*, 090406.

¹⁴ In a state document from January 2010 one can read the following: "Noting that the Kenyan people and the state use different terms to refer to indigenous peoples [...] the screening process

domestic effect of other major regional and international human rights instruments has remained limited in Kenya, something which was outlined as a major hinder to the country's indigenous peoples during the KNCHR/ILO workshop. The Government has for example submitted only one periodic report to the African Commission on Human and Peoples' Rights since Kenya became a party to the African Charter in 1992.¹⁵ Further, the Bill of Rights of the Kenyan Constitution constitutes a weak basis for indigenous peoples to make their claims, especially collective. It minimally provides for civil and political rights, but not much for state obligations for economic, social and cultural rights for the citizens. (Constitution of Kenya, Chapter 5)

5.2.1 Development strategies

Development projects initiated by the Kenyan Government have often been characterized by the establishments of game parks, or logging and mining activities. Many times people living in the areas affected have been evicted in order to make room for the "best of the nation", which the Endorois community is an example of. Where compensation funds exist they are often only ad hoc based and the victims usually have very little actual power of negotiating for anything but direct losses. (Interview no. 1) The Endorois have, as already mentioned, not yet received their promised compensation for the evictions. They further claim that the community elders were deceived into reaching verbal agreements with the Country Council regarding the evictions and compensations, and they consequently lack written record of these agreements. (Interview no. 3)

Development projects affecting certain communities have in themselves often lacked proper community consultations, as well as the free, prior and informed consent. Various decentralization programmes have during the years been implemented in Kenya, mainly targeting youths, women, and groups suffering

has adopted 'vulnerable indigenous peoples' within the context of the World Bank's policy on Indigenous Peoples (OP 4.10). Considering [...] the distinct social and cultural conditions and comparative vulnerability of the various ethnic minority groups, this document focuses initially on Sengwer, Ogiek, Waata, and Boni peoples. Any addition to the list of ethnic minority groups who meet OP 4.10 criteria for indigenous peoples will be made after further field verification and consultation with the Government of Kenya. The Government of Kenya has prepared this Indigenous Peoples Planning Framework (IPPF), to ensure that, in cases where indigenous peoples are present in, or have collective attachment to project lands, an Indigenous Peoples Plan (IPP) is prepared so that the development process fully respects the dignity, human rights, economies, and culture of indigenous peoples." (Kenya Electricity Expansion Project Draft Indigenous Peoples Planning Framework (IPPF) January 2010)

¹⁵ The report was submitted in 2006. The reasons for this late submitting were explained being "manifold, and include political, social, and economic problems obtaining for most of the Country's post-independence history. In the past, the political system was not conducive to a culture of human rights. In recent years [...] Kenya has increased its capacity to undertake state reporting and other human rights related activities." (Kenyan initial Report on the African Charter on Human and Peoples' Rights, 2006.)

from severe poverty.¹⁶ Local authorities normally have a better understanding of specific community needs. However, many of the programmes have not functioned properly due to weak management structures, low public awareness and participation, politicization and duplication of the funds, loopholes in the legal framework, and the lack of overall planning and evaluation framework leading to difficulties in assessing the long term impact and sustainability of the projects. (EWC Training Program) One of the EWC staff members commented on the various education programmes implemented in the rural areas:

[E]ducation is becoming better in the pastoralist areas, but for a long time our community was very isolated from the rest of the society. We were viewed as backwards and no efforts were made to develop our community. [...] Many minority communities have not been properly targeted in especially education programmes. Many of the children therefore don't go to school. (Interview no. 5)

At the EWC Training Programme this was further outlined as a major obstacle for the situation of the Endorois community. Their own leaders often lack proper education and structure, and overall, the community members are faced with illiteracy and poor education due to the inaccessibility of these social services.

Currently, Kenya's blueprint regarding the national development the next coming years is the Vision 2030, which mainly is based on economic aspirations and projects. The EWC staff members commented positively on a note in the Visions on improved education in pastoralist areas, but were at the same time sceptical regarding the Government's actual implementation of the document:

It is one thing to put it on a paper and another thing to realise it. Many times it's just a matter of fine words, and the money goes to specific individuals instead. (Interview no. 5)

In the Vision focus has been placed on specific areas in the country where economic progress is expected and available, favouring a capitalist mode of production. The KNCHR Commissioner argued that this focus may be prosperous for Kenya's overall economic progress, but in the end it may cause more damage than use for the smaller communities in the country:

It only targets some areas and ignores the role of the community, which is bad. More economic investment could lead to more exclusion for many communities who already are in a difficult situation. (Interview no. 1)

¹⁶ Examples of such programmes are Majimbo 1963; District Development Grant Programme 1966; District Development Planning 1971; Constituency Development Funds (CDF) 2003 up to today. (EWC Training Programme)

The Commissioner expressed hope over the fact that the Vision contains some elements of decentralization and that the authorities are making attempts to move projects from the city areas to the periphery. Increased accessibility and information could be two possible outcomes of this move. However, focusing on purely economical development is a weakness according to the Commissioner, who further recommended a rights-based approach to development being applied instead by the Government:

It would be a greater focus on people-based and civil society-based projects. It would make people more active and aware of their capabilities and power. (Interview no. 1)

5.2.2 Pastoralism

Acknowledging the large number of Kenyan indigenous communities being pastoralists, including the Endorois, it became relevant during my study to highlight their present situation. The land to which the Endorois community was forcibly evicted has shown to be unfavourable for pastoralist purposes, in comparison to when they lived around Lake Bogoria where there were plenty of resources for practising their traditional lifestyle. Many of the community members have been forced to apply other sources of income in order to survive, such as selling jewellery and beverages to tourists passing by their homes on their way to the game reserve. A quote from the AC evidentiary video further explains:

Our parents tell us that in the past when they lived around Lake Bogoria, there was plenty of grass for grazing, the cattle used to lick natural salt and it used to help them get healthy and help their bones grow and fatten.[...] We were chased to a place which is hostile to our lifestyle. (AC evidentiary video)

At the workshop on pastoralism the issue of how policies in Kenya have little support for pastoralism as a livelihood and production system was highlighted by the Reconcile staff. It is an economy which produces mainly for subsistence rather than for the market, something which the Kenyan Government has considered being a primitive and uncivilized mode of production in great need of modernization. Development interventions in pastoralist area have been characterized by ignorance on pastoral systems, and many of them have failed due to stereotypical attitudes held by Government officials and development agencies. This was to some extent confirmed by a representative from the Ministry of Livestock and Development Planning, who admitted that pastoralist communities repeatedly have been told by various actors that in order to survive they need to change their lifestyle. They have for a long time been negatively affected by inappropriate policies and development interventions, and additionally, previous policy formulations and community consultations have been characterized by limited funding and few participants. He further stated:

[P]astoralist communities have been disadvantaged during the pre-colonial, colonial and post-colonial period. Areas with faster income opportunities have been prioritised. [...] But state institutions on the ground are being strengthened, and the grass root advocacy groups should do the same, and each pastoralist group should stand up and advocate for their rights.

One of the Reconcile staff members continued the discussion:

Many pastoralist communities have their own kind of lifestyle which has lots of implications as far as development is concerned [...]. Pastoralism, for example, has not been appreciated as a way of livelihood but as much has been discussed, a culture of practice and [...] it is very difficult designing policies for diverse cultural practices. [...] But when you support livelihoods what you simply do is to ensure that they have proper representation as far as policy processes are concerned. [...] Their interests have not been comprehensively captured in the policy making process. (Interview no. 8)

A major challenge for indigenous pastoralist communities is that the present Constitution of Kenya is based on colonial principles which do not recognize communal ownership of land. The KNCHR Commissioner claimed that tensions over land use often have had its basis in these principles, and they have affected the relationship between the state and these communities as well as between indigenous communities and non-indigenous communities. Additionally, the lack of proper land documentation has been a major problem with frequent land grabbing as a result. (Interview no. 1) During my time in Kenya a National Land Policy was accepted by the Kenyan parliament, as a response to the need for better land regulation and documentation. While containing many positive changes for the land issue, it was also criticized for not going far enough in addressing the question of collective land rights, which is of great importance for pastoral and indigenous communities. One of the Reconcile staff members claimed regarding the new policy's possible implications for issuing land problems and historical injustices:

The National Land Policy has tried to address some of these concerns because the process was very consultative, and as far as the content is concerned it has tried really tried to address this [...]. Generally, I believe it is a fairly good document, it's going to address a lot of issues, because one thing would be the issue of the historical land questions which has not been answered, and with that we will be able to sort out issues as far as land question is concerned in Kenya. (Interview no. 8)

However, change within the pastoralist communities also needs to occur:

There is also need now to look at how the pastoralist organizations can appreciate the fact that they live in the realities now, in a sense that they don't just talk about an area which has been marginalized, it is high time now to come out of this question of

marginalization and then get a direct engagement on how we work on addressing questions of marginalization. (Interview no. 8)

5.2.3 To be counted is to exist

[...] There is a need for each indigenous community to be identified by their names instead of among others. (Participant at the Nairobi workshop)

A Census is a good example on how this could be realized, and I was fortunate to be in Kenya when the National Census 2009 was planned and conducted. The Government put an enormous amount of money to the Census, proclaiming it to be crucial for Kenya's future development. By extending the questionnaire with various elements of people's livelihoods, salaries, access to technology etc, the Government aimed at receiving a better picture of its population's needs, and from there be able to design the country's development in order to be profitable to the whole population. (<http://www.kenyacensus.or.ke>) However, these purposes became during the Census process clearly overshadowed by the ethnic issue. In the questionnaire the Government had included the question "*Which tribe do you belong to*", causing an intense national debate. During numerous informal conversations on this issue the arguments tended to move between the welcoming of the question claiming it had always been included in previous Census counting, and the resistance towards the question arguing it not relevant to the purpose of the Census. Additionally, considering the post-election violence in 2007/2008 there were fears that the question could come to cause more tensions among the different ethnic communities, and there was also suspicions on the Government's real use of the Census results.

Maina Kiai, former chairman of the KNCHR, dismissed in an article the Census as "another political gimmick" in which communities will try to outdo each other, and the enumerators will try to manipulate and increase the numbers of their people. In earlier Censuses groups were left out while others were created or emerged to form larger groups, for example, several sub-nationalities were put together to form the Kalenjin and Luhya groups in the 1969, 1979, and 1989 censuses. (The Nation, 090406) In a press statement the non-Governmental Kenya Human Rights Commission (KCHR) argued that previous Census counting had ignored many minority and indigenous communities as distinct ethnic groups since it used a list of only 42 tribes. This has led to the groups' reduced visibility in national policy making, and to their unequal access to development resources, Government employment, and political representation. Many communities were not given prominence since they did not fall under any tribe code in the questionnaire.

Today is the eve of the national population and housing census, yet many Kenyans still ask themselves how the counting will count for them. (KCHR, 090823)

The Commissioner at KNCHR argued that avoiding the question of tribe in the Census would not solve the country's ethnic woes, and Kenyans should find ways of appreciating their diversity without turning it into a tool for division and unfair distribution of resources. (Interview no. 2) However, the suspicion against the Government's real intentions with the use of the Census result has during the last months been fuelled by the fact that the results not yet have been released. Governmental sources promised the interim results of the Census being released/official December 31st 2009, which did not happen. Another two times the Government was to release the results without any success.

5.2.4 The Kenya National Commission on Human Rights

In order for Kenya's indigenous peoples to receive greater legal protection and create policy change, the potential of the KNCHR was outlined as an opportunity by the participants at the KNCHR/ILO workshop. The Commission was considered a role model for other national human rights institutions in Africa. In 2005 the Commission initiated a special programme targeting minorities and indigenous peoples in the country, and since the start they have organized various seminars in order to highlight the situation of these peoples. However, its potential is based on the Kenyan Government's response to the Commission's recommendations and policy advice. To date, this response has according to the KNCHR Commissioner been scarce, and can be regarded as a great challenge for the future work of the Commission together with the fact that the Commission not yet has been properly institutionalized. The Commissioner expressed great concern that the Government neither implements various court rulings and recommendations, despite the fact that one of the core tasks of the Commissioner is to give policy advice to the Government, nor that no real initiatives have been taken from the Government's side in order to meet and communicate on the country's human rights issues. (Interview no. 1 and 2)

5.2.5 The legal struggle

During my time in Kenya the Endorois' legal process in the African Commission was not yet finalized. Though, the significance of the case was thoroughly discussed at various occasions:

No matter how the Endorois case goes, it is important to look at what meaning it has had for the Endorois. The case has given a sense of belonging to the Endorois community. (EWC Training Programme)

For the Endorois the case procedure has been long and tiresome, including elements of both harassments and legal setbacks. The Kenyan Government has systematically been using excessive force on the Endorois with the object of denying or preventing them from resettling on their ancestral land. At the same

time, they community has received visibility not only in Kenya but also in international forums, as their case is unique in its kind. The human rights activists I met during my study all expressed hope regarding the case, arguing that it raises the Endorois community's national visibility and ultimately could lead to positive policy change for indigenous peoples in the country. The KNCHR Commissioner affirmed this:

[I]t is a milestone for indigenous peoples, not only in Kenya but also in other African countries where indigenous peoples are struggling for recognition and social justice.

(Interview no. 2)

My last interview in Kenya was with the EWC Programme Officer, who expressed no doubts that the African Commission's final statement would be in favour of the Endorois community. The fact that the case still was considered as a politically sensitive issue, and that the decision could lead way for numerous other African indigenous communities to go to court, did according to him no longer have the power to hinder the legal process. (Interview no. 6) As it turned out, he was right, and it now remains to see how far the Kenyan Government will go in implementing the court ruling.

6 Analysis

In this chapter I intertwine a deeper analysis of the collected data with observations relevant for the purpose of the study, as well as the theoretical framework. Initially I discuss the influences on indigenous identity and the meaning of recognition within the social context, and thereafter I move the discussion to include the legal context. I also reflect on some of the reasons behind the resistance against some Kenyan communities identifying themselves as indigenous.

6.1 Indigenous peoples in the social context

My overall impressions of the social context in which the Endorois and other Kenyan communities interact are the people's interest and engagement in political issues and the ethnic diversity in the country. Whether at the local market or in an office belonging to a human rights organization, the discussions often took a serious turn and reflected the people's great awareness of these issues. Additionally, the power of external forces, such as globalization, plays an important role in people's lives. These external influences make the social sphere more transcendent and available, connecting people from different backgrounds and encouraging them to develop their use of traditional values and practices strongly connected to ethnic belonging. They may also have positive effects on the situation of those Kenyan communities identifying themselves as indigenous, due to that these communities' issues of interest increasingly are brought into the light.

6.1.1 Self-identification versus external identification

Similar to many other indigenous communities worldwide, the principle of self-identification has for the Endorois been given prominence when defining who they are. The community's identification process is mainly illustrated through the members' interactions on the private level, based on their shared history, values, traditions, cultural, and religious practices. In order to unite these elements of Endorois identity their ancestral land around Lake Bogoria has functioned as their centre, having spiritual as well as economic significance for the people. The Endorois' identity has further inevitably been shaped through interactions with other individuals and groups in society, and they are both aware of and affected by the attitudes towards them and their application of the principle of self-

identification. Without ignoring the internal differences within the community, this principle tends to have been applied relatively unproblematic by the Endorois, and their main challenge consists in persuading other individuals and groups to acknowledge the legitimacy of the principle. So far, it has within the Kenyan social context been neglected, and has received no clear recognition. The principle has instead been subject to severe overuse, illustrated through arguments that all black-skinned Kenyans are indigenous to the country. This reflects a lack of interest towards the reality of indigenous questions; misrecognition of the concept of indigenous as well as of the principle of self-identification within the indigenous discourse; and non-recognition of the Endorois community as possessing a unique, collective indigenous identity. If further acknowledging that the element of aboriginality no longer constitute the foundation of indigenous identity due to the expansion of the concept of “indigenous” to include all parts of the world, this social misrecognition is not defensible.

Despite the wide knowledge on the various ethnic groups in Kenya, people are often unaware of which groups in society identifying themselves as indigenous, or the reality of these peoples’ social situation and rights claims. This confusion and lack of knowledge pose difficult challenges for the country’s indigenous peoples, their organizations, and their advocates, in their struggle for recognition. Therefore, though without undermining the principle of self-identification, the concept of “indigenous” further needs to undergo a development change towards the inclusion of other important elements for the identification and definition process rather than trusting on the aboriginal element. While indigenous peoples in Kenya focus on self-identification as the ultimate definition criteria, in their relation to the rest of the society it may be prosperous to outline some further criteria in order to receive the nation’s attention, which in combination with increased knowledge leads to a clearer external identification of their needs, claims and rights. However, it is probably impossible to accomplish this without interfering on the unlimited right to self-identification advocated by indigenous peoples, a dilemma discussed in the theoretical framework and without any clear solutions in the international as well as the Kenyan context.

At the same time there is a need to acknowledge that group identities vary from time and place, and that the creation of static categories within the indigenous discourse may lead to the establishment of an indigenous/non-indigenous dichotomy. Such dichotomy could mask the diversity of interest that different indigenous peoples in Kenya have. A comparison can for example be made between the Endorois community and two other Kenyan indigenous communities, the Maasai and the Ogiek, where they all have different histories, preconditions, aspirations, and demands. A dichotomy may also ignore internal differences within the identification process. An interesting aspect to further analyze is how the identity of the Endorois community has been affected by the scattering of the people due to the evictions, where for example gaps between community members living in rural and in urban areas, or between men and women, may have been created, increased, or decreased.

6.1.2 The effects of social misrecognition

The social misrecognition of Kenyan indigenous peoples can be placed in relation to the negative attitudes and stereotypes often targeting them, where they throughout their history have been subject to discrimination, assimilation, and marginalization. They have been regarded as “trouble” and “backwards” by the authorities as well as other people in society, which in combination with social stigmatization has contributed to the lack of interest in dealing with indigenous peoples’ claims, where some people I talked to did not seem to consider it an issue at all. Thus, the social categorization of indigenous groups by other members of the society is in the Kenyan setting often negative, leading to an exploitation of their cultural identity and expression as well as to continuing negative connotations attached to the term indigenous. Demeaning pre-understandings on indigeneity are difficult to combat if this ignorance is continued, and one of the challenges for indigenous peoples becomes to balance positive group identification against external negative categorizations.

While social misrecognition can be regarded as the denial of indigenous peoples’ history and collective identity, the various areas of marginalization may also be used for resistance and hope. Even though the Endorois community for a long time was in conflict with the Kenyan state and experienced legal as well as social setbacks, they did not give up the struggle. Their identification as the Endorois tends to be strong and include an awareness of their real value, since it constitutes the foundation of most of their actions aimed at improving their position in society.

6.1.3 Why the resistance?

In the beginning of my study I was unprepared of and did not quite understand the widespread denial and lack of acceptance of the very existence of some Kenyan communities identifying themselves as indigenous. However, further through the field study I began to realize the complexity of the issue, and some of the reasons behind the attitudes expressed by so many. While land is important for indigenous peoples in Kenya it has great importance for the rest of the population as well, and illegal land dispossessions have affected Kenyans from all ethnic communities since the colonial period. Similarly, the importance of “right” ethnic belonging, poverty, lack of social services, and non-representativeness in decision-making processes are realities for basically everyone in Kenya who does not belong to the ruling elite.

Additionally, the post-election violence in 2007/2008 left many wounds among the Kenyan people, and indicated that the question on which role ethnicity should have in the country still does not have a simple answer. The debate on the Census 2009 further illustrated this question, and overall these events are examples of a politicization of ethnicity existing in Kenya. Neither can the concept of indigenous be considered as neutral, but has instead become socialized, with indigenous questions consequently being regarded as politically and socially

sensitive. Indigenous peoples are seeking a label which according to many may increase an “us versus them” feeling, and which is believed to have significance for the receiving of special attention, protection, and resources. All these elements, and in combination with the lack of proper knowledge on indigenous issues as well as a fear of new ethnic conflicts, could explain some of the negative reactions towards, and reluctance in recognizing certain Kenyan communities claiming indigenous status.

6.2 State-based politics of recognition

Continuing the discussion with the Kenyan state and its institutions in focus, a major challenge regarding the legal recognition of indigenous peoples is the lack of political will to deal with *any* of the “sensitive” issues in Kenya. It remains to see if the political will and motivation around indigenous issues will develop and expand considering the present political climate, which draws much of the politicians’ attention away from human rights questions in the country. Kenyan politics is a landscape characterized by communication breakdowns, high-level corruption, bureaucracy, nepotism, poor access to legal instruments, etc, and the lack of trust in their politicians was clear when talking to people:

People vote not for the political manifestations and promises, but for the person they find is closest to oneself. People know that either way the politicians will not implement their values and therefore they might as well vote for the person of the same tribe, background etc. [...] Speeches and statements of social development and human rights and participation rarely congruence with real life. (Interview no. 5)

If the Kenyan Government aspires for support for their politics, there is a need for inclusion of all groups in society. However, the statement by the High Court of Kenya illustrates one aspect of the widespread attitudes of non-recognition amongst state officials and institutions towards the presence of indigenous peoples in the country: “In any case, there is no proper identity of the people who were affected by the setting aside of their land to form the game reserve.”

6.2.1 Conceptual misuses

Within politics as well as the law and policy making area, Kenyan communities identifying themselves as indigenous have not been recognized as possessing such identity. The use of various forms of terminology in legislation and policies to refer to those who in international laws are understood to be indigenous peoples is inconsistent or even contradictory. Similar to its people, the state has claimed everyone in the country to be indigenous, and have refrained from ratifying human rights instruments important for indigenous peoples. The concepts of minorities, marginalized and vulnerable have in the Kenyan setting been attached

to these communities, and have been used interchangeably by authorities as well as non-Governmental organizations and human rights advocates. While the Endorois communities may be identified within all these categories their marginalization and vulnerability as an indigenous community is not recognized, nor the specifics separating them from other minority communities in society. The references to the various concepts could have the effect of undermining indigenous peoples' visibility and recognitions, for example due to the fact that the rights of minorities not necessarily apply to indigenous peoples. The Kenyan state may regard the conceptual misuse as an excuse not to handle with indigenous issues, since they are aware of the implications under international law, especially regarding land rights. The fear of using the word "indigenous" is thereby based on the non-acceptance of the collective nature of certain human rights, and the potential risk for conflicts with individuals.

The conceptual development of the term "indigenous" has clearly not yet reached the consensus necessary for these peoples' legal recognition. Kenyan authorities have not been consequent in their attitudes and actions towards the country's indigenous communities, with the lack of proper policies and laws targeting these communities as a result. Additionally, it has contributed to a further distancing of indigenous peoples' inclusion in policy and decision-making processes and development consultations, since without a clear definition it is difficult to properly address the indigenous peoples' rights needs.

6.2.2 Assimilation trends

An additional subversion of indigenous peoples' inclusion and visibility is the lack of a separate code in various official documents identifying a community as a distinct ethnic group. In Kenya the question of belonging to the "right" ethnic group – usually the group with most of the power and resources – has been important in terms of social, economic, and political advantages, and has basically decided one's opportunities and limitations in life. An exception to this "principle" can however be found within the Endorois community's history. They experienced their worst harassments and difficulties during the era of former President Moi – who himself is a member of the Kalenjin community and grew up in the Baringo district close to the Endorois' land. Today, Moi is the owner of the Lake Bogoria Hotel and Spa Resort.

The previous Census counting in Kenya illustrated the importance of indigenous peoples as well as the rest of the Kenyans being acknowledged according to their ethnic group belonging. While many small communities in the past have been missing in the counting, and especially those identifying themselves as indigenous, they have become invisible when it comes to political representations and participation in policy-making processes. The Census is aimed at improving a just and equal social and economic development in the country. The exclusion of indigenous peoples may lead to the continuance of them being assimilated into larger groups with no room for their special attributes. An official recognition as a distinct ethnic community affirms and strengthens the

preservation of indigenous peoples' collective identity. Additionally, recognition as an own ethnic group and recognition as an indigenous group do not have the same implications, but can be regarded as having equal importance. While the former has direct political and economic significance within the Kenyan setting, the latter includes cultural elements important for the identity of indigenous peoples.

6.2.3 Collective land rights claims

The importance of land is recognized not only within the indigenous discourse. Similar to belonging to the "right" ethnic group, land has historically been regarded as a precondition for all Kenyans' opportunities to political power, resources, and social and economic development. What differs is the indigenous peoples' focus on collective rights claims to land, where recognition of customary law is fundamental to maintaining and continuing their distinctive cultural identity as an indigenous community. More specifically the legal recognition of their rights and access to traditional land and natural resources is crucial for the survival of many indigenous communities. Without such explicit recognition of land rights indigenous peoples will remain vulnerable to more powerful economic forces in society.

For the Endorois, the legal recognition of them as rights bearers to their ancestral land in terms of spiritual, cultural and economic importance is essential for the preservation of their collective identity and survival as a traditional people. The protection and enhancement of the Endorois' lifestyle and culture is inextricably linked to land rights and sustainable livelihood. Where they for centuries had practiced a sustainable way of life around Lake Bogoria, they were removed to an area far from conducive to this lifestyle. By denying them access and utilization of their traditional lands and natural resources, the Kenyan Government has failed to recognize the equality of opportunity to the Endorois to practice their traditional occupation. Collective rights to land and natural resources could instead guarantee a capability of the Endorois to be able to exercise these important practices. However, so far the state based recognition of collective claims on land has been lacking, favouring individual land rights instead, and has further paid little attention to the importance that indigenous peoples attach to the preservation of culture as an important element of their identity.

6.2.4 The norm-setting power

The power of dominant groups in society to establish a normative way of life has often negative outcomes for indigenous peoples, since their way of life often contradict the established norms. Within the specific question of production systems in Kenya and which one being the most profitable livelihood, the norm-setting power has since independence been within the ruling agrarian elite. It tends

to have its base in colonial land policies and laws which promoted farming and a market-oriented capitalist mode, traditionally favouring the ruling elite and agrarian groups in society and leaving smaller ethnic groups relatively invisible in the debate, and subjected to widespread stigmatization and discrimination. Other livelihoods have been labelled as uncivilized and backwards, with pastoralism as the clearest example. It has been regarded as a primitive mode of production, as it produces mainly for subsistence rather than for the market. Pastoralists are suffering because of these norms and of their inexistence within the majority of the country's laws and provisions. These communities have not been in positions to influence key policy formulation processes and policy makers in turn have not always supported them, all contributing to the difficult situation many indigenous groups experience since they have not been able to maintain their traditional lifestyle and livelihoods. Considering this, pro-active efforts by the indigenous peoples themselves to define a development which embraces their cultural distinctiveness can be regarded as crucial for the future of these peoples.

6.2.5 National unity versus cultural diversity

One reason to the widespread lack of recognition within Kenyan politics could be explained in terms of a risk of undermining equal relations between the ethnic groups in the country, as well as the preservation and/or development of a national unity. This may be a reality on a social level regarding the interactions between the Kenyan people, as discussed earlier. However, such national unity has not been officially promoted by the authorities, and the way the politics in the country are run suggests that it is not a goal everyone is willing to strive towards. Additional examples are state claims on natural resources in the name of national economic development and the "general good", which at times have superseded local claims of land rights and subsistence affecting many indigenous communities. However, due to the involvement of corruption, bribes, nepotism etc, this "general good" often benefits the ruling elites instead of the whole population. Various ethnic groups in the country have traditionally struggled to gain power and recourses mainly for the internal distribution. It is therefore not likely that a legal recognition of the indigenous peoples in Kenya would contribute to further differences in the battle for power and resources among the people, and the Government cannot justify their ignorance and lack of actions towards indigenous issues by claiming to work for the best of the nation and for a strong Kenyan unity. The need for recognition can be met through greater respect for the traditions, values, beliefs, and traditional knowledge of these communities. This could be accomplished within a goal of national unity which still respects ethnic diversity. Additionally, if the gains of ethnic identity and belonging are highlighted, further divisions among the population could be avoided, and indigenous identity could be fully recognized and appreciated.

7 Concluding remarks

Analysing the importance of recognition of the identity of indigenous peoples in Kenya, this thesis has discussed several elements within the contemporary Kenyan context in which changes could occur and lead to greater recognition of these peoples. The Endorois community's legal case can for example serve to illustrate the nature and importance of a social as well as legal recognition of indigenous peoples' identity and way of life. The case has brought the relation between Kenyan indigenous communities and the state into the light, as well as these communities' position in the social context. The initial non-recognition of the Endorois' identity by the High Court of Kenya now has the possibility to transform through the African Commission's decision into a positive influence on the social recognition of indigenous identity, in terms of increasing the knowledge and attention to these issues within the social context. The legal recognition resulting from the decision may provide significance to indigenous peoples in terms of creating a greater space for them in the public sphere. Hopefully, this leads to the end of conceptual misuses and instead to the legal recognition of collective rights claims as a complement to the individual, as well as to the state acknowledging indigenous peoples as possessing a collective identity in need of better protection and appreciation.

While possessing different characteristics and advocated in different contexts, both social and legal recognition is in my opinion a precondition for the overall improvement of the situation of indigenous peoples in Kenya, and in order to confirm and strengthen the preservation of their indigenous identity. While filling different purposes, they complement each other at the same time, and until they both have been incorporated into the discourse of indigenous issues in Kenya, the indigenous communities continue to be marginalized politically and legally, and subjected to ignorance and negative stereotypes. By highlighting indigenous issues and advocating for the Government to ratify international human rights instruments targeting indigenous peoples, and at the same time continue the struggle within the relevant areas in the Kenyan national context, the full recognition of Kenyan indigenous peoples and their identity may eventually be reached.

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