

Making peace under the mango tree

A study on the role of local institutions in conflicts over natural resources in Tana Delta, Kenya



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Abstract

In this research, conflicts over natural resources in the Tana Delta and the role of local institutions are central, with a special emphasis on the 2012/2013 clashes. In this region, conflicts between the two dominant ethnic groups, the Orma (who are predominantly herders) and the Pokomo (predominantly farmers), are common. Three types of institutions are involved with conflict management and natural resource management, namely the local administration, village elders, and peace committees. As for other regions in Kenya, the authority of elders has diminished in the past decades, whereas the local administration lacks the authority and capacity to govern the region. Therefore, peace committees can play a vital role in conflict management and natural resource management. The main natural resources which are contested in the Tana delta, are water, pasture, and farmland. Although peace committees seem fairly effective with managing cross-communal conflicts and preventing any further escalation, conflict prevention needs further priority. Cross-communal agreements to manage natural resources have been less and less the case, which is one of the main factors causing conflicts. Engagement of communities in making these agreements should be one of the priorities in the post-clashes Tana delta. As for the 2012/2013 clashes, it is likely that outside interference, either prior or during the conflict, has caused the escalation of violence, which has led to the loss of almost 200 human lives, probably because of a favourable outcome of the elections held in March 2013. Although large-scale land acquisitions have not directly contributed to the clashes, interest of investors for developing ranches into large-scale plantations has increased intercommunal tensions, which has indirectly contributed to recent violence.

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Acronyms and Abbreviations

ASAL	Arid and Semi-Arid Lands
CBO	Community Based Organisation
CoCooN	Conflicts and Collaboration over Natural resources
DC	District Commissioner
DDR	Disarmament, Demobilisation, Reintegration
DO	Divisional Officer
DPC	District Peace Committee
EIA	Environmental Impact Assessment
GoK	Government of Kenya
GSU	General Service Unit
IEBC	Independent Electoral Boundary Commission
IGAD	Intergovernmental Authority on Development
KWS	Kenya Wildlife Service
LSLA	Large-Scale Land Acquisition
NEMA	National Environment Management Authority
NSC	National Steering Committee on Peacebuilding and Conflict Management
PC	Provincial Commissioner
SALW	Small arms and light weapons
SEA	Strategic Environmental Assessment
SSR	Security Sector Reforms
TARDA	Tana and Ahti River Development Authority
TDIP	Tana Delta Irrigation Project
TISP	Tana Integrated Sugar Project

Glossary

Baraza	Informal meeting, used for settling issues
Chiko	Water point for human use
Gasa	Council of elders for Pokomo
Kyeti	Administrative unit governed by Pokomo
Malka	Water point for livestock
Mathadedda	Council of elders for Orma
Mathenge	<i>Prosopis Juliflora</i> , an invasive shrub
Oodesh	Council of elders for Wardei
Panga	Machete
Shamba	Farm
Shifta	Bandit (originally Somali separatist)

Chapter 1: Introduction

On the 22nd August 2012, Kenya witnessed one of its worst acts of violence since the post-election crisis in 2007/2008. At dusk, around 300 persons surrounded Riketa, a small village in the Tana Delta, Kenya, and killed 53 people, of which 34 women and 13 children (KNCHR, 2012). This attack was just one in a series of clashes between the Pokomo and Orma, the two dominant ethnic groups in the Tana Delta, with the highest intensity in August/September 2012 and December 2012/January. Although this type of attack was unprecedented in its harshness, intercommunal conflicts are not uncommon in this region.

Yet early records on the peoples in the Tana Delta state a different story. For example Prins (1952) said the following on relations between the Pokomo and Orma: "By 1952, the Galla (Orma) were reported to be living peacefully side by side with Pokomo in perfect friendliness". In more recent history, however, there have been other intercommunal conflicts. In 2001 and 2004 there have been serious escalations as well and tensions seem to have remained under the surface.

In this research I will focus on the causes and ways of resolution of conflicts in the Tana Delta. This area derives its name from the Tana River (see figure 1.1 for location), which flows from the Central Highlands and branches into a delta area, approximately 800 km downstream, after which it flows into the Indian Ocean. It is the longest river in Kenya and one of the few rivers which do not dry up seasonally. Yet despite this valuable resource, Tana Delta is among the least developed in Kenya. The majority of the people are involved with subsistence farming or cattle herding, which provide little income for most. Approximately 76.9% of the people live under the poverty line¹ (TDDC, 2008) (not regarding the impact of last clashes which has further deteriorated the economy) and relief food is given on a frequent base (Schade, 2011).

At first sight, at the roots of these intercommunal tensions, lie differences in livelihoods. In the Tana Delta, the type of livelihood is still much related to one's ethnic identity. Some ethnic groups, such as the Orma, rely on pastoralism as their main economic activity. Others, such as the Pokomo, are dependent on farming. Ideally, these economic activities are complementary rather than conflicting, with farmers providing for food crops and pastoralists providing for meat and milk. However, this ideal harmonic relation is far from reality.

Conflicts between farmers and pastoralists are not unique for the Tana Delta. All over the world, the (potentially) conflicting livelihoods are a risk factor for conflicts. In Africa numerous examples can be given for these types of conflicts, especially in the border zone between arid, and more fertile land. Examples can be given for Kamba cultivators and Somali pastoralists in Kenya (Daily Nation, 21/9/2013), or outside Kenya, the Mossi and Fulani in Burkina Faso or Hausa and Fulani in Niger (Hussein, Sumberg & Seddon, 1999).

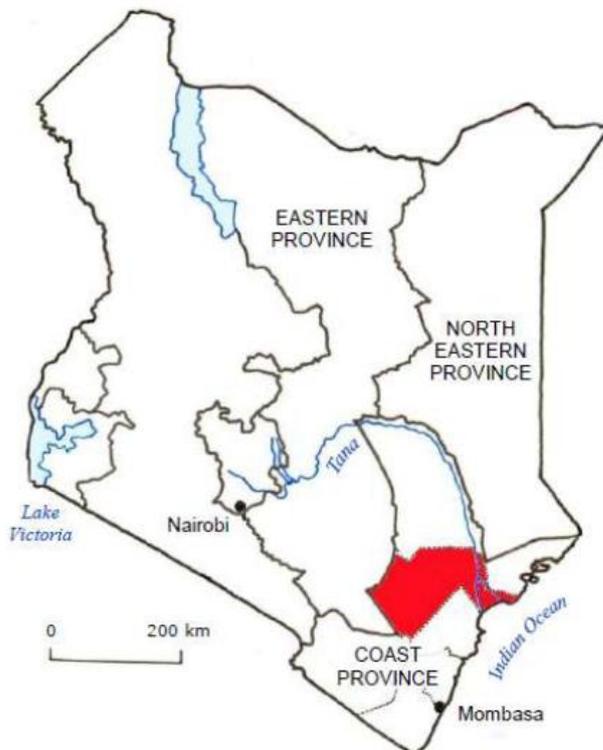
Besides pastoralist-farmer conflicts, another frequent type of conflict are conflicts among pastoralists, mainly over pasture and cattle. In Northern-Kenya conflicts are frequent between e.g.

¹ With a national average of 46%.

Pokot, Samburu and Turkana. Besides competition over natural resources, these conflicts are often related to cattle raiding².

For both type of conflicts, it is obvious that competition over natural resources matter and these factors have often been the subject of earlier research. What's more, in arid and semi-arid lands (ASALs) competition over natural resources only seems to be increasing, with contributing factors being population growth and loss of farm land and grazing land (due to environmental and human factors) (Schade, 2011).

Figure 1.1: Location Tana Delta District



Source: Smalley (2011)

Development, security and governance

In these areas such as the Tana Delta, the nexus between development and security is evident. The lack of economic opportunities is a contributing factor to the region's insecurity, which consequently contributes to the region's lack of economic opportunities. Although Eastern-African economies have recently seen growth rates as high as 7% (PWC, 2012), most rural areas have seen little gains from these national developments.

An essential factor is the absence of an active government. In ASALs, often there is a lack of interest from the central government. Consequently, local governments are ill equipped to cope with the challenges in these regions (Schade, 2011). Although the pastoralist economy in East-Africa is

² Cattle can be seen as a natural resource depending on your definition, yet cattle raiding occurs not only because of economic reasons, but also because of cultural reasons (Nganga, 2012; Martin, 2007).

estimated to generate 1 billion dollars annually (Catley, Lind & Scoones, 2013), the governments in East-Africa seem to show little interest in this. Pastoralist communities have often felt neglected and marginalised and are often situated in the hinterlands (Pavanello, 2009). In a historical context there is nothing new under the sun. In the colonial era, the British used a policy of pacification for the hinterlands and development efforts were aimed at the (fertile) Central Highlands after establishing Nairobi as Kenya's capital (Foeken, Hoorweg & Obudho, 2000).

The relative absence of the central government (and its agents) has led to the still on-going, yet decreased, influence of the traditional people in power, namely the village elders. Traditionally, it were the village elders who were in charge of the local communities. All over East-Africa, the emergence of the nation-state and market economies has led to power vacuums, which has led to the erosion of the authority of elders (Ensminger, 1992). Unless this transition, to a government with a monopoly on violence, is complete, conflicts will remain more likely to occur. However, this transition is likely to take decades to be completed.

Peace committees

As an answer to strengthen local governance, the Government of Kenya has adopted the peace committee model. Peace committees are made up of several members of the community and are in charge of building peace and settling conflicts (NSC, 2011). Besides the traditional participation of elders, they also encompass youth, women, disabled persons and religious leaders, and work alongside government officials.

Peace committees in Kenya have their roots in the 1994 conflict in Wajir. In this conflict, elders were incapable or unwilling to stop the continuous violence. Women from both communities started with informal talks between the two warring communities, which was the start of a peace process which eventually also included businessmen, youth, elders, and others (Menkhaus, 2008). The success of this grassroots peace building process drew the attention of, among others, the Government of Kenya and it was seen as a cheap and effective way in ASAL regions to create peace (Adan & Pkalya, 2006). With the involvement of women and youth, it can be seen as an evolution of the traditional systems and their customary ways into a model which incorporates a better representation of the population. After the post-election crisis in 2007/2008, this model was extended to other non-arid regions.

'Land grab' and Tana Delta

Another development which has put this region on the international radar is the worldwide increased interest in land. This interest of investors (both domestic and international) in acquiring large tracts of land, mainly for growing food crops or creating biofuel, is often depicted as 'land grab'³ (Cotula, 2012). Since the Tana River is one of the few rivers in Kenya which has a year round continuous flow of water, the area is thought to have a high potential for large-scale irrigation projects, and is thus also subject of this renewed interest. In the 1980s and 1990s, there have been several projects near the Tana River but in the Tana Delta these projects have not been successful to this date (Hamerlynck et al., 2010). This renewed interest has gained a lot of attention, both in popular media and in the academic field and is controversial (Cotula, 2012). After the eruption of

³ Since 'land grab' is an emotionally charged term, I will use the more neutral term 'large-scale land acquisitions' (LSLAs).

violence in August 2012, speculations were also made about the role of these investors in the recent clashes (E.g. Daily Nation, 14/01/2013).

In the debate on these large-scale land acquisitions (LSLAs) people who are in favour of this development point out that these acquisitions are investments, leading to employment opportunities, technological transfers, utilization of unused land and infrastructural improvements. On the other hand, opponents state that these LSLAs will lead to increased competition, environmental damage, loss of livelihoods and will leave the local communities with the costs, leaving the benefits for the investors (Cotula, 2012).

This research

With these fiery ingredients of competition over natural resources, weak governance, a history of violence between different communities, and little prospect of a better future, the Tana Delta is prone to future conflicts. It is thus important to gain a deeper understanding of the different dynamics involved with the causes and the reaction to these conflicts in the delta. I will therefore aim to answer several questions, all related to conflicts and natural resources in the Tana Delta. Firstly, I will look into the causes of intercommunal conflicts in the Tana Delta and specifically into the role of natural resources. Secondly, I will investigate the ways of managing natural resources and how these have changed over time. Related to this, I will look into the role of peace committees, who are active in managing natural resources and their role in resolving conflicts and building peace, while also looking into the role of the alternatives: elders and the government. Finally, I will look into a specific case of a large-scale land acquisition in the Tana Delta, looking into its relation to conflict and development.

With these research goals I have formulated the following research questions:

- *What are the causes for intercommunal conflicts in the Tana Delta, and specifically, what is the role of natural resources in creating conflicts?*
- *In what way are natural resources being managed and by whom, and in what way has this changed over time?*
- *How are conflicts being resolved and what is the role of local institutions in this process?*
- *How are conflicts being prevented and what is the role of institutions in conflict prevention?*
- *What is the role of LSLAs in intercommunal conflicts?*

The clashes in 2012-2013 have, again, shown the fragility of intercommunal relations in the Tana delta. The government has put expectations on peace committees as means to prevent and manage conflicts. This research aims to help these efforts by investigating the causes and courses of conflicts. Not only will this research help the general cause by providing an analysis of peace committees and their role in conflict resolution and peace building, it will also make a significant contribution to the scientific debate on non-state development driven initiatives for conflict resolution, and more generally speaking governance (or non-governance) in rural areas. By including LSLAs in this research, I can provide new insights in the debate on 'land grab' and its risks and opportunities, in which a lot has been written but so much less has been actually investigated.

Structure thesis

In the following chapter an overview of the theoretical framework will be given. In chapter three and four the national and regional/local context will be presented, describing issues such as governance, economic development, and the history of the Tana delta. This is followed by an overview of the collected data and used methodology, in which also a number of background characteristics will be discussed. In chapter six, the analysis of this study will be presented, finally followed by a conclusion and discussion in chapter seven.

Chapter 2: Theoretical Framework

In order to get a better understanding of access to natural resources and its relation to conflict and peace building, a number of theories are used, which will be presented below. To fully grasp the relationship between natural resources and conflict and cooperation, factors such as culture, security and the political context often need to be taken into account, since not a single conflict can be explained by solely looking into one dimension.

2.1: Concepts of conflict and conflict management

2.1.1: Conflict

Although the term conflict evokes images of war, it encompasses far more elements. In the academic field there is no real consensus on which definition to use (Rutten and Mwangi, 2013), but generally speaking they have some elements in common, most importantly; two or more involved parties and the perception of conflicting goals, interests or opinions⁴. They are part of social relationships and are partly socially constructed processes (Rutten & Mwangi, 2013). They can range from interpersonal conflicts to international conflicts (Ramsbotham et al., 2005). Furthermore, conflicts need not a priori perceived as a negative process; even violent conflict can have beneficial results. As Homer-Dixon pointed out: “Mass mobilization and civil strife can produce useful change in the distribution of land and wealth in institutions and processes of governance” (Homer-Dixon, 1999, p. 5).

Galtung (1969) argued we should see conflicts as triangles, made up from three elements: contradiction, attitude and behaviour. According to this framework, full conflicts (*direct violence* in Galtung’s framework) require the presence of all three components. Galtung regards conflicts as dynamic processes, in which these elements constantly change and influence each other. In this model, contradiction is the (perceived) mismatch of goals between the different parties, which are products of their social values and structures (Mitchell, 1981). The second component ‘attitudes’ is made up from the parties’ perceptions of others and themselves. Finally, the third component ‘behaviour’, can be violent or non-violent (Galtung, 1969). Whenever the element of ‘behaviour’ or ‘attitudes’ is missing, we can speak of latent or structural conflicts (Ramsbotham et al., 2005). These different types of conflict require different responses in order to be settled, which shall be discussed in the next section.

This difference between types of conflict is also relevant for the concept of ‘peace’. The phase of peace can be described as the absence of direct violence, defined by Galtung as ‘negative peace’. Whenever structural and cultural violence are absent as well, he speaks of ‘positive peace’.

2.1.2: Conflict escalation and de-escalation

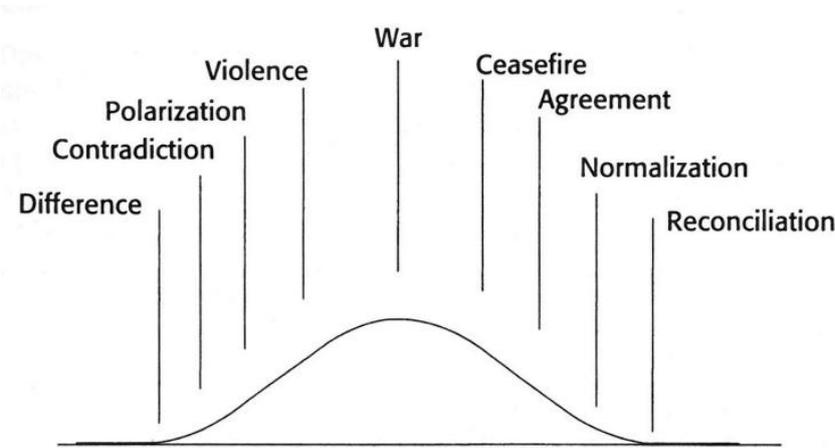
Conflict escalation and de-escalation can be arranged as shown in figure 2.1, ranging from the lowest level of intensity, moving to open warfare and moving back to ‘normality’, after reconciliation has taken place. In this model *differences* are everyday social practices, which can ‘scale up’ towards

⁴ In this study I will focus on social processes between communities, with individuals being the smallest unit of analysis.

contradictions. Whenever *contradictions* become fiercer, they can lead to *polarization*, in which parties are formed and the conflict becomes manifest. This can lead to *violence* and eventually *war*. After violence or wars, ceasefires and agreements can be drawn, after which normalization and reconciliation can take place. Obviously, this is not a linear process. It is more likely that conflicts move back and forth on this ladder, escalating and de-escalating over time.

Obviously, figure 2.1 is a simplistic view of reality. The process of conflicts is hard to predict and often far from linear, especially since conflicts change over time. New parties can get involved and internal struggles can lead to new goals or tactics (Ramsbotham et al., 2005). Still, ordering these modes of conflict can help us in gaining a better understanding of conflicts and proper reactions to conflicts in order to create (sustainable) peace.

Figure 2.1: Escalation and de-escalation phases of conflicts

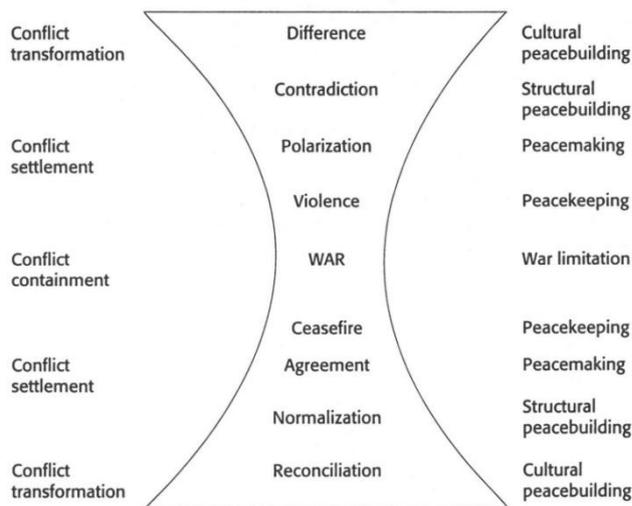


Source: Ramsbotham et al. (2005)

The various reactions to these types of conflict-intensity can be seen in figure 2.2, dubbed by the authors as the “hourglass model of conflict resolution responses” (Ramsbotham et al., 2005). In this model, the three columns represent the different phases of conflict and their proper responses. The hourglass figure symbolizes the shifting political space, corresponding to the conflict’s intensity, and helps us in identifying the different actors in this region and their responses. For instance, community leaders can be effective peace builders, but are less suitable to peacekeeping, since they rely on persuasion instead of enforcement.

In the first column, conflict transformation can be regarded as “a deep transformation in the institutions and discourses that reproduce violence, as well as in the conflict parties themselves and their relationships” (Ramsbotham et al., 2005, p. 29). This is more encompassing than the concept of conflict settlement, which is the cessation of violence, but not necessarily addressing the attitudes or behaviour. *Conflict containment* is less drastic, solely preventing the violence from worsening, in other words peacekeeping.

Figure 2.2 Hourglass model conflict resolution



Source: Ramsbotham, Woodhouse & Miall (2005)

In the third column, the strategic responses are presented, starting with *cultural peacebuilding*, such as installing fact finding missions, truth commissions or peace commissions. *Structural peacebuilding* encompasses elements such as development aid or supporting or training of NGOs. *Elite peacemaking* involves diplomacy (although on a low level) and negotiation. Seen in a post-conflict perspective it also encompasses elements as power sharing and electoral or constitutional reorganization. *Peacekeeping* contains factors as crisis management, containment, or in a post-conflict stage, confidence building, disarmament, demobilisation and reintegration (DDR), security sector reform (SSR), etc. In open *war* situations these options are limited to peace enforcement or peace support.

2.2: Causes of conflict

2.2.1: Another new war?

The apparent rise of the number of conflicts after the end of the Cold War has been one of the main topics in the academic field of conflict studies. Discussions focused on questions such as whether there was truly a rise in (inter and intra-state) conflicts, whether the nature of conflict had changed (*new brutality*), or whether they were caused by grievances or greed (Collier & Hoeffler, 2004; Kalyvas, 2001).

In the latter research question, greed vs. grievances, scholars have been debating on whether factors such as relative deprivation or cultural oppression (grievances), or economic gains (greed) were causing or prolonging conflicts. The difficulty of disentangling these factors is problematic. For instance, greed implies a norm: the line between fighting for gaining a better economic position or for 'greed' is thin at the least.

Abundance or scarcity

Scholars occupied with economic factors as causes for conflict have focused on extractive natural resources⁵ as explanations for violence (Rutten & Mwangi, 2013). Two viewpoints can be discerned, either regarding resource abundance (dubbed as the *resource-curse*) or resource scarcity as a cause for conflict. Results so far vary, with in both camps scholars claiming it is either abundance, scarcity, or a combination.

Others scholars have been labelled as ‘neo-Malthusians’, dubbed by Richards (2005) as “Malthus with guns”. Malthus spoke of the relation between natural resources and conflicts in the 19th century. He argued that the rate of food productivity would eventually be outpaced by the population growth, which consequently would lead to conflicts because of the increased competition over natural resources. Although Malthus did not foresee that the food productivity would instead grew significantly because of technical innovations, the premise that environmental scarcity can lead to conflicts is generally accepted⁶. Homer-Dixon (1999) illustrated this view with several examples. In his research, he describes environmental scarcity as follows: “*Environmental scarcity, ..., is scarcity of renewable resources, such as cropland, forests, river water, and fish stocks. This scarcity can arise ... from depletion or degradation of the resource, from increased demand for it, and from unequal distribution*” (Homer-Dixon, p.8). This concept excludes extractable natural resources, such as oil or diamonds. As with conflicts, environmental scarcity can have beneficial effects as well, for instance creating incentives for technical and institutional innovations (ibid.).

2.2.2: Natural resource scarcity and conflicts

In his work, Homer-Dixon states five types of conflict caused by environmental scarcity (see below) which show different levels of geographical scale, moving from a local to global level. Although the two types with the largest geographical scope (four and five) do not seem to be relevant for the Tana Delta, the other three types can help us understanding the region’s conflicts.

Classification of conflicts by geographical scope by Homer-Dixon.

1. *Disputes arising directly from local environmental degradation*
2. *Ethnic clashes arising from population migration and deepened social cleavages due to environmental scarcity*
3. *Civil strife caused by environmental scarcity that affects economic productivity and, in turn, people’s livelihoods, the behaviour of elite groups, and the ability of states to meet these changing demands*
4. *Scarcity-induced interstate war over, for example water,*
5. *North-South conflicts over mitigation of, adaptation to, and compensation for global warming, ozone depletion, etc.*

Furthermore, he also makes the distinction between different types of violent conflict that can arise from environmental scarcity, yet acknowledging that conflicts rarely will fit solely in one category. First of all, ‘simple-scarcity conflicts’ are interstate wars with the purpose of conquering other nation’s resources⁷, which have been most often non-renewable resources since this type of resources takes far less time than renewable resources to provide any gains (ibid.). He names four

⁵ Such as oil, diamonds and timber.

⁶ For a recent overview, see Schilling (2012:234-236).

⁷ Such as Japan in World War II, seizing coal, oil and minerals in China and Southeast Asia (Homer-Dixon, 1999).

renewable resources which are likely to start simple-scarcity conflicts, namely: “*agriculturally productive land, forests, river water, and fish*” (ibid, p. 138), yet concludes that for states, scarcity of these resources has not lead to conflicts recently.

The second category of conflict is made up by *group-identity conflicts*. Conflicts in this category, are caused by (perceived) threats to people’s group identity. People tend to have a stronger feeling of appreciation towards their group members, and consequently a more negative attitude towards people from the *out-group* (Forbes, 1997).

One of the responses to environmental scarcity is migration⁸. This migration to other populated areas can lead to the ‘host group’ feeling threatened, which could lead to violence. Homer-Dixon notes that the main determinant whether this increased hostility leads to violence is the influence of the state. Causing organised conflicts requires resources and cooperation, which is absent for most migrants, and therefore requires the backing of the receiving state or an external state. However, it is important to note that this assumes at least the presence of state control in the receiving region. Large scale migration of groups towards regions which have little absorption capacity and little governmental capacity⁹ is plausible to threaten the stability of the region.

Finally, the third type of conflict Homer-Dixon names is labelled as ‘insurgencies’, which are explained by “*a combination of relative-deprivation theories and structural theories of civil strife*”(ibid., p. 142). In other words, insurgencies are combinations of conflicts of *grievances* and *opportunities* and are directed at the state. Insurgencies can break out when a group turns violent, because it feels relatively deprived and senses it can be successful. This can be influenced by environmental scarcity, by improving the economic situation or by weakening the institutional capacity, thus increasing the opportunity of an insurgency (ibid.).

These environmental scarcity-related conflicts have been perceived as increasingly occurring, both in academic and popular fields (Hussein et al., 1999). This is also true for farmer-herder conflicts, one of the main conflicts in the Tana delta (Martin, 2007). However, evidence is missing to back up these claims (Hussein et al., 1999).

Different types of scarcity

In his book, Homer-Dixon (1999) describes three different sources of environmental scarcity, which are *supply-induced*, *demand-induced* or *structural* scarcities. Supply-induced scarcity arises when the supply of the resource shrinks. Possible reasons for this shrinking of the resources are environmental degradation (such as soil erosion) or resource depletion. Demand-induced scarcity arises when the demand grows, which can happen because of e.g. population growth. Structural scarcity is affected by distributional changes and can occur when one group requires a bigger portion of the available natural resources, which goes at the expense of other groups. An important condition is that the resource is *rivalrous*; whenever one economic actor uses a resource, its availability to others is reduced (Homer-Dixon, 1999). Furthermore, another condition for structural scarcity is that resources are *excludable*; this means that resources can be claimed because of the existence of property rights or other institutions, and will therefore not be available to others. High-seas fisheries

⁸ Others being technological innovation, trade, armed conquest, etc.

⁹ Such as the border area of Kenya, South-Sudan, Ethiopia, and Somalia.

are an example of non-excludable resource, since they move autonomously and cannot be completely claimed¹⁰.

The work of Homer-Dixon has been criticized on a number of issues. Most importantly, he did not incorporate the influence of political systems in his analyses. As Jackson (2003) points out, often it is not the absolute lack of resources which leads to conflict. Instead, it is the lack of access to these resources that leads to conflicts, or in other words it is the distribution of resources that matters. In his later published book (1999), Homer-Dixon has weakened his conclusions, stating that scarcity of renewable resources can *contribute* to 'civil conflicts', rather than in his original hypothesis that states that environmental scarcity *causes* conflict (Jackson, 2003).

2.2.3: Scarcity and cooperation

Opposite to this relation of scarcity-conflicts is the view that scarcity of resources might instead lead to more collaboration between competitors. In a study on water scarcity and its consequences, Wolf (2007) demonstrated that the vast majority of international disputes over water usage ended up in a form of collaboration, instead of conflict. His main explanation for this absence of violence is the enormous costs of open warfare when water is involved. According to his study (2009), institutions are essential for preventing conflicts over water, therefore the greatest risk of conflicts to arise occurs when the institutional capacity is insufficient because of sudden changes, such as disasters, construction of dams, etc. However, it is important to note that his study was based on state level. At lower levels, such as local or regional, water has often been the subject of conflicts (Homer-Dixon, 1999).

On the other hand, in a study (Witsenburg & Adano, 2009) on the northern Kenyan arid lands, the authors indicated that conflict was most likely to occur during wet seasons, while during the dry seasons (when scarcity was at its peak) warring factions overcame their discords, reconciled and shared the available water resources (Adano et al., 2012).

This study provides an interesting sight in the *scarcity vs. abundance* debate, since one can expect that the motivations for raids during dry seasons are linked with scarcity, while raids during wet seasons would be done (above all) because of resource abundance. The authors come with the conclusion that abundance leads to conflict in this case, backing it up with the explanation that raiding cattle during the wet season is more opportune, since cattle is stronger and thus able to travel longer distances (Witsenburg & Adano, 2009). However these findings have been unique and have (so far) not been supported by any other study. It has also been criticized on a number of points, namely because of a number of methodological issues, such as the used proxy for resource scarcity (Rutten & Mwangi, 2013).

2.2.4: Climate change and conflicts

These views on environmental scarcity have been related to the discussion on climate change (Frerks, 2007). However, while popular in popular media, in the academic field this view of '*climate change causing scarcity, causing conflict*', has received much criticism, since to this point there has been no clear evidence for this increase in conflicts. For instance, by comparing climate change characteristics (precipitation and temperature), Klomp and Bulte (2012) did find a clear relation with the occurrence of conflicts. In an overview study, Theisen et al. (2013) conclude that under certain

¹⁰ If it was technically possible to catch all the fish, obviously it would be an excludable resource.

circumstances the risk of conflicts becomes bigger, but overall, they conclude, evidence is weak or non-existent. In addition, even if climate change would occur, much depends on the adaptability of people (Schilling, 2012).

2.2.5: Culture and ethnicity

Other studies on the causes for conflict have focused on the role of ethnicity and culture. These studies have recently been labelled as 'New Barbarism'. Related to these ideas is Huntington's hypothesis of 'The clash of civilizations'. Huntington coined this term in his article published in 1993 and gained much notoriety (and criticism) with his ideas. His main thought is that wars will not be fought between nation-states but between civilizations and these wars will occur mostly at the interfaces of civilizations¹¹. However, as Fox (2005) points out there is no empirical evidence for his hypothesis, as he shows that intra-civilizational conflicts have always had a higher chance of occurrence than inter-civilizational conflicts. Other criticism has been aimed at problems of defining culture and ethnic violence (Brubaker & Laitin, 1998) and the premise that cultures are static, rather than dynamic (Rubenstein & Crocker, 1994).

But even if differences ethnicity and culture do not lead to violence independently, often they are at least important elements in conflict. To determine whether violence is truly 'ethnic violence' is hard, often ethnicity is related to other influential elements, such as the socio-economic or political situation. In their attempt to gain a better understanding of ethnicity and ethnic violence, Brubaker and Laitin (1998) described ethnic violence as violence in which the ethnic aspect is not trivial.

Oberschall (2000) made a distinction between four common views on ethnicity and ethnic violence, and adds a new view to this synopsis. First of all, according to the primordial view, ethnic identities are culturally given and a natural affinity, such as in kinship. Enmity towards other ethnic groups persists under the surface and can erupt because of several reasons. Secondly, in the 'instrumentalist' view, ethnic identities are manipulated by political elites for their purposes, for example state building or electoral reasons. Thirdly, he describes the 'constructivist' view, which combines the ideas of the instrumentalist and primordial views, stressing the variety of importance of religion and ethnicity in different times. Another view is based on a security dilemma: whenever there is a breakdown of the state, ethnic groups mobilise because of the security dilemma, which triggers other groups to mobilise, etc. According to this view, ethnic violence isn't caused by hatred but because of fear and insecurity (Oberschall, 2000). Yet, as the author points out, ethnic violence breaks out as well in situations where there is a functioning state. By combining different elements of these views, and by adding a concept of cognitive frame, he aims to explain the link between ethnic manipulation by elites and grassroots ethnic identities. He illustrates this with the example of the Yugoslavian conflicts of the 1990s, stating that Yugoslavians had two cognitive frames of ethnic relations. In times of peace, they had a cooperative frame, such as in the period 1950s-1980s. Yet they also remained to have a dormant crisis frame, which was rooted in family histories and collective memories of previous conflicts (ibid).

At a first glance, these different layers of ethnic identities can be applied to Kenya as well. Although most ethnic groups live in relative peace, in situations of distress, the ethnic identity becomes more important and ethnic violence can be widespread, such as during the election periods of 1992, 1997, 2002 and 2007-2008 (NSC, 2011).

¹¹ With civilizations in Africa being: 'African' and 'Islamic' with Ethiopia in a separate category.

2.2.6: Security dimension

In the previous section I have discussed the role of natural resources and culture and their role in conflicts. As I mentioned before, there are numerous causes for most conflicts, and one type of cause is rarely (if ever) sufficient in understanding the outbreak of a certain conflict. Although the main focus of this research is on the role of natural resources, other elements have to be taken into account as well, in order to gain a better understanding of conflicts in the Tana Delta.

Earlier in this section I spoke of the discussion about 'new' and 'old' wars. One aspect which leads to this discussion was the perception of an increased brutality of war. The idea that 'new' wars are characterized by excessive violence can at least partly be ascribed to an increase of media coverage, making violence more graphically widespread, it has also changed because of technological changes. Specifically the proliferation of automatic weapons. Automatic rifles require little training, are relatively cheap to manufacture, and are more deadly. While in underdeveloped regions such as the Tana Delta, earlier conflicts were fought with spears, machete's and bows and arrows, the introduction of small arms and light weapons (SALWs) has made conflicts much deadlier (Weiss, 2004)¹².

SALWs are easy to obtain in the border regions in the Horn of Africa for several reasons. First of all, there is little government control over these regions, which makes it hard to control cross-border trade. This lack of government control also implies the lack of security provided for citizens. Therefore, citizens arm themselves for protection. Secondly, ethnic groups are often situated in multiple counties, since most African borders were drawn by Western colonizers. These (trade-) connections are often used for smuggling as well. Finally, the insecurity in the region guarantees a market with a huge supply of SALWs. Although Kenya has been relatively peaceful, neighbouring countries Uganda, Sudan, Ethiopia and Somalia have seen numerous conflicts since the 1950s (NSC, 2011). Besides for internal conflicts, arms were also imported in the region as tensions rose because of the Cold War¹³.

2.3: The role of local institutions

2.3.1: Statutory and customary law

Resource conflicts can often be related to institutional gasps. The absence (or incompetence) of authoritative hierarchies to enforce rules, asks for new or improved institutions to bridge those gaps (Keohane & Ostrom, 1995; Ostrom, 1999).

These institutions are based on statutory or customary law, or a mixture of these types of law. Customary law can be described as: "*indigenous African legal rules, procedures, institutions, and ideas*"¹⁴. Related to this are the differences between traditional and 'modern' authorities: Traditional authorities have their roots in tradition and culture for their legitimacy, whereas in 'modern' societies, legitimacy of authorities relies on a legal (written) framework, with leadership often based on democratic principles (Lutz & Linder, 2004).

¹² Although the majority of the victims in the 2012/2013 clashes were killed by crude weapons (KNCHR, 2012)

¹³ Especially in Somalia and Ethiopia.

¹⁴ According to the Encyclopedia of Africa: South of the Sahara (1997). Obviously, the qualification 'African' can be replaced by other geographical place names.

Although colonialism, and nation-building afterwards, has led to the change or replacement of customary law, it is still widespread in Sub-Saharan Africa. This is especially true for rural and remote areas (Boege et al., 2009). In these areas, customary law, traditional social structures (such as extended families and clans), and traditional authorities (elders, healers, *big men*) still regulate many aspects on the local level (ibid.), although their authority has decreased with the rise of nation-states and market economies (Ensminger, 1992).

During colonial times, the colonial rulers often built on these traditional institutions in order to rule effectively. This association with colonial times has led to a drop in influence after states became independent. They were seen as backward, anachronistic and hindering the process of nation-building by the new political elites and were therefore replaced or suppressed, as it was seen as hindering the process of nation-building (Boege, et al., 2009; Menkhaus, 2008).

However, traditional social systems are not likely to disappear any time soon. On many occasions, governments have tried, or are trying, to harmonize traditional systems with the principle of democratic nation-states (Walls & Kibble, 2010), as happened in Somaliland (ibid.), Mozambique (Lutz & Linder, 2004) and several other African states¹⁵ (Boege et al., 2009).

2.3.2: Loss of influence

One of the reasons that are commonly given to the increase of internal conflicts in Sub-Saharan Africa, is the erosion of the power of traditional authorities (Hussein et al., 1999). Besides the association with colonisation, reasons why traditional authorities have lost influence can be related to modernisation (Krätli & Swift, 1999). Globalisation and migration have led to a far greater exchange of information, thus people are less independent on others to receive information (Krätli & Swift, 1999). According to Odhiambo (1996), traditional authorities have eroded because of the gradual replacement by formal government agencies and officials. Duffield (1997) argues that the authority of elders has been undermined because of the emerging market economy and the growing differences between rich and poor, which consequently leads to labour migration.

2.3.3: Economic diversification and property rights

Ensminger (1992) has also sought for an explanation for the loss of authority in economic factors. In her study, she argues that traditional authorities have lost their authority because of changes in property rights. In her study on intuitional transformations of the Orma, she indicates that in the 1970s and 1980s, more and more Orma became sedentarized, leaving their nomadic lifestyle behind. Because of this development, land prices grew steadily. What's more, the commercial production of livestock increased significantly, because the nationwide economic growth and an increasingly urban-based population led to an increase of the demand for meat¹⁶.

Sedentary households were better off than their nomadic counterparts. The economic growth they experienced led to an increase in economic diversity, with Orma becoming "commercial producers, traders, farmers, and wage labourers" (ibid., p.137). One of the results of this was less consent on property rights, since people who kept livestock for domestic reasons require other property rights than commercial beef producers. This disagreement over property rights became also present in the

¹⁵ E.g. Namibia, South-Africa, Ghana, Mozambique, Uganda, Zambia and Cameroon (Boege et al., 2009).

¹⁶ She also links this to the growth of international tourism in the Coast region.

system of elders, leading to less consensus amongst elders. The failure to come to consensus among the Orma elders added to the loss of legitimacy (ibid.)

The economic growth of the Orma community also led to loss of elder's authority in other ways. For instance, traditionally, young men were dependent on their kin in order to marry, since dowry had to be paid, which young men were unable to afford by themselves. With young men having more financial resources, they did not have to rely on elders anymore for their dowry, leaving elders out of the process of arranging marriages (ibid.).

The government also had a significant task in this process. Some elders used the government agencies as instruments in their own (economic) competition. For instance, chiefs¹⁷ started using the police (a 'product' of nation-states) to keep out foreign pastoralists, and this was gradually seen as legitimate¹⁸ (ibid.).

The consequences of these changes have been drastic for many aspects of society, since elders were the primary authorities. These will be discussed separately for their involvement in natural resource management (section 2.4) and in their role in conflict management (section 2.5).

2.4: Natural resource management

In order to gain a better understanding of the role of natural resources and the outbreak of conflicts, the way natural resources are being managed in the Tana Delta will be investigated as well. In the previous section, an overview was given of several elements which have been argued to contribute to the occurrence of conflicts. Central in this overview is the role of natural resources. Most scholars would agree that natural resources have a certain role in conflicts, but consensus on how these mechanisms work vary. By looking into the natural resource management, we can scrutinize factors which lead to successful cooperation, or on the other hand lead to destructive conflicts.

There are different definitions¹⁹ of 'natural resources' in use, although these definitions are not fundamentally different. Unsurprisingly, elements such as the relation to nature, usefulness and scarcity can be found in most concepts of natural resources. Still, some resources are easier to classify than others, such as minerals, land or water compared to fish or livestock. For example, Mazor (2009) argues that resources are natural if they haven't been created or significantly altered by human beings. This leaves room for ambiguity. For example, afforestation or domesticated animals have been affected by human beings. Dietz (1996, p.33) on the other hand argues that natural resources are determined by society, stating that "*nature becomes a natural resource whenever people relate to nature, so it is a resource by social definition*". He illustrates this by giving a list of examples, containing resources as land, minerals, water, air, energy and flora and fauna. By including flora and fauna he regards domesticated animals as natural resources as well, which have often been (and still are) categorized differently in various other research. However, in this study, I will follow this definition, since flora and fauna is essential for at least half the Tana Delta's population.

¹⁷ Government officials, stemming from the area, see section 4.6.

¹⁸ At least in 1985 (Ensminger, 1992: 142).

¹⁹ And often definitions have not been stated.

Tragedy of the commons?

In the academic field of natural resource management (NRM), the Malthusian idea that capacity of natural resources will not be sufficient for their users in the long run, has had a substantial following, although this idea has been contested because of the development of technological advancements. Related to this idea is Hardin's (1968) concept of the '*tragedy of the commons*'. This *tragedy* happens, according to Hardin, because of the nature of some natural resources, namely common pool resources. These resources, in Hardin's example pasture, are, in Homer-Dixon's dichotomy, rivalrous, yet non-excludable. Pasture is rivalrous, since if user A uses a certain portion, other users have less to use themselves. Yet it is non-excludable in a lot of areas, since property rights (or control of property rights) are often lacking, or because land is common property by law. This implies that users cannot prevent others from using the same pastoral land.

Tragedy theorists reason that common ownership of land, combined with private ownership of cattle creates incentives to have as big herds as possible, thereby overusing the land (Ensminger & Rutten, 1991). The rational choice for individuals (having large herds means higher chance of recovery after droughts) leads to an undesired collective outcome; overgrazing. Yet as many scholars (e.g. McCay & Acheson, 1987) have pointed out, there have been too many successful common property systems which did not 'suffer' this tragedy. Opponents have pointed out that the 'tragedy' is an oversimplification, since it ignores or underplays the existence and functions of self-governing institutions (Dietz, Ostrom & Stern, 2003). Ostrom (1990) argues that these local institutions are capable of managing resources for collective profits, as the users of the natural resources learn to cooperate when facing resource problems.

Although much criticized, following Hardin's study, indigenous common land tenure systems were considered an obstruction to development. It contributed to the idea that developing countries should move to statutory property right systems, whereby land is registered in the name of an individual, company, co-operative or group.

2.5: Local institutions and conflicts

With regard to conflict management, three different categories of mechanisms can be distinguished: (1) customary approaches; (2) legal approaches; (3) alternative conflict management systems (Sanginga et al., 2007). In a study by Ratner et al. (2013), these different mechanisms are described as seen in table 2.2., indicating their strengths and limitations.

2.5.1: Elders and alternatives

Traditionally, institutions involved with conflict management in rural Kenya, were centred around village elders. As mentioned before, the loss of authority of elders has also affected the nature of conflicts (Krätli & Swift, 1999). The authority of elders to settle conflicts relied on three main sources: "(i) control of access to resources/marriage; (ii) being part of a large-cross clan, cross-ethnic, cross-generation network; (iii) supernatural legitimacy" (Gulliver, 1951; Spencer, 1973; Almagor, 1979, *derived from Krätli & Swift, 1999, p. 31*). These sources of power also indicate certain limits; for instance, conflicts which are larger than the network of the elders, conflicts which arise about new resources over which elders traditionally do not have legitimacy (e.g. boreholes or formalized land tenure), or when actors are not depending on economic resources managed by elders (Krätli & Swift, 1999).

Yet it is important to note that while elders had the authority to settle conflicts, they have instigated conflicts as well, as did happen in Wajir in 1994²⁰ (Ibrahim & Jenner, 1996). In Turkana, elders are still involved in making war, for instance, by blessing warriors who go on raids (Krätli & Swift, 1999).

Traditional methods of conflict management

One of the functions of traditional customary rules is also to prevent or manage escalation of conflicts by setting out rules of warfare (Krätli & Swift, 1999). For instance, among the Dassenecht, who reside north of Lake Turkana, raided cattle could not be used to build up the raider's herd but was to be granted to a related elder as a gift or had to be sold to buy weapons. Raiders were also forbidden to marry abducted girls. These rules were there to limit the incentives to start conflicts (ibid.).

In cases of any conflict, often traditional systems of power are still being used. This is partly due to the high costs of the judiciary²¹ and the lack of legitimacy of formal justice. Local perceptions of justice often do not match with formal justice. For instance, many communities in rural Kenya support the idea that the entire kinship is responsible for crimes, instead of an individual perpetrator (Chopra, 2008).

So instead of using the formal judiciary, in most cases people have remained to make use of customary methods, which is more in harmony with people's perceptions of justice. While this is not an issue for cases within the same community, it is harder to use customary ways for conflicts between different ethnic groups or communities, since they could have different values of justice (ibid.).

The inability of these traditional authorities to cope with inter-communal conflicts, combined with the weakness of local governance, has led to several local peace initiatives which have tried to cross this gap, of which the Wajir peace initiative is seen as the start of cross-communal peace initiatives in Kenya.

²⁰ See section 2.5.2.

²¹ In addition to the lawsuit costs, transportation is a big issue. Often there are only magistrate offices in the district capitals, making transportation costs for perpetrators, victims and witnesses high in rural Kenya (Chopra, 2008).

Table 2.1: Conflict management mechanisms

Conflict management mechanisms	Strengths	Limitations
Customary mechanisms	<p>Encourages participation by community members and respect of local values and customs</p> <p>Provides familiarity of past experience</p> <p>Can be more accessible because of low cost, use of local language, flexibility in scheduling</p> <p>Decision-making is often based on collaboration, with consensus emerging from wide-ranging discussion, often fostering local reconciliation</p> <p>Contributes to a process of community self-reliance and empowerment</p>	<p>Not all people have equal access to customary conflict management practices owing to gender, ethnic, or other discrimination</p> <p>Courts and administrative law have supplanted authorities that lack legal recognition</p> <p>Communities are becoming more mixed, resulting in weakened authority and social relationships</p> <p>Often cannot accommodate conflicts among different communities, or between communities and government structures, or external organisations</p>
Legal and administrative systems	<p>Officially established with supposedly well-defined procedures</p> <p>Takes national interests, concerns, and issues into consideration</p> <p>Decisions are legally binding</p>	<p>Often inaccessible to the poor, women, marginalized groups and remote communities because of the cost, distance, language barriers, illiteracy and political discrimination</p> <p>Judicial and technical specialists often lack experts, skill or interest in participatory natural resource management</p>
Alternative conflict mechanisms	<p>Promotes conflict management and resolution by building on shared interests and finding points of agreement</p> <p>Processes resemble those already existing in many conflict management systems</p> <p>Low cost and flexible</p> <p>Fosters a sense of ownership in the solution and its process of implementation</p> <p>Emphasis building capacity within communities so local people become more effective facilitators and handlers of conflict</p>	<p>May encounter difficulties in getting all stakeholders to the bargaining table</p> <p>May not be able to overcome power differences among stakeholders in that some groups remain marginalized</p> <p>Decisions may not always be legally binding</p> <p>Some practitioners may try to use methods developed in other countries without adapting them to the local contexts</p>

Source: Retrieved from: Ratner et al. (2013), after Sanginga et al. (2007); Means et al. (2002).

2.5.2: The Wajir peace initiative

In the early 1990s, local authorities could not get their grips on a local conflict in Wajir between three Somali clans. When the violence spread to women who started fighting in the Wajir market, two women intervened and initiated group discussions on the causes of conflict. This led to the creation of the Wajir Women for Peace Group, which then expanded to include other women in Wajir town (Walker et al., 2003).

Another initiative came from a group of educated professionals who formed the Wajir Peace Group. They started having talks with different elders, both from warring clans and from minority clans who weren't involved as mediators and conveyed a meeting. After several discussions, the elders agreed to the so-called 'Al Fatah-declaration', which contained the guidelines to a return to peaceful relations. During these meetings, other elders and youth also started to organise themselves while local businessmen started to raise funds for peace activities (ibid.). The Provincial Administration, which was already working occasionally with elders, joined efforts with these groups and ultimately brought it under the wing of the District Development Committee in 1995.

In arid and semi-arid lands, other organisations followed this example, which were soon supported by local and international NGOs. Some of these were also bottom-up initiatives, others were driven by NGOs and donors (ibid.). These initiatives can be seen as the start of peace committees, which fit in the category of 'alternative conflict management systems' (see table 2.2).

2.5.3: Declarations and resolutions

Other examples of these 'alternative systems' can be given by a number of declarations which have been made among several Kenyan (mostly Northern Kenyan) communities. One of the most well-known example of such declarations, are the so-called "Modogashe-Garissa declarations"²². These declarations were signed in 2001, after the government's security committees and community elders met with stakeholders²³ of the districts of Isiolo, Marsabit, Moyale, Wajir and Garissa (Chopra, 2008). The goal was to negotiate solutions for the frequent conflicts in these areas, which resulted in the 'Modogashe declaration'.

In this declaration, several issues which may lead to conflicts, such as cattle raiding and disputed use of water and pasture, are discussed. Every specific issue is discussed with specific guidelines, which should prevent future conflicts. For instance, in the case of disputed use of natural resources, the declaration states that unauthorized herders shall leave the area; they should seek agreement from the respective chief and elders if they wish to migrate to that area; they are not allowed to carry firearms when entering a grazing area; and at the end of a drought, herders need to move to their home district (ibid.).

In cases of cattle raids, the declaration states that elders and peace committees should cooperate with the provincial administration and police in the recovery of stolen cattle. The accuser should let security personnel and elders pursue the raiders. If cattle is not recovered, each head of cattle should be compensated by five heads of cattle, whereas the death of a man or woman should be compensated by respectively 100 or 50 cows or camels (ibid.).

²² Others are the Laikipia declaration (1999); Wamba declarations (2002); Kolowa declarations (2002); Peace accords in Naivasha (2006).

²³ Administrative leaders, Police, MPs, county councils, and chiefs.

This Modogashe declaration was revised in 2005, under coordination of the Office of the President, in order to deal with some challenges which occurred under the implementation of the Modogashe declaration. This 'Garissa Declaration', was signed by stakeholders from the districts: Isiolo, Garissa, Marsabit, Moyale, Samburu, Meru North, Mandera, Wajir, Ijara and Tana River.

Some of the alterations are specifications to make the declaration more clearly. Other provisions are more in harmony with statutory law. For instance, it is stated that firearms are illegal according to Kenyan law, and thus grazers are forbidden to carry arms. Another modification has been made to the number of cattle as compensation for not-recovered stolen cattle, which has been lowered to two heads of cattle. In case a person is killed, the perpetrator should be brought to court, in addition to paying compensation. With regard to peace committees, the new declaration states that elections should be more transparent, with representatives being chosen at the grassroots level.

The drafting of this declaration was at some times time-costly, since socio-political values had to be streamlined to find common values. For instance, ethnic Samburu were reluctant to include the killing of women in the declaration, since this was unknown in their customary laws, since they, as they stated, 'did not kill women' (ibid.). Other criticism was directed at the differences of compensation between killing men and women.

The success of these initiatives depends much on the level of inclusiveness, since legitimacy is derived from whether communities feel included in the process. Declarations which were initiated by donor agencies or NGOs have often been rejected by local communities (ibid.). In addition, in some parts of the country, too many regional meetings have been held to create new resolutions, whereas old resolutions were not reviewed, which has led to 'resolution fatigue' (Walker et al., 2003).

For the Modogashe-Garissa declaration, it clearly resembles a mixture of customary and statutory law. This also creates tensions, since at some points, the customary law used in this document, contradicts with statutory law. The National Steering Committee on Peacebuilding and Conflict Management (NSC)²⁴ states the following on the legal status: "*Whilst the NSC, for example, might recognize and actively advocate the Modogashe-Garissa Declarations, such declarations and agreements are unenforceable in law and further, they might not be recognized by departments within the same ministry that houses the NSC, such as the police*" (NSC, 2011). This legal ambiguity has been addressed in the 2010 constitution, but still there remains an area of tension.

2.5.4: The mediated state

This hybrid form of formal and informal governance is dubbed by Menkhaus (2008) as: '*the mediated state*', a concept which originates from the academic field of pre-modern and early-modern state formation in Europe, describing central governments (monarchs in the case of pre/early-modern Europe) who 'outsourced' authority to other groups in their border areas because of their own inability to do so (Menkhaus, 2005). While hybrid conflict mechanisms offer several advantages (see table 2.2), the long term perspective raises concerns, when seen in the light of state building.

The example of pre-modern France, having several (overlapping) jurisdictions, different legal codes, and different tariffs and taxes, illustrates the phase of state building, which can be (carefully) compared to African states (Menkhaus, 2008). In such countries, including Kenya, central

²⁴ The NSC falls under the Office of the President and is responsible for mainstreaming peacebuilding and conflict management activities (see also section 3.4).

governments are often also too weak to control the monopoly of violence in their full geographical scope.

Menkhaus states that, until recently, there were a number of reasons why African states were unwilling to strive for mediated states. First of all, because of ideological reasons, states were aiming to transform into modern states, with the ultimate goal of full sovereignty and the legitimate use of violence within their borders (ibid.) Secondly, African states have fixed borders, protected by international law, which was not the case for early modern European states (Herbst, 2000). As a consequence, African states have fewer incentives to protect their borders and invest in border regions, while in early modern European states, this would pose great risks to losing territory because of secessionist movements or expanding foreign powers (Menkhaus, 2008). Especially for regions of little economic importance, the costs of establishing a functioning government, are far greater than any revenues, also considering the fact that the negative spillovers from border regions do not directly affect the core regions, given the geographical distance (ibid.).

Menkhaus argues that, whenever there is an interest in developing an ignored region, but capacity is lacking, the alternative of a mediated state becomes viable. The author states that this has also happened in Kenya, arguing that the increased negative spillovers, crime, terrorism, displacements and arm flows, have affected the core regions, which has led to an increased interest of the state in the peripheral regions²⁵.

Long term perspectives

The benefits of incorporating customary institutions on short term can be summarized as being perceived as more legitimate and being more cost effective than court procedures (Adan & Pkalaya, 2006). However, opinions on the long-term perspective vary. Menkhaus (2008) argue that building up non-state authorities does not have to contravene with the building up of formal state authority, indicating that the former is part of short to medium term governance, while the latter is part of long-term governance. Eventually, he states, the formal state may displace the mediated state. However, this is not a necessity according to the author. He also considers the scenario of the mediated state as a long-term alternative model, although he lists a number of 'intrinsic shortcomings', such as the lack of legal recognition (ibid.). Chopra (2009) agrees with these shortcomings, stating that peace initiatives undermine important aspects, such as "the national unity of the law and elements of democracy and equality" (ibid., 2009: 543). While she acknowledges the importance of hybrid initiatives for peace building, she views the transition of governance from a modernist viewpoint, with the modern formal state as endpoint.

2.6: Large scale land acquisitions

2.6.1: 'Land grab' as a new phenomenon?

In the public debate on development, the apparent increase of interest in acquiring land (or its resources), often dubbed as 'land grab', in developing countries has generated much publicity. This rise in large-scale land acquisitions (LSLAs) has been ascribed to several factors, with the most

²⁵ According to the author also because of increased pressure from international actors, to alleviate the hinterland's security risks, such as multiple terrorist attacks (Menkhaus, 2008).

prominent being the growing interest in biofuels and volatile commodity prices²⁶ (German et al., 2011). Although the scale of this development is much debated, partly because of the nature of land deals being not transparent, most scholars agree that an increase of land transactions has taken place (Deininger et al., 2011). In the popular image of this development, much emphasis is given on investors from Western countries and Gulf States, yet in 2011, the World Bank concluded that most large-scale agricultural investments are done by domestic investors (Deininger et al., 2011).

The main reasons behind this phenomenon are rising food prices and the emergence of new biofuel regulations in an attempt to address concerns over climate change. Food security is especially important for agricultural commodity importing nations who, by acquiring land abroad, lessen the risk of shortages and sudden price spikes. The 2007-2008 food crisis played an important role in this, since importing countries were reminded of their vulnerable position (World Bank, 2010). Another important development which has led to an increasing interest in land is the emergence of biofuels. The biofuel market has seen a huge growth in the past decade, causing an increasing scarcity of land.

2.6.2: Pros and cons

In the heated debate on these land transfers, various arguments are being used why it is either a beneficial or harmful development.

Arguments in favour of this development generally include provision of public goods and social services, job generation, infrastructural improvements, access to new technologies and markets, and payment of taxes for local or central governments (Deininger & Byerlee, 2012). Some of these arguments are related to an older debate in the field of development studies, namely whether large or small-scale farming is best suitable in Sub-Saharan Africa.

On the other hand, arguments against this rise of interest in farmland include environmental and economic damage, weak legal positions, and social risks (e.g. encroachment) (ibid.). In addition, arguments of those in favour have been criticized. For instance, while investments may lead to job generation, an important aspect is what jobs are generated, and for whom; when the required skills are not owned by local residents, they are not likely to profit from new-created jobs. There are also concerns over the potential threat to the local food security. A large share of investors aims to produce food for export, instead of the local market, which is likely to lead to an increase of food prices which would have to be compensated (De Schutter, 2011). Given the quick rise of interest, fear of speculation of land has also increased, posing the risk of unused land since it is held without incentives to develop (De Schutter, 2011). Finally, the (lacking) recognition of land rights has often been used as an argument against LSLAs. Deininger (2011) argues that in countries with weak protection of land rights, land acquisition is more likely to occur. This suggests that investors are eager to invest in countries who are less interested in ensuring that the local population will benefit from these investments.

2.6.3: A messier picture

The apparent rise in land acquisitions has been accompanied by a fast growing interest in academic and popular media. Several developments have taken place since, moving from a polarised debate with much noise and little empirical evidence, to a more nuanced picture.

²⁶ Which has also attracted more and more speculators (Borras et al., 2011).

More variety

For instance, the variety of stakeholders has become more clear. While in some popular views, the image appeared that Western imperialist powers retook African land from the victims, local residents, with the difference in acquiring land with money rather than violence, the reality is more complex than that.

For example, although investments will lead to jobs, it is unsure who will profit from this. For instance, if newly created jobs are granted to outside migrants, obviously local people are much more likely to only experience the disadvantages. Even if the newly created jobs are granted to local people, one can still wonder which group will profit most from this; if there are ethnic groups present who have either experience with farming or with herding, those who farm seem to be more likely to reap the benefits since they have more experience with farming. Even within different ethnic groups, there can be much difference between 'members', for example because of socioeconomic interests. Land owners or members of land owning entities (such as shareholders of ranches) can benefit from land revenues, whereas landless people cannot.

This variety of opinions is also illustrated by earlier research in the Tana Delta (Pickmeier, 2011), in which it became clear that the youth's attitudes varied significantly according to their livelihood (which is still much related to people's ethnic identities).

Estimating the size of LSLAs

Other noise in this debate has been caused because of much discord over the size of the LSLA developments, with claims growing larger and larger (Edelman, 2013). For instance, Oxfam claimed in 2011, that 227 million hectares of land ("the size of Western Europe") were transferred since 2001, in most cases to international investors. In 2012, Oxfam claimed, land eight times the size of the UK²⁷ had been sold or leased. Based on the Land Matrix Partnership²⁸, this number has been brought down to 11 million hectares (dubbed as the size of Ireland) which was acquired by G8 countries (Oxfam GB, 13/6/2013).

Also within the Land Matrix database, huge discrepancies have appeared over time. Often, delayed, cancelled, or scaled-back deals have been reported, even after correctives had been issued (Edelman, 2013). Reasons for these discrepancies are related to the "*rapid phase of the phenomenon, its lack of transparency, and the absence of a standard criterion to classify and report these acquisitions*" (Rulli et al., 2013: 893).

These apparent greatly exaggerated numbers are not a legitimization for trivialising this phenomenon, but should be seen as a warning sign for more transparent and thorough research on LSLAs (Edelman, 2013).

²⁷ Which accounts for approx. 195 million hectares.

²⁸ The Land Matrix was launched in April 2012, and aims to provide an interactive database on LSLAs.

Chapter 3: Kenya

In the following chapter, attention will be devoted to an overview of Kenya concerning the state of governance, security, land regulations, politics and the national framework for peace building and conflict management.

3.1: Governance and security

3.1.1: Governance

In August 2010, a new constitution was adopted after a lengthy process that saw many stops and adjustments along the road. The document was approved in a national referendum (Kramon & Posner, 2011). This new constitution has altered (or will alter, since its implementation is not complete at this point) various aspects of the Kenyan society. Although the constitution was received with much enthusiasm because of its reformist content, its implementation has received more criticism. Observers have specifically pointed at the weakening of the reformist contents (e.g. Daily Nation, 22/3/2012).

One of the most important and new elements in the 2010 constitution is the concept of devolution, with powers being transferred from the central government, and specifically the President, to new administrative entities: counties (Kramon & Posner, 2011). Before the adoption of the 2010 constitution, the GoK consisted of five different administrative levels, namely, in descending order: State, Province, District, Location and Sub-location. In addition to the House of Representatives, a Senate has been installed, consisting of elected regional representatives (47 in total, 1 per county) and nominated minorities (representing women, youth and disabled persons, 20 in total).

Counties will receive at least 15 per cent of the national government's revenues, and are responsible for several tasks such as primary health care, implementation of agricultural policy and management of county-level transportation. Resource distribution to the counties is governed by the Senate, whereas this was earlier managed by the different ministries (ibid.).

3.1.2: Security

Although Kenya, when compared to other African countries, has been relatively peaceful, with intervals there have been small-scale violent conflicts, especially in rural parts of the country. This has often been related to the political, cultural and economic marginalisation of ethnic groups (of whom many practice pastoralism) residing in these areas (Krätli & Swift, 1999). During the colonial era, the British rulers used a policy of pacification for the hinterlands and focused their development efforts mainly on the more fertile Central Highlands foremost occupied by white settlers, (Foeken et al., 2000). This practice of favouring the central regions was continued after Kenya became independent in 1963, with the expectation that development would 'trickle down' to other areas. However, to this date, communities in the hinterlands often feel marginalized (NSC, 2011).

Because of weak governance, rural communities have protected themselves and are often well-armed. The inability of offering protection by the GoK has been acknowledged by installing the home guard policy, meaning that in rural areas local guards are armed by the government and allowed to protect their communities (Krätli & Swift, 1999). The proliferation of small arms is especially true for

pastoralist communities, since historically they have been more mobile and are therefore less dependent on state-institutions. What's more, the (cultural) phenomenon of cattle raiding adds to the region's insecurity. The proliferation of small arms has made these raids far more deadly and to this date the GoK is struggling to prevent cattle raiding, which yearly causes numerous human lives. With time, the gun culture in pastoralist communities has transferred to agricultural communities as well (NSC, 2011).

The presence of small arms has also increased because of regional insecurity in Kenya's borderlands, such as Somalia, Ethiopia, Uganda, Sudan & South-Sudan and Uganda (NSC, 2011).

This combination of weak governance, proliferation of small arms and political and economic marginalization, has been the main contributors to the insecurity of Kenyan hinterlands.

The 'Shifta war'²⁹ and its consequences

In the 1960s, ethnic Somali in Northeast Kenya, inspired and supported by the Somali government, rebelled against the Kenyan central government, in pursuit of a Greater Somalia³⁰. This insurgency was answered with brutal repression by Kenya's security forces (ICG, 2012). At a local level, this conflict has been ascribed to local grievances caused by marginalization, whereas at state level, scholars point at Somalia's attempt to increase its position versus its neighbours, most importantly Ethiopia (ICG, 2012). The interference of Cold War rivals guaranteed large quantities of small arms. Although the Somali government signed a cease-fire in 1967, the conflict lingered on and was marked by small-scale violence.

Since the violence occurred in the remote North East of Kenya, and media was state-controlled, the conflict had little outward exposure. Although numerous human rights violations occurred³¹ between the 1960s and 1990s, perpetrators have never been prosecuted, while existing grievances were left intact. The counter-insurgency had a huge impact on pastoralist lifestyle. One measure to combat the insurgents was to force people to live in fortified hamlets, which could be forced upon ethnic Somali by killing or confiscating their cattle (Baxter, 1993).

MRC

A factor adding to the regional insecurity is the Mombasa Republican Council (MRC). The MRC is a separatist organisation which aims to gain independence for the Coastal region. They base their claim on the history of the Coastal region. Before the British ruled Kenya, the Coastal region was part of the Sultanate of Zanzibar, after which it became a protectorate under British rule in 1895 (Goldsmith, 2011). When Kenya became independent, it was handed over to the GoK, in exchange for compensation for the Sultan of Zanzibar. After the incorporation of the Coast region, settlers from 'up-county' moved in to gain large plots of land (mainly for tourism purposes), leaving the local residents marginalized. While Coastal politicians have since been in favour of federalism, up until the adoption of the 2010 constitution, Kenya was centrally ruled (Goldsmith, 2011).

²⁹ The term 'Shifta' stands for 'bandit'. By implying this criminal element, the GoK legitimized their repression versus these 'criminals'. Nowadays the term is still used, yet for actual 'bandits'

³⁰ This was not limited to Kenya, in Ethiopia the Ogaden war was fought between Ethiopia and Somalia, when Somalia tried to conquer the Ogaden region.

³¹ With the worst being the Wagalla massacre in 1984, when at least 300 Somali men were executed by the Kenyan army (Bradbury & Kleinmann, 2010). Other reports state numbers as high as 2000.

Views on the MRC differ, either being a social movement or a terrorist group (as by the GoK). In Kenyan media, the MRC has often been linked to violence. For instance, during the night before the 2013 elections, four police officers were attacked, allegedly by the MRC (Daily Nation, 11/03/2013). However, MRC spokespersons have always neglected allegations of having militias. This association with violence has led to the ban on MRC in 2011, declaring it an illegal organization, which has later been contested by the MRC. During the 2013 elections, they called on citizens to boycott the elections, although this was hardly observed. Yet, as most citizens seem to disapprove of secessionist calls, their agenda concerning grievances over land rights seem to be widely supported (Goldsmith, 2011).

3.1.3: Economy and development

Although Kenya has the biggest economy in East-Africa, the economic differences within the country are huge. These economic differences are also manifested in regional differences. To illustrate this, the former Coast and North Eastern provinces are the least developed regions in Kenya (ICG, 2013a), whereas the Coast region was far more prosperous than Central Kenya in pre-colonial times (Foeken et al., 2000).

In 2007, the GoK drafted a new policy, 'Vision 2030', which would have to provide the guidelines for guiding Kenya to a brighter future. This blueprint consists of a line of five-year-plans and was started in 2008. Part of this plan is the development of Kenya's hinterlands by developing the agricultural and livestock sector. This is done, amongst others, by utilisation of new agricultural lands, increasing value on current crops and livestock by technological means, reforming the policy framework and by implementing disease free livestock zones (GoK, 2007). Besides domestic funding, these projects are likely required to be financed by foreign investors as well (Nunow, 2011).

This major component of large-scale irrigated agriculture, has received much criticism. Opponents to these plans point at the large investments and maintenance costs of capital-intensive large-scale irrigation (IRIN, 10/7/2013). Furthermore, they argue that these plans ignore the potentiality of pastoralism in ASAL areas, arguing that pastoralism, when properly practised, is more profitable than irrigated agriculture (e.g. Benhke & Kerven, 2013).

LAPSSET

One of the flagship projects in the Vision 2030 policy document is the Lamu Port and Lamu-South-Sudan-Ethiopia Transport Corridor (LAPSSET). The new deep water port at Lamu would be connected to Juba and Addis Ababa and consists of a road network, a railway to Juba and oil pipelines to Juba and Addis Ababa. Furthermore, it encompasses the construction of an oil refinery, three resort locations and three airports. Developing the Lamu port would also relieve the current stress on the only deep water port in Kenya, Mombasa. The total costs are estimated to be approximately 23 bn. USD (Nunow, 2012).

This project has also gained criticism. For one, in Lamu fears have been raised that the project will lead to displacements³² (estimated to be 60.000 by the Ministry of Lands), destruction of marine wildlife, and will increase the risks of conflict (IRIN, 31/10/2012). The consequences for the Tana Delta are to this date unclear. On the one hand, it could greatly improve Tana Delta's connection to Kenya's economy. On the other, the total population of Lamu is projected at 1 million after

³² Few people have title deeds and fear getting evicted.

completion of the project. Such an increase in population could potentially disrupt livelihoods and the environment in the Tana Delta as well, considering its proximity to Lamu (approx. 70km.).

3.2: Land governance

Many social problems in Kenya are rooted in the governance of land. One factor is the scarcity of suitable land with only 20 per cent being suitable for agriculture³³, which is occupied by approx. 75% of the Kenyan population (FIAN, 2010). The vast majority of Kenya is arid or semi-arid lands (ASAL) and provides a living for 25% of the population only. Besides the economic value of land, land in Kenya is also regarded as having symbolic, cultural and historical value (O'Brien, 2011). Reserving land for conservationist reasons³⁴, and unequal land ownership, adds to this scarcity.

During the colonial period, many indigenous communities were dispossessed of their agricultural and rangelands, especially in the Central Highlands, when the land (approx. 20% of Kenya's land) came into the hands of European settlers (ibid.). By enforcing colonial laws, the customary land tenure system was replaced in several parts of Kenya. The colonial powers held these former customary ruled lands, now in trust.

When Kenya became independent, President Jomo Kenyatta handed over political positions and much of the fertile highlands to a small group of Kikuyu elite. This practice was followed by his successor, Daniel arap Moi, favouring his fellow Kalenjin. Land was granted in exchange for political support, often before presidential elections. This practice of land grabbing also concerned the Coastal region, where large tracts of land have been transferred to large-scale agro-industrial groups (e.g. sisal plantations), tourist sector or private developers, of which many is owned by 'up-country Kenyans' or foreigners (Mghanga, 2010).

National land policy

In December 2009, the National Assembly adopted the National Land Policy (NLP). In the former situation, there were 3 classifications of *land*; government land, trust land and private land. Government land³⁵ was under direct control of the President, who often misused this power for personal gains. Under the new constitution this has been transformed into 'public land' and has been placed under the control of the National Land Commission.

Trust land was held in 'trust' for local communities and was governed by the County Council. Officially, communities were to be informed whenever land was e.g. leased, but in reality this rarely happened. During its existence, there have been several cases of abuse by the County Council (Krätli & Swift, 1996). This type of land is now called 'Community land' and is held by "communities identified on the basis of ethnicity, culture, or similar community of interest" (GoK, 2010).

With the implementation of the NLP, land allocations are now to be made public, making individuals or civil society organisations (CSOs) able to object to decisions. Furthermore, land allocations have to subdue to environmental standards and land leases have a maximum term of 99 years, replacing the earlier period of 999 years. Community land will fall under the jurisdiction of land commissions, who

³³ Defined as medium to high potential for agriculture (FIAN, 2010).

³⁴ 8% of Kenya's landmass is qualified as National Parks or National Reserves.

³⁵ 'Crown land' before Kenya's independence.

will replace the county council's role in this matter. Other land regulations which have been stated in the 2010 constitution are to be incorporated in new laws in the coming years.

3.3: Political context

After Kenya's independence in 1960, local and presidential elections have been much influenced by ethnic politics. Helped by the great personal powers of the President, the candidate to be elected was expected to use these powers to help his own ethnic group. In his shadow, the surrounding elites benefited as well and did much in their power to strengthen their positions, little concerned with any legal restrictions. Political elites even had their private militias, which were occupied with intimidation and repression during election periods (NSC, 2011). Numerous political murders have often gone unpunished. During the period of Daniel arap Moi, political freedom was at an all-time low in post-independence Kenya, by then a *de facto* one-party state. Moi defended his one-party system by warning for chaos as the result of multi-party elections. The reintroduction of multi-party elections in 1992 was, indeed, marked by violence. In subsequent elections in 1997 and 2002, again there was low-scale violence (ICG, 2013a).

3.3.1: Post-election violence

In 2007, the violence surrounding elections reached a peak, when disagreement over the outcome escalated into a civil conflict, taking 1,133 lives and displacing over 250,000 people (ICG, 2012a). The violence was triggered by the announcement of the results and consequently the opponent's accusation of the results being rigged. According to the Commission of Inquiry on Post-Election Violence³⁶ (CIPEV), which was charged with investigating the PEV, there were at least four patterns of violence.

Firstly, when the results of the presidential elections were published, spontaneous protests erupted which turned violent. This was accompanied by opportunists who were guilty of rape and looting. Secondly, the police forces' response against this violence was very violent, using live ammunition against protesters. The Waki commission estimated the number of people killed by gunshots to be 405 (CIPEV, 2008). Since very few people possessed firearms, the majority of this number has been ascribed to the police force (ICG, 2013a). Besides unprofessionalism, the police force has also often been accused of corruption and using excessive force (ICG, 2013a). Thirdly, organized attacks by Kalenjin youth in Rift Valley, which started right after the announcement of the election results, attacked other locals from other ethnic groups, especially Kikuyu. Finally, ethnic militias were active in Rift Valley, some Nairobi slums and areas around the capital, which were organized by local (or national) political actors. A notorious example is the outlawed Mungiki sect.

After the mediation of Kofi Annan³⁷ and eventually the power sharing of Kibaki and Raila Odinga³⁸, several reforms have been initiated in order to prevent such an outcome for next elections. New institutions were established, such as the founding of the National Cohesion and Integration Commission (NCIC)³⁹, or were reinforced, e.g. the National Steering Committee on Peacebuilding and

³⁶ Also known as the Waki commission.

³⁷ Mandated by the AU.

³⁸ Who became Prime-Minister, a function which was not used since the 1960s, and has been eliminated with the 2013 elections.

³⁹ Tasked with enhancing the nation's cohesion, e.g. by monitoring media for hate speeches (ICG, 2013b).

Conflict Management (NSC, see section 3.4). The Electoral Commission of Kenya (ECK) has been replaced by the Independent Electoral and Boundaries Commission (IEBC).

3.3.2: 2013 elections

After several delays, finally new elections were held on March 4th, 2013. The efforts seem to have borne fruit, since the elections were generally peacefully and transparent. On the other hand, others point at the effect of the alliance between two former rivals, Uhuru Kenyatta and William Ruto, who are both indicted in the ICC because of their role in the PEV. Kenyatta won by gaining 50,07% of the total votes, whereas his main competitor, Odinga, received 43,3% of the total votes. While Odinga initially declared to contest the results, he shortly thereafter acknowledged Kenyatta as winner of the elections. To this date, the ICC trials⁴⁰ have been further delayed while the number of suspects has dropped to three⁴¹ and more and more witnesses have withdrawn from the trial because of security reasons (BBC, 18/7/2013).

The 2013 elections also marked the next step in the constitutional reforms. After the 2013 elections, the number of seats in the National Assembly has gone up to 349⁴². Out of these 350, 290 are elected from single-member constituencies, 47 are reserved for women, and 12 seats are reserved for special interest groups (ICG, 2013b). Besides presidential elections, there were also elections held for several other positions (see table 3.1).

For the new administrative units, counties, two new positions were subject of the elections. The governor stands at the head of the executive power of the county, while the county representatives take seat in the County Assembly. The respective runner-up in the elections is elected as deputy Governor. Every county consists of several wards, in every ward voters could vote for one representative in the County Assembly. This organ vests the legislative authority at county level.

Table 3.1 List of candidate positions and their respective bodies

1. President	Head of State
2. Senator	Senate
3. MP	National Assembly
4. Women representative	National Assembly
5. Governor	Head of County
6. County representative	County Assembly

Source: ICG (2013a)

With these new positions and powers for local governments, concerns have been raised that devolution would increase the risks of conflicts. For example, recent conflicts in Mandara and Wajir between the Garre and Degodia clans (both ethnic Somalis) and between Gabbra and Borana near Moyale have been linked to these local political battles (IRIN, 28/6/2013; Daily Nation, 4/3/2012).

⁴⁰ The other three cases have been dropped.
⁴¹ President Uhuru Kenyatta, Vice-President William Ruto and Joshua Sang.
⁴² With one speaker elected by the NA but chosen from non-members (ICG, 2013b).

3.4: National framework and Conflict Management

As mentioned earlier in this chapter, the National Steering Committee on Peacebuilding and Conflict Management (NSC) was reinforced after the PEV. The NSC became operational in 2002 and is established within the Office of the President (NSC, 2009) in order to: “*strengthen, coordinate and integrate various conflict management initiatives*” (ibid., p. 1). It unites representatives from relevant ministries, development partners, CSOs and UN agencies. Besides the coordination of conflict management initiatives, the NSC has set up the National Conflict Early Warning and Response System (NCEWERS)⁴³ which monitors and analyses conflict indicators and spreads this information in order to prevent potential conflicts (NSC, 2011). Funding for peace committees is also transferred via the NSC.

Peace committees

The main local organisations are Peace Committees, which are active on various administrative levels. These committees are hybrid bodies made up from traditional and formal authorities in charge of conflict management. Their responsibilities are stated as follows (NSC, 2009):

- Promote Peace education, a culture of peace and non-violence
- Enhance conflict Early warning and response
- In consultation with the security and intelligence committees and other stakeholders, oversee the implementation of the peace agreements / social contracts
- Support initiatives for the eradication of illicit firearms, safety and security
- Ensure prudent administration and accounting of resources allocated to them
- Document and keep record of peace processes and interventions
- Facilitate trainings, community dialogue, sensitization and awareness raising
- Put in place mechanisms to address inter-district and cross-border conflicts
- Mobilize resources for the implementation of programmes/ activities
- Network with other peace forums to enhance harmonious relationships
- Monitor evaluate and report on peace and nation building programmes
- Perform all other functions necessary for the realization of the objectives of the national Policy on peace building and conflict management

As mentioned earlier, peace committees are based on the Wajir peace initiative and other grassroots peace initiatives. The successes of these initiatives spread out to neighbouring (ASAL) areas and were eventually, after the PEV, also installed in other, non-arid, areas⁴⁴, under the flag of the NSC. However, since founding of the Wajir peace committee, peace committees have been mainly ad hoc solutions, and there have been huge differences in their successes and activities (Adan & Pkalya, 2006).

⁴³ As an implementation of the CEWARN Protocol, signed by the IGAD members.

⁴⁴ Namely Central, Coast, Western, Nyanza and the Rift Valley (NSC website).

Rules on memberships vary for peace committees, but in the NSC framework there are some criteria formulated, such as acknowledging the principles of diversity and non-discrimination. The total number of members cannot exceed 15 and members should be drawn from the following organs or groups (derived from NSC (2009)):

- Community representatives working on peace-related issues;
- CBOs with peace programmes in the district;
- Women;
- Youth;
- People with disabilities;
- Private sector;
- Any other institution, organization or body that may be useful in the peace process.

Chapter 4: Tana Delta

In the following chapter, I will give an overview of the context of the Tana Delta, describing the demography, the various ethnic groups, environment, land regulations, local administration and economy and development issues.

It is important to note that although this research is on the Tana delta, the figures presented here are, if not otherwise mentioned, for the Tana Delta District. The administrative region Tana Delta District⁴⁵ is much larger than the actual Tana delta and includes a large tract of land west of the Tana delta, part of which is gazetted as Tsavo East National Park. This area west of the river supports only wildlife and nomadic pastoralism (UNICEF, 2009). Furthermore, a small fraction of the geographical Tana Delta lies in the administrative boundaries of Lamu district⁴⁶. Since the vast majority of Tana Delta lies within Tana Delta district, I will only present figures of this district.

4.1: Demography and socioeconomic characteristics

The most recent Kenyan population census (2009) gave for Tana Delta District a total of 96,664 inhabitants, living in 12457 households, with an estimated annual population growth rate of 3.4%⁴⁷. Approximately 68% of the population is under the age of 25 (KNBS, 2009). Absolute poverty is widespread (estimated at 77% for Tana Delta District⁴⁸), making people dependent on additional help from relief agencies (UNICEF, 2009). Combined with harsh environmental conditions, such as erratic rainfall, the area is highly food insecure (Hamerlynck et al, 2010). This is also reflected in the region's general health, lacking health facilities and having a high frequency of diseases (UNICEF, 2009).

Other indicators of Tana delta's lack of development can be given by the educational status. While the national literacy rate is 87% (World Bank, 2011), the rate for Tana Delta District is 33.7% (TDDC, 2008). Primary school attendance is estimated at 64%, while attendance for secondary education is 14% (ABF, 2010). School attendance varies much among different ethnic groups. While 22% of the Pokomo have not followed any education, the rate for Wardei on this matter is 95% (TDDC, 2008).

4.2: Ethnic groups

In the Tana Delta one can distinguish at least eight ethnic groups, whom all have a strong affiliation to a specific livelihood. The two dominant ethnic groups are the Pokomo and the Orma, who both account for 44% of the total Tana Delta district population, which shall be discussed in more detail. The Wardei, Cushitic-speaking pastoralists, make up 8% (KNBS, 2009). Other ethnic groups living in the Delta are, amongst others, the Walema, Giriama, Somali, Wataa, and Luo, who combined make up the remaining 4%.

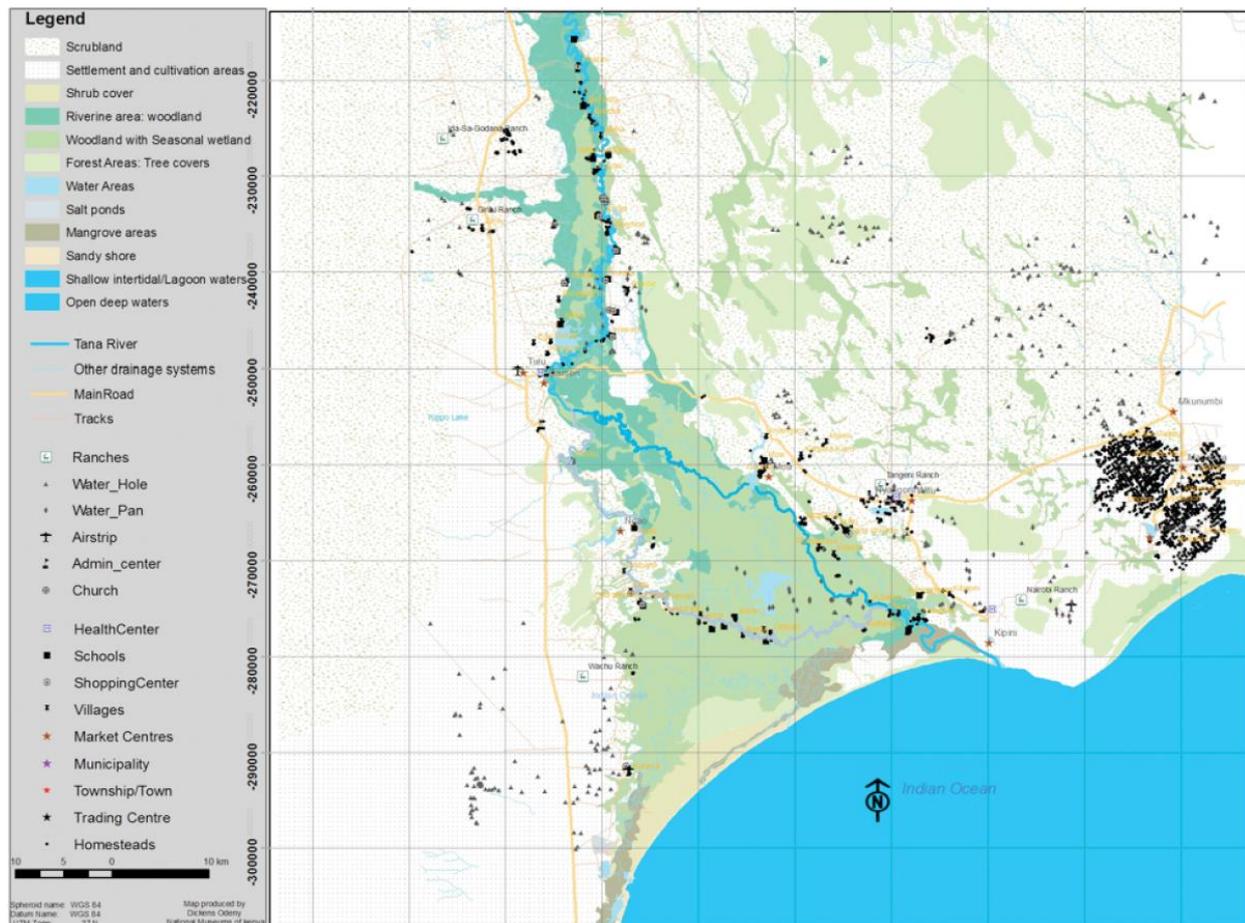
⁴⁵ Which was carved out of Tana River District in 2007.

⁴⁶ Currently Lamu County.

⁴⁷ With a national population growth rate of 3%.

⁴⁸ With a national average of 46%

Figure 4.1: Various land types in the Tana Delta



Source: Ministry of Lands (2012)

4.2.1: Orma

The Orma are part of the Oromo, who reside predominantly in Ethiopia, as well as in parts of Kenya and Somalia, numbering approximately 25-30 million (Kassam & Megerssa, 2002). In the Tana Delta, Orma make up 44% of the total population (KNBS, 2009). The main economic activity is pastoralism. The vast majority of Orma in the Tana Delta is Muslim, after converting in the beginning of the 20th century (Ensminger, 1992). The Orma language is part of the Eastern Cushitic language family.

The Orma were part of the greater Oromo⁴⁹ expansion (Ensminger & Rutten, 1991), when they settled in Southern Ethiopia and Northern Kenya. In the 19th century, the Orma suffered heavy losses while in conflict with Somali at their northern borders. As a result they migrated south to the areas where they have resided ever since, predominantly west of the Tana River and in the Tana Delta (ibid.). During this time, many Orma social and political institutions were destroyed (Ensminger, 1992).

Since long, the Orma have been nomadic pastoralists. For the interior, it was only around the late 1940s that some Orma began to sedentarize, while near the coast reports indicate earlier

⁴⁹ Also known as the 'Galla'.

adaptations towards sedentarization (New, 1874; Ensminger & Rutten, 1991). At first, this change did not cause many problems, yet by the 1960s the population was large enough to create pressure on the local resources (Ensminger & Rutten, 1991). Historically, the strategy to cope with pressure on local resources was migration, either peacefully or violent, and control over access to water. However, these methods became insufficient after sedentarization and the growing divergence in interests between subsistence pastoralists and commercial oriented pastoralists (Ensminger, 1992). Consequently, there have been several initiatives by local CBOs, such as the Tana Pastoralist Forum, to decrease the herd sizes, in order to lower environmental pressure (fieldwork, June 2012).

Orma's pastoralist lifestyles are reflected in their view on property rights. Orma rely on pasture to survive. Historically, the Orma managed their grazing lands as commons, with conquest and water rights as control mechanisms to prevent overgrazing (Ensminger, 1992). The rights to use wells are, contrary to grazing land, privately arranged. Wells were re-dug every season and were controlled by whoever dug at that spot first, and his successors (Ensminger & Rutten, 1991).

For some, ranches were an outcome to secure their claims to pasture (see also section 4.5.2), but many pastoralists were left out of this process (Nunow, 2011). The majority of pastoralists lack any title deeds, but when expressed, they are clearly in favour of communal land, rather than any private title deeds (Pickmeier, 2011).

Before the arrival of British colonial administration, the Orma, like all Tana Delta communities, administered themselves. For the Orma, decision making was in the hands of the council of elders, in Orma called the *Mathadeda*⁵⁰ (Ensminger, 1992). The Orma's social organisation has much in common with fellow Oromo ethnic groups and were also organised in different age-sets (as well as the Pokomo). The council of elders is made up from members of one age-set. Members are expected to be over 50 years old, respected, competent and wealthy (Martin, 2007). Membership lasted until elders became incapable of performing their tasks, if they would become too few in numbers, the following age-set would take over their predecessors' positions (ibid.). Whenever disputes occurred, villagers would bring their conflicts to the council of elders, who argued on suiting measures and settled the issue by reaching consensus. This often required payment as compensation to the aggrieved party (Ensminger, 1992.). Other decisions made by the elders involved issues such as grazing restrictions or family issues.

4.2.2: Pokomo

The Pokomo are considered part of the North-Eastern Bantu group, in addition to groups such as the Mijikenda and the Waitata (Ng'ang'a, 2002). Besides the Tana Delta, the Pokomo also inhabit areas upstream of the Delta, where they reside close to the Tana River. Their main economic activity is farming, with some Pokomo also being involved in fishing. The majority of Pokomo is either Muslim or Christian.

They claim to originate from Shungwaya, a mythical state⁵¹, ought to be situated in present Jubaland (Prins, 1952), yet the extent of this state has been much exaggerated and was situated further south (Turton, 1975). After recurring conflicts with the Galla in the thirteenth and fourteenth century, the Pokomo migrated southwards and settled at the Kenyan coast (Prins, 1952.).

⁵⁰ Referring to the trees under which the elders usually met.

⁵¹ Other Bantu tribes, such as the Mijikenda, claim to originate from this state as well.

The Pokomo can be divided in four sub-groups. The Upper Pokomo and Lower Pokomo, named after their residence near respectively the Upper and Lower Tana river, make up for the majority of the Pokomo, with two smaller groups being the Waluana⁵² and Korokoro⁵³ (Ng'ang'a, 2002). Within these groups there are cultural differences, such as language and circumcision. At least in the 20th century, there are reports that between these two Pokomo groups, as well as within, conflicts occasionally occurred (Prins, 1952).

The Pokomo are, like the Orma, organised in different age cohorts (Prins, 1952). The council of elders consists of one specific age group, and eventually is replaced by the following age group, which is accompanied with certain ceremonies marking this event (Martin, 2007). The administrative unit, called a *kyeti* (*vyeti* pl.), consists of an alliance of three to eight patricians, who live in a shared territory (Bunger, 1970). Every *kyeti* was administered by a council of elders. It is believed there were 12 to 15 *vyety*, who were administered by two chiefs, respectively responsible for the Upper Tana and Lower Tana (Martin, 2007). The leader of the *Gasa* was expected to be integer, respected, competent, wealthy, experienced and should be over 50 years old (*ibid.*). There is no defined term of office, whenever the *Gasa* feel they have to step down, they can end their term of office. Like the Orma, the *Gasa* deal with issues such as family issues, land regulations, conflicts, etc.

4.2.3: Inter-communal Conflicts

The above described ethnic groups, and others, have often been in conflict. Accounts on the inter-communal relations tell different stories, making it hard to get a clear picture on the course of inter-communal relations. In 1866, reports indicate that the Pokomo, and other communities, were tributary towards the Orma⁵⁴, yet the wars with the Somali and Maasai and a small pox outbreak, which happened shortly after that period, had weakened the Orma significantly (New, 1874; Ensminger, 1992). This led to a more balanced relation between Orma and Pokomo (Prins, 1952). Werner (1913) spoke of friendliness between Pokomo and Orma. However, in the 20th century violence occasionally erupted, which has not changed ever since. Although some researchers (see Wanja Nyingi, Duvail, & Hamerlynck, 2012) have claimed that traditionally, the west 'Oda-branch' was used (and occupied) by Pokomo and the east 'Matomba-branch' was used by Orma, nowadays there is no such division, with both communities living near both river branches.

At the end of 2000, conflicts erupted between the Pokomo and Orma. This conflict was triggered by the demarcation process which was about to start. Orma, fearing that they would lose access to the river started the conflict by killing a Pokomo farmer who was demarcating his farm (Martin, 2012). This escalated into an ethnic conflict, which was fuelled by politicians, resulting in over 130 people killed and thousands displaced (*ibid.*). Although Wardei weren't directly targeted, they fell victim to revenge-seeking Pokomo as well, who believed them to be Orma (Martin, 2007). In April 2004, four Pokomo fishermen were attacked in Kipao by supposedly Orma, killing one fisherman (East African Standard, 27/4/2002).

December 2006, conflict started between Orma and Wardei near Bura (Daily Nation, 9/12/2006). This led to several revenge attacks which lasted until April 2007 (Daily Nation, 28/4/2007), costing over 30 lives, livestock and property. Conflict between Orma and Wardei flared up again in January

⁵² Commonly known as Malakote, yet this name is perceived as pejorative.

⁵³ Also known by the name Munyo Yaya, meaning Northern Pokomo in Oromo (Ng'ang'a, 2008).

⁵⁴ Closer to the coast, the Swahili had this position of overlords (Prins, 1952).

2011, when six people were killed after raiding 60 heads of cattle (Daily Nation, 31/1/2011). Since then, the area was relatively quiet until August 2012, which was the start of the 2012/2013 clashes between the Pokomo and Orma (which will be described in section 6.1).

4.3: Land regulations

4.3.1: Current land status

Land ownership is a very sensitive topic in Kenya. As mentioned before, few people in Kenya have title deeds, which is also true for the Tana delta. For instance, for farmers in Tana delta District, only 4% has a title deed (TDDC, 2009). This indicates the importance of customary laws in regard to land regulations. For the customary way, land is mostly transferred from father to son (Pickmeier, 2011). When someone wants to use unused plan, traditionally one had to go to the respective council of elders. Nowadays, this position in this matter is reserved for the chief and assistant chief (fieldwork, July 2012).

Although customary used, the majority of land in Tana Delta District is marked as public land (former 'government land'), thereby making the users legally 'squatters'. In addition, some areas have been designated as community land (former 'trust land'), especially near the Tana River. Before the recent reforms, trust land was managed by the county council. Although they were to keep the land in trust for the local people, local people's position was still weak. Often, the county council (and the government) treated trust land as government land, and were only informed whenever trust land was sold or leased (Nunow, 2011).

Larger land users are the various ranches and a number of investors. The land owned by TARDA is controversial and is currently contested in court. Other large-scale investors have (or planned to have) sub-leased land, from the companies/groups owning the ranches (see also section 4.5.2). Another ranch, which lies partly in Tana Delta District, is the Galana ranch, which is located south east of the delta, in the direction of Kilifi and is run by the Agricultural Development Corporation (ADC). Out of 607,287ha, 345,800ha is in Tana Delta District, while the other 261,487 lies in Kilifi district (ILCA, 1979).

The lacking of legal protection has made land in the Tana delta susceptible to land grabbing. Land in possession of TARDA was trust land. In 1995 it was granted a Letter of Allotment from the Commissioner of Land, which was only valid for three months, and is not an effective title deed (Lebrun, 2009). Although a court case was started in 1995 by the affected communities, no decision had been made at least up to 2009 (ibid.). In another case, a large-scale investor wanted to start a prawn and shrimp farm inside the delta. However, this attempt was blocked by the President in 1993 (Temper, 2012).

4.3.2: Land registration attempts

Land registration is a very sensitive process, and has triggered violence in the past (see section 4.2.3). Related to the differences in livelihoods, different communities favour different land regulations. Pastoralists are more favoured to access to large tracts of land, since they are required to be mobile in seek of pasture. On the other hand, farmers need to secure their private farms, thus favouring private title deeds, although it is important to note that they are dependent on the Tana River for

agriculture. As has been the case in the past, the course of the Tana River shifts over time. Any shift which leads to be blocked from the river would seriously affect the productivity of the plot of land.

Currently, there are two developments, which are collaborations between several ministries⁵⁵ and Nature Kenya, a NGO active in nature conservation. First of all, a Strategic Environmental Assessment(SEA) is currently being drafted, which covers environmental, social, economic and cultural considerations. Its aim is to promote the sustainability of the Tana delta, by investigating the effects of policies, particularly the Land Use Plan (LUP), on human welfare and natural systems (Ministry of Lands, 2012). This Land Use Plan has been started by the same group in September 2011, and is to “... *to guide policy formulation and decision making on future development of the Delta*” (ibid.). In the LUP, the area will be mapped, while distinguishing zones for settlement, agriculture, investments and livestock (interview, with Nature Kenya manager). The LUP will, according to the Permanent Secretary of the Prime Minister, “... *significantly influence the way land is allocated to various users and interest groups.*” (ibid). Although it has not been stated explicitly that this would lead to the process of formal land registration, local communities have expressed these expectations (fieldwork).

An important role in the mapping exercise is reserved for Nature Kenya, who perform the mapping and consultations. However, in several events, local communities have expressed their dissatisfaction with this NGO, claiming that they are biased towards certain communities and do not cooperate with the local communities. For instance, two county council members claimed that they never had spoken with Nature Kenya. These feelings are likely to be fuelled by the potential risks of land registration. Other concerns have been raised about NK’s priorities⁵⁶, as regarding nature conservation as more important than economic development. On the other hand, others did express their support for Nature Kenya. For instance, the Tana Pastoralist Forum, a CBO aiming to educate and advocate for pastoralists, work together with Nature Kenya by educating on how to adapt to environmental changes (interview with chairman TPF, 23/7/12).

The sensitive and laborious process of land registration can also be illustrated by a recent submission of title deeds. September 2013, 495 title deeds were to be issued by the President. However, this was blocked by the County Governor, Hussein Dado, stating the reason as following: “*We could not accept title deeds for only one sub-clan from one sub-location. All the titles were for Ngao sub-location in Tana Delta*” (Daily Nation, 1/9/2013). Strikingly, Ngao is the home village of former MP Danson Mungatana. The governor added that squatters from Hola, Garsen, Bura and Madago had letters of allotment and indicated that those should also to be added to the title deeds to be issued.

4.4: Environment & climate

4.4.1: Environment

The Tana Delta is situated in East-Kenya and covers the area (approx. 1300 square kilometre) seen in map 4.3. This Delta is formed by the Tana River, which has its main sources in the Aberdare’s and

⁵⁵ Office of the Prime Minister [which has been transferred since the position of Prime Minister is abolished]; Ministry of Lands; Ministry of State for Planning, National Development and Vision 2030 (Ministry of Lands, 2012).

⁵⁶ Its goal is to, in addition to promoting conservation, increasing knowledge and advocacy, encourage community participation in conservation through promotion of sustainable benefits.

Mount Kenya. The river is Kenya's longest river with an average discharge of $156\text{m}^3/\text{s}$ ⁵⁷ (Duvail et al, 2012). In its course, the river passes five hydroelectric dams, while another three are planned in the future (Duvail et al, 2012). Near Mnazini, approx. 70 km land inwards from the ocean, the river branches out to form the Tana Delta.

The river has shifted its course regularly, both because of natural and human reasons. One of the most significant changes was triggered by local residents, when they excavated a small section to support agriculture and fishing. This small channel eventually grew deeper than the main river, which henceforth became the main branch, leaving the 'original' main branch often dry (UNICEF, 2009). This change in course had drastic effects on villages living near the old river branch, which were cut off from a continuous water flow.

Figure 4.2: Dried up riverbed near Handaraku



Source: Author (7/2012)

The coastline is covered with 50m sand dunes and mangrove forests. The delta area provides for a rich wetland biodiversity, which was acknowledged in late 2012, when part of the area was designated as a Ramsar site⁵⁸, committing the GoK to "promote [its] conservation" (Farrier & Tucker, 2000). The area surrounding the Delta is mainly semi-arid, covered with scrub land, which provides pasture during the wet season but becomes too arid during dry seasons.

Along the river, riverine forests can be found, which are remnants of the tropical forest belt from the Congo to the east coast of Africa during the Pleistocene era (Schade, 2011). Part of this forest is designated as the Tana River National Reserve, which was gazetted in 1976, and hosts, amongst others, two endangered primate species (Hamerlynck et al, 2010). From 1996, the Global

⁵⁷ Measured at Garissa for the period 1946-2010.

⁵⁸ The Convention on Wetlands of International Importance (called the Ramsar Convention) is an international treaty for the conservation of wetlands, signed by the GoK in 1999.

Environment Facility of the World Bank, funded the development and implementation of a management plan, in collaboration with the KWS, aiming to improve sustainable management of forest use, reforestation, community involvement, and voluntary relocation of reserve residents. However, several setbacks, and, most importantly, tensions between the reserve residents and the project team, led to the World Bank withdrawing its funding in 2001 (Glenday, 2005).

4.4.2: Climate

Temperatures are generally high, with an average monthly minimum of 22.6°C and an average monthly maximum of 34.1°C (Hamerlynck et al, 2010). In addition to water received from the Tana River, the area relies on rainfall. Precipitation rapidly declines when moving land inwards from the coast. Whereas the rainfall near the coast is on average 1000mm per year, at Garsen this is considerably lower: 520mm per year⁵⁹ (Hamerlynck et al, 2010). The annual cycle can be divided in two wet and two dry seasons. April till June is referred to as the long rainy season (approx. 45% of the annual precipitation), the short rainy season lasts from November to December (approx. 25% of the annual precipitation). July till October is consequently the main dry season, with January till March as the short dry season. These dry months have a mean monthly precipitation of less than 50mm (ibid.). Floods are common after every rainy season and are essential for people's livelihoods. They leave fertile sediments on grasslands and fill oxbow lakes with fresh water. On the other hand, floods occasionally destroy the already underdeveloped infrastructure. Several villages are cut off during the wet season, leaving transportation options limited to canoes. The most recent floods, April, 2013, again caused much destruction, leading to the deaths of 7 persons and displacement of almost 25,000 persons in Coast region (KRCS, 2013).

As a result of the construction of the dams, the flood patterns in the Tana Delta have changed: the peak flow during the main wet season has decreased while the dry season flow from December to March has increased⁶⁰ (Maingi & Marsh, 2002). The decrease in flow peaks has led to a reduction of flooded surface area, flood peak duration and meandering dynamics (Hamerlynck et al., 2010). Local farmers have attributed lower agricultural output to these developments (see section 4.5.2) (Schade, 2011).

Besides seasonal floods, the area can also be affected by cyclical floods. These cyclical floods are related to the El Niño Southern Oscillation (ENSO) and the Indian Ocean Dipole (IOD) phenomena. Since the 1920s, Kenya has suffered at least one major drought and one major flood, which are caused by these weather anomalies (Charania, 2005). The consequences of both phenomena can be drastic. For example, in 1997 the El Niño phenomenon caused one of the worst floods in the Delta, which caused huge amount of destruction, including the irrigation project near Garsen (see also section 4.5.2).

⁵⁹ Further land inwards (Garissa) precipitation is 325 mm.

⁶⁰ Measured at Garissa, comparing the pre-dam (1941-1979) with post-dam (1982-1996) period.

4.5: Economy and Development

The main economic activities in the Tana Delta are pastoralism and subsistence farming, with other economic activities being trading, large-scale agriculture and fishing. The majority of the people practise a variety of livelihoods, since generally income is low and any additional income is much needed. The distribution of main economic activities in the Tana Delta is as follows:

Table 4.1: Main economic activities Tana Delta

Occupation	Per cent
Herdsman (pastoralists)	38.9
Keeping livestock	8.3
Business man/woman	1.7
Farming and livestock	8.9
Farming	35.6
Unemployed	6.7
Total	100.0

Source: HVA International (2007)

4.5.1: Pastoralism

One of the two main economic activities in the delta is nomadic pastoralism. Although pastoralism has been under continuous stress in Kenya, it still forms an important economic sector, estimated to generate US\$ 1 bn. annually in East-Africa (Catley et al., 2013).

Although historically, most pastoralists were nomads, over time more and more pastoralists have sedentarized⁶¹ with most Tana Delta pastoralists continuing practicing pastoralism, yet in a different form. Sedentarization has provided several benefits for pastoralists, such as increased access to public services, education, healthcare, and security. However, it has also increased the competition over natural resources since herders became less mobile, causing more erosion (Ensminger, 1992).

In the Tana Delta, herds vary from a single animal up to over a thousand animals. Bigger herds cannot be kept close to the village regarding the risk of overgrazing, and are required to be more mobile. Historically, keeping bigger herds were a logical option since they provide for a better recovery in case of droughts⁶². Nowadays, larger herds are subdivided in different herds, in which a smaller herd is kept for domestic meat and milk production and stays near the village. The bigger herds are sold for meat production (fieldwork, July 2012). Local pastoralists sell the cattle to traders, of which the majority goes to Mombasa, with other destinations being Malindi and Kilifi (ABF, 2010). Milk production is destined for local use only; due to the lack of cooling systems it cannot be sold outside the area (ibid.).

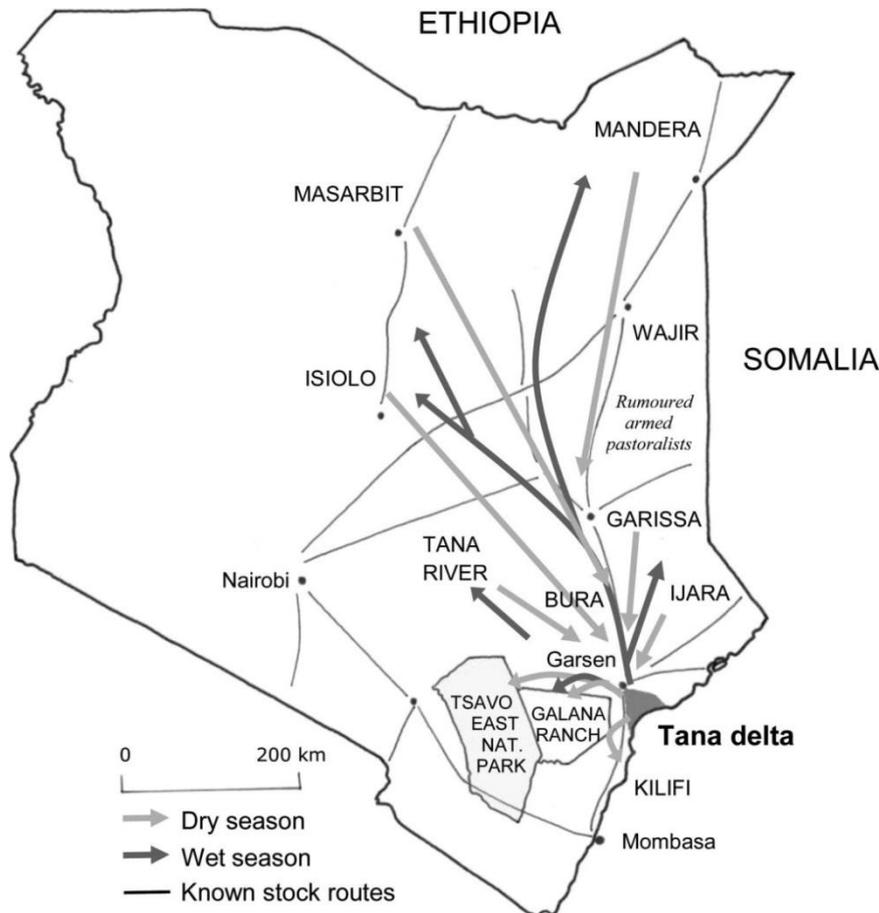
In the wet season the herds are taken back to the hinterlands because of the re-growth of grass in these regions. Herders want to use these pastures for their animals before the fresh grasses disappear. In addition, during the wet season, the prevalence of diseases becomes high in the delta. In the wet season, the amount of animals drops to approximately 50,000. In the dry season, when

⁶¹ Either adapting their pastoralism activities or converting to other economic activities.

⁶² For instance, in one of the worst recorded droughts, 70 per cent of Orma's livestock was killed (Ensminger, 1992).

herds are driven to the Tana Delta in search of water and pasture, the amount of animals can reach up to 500,000 (fieldwork, June 2012). During this period, pastoralists from as far as North Eastern Kenya, Somalia and Ethiopia come to the Tana delta (see figure 4.4). This increase leads to a strong increase of the pressure on natural resources and conflicts are more likely to occur in these periods.

Figure 4.4: Migratory routes for seasonal livestock influx



Source: Smalley & Corbera (2012)

Cattle raised by Orma is mostly Orma Boran cattle, a local Zebu breed selected for its increased resistance to trypanosomes, a haemoparasitic disease transmitted by tsetse flies (Irungu, 2000). Tsetse flies have had devastating effects on animals in East-Africa and are still considered a large threat. Drugs and control can provide some relief but are often hard to obtain. Other problems are caused by ticks, which can cause several diseases. The traditional method to get rid of ticks is to burn them. A more efficient way is to bath or spray cattle in so-called cattle dips, which contain chemicals, exterminating ticks. However, due to a malfunction, the cattle dip in Garsen, the main livestock market in the region, was not functioning (see figure 4.5).

Figure 4.5: Dormant cattle dip near Garsen



Source: Fieldwork (June, 2012)

Ranches

In an attempt to strengthen economic development, several ranches were started from the 1960s onwards, which was promoted by the World Bank and inspired by the range management practices in the United States (ILCA, 1979; Smalley, 2011,). It was thought that developing the ranch model would move pastoralists into sedentary lifestyles and would develop the economic proficiency of pastoralists (Abercrombie, 1974). However, this policy has been much criticized, mainly because it was not compatible with pastoralists' required mobility and their larger herd sizes, which are essential in Kenya's unpredictable climatic conditions (Ensminger & Rutten, 1991; Mutiso, 1995).

In the Tana Delta this policy has led to the start-up of several ranches (see table 4.2). Most of these are located surrounding the Tana Delta. The initial lease-periods were set at 45 years, meaning that, since most ranches were set up in the 1970s, in the last few years contracts have been renewed or are currently under investigation to be renewed.

Table 4.2: Overview ranches Tana Delta

Ranch	Size (in ha)	Type	Members*	Year of start-up	Ass. ethnicity
Kon-Dertu	23,000	LLC	113	1990	Orma
Kitangale	23,000	LLC	102	1975	Pokomo
Kibusu	27,400	DAC	62	1990	Pokomo
Haganda	13,000	LLC	53	1976	Orma
Giritu	42,000	DAC	250	1976	Pokomo
Ida-Sa-Godana	50,828	Cooperative	106	1970	Orma
Wachu	32,000	DAC	80-83*	1976	Orma

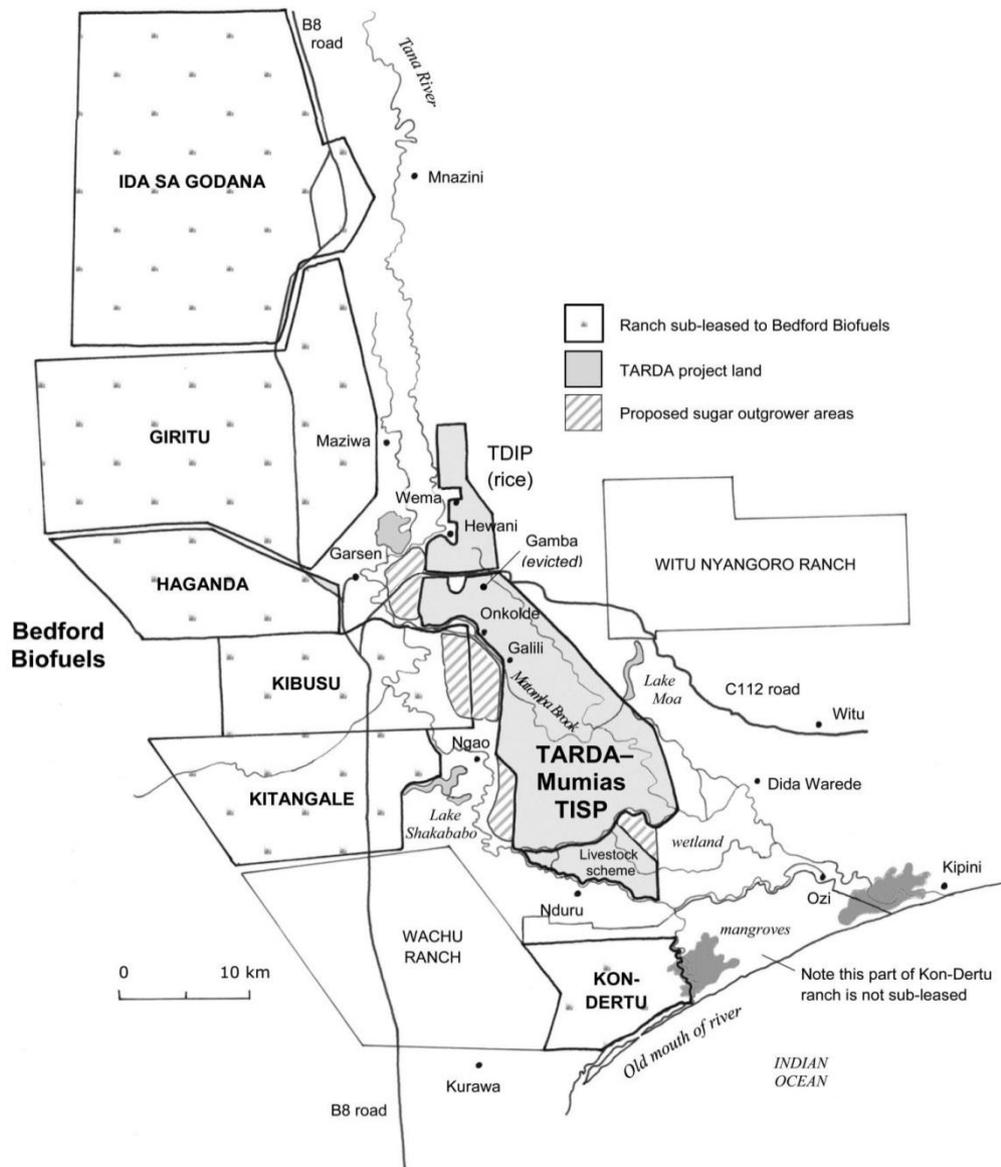
Source: EIA Bedford (2010); ILCA, (1979); Fieldwork, July 2012 *Members as of 2010. LLC= limited liability company
DAC=Directed Agricultural Company

In order to become a member, cattle and money were required to be donated, which was then managed by a small number of staff. Because of people's fears of external threats⁶³, ranches were attractive as a means of safeguarding land (Smalley, 2011). Critics point out that the process of land acquisition in the 1970s was not inclusive, leaving local elites⁶⁴ to acquire most of the land (Nunow, 2011). However, commercially, the ranches are considered as failures, with only Ida-Sa-Godana being currently active. Because of mismanagement, underinvestment, corruption, environmental problems, and cattle rustling, the ranches became burdened with high debts (ibid.). The lack of funds has left these ranches dormant, which, in combination with the fact that the ranches are unfenced, leads to the ranches being *de facto* used as commons (ibid.). The fact that the ranches were dormant has also increased the incentives to sub-lease land to other parties, such as did happen with Bedford Biofuels (see section 4.5.2), since idle land can be confiscated by the central government through a clause in the 2010 constitution (Smalley, 2011).

⁶³ Such as *shiftas*, politicians and investors who had their eyes on land or plans for a wildlife reserve in the case of Kon-Dertu ranch (Smalley, 2010).

⁶⁴ Both Orma and Pokomo elites, who often do not reside in the Tana Delta.

Figure 4.6: Location of ranches and large-scale agriculture projects.



Source: Smalley & Corbera (2012)

4.5.2: Agriculture

Subsistence farming

Besides pastoralism, the main economic activity of the Tana Delta residents, is subsistence agriculture. Crops for domestic consumption consist of maize, tomatoes, onions, green grams, beans, and potatoes. Cash crops which are cultivated are water melons, mangoes, cashew nuts, and bananas. Because of the huge variability in rainfall, farmers are often confronted with failed or meagre harvests (Schade, 2011). Plots vary from half an acre up to bigger plots of more than 10 acres (fieldwork, August, 2012).

Farmers have used the Tana River as their main source of water to grow their crops. Seasonal floods of the Tana River caused fertile residuals to be left in the flooded areas. However, upstream

damming of the Tana River has led to a significant decrease in the amount of annual floods (Maingi & Marsh, 2002), which hampers yields. Since farming is mostly done close to the riverbeds because of the fertility, erosion of the river beds occurs. Although the law forbids farming within a 10 meter range to the river, this law is hardly in effect (Fieldwork, June 2012). There are few farmers who have pumps for irrigation, although there are some examples of cooperatives who share their pumps. Some farmers manually irrigate their plots but this is demanding labour and has less impact.

Difficulties farmers cope with are lack of capital (for irrigation, fertilizers, equipment, etc.); insecurity (also legal); environmental conditions (rainfall, floods, soil erosion); and destruction of crops (because of livestock or wildlife).

Figure 4.7: Irrigation pipelines near Garsen



Source: Author (July 2012)

Large-scale farming

Being Kenya's longest river and providing for a continuous discharge, the Tana River has been the subject of large-scale projects since the 1950s (Hirji & Ortolano, 1991). In the 1980s, large-scale irrigation projects were set up near Hola and Bura (North of Tana Delta), for rice and cotton production. However, due to several setbacks (amongst others the change of course of Tana River in case of the Hola project) these projects have never been fully operational. Currently, these operations are only operating at a small scale.

Tana Delta Irrigation Project

The first large-scale irrigation attempt in the Tana Delta was also done in the 1980s. The 'Lower Tana Village Irrigation Project' covered an area of 16,800ha (Hirji & Ortolano, 1991). For this purpose, the formerly trust land, was transferred to the Tana and Athi River Development Authority (TARDA), a parastatal agency, also in charge of the large large-scale irrigation projects and the hydroelectric dams upstream of the delta (Lebrun, 2009; Hirji & Ortolano, 1991). After objections from the initial donor⁶⁵ to continue the project because of social and environmental reasons, TARDA sought a new donor (who were unaware of the social and environmental objections because TARDA issued a new Environmental Impact Assessment (EIA)), which was found in the Japanese Overseas Economic Cooperation Fund (OECF) (Hirji & Ortolano, 1991). With the help of this new donor, a first polder was created in 1988 of approx. 2000ha (Hamerlynck et al, 2010). In 1993 the production started, although

⁶⁵ The Directorate General International Cooperation(DGIC) of the Dutch Ministry of Foreign Affairs

infrastructure was only completed in 1997. The yields were significantly lower than expected and the project was eventually abandoned after El Niño related floods destroyed the irrigation project in 1997 (ibid.).

To this date, the land has been TARDA's, who revitalised some elements of the irrigation scheme in 2009, now called the Tana Delta Irrigation Project (TDIP), which comprises 20,000ha in total. However, the first two harvests have failed due to floods and diseases (Ministry of Lands, 2012). Currently, there is approximately 1000ha under cultivation (fieldwork, July 2012). Most of the TARDA owned land is dormant (see next section) and *de facto* under common use by local communities for the time being (Nunow, 2011).

Figure 4.8: Inflatable dam for TDIP



Source: Author (July 2012)

Tana Integrated Sugar Project / Mumias

In addition to its 1000ha which are currently cultivated, TARDA is involved in a joint venture with Mumias, a sugar producing company active in West-Kenya. This project involves 16,000ha being irrigated in order to grow sugarcane as a mean to create biofuel. In addition, 4000ha is reserved for outgrowing schemes (Smalley, 2010). Since the publication of their EIA in 2007, the plan has received much criticism (locally and nationally), because of the severe environmental and social disruption it would cause according to opponents (Smalley, 2010), also in comparison to the current plans of the TDIP and the Bedford project. For a start the location of these projects, with the TDIP based north and Bedford west of the delta, is less disturbing as the TISP which is situated inside the heart of the delta. Especially livestock keepers fear to lose their dry season safe haven. To this date, the highly controversial project has been put on hold until the newly installed county government and the National Land Commission will approve the project (Daily Nation, 5/3/2013). It is unclear what the consequences of the listing as Ramsar site are will be for the TISP.

G4 Industries

A British company, G4 Industries, had plans to grow oil seeds (castor, sunflower and crambe for biofuels) on the Wachu ranch (28,900ha, see figure 4.6 for location), of which 10,000ha were planned to be irrigated (ESIA G4i, 2010). Despite having conducted an EIA and other impact analyses in 2009-2010 and having received a license from the National Environmental Management Agency (NEMA), the project was never implemented. G4 reported to pull out of the project because of

environmental reasons (RSPB website, 21/10/2011). However, in an interview one G4 executive stated they pulled out because of: “... burdens of financial recession, costs of installing water capture and irrigation systems, and because of ‘Kenyan Government corruption issues’ in which the company was not prepared to become involved” (Schade, 2011: 52).

Bedford

At the time of my fieldwork, Bedford Biofuels was the only investor active in the Delta. However, the company was declared bankrupt in February 2013⁶⁶ (Edmonton Journal, 27/2/2013).

Bedford started sub-leasing land from 6 ranches⁶⁷ in 2009 with the purpose of growing *Jatropha Curcas*, in order to produce biofuel. Since the start-up in the 1970s, these ranches have gained little revenue and part of the deal with Bedford involved taking over the existing debts, which were caused by a combination of mismanagement, corruption, and environmental problems (Nunow, 2011). Bedford’s initial plans were to cultivate 64,000ha⁶⁸ but the project has never operated on full scale, since they were only permitted to cultivate 10,000ha as a pilot project. Even on this pilot, they only cultivated 25ha, which, according to a Bedford source, never received the care it should have because of financial concerns (fieldwork, interview with former Bedford employee).

Although financial reasons were the main reason why Bedford pulled out of the project, others were delays with approval of the EIA by NEMA⁶⁹ and problems with finalising lease agreements (ibid.). According to a former Bedford employee, Bedford abruptly abandoned the project, without settling bills, salaries and legal proceedings. Since the bankruptcy there have been reports of cattle grazing in the cleared land (Nature Canada, 3/6/2013), making it likely that the area for now will (again) be used as common land.

Criticism

During their time in the Delta, Bedford Biofuels has received much criticism from conservationists, spearheaded by Nature Kenya (NK)⁷⁰, who claimed that the project would disrupt the delta’s ecology, biodiversity and people’s livelihoods (e.g., RSPB, 21/10/2011). Other criticism was aimed at the shortcoming of *Jatropha curcas* in general, often pointing at the fact that at least in Kenya there has not been any example of a successful large-scale *Jatropha* plantation. It is important to note that Nature Kenya’s work in the Tana delta has been much criticized by local residents, while they play an important role in the drafting of an Land Use Plan and Strategic Environment Assessment. During the whole debate on LSLAs, NK has taken a stance, disapproving of all the proposed projects. They argue that “it is imperative that planning for the Delta’s resources precedes any large-scale development proposals” (The Star, 1/3/2010), and cite tourism as an example of development which does not disrupt any local lifestyle. However, local residents are worried that, in the end, conservation is what is truly important to NK and its partners, while local residents see development as more important, creating an area of tension. To indicate this, Pickmeier (2011) and Smalley (2011) reported mixed

⁶⁶ 25 May 2012, Bedford Biofuels (the ‘Bedford Biofuels Tana Delta Phase I Investment corporation’) was already issued a cease trade order (CTO), banning the company from raising funds for the Tana delta project in its then home region, Alberta, Canada (Edmonton Journal, 1/12/2012).

⁶⁷ Ida-sa-Godan, Giritu, Haganda, Kibisu, Kitangale & Kon-Dertu (EIA Bedford Biofuels, 2010). See also table 4.2.

⁶⁸ Out of a total of 160,000ha.

⁶⁹ National Environment Management Authority

⁷⁰ Which is backed by Birdlife International, the Royal Society for the Protection of Birds and IUCN.

narratives of local attitudes towards the Bedford Biofuels project and TISP, with both supporters and opponents (with Bedford Biofuels being less controversial than TISP).

4.5.3: Other economic activities

Other economic activities present in the Tana region include fishing, trading, transportation and the production of charcoal.

Fishing

Fishing is done in the river, oxbow lakes, swamps, and lakes (see figure 4.9). These lakes rely on the river and rainfall and occasionally dry up. As with pastoralism and farming, fishing is also an important aspect of people's (ethnic) identity. Most fishing is done by local Bantu groups, such as the Pokomo, and by traditional fishing communities who, attracted to the affluence in fish, migrated to the Tana Delta, such as the Luo, who originate from West-Kenya (Mireri, 2010). Cushitic ethnic groups, such as the Orma, Somali and Wardeji, are hardly involved in fishing, which is also related to their cultural aversion of fishing (and consumption of fish).

In the early 1990s there were also plans to start a prawn farm inside the delta area, but this project was abandoned after much (local, national and international) criticism (The Nation, 18/11/2000; AFP, 23/2/1993). Recently, attempts were made to stimulate the fishing practise by creating fish ponds near Garsen. However, because of vandalism and theft of the materials, this project was dormant at the time of my fieldwork.

Figure 4.9: Satellite photograph of the Tana Delta (northern part), illustrating the meandering river, arid scrub land (West), the two main branches (South), oxbow lakes, and the TARDA complex (East)



Source: Google Earth (2007)

Charcoal

The production of charcoal is an important source of income for some, but also causes significant environmental damage. Still, charcoal is the main method to cook, 98% of the residents rely on charcoal for this activity (UNICEF, 2009). As an attempt to stop illegal logging and stop soil degradation, the FAO - later followed by several NGOs, and various government agencies- introduced the plant *Prosopis Juliflora*, locally known as Mathenge (FAO, 2006).

The introduction of this shrub has led to severe criticism, aimed at the toxicity of the fruits which is harmful to animals and the claim that it is an enemy to natural vegetation and is extremely hard to eradicate⁷¹ (TDDC, 2008). In Tana River District, the first plantations were done near the Hola and Bura irrigation schemes in resp. late 1970s and early 1980s (FAO, 2006).

Efforts are now put into making economic use of Mathenge by creating charcoal out of it. Bedford Biofuels had also aired plans to eradicate the area from this invasive shrub, which for some residents was reason to support the company (Pickmeier & Rutten, 2012).

4.6: Local Administration

Before the instalment of the newly formed counties, public administration consisted of four different (regional and local) levels (see below). The implementation of the 2010 constitution is still underway and issues needs to be further incorporated in new laws. Since it is unclear yet what the new administrative arrangements will be, only the pre-2010 constitution shall be discussed.

Administrative regions and their respective leaders:

- Province Provincial Commissioner
- District District Commissioner
- Division Divisional Officer
- Location Chief
- Sub-Location Assistant chief

Tana Delta District consists of three divisions (see table 4.3), which are subdivided in locations and sub-locations. These positions are all appointed by the central government, with people on higher positions (DO and higher) often originating from other parts of Kenya. Although villages are not administrative levels, their leaders, headmen, do cooperate with the provincial administration. Headmen, whose work is unpaid, are chosen by the community for an undefined period of time.

⁷¹ Described by the FAO as “*The invasive potential of Prosopis spp. and the emerging trends of massive colonization of wetlands are already showing all the indications of a great disaster of national and international importance*” (2006: 36) .

Table 4.3: Administrative units Tana Delta District

Division	Land Area (km ²)	No. of Locations	No. of Sub-Locations
Garsen	14,460.5	7	16
Tarasaa	838,2	5	12
Kipini	714,7	3	6
Total	16,013.4	15	34

Source: UNICEF (2009)

With respect to the electoral boundaries, the area was divided in nine electoral wards, in one constituency: Garsen, which was one out of three constituencies for Tana River District. (UNICEF, 2009). This has changed for the 2013 elections, resulting in three MP constituencies for Tana River County: Garsen, Bura and Galole constituency, out which Garsen constituency is subdivided in six wards⁷², for choosing a County Representative⁷³(IEBC, 2012).

⁷² Kipini East, Kipini West, Garsen central

⁷³ Galole and Bura county consists of respectively 4 and 5 wards.

Chapter 5: Data & Methodology

5.1 Methodology

For this research, a combination of analysis of existing literature and data collection during a three-month fieldwork phase, which lasted from June till August 2012, are used. During this fieldwork phase, data is collected by conducting qualitative interviews, by conducting questionnaires and by personal observations.

Part of the collected data is also intended to be analysed for the CoCooN project, of which this research is part of. The CoCooN project, which stands for Conflicts and Collaboration over Natural Resources, is a research programme which is part of the strategic theme '*Conflict and Security*' of the Netherlands Organisation for Scientific Research (NWO). This research programme aims to increase the understanding of the dynamics involved with conflicts over natural resources (CoCooN, 2009).

5.1.1: Interviews

From the beginning of June until the end of August, 2012, in-depth interviews were conducted with government officials, community leaders, (district) peace committee members, conservationists, ranch representatives, the local magistrate, private sector members, CBO members, and several others, resulting in over 38 semi-structured interviews. The used interview guide was based on earlier research (Pickmeier, 2011) and was in the first weeks gradually expanded to meet the requirements for this research⁷⁴. This final set offers a wide range of topics, including questions on people's livelihoods, views on large-scale land acquisitions, natural resource management, conflicts, peace committees, and the influence of elders and provincial administration. The amount of subjects which were addressed depended on the respondent and his position. In addition to the interviews, three group discussions have been held. Out of these, two were held in Kilelengwani where the recent tensions were discussed with respectively Orma and Pokomo men. In another group discussion, community leaders, headmen and chiefs were present, when discussing the matters in Nduru village.

Interviews were held in English, or were interpreted from Swahili or Orma to English, whenever the respondent was not fully capable of speaking English. Although this decreases the quality of the data, it was a necessity since many residents only speak their local language and Swahili. Because of the sensitive nature of the topics, interviews were not recorded, so interviewees were less reluctant to be open to the interviewer.

5.1.2: Questionnaires

In addition to interviews, 67 people were interviewed based on a structured questionnaire. The questionnaire consisted of 134 questions⁷⁵. Questions were drawn up by an earlier group of students who were part of CoCooN, in collaboration with senior researchers affiliated with CoCooN (see Pickmeier, 2011). In addition, two subsets of questions were added which covered questions regarding large-scale land acquisitions and local peace initiatives. The questionnaires are to provide background information to the information gathered during the interviews.

⁷⁴ See Appendix A.

⁷⁵ See Appendix B.

Initially, 75 questionnaires were planned to be gathered, however, due to the outbreak of the Tana delta conflict, 67 could be collected. Questionnaires were administered with the help of a research assistant in Swahili or in a local language and took about 60 to 90 minutes. Questions involved issues as basis characteristics, natural resource management, attitudes on people’s livelihoods, means of conflict management, and on internal and external threats to people’s livelihoods. The majority of the questionnaire contains retrospective questions, e.g. on earlier conflicts. This retrospective nature may induce unreliable answers by respondents giving social desirable answers or respondents showing memory effects. Given the relatively short fieldwork phase and the broad geographical scope, verification of reported events was impossible to provide for. Therefore, it is likely that controversial matters are underreported.

The study area comprised the Tana Delta, yet with a specific focus in the questionnaires on people living near Wachu-Oda ranch , in order to capture their attitudes on the abandoned plans of G4, and any future plans for this specific ranch. The 6 selected villages are Oda, Mwina, Kulesa, Nduru, Handaraku, and Kilelengwani (see figure 5.1 for their location). Kulesa, Mwina and Kilelengwani were specifically selected because of reported tensions between different communities. When shared under three geographical clusters, the following ethnical division can be seen (table 5.1).

Table 5.1: Overview villages and their ethnic composition in this sample

	<i>Pokomo</i>	<i>Orma</i>	<i>Wardei</i>	<i>Total</i>
Oda Cluster	20	17	5	42
Kilelengwani	6	6	0	12
Mwina/Kulesa	6	0	6	12
Total:	32	23	11	66

Source: Fieldwork author

Sampling

Since there is no clear land or population registration system, obtaining a representative survey is difficult. We were forced to do random sampling within preselected villages. Based on our observations and knowledge, we selected for people’s socioeconomic status, livelihood, gender and ethnicity, which provides for some representativeness since age, gender and socioeconomic status are fairly visible. Ethnicity and people’s livelihood (which are strongly related) were selected by our own observation, and was made easier because of the region’s ethnical segregation.

After every round of questionnaires, the data was checked for any missing values, resulting in very few missings⁷⁶. Although this quantitative data provides for valuable background information to the qualitative data, its limited representativeness and the number of cases limit the use of this data for extensive research purposes.

⁷⁶ One Sanye, member of a Khoisan, hunter gatherer tribe who are ethnically unrelated to Wardei, Orma or Pokomo, is left out of the analyses.

Figure 5.1: Location surveys



Source: Fieldwork; Google Earth

Practical and social barriers

During the data collection phase, several practical and social barriers were encountered. In the questionnaires and interviews, controversial topics were discussed (even more after the animosity became so apparent) such as intercommunal relations, land regulations and conflicts. Although attempts were made to avoid this, e.g. by stressing the researchers' neutrality and aim of this research and by gaining trust, people were still much reluctant to discuss these matters.

During the fieldwork phase, conflict broke out between the Orma and Pokomo communities, especially after the attack on Riketa on 22nd August 2012. Because of security reasons, the author and his assistant were not able to go into the Delta area anymore. Being confined to Garsen, gathering information became much harder, which was worsened because of people's fears and suspicions (during the height of the tensions social life temporarily stopped in Garsen; shops were closed, people stayed at home). On the other hand, it provided the opportunity to have first-hand experience of the events.

Because of time constraints, part of the fieldwork had to be done during Ramadan, which lasted from 20 July until 18 August⁷⁷. This was not ideal given the large Muslim population, since interviews were more frequently interrupted because of calls to praying, and respondents were physically weaker because of fasting, which makes it possibly harder to recall situations. On the upside, it was easier to identify and approach Muslim respondents, since they were less engaged in their normal activities.

5.1.3: Observations

In addition to interviews and questionnaires, there have also been a number of peace meetings and elders' activities which the author observed, which helped to gain a better understanding of the modus operandi of these initiatives. The operating languages were mostly local languages or Swahili, so again, the help of a translator was necessary.

5.2 Data

Interviews and questionnaires

In total I have conducted 41 interviews and three group discussions, which varied from 15 minutes relatively brief talks to in-depth interviews which lasted over 90 minutes. Content of these interviews shall be discussed in the next chapter.

As for the questionnaires, in total, 67 respondents were approached. Out of these 56.7% were men. The reported age ranges from 31 to 64, with an average age of 48⁷⁸. This is obviously much higher than Tana delta's population average, yet is expected since the aim was to question those in charge of the household. In the following section, an overview of the additional key background characteristics is presented.

Educational attainment

Table 5.2 resembles the differences in educational attainment⁷⁹ for this survey. When comparing people from different ethnic groups, the Pokomo have a big advantage, with the majority (87.6%) having enrolled in primary or secondary education. At least for the sample population, secondary education seems to be almost exclusively received by Pokomo. Although Koran school is not really comparable with the state-organised education categories, these numbers indicate that it is an important form of education for a significant group of Tana delta residents, especially the Orma. It is important to note that these numbers represent the educational attainment of the sample population, who are much older than the average Tana delta resident. Education enrolment has risen over the years, so one can assume that nowadays, younger people are better educated than their parents.

⁷⁷ Views on the start of Ramadan vary, in Tana Delta it started on 20/7.

⁷⁸ Std. deviation of 8.9.

⁷⁹ One year in a certain level was enough to be placed in that specific category.

Table 5.2. Frequencies educational attainment for Pokomo, Orma and Wardei

Educational attainment	Pokomo		Orma		Wardei		Total:	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%
None	0	0	3	13.0	1	9.1	4	6.1
Koran school	2	6.3	15	65.2	4	31.8	21	31.8
Primary education	14	43.8	4	17.4	6	54.5	24	36.4
Secondary education	14	43.8	1	4.3	0	0	15	22.7
College	2	6.3	0	0	0	0	2	3.0
Total:	32	100	23	100	11	100	66	100.0

Source: Fieldwork author

Economic activities

As the sample was set-up to consist of equal groups of herders and farmers, the figures in table 5.3 illustrate that this was achieved. It also shows that still, there is a strong ethnic affiliation to main livelihoods for the Orma, Pokomo and Wardei communities, with Orma and Wardei almost perfectly fitting in the *pastoralist* category and Pokomo in the farming category.

Table 5.3. Frequencies main economic activities for Pokomo, Orma and Wardei

	Pokomo		Orma		Wardei		Total:	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%
Livestock keeping	0	0	21	91.3	11	100	32	48.5
Farming	32	100	0	0	0	0	32	48.5
White collar job	0	0	2	8.7	0	0	2	3.0
Total:	32	100	23	100	11	100	66	100.0

Source: Fieldwork author

However, when looking at people's alternative economic activities (table 5.4), one can see that all three communities are involved with alternative economic activities as well, with 37.5% of the Pokomo being involved with livestock keeping and over 78% of Orma being involved with farming. Another surprising feat is the relatively high number of Pokomo who are involved with a blue collar job. Fishing and white collar jobs are little practiced.

Table 5.4. Frequencies alternative economic activities for Pokomo, Orma and Wardei

	Pokomo		Orma		Wardei		Total:	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%
Livestock keeping	12	37.5	2	8.7	0	0	14	21.2
Farming	0	0	18	78.3	2	18.2	20	30.3
Fishing	3	9.4	0	0	0	0	3	4.5
White collar job	1	3.1	1	4.3	0	0	2	3.0
Blue collar job	8	25.0	0	0	1	9.1	9	13.6
Total:	32	100	23	100	11	100	66	100.0

Source: Fieldwork author

By comparing the main economy and alternative source of income, a new variable was constructed which describes whether a respondent is a farmer, herder, or practices a combination⁸⁰ (see table 5.5). As could already be seen in the previous table, the majority of Orma are involved with farming, in addition to herding. This is far less the case for the Wardei, who are still mostly involved with solely livestock keeping.

Table 5.5. Frequencies economic activities, split out for herding, farming, and herding and farming for Pokomo, Orma and Wardei

	Pokomo		Orma		Wardei		Total:	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%
Herder	0	0	5	21.7	9	81.8	14	21.2
Herder with farming	0	0	18	78.3	2	18.2	20	30.3
Farmer	20	62.5	0	0	0	0	20	30.3
Farmer with herding	12	37.5	0	0	0	0	12	18.2
Total:	32	100	23	100	11	100	66	100.0

Source: Fieldwork author

Socioeconomic status

In order to look at respondent's socioeconomic status, average land size (for cultivating, in acres), average number of livestock and the average number of assets have been presented in table 5.6. For the number of assets, a list of thirteen items⁸¹ was used, the total number of these items has been added up.

⁸⁰ The two Orma who have a white collar job as their main livelihood are also herders and farmers and are therefore categorized in the mixed class of 'herder with farming'.

⁸¹ Such as owning a radio, donkey car, brick walls, iron roof, mobile phone, electricity, etc.

Unsurprisingly, farmers have more land than herders who farm. For livestock, the numbers between herders and farming herders do not vary much, although herder have more cattle whereas farming herders have more goats or sheep. However, the number of assets is higher for herders than for farming herders. This would mean that farming herders are worse off than herders, which is surprising since the herd sizes are not that different, while farming herders can also gain income from their farming activities. An explanation for this difference in assets could be that it were herders who were worse off who chose to start cultivating, since they needed alternative income sources, and this difference is still present these days. However, it is important to note that many Orma (who make up the bulk of the farming herders) have started cultivating decades ago, making it unlikely that such a difference would prevail.

When comparing the farming herders with farmers and herding farmers, the difference is also notable. At least for income from cultivated land, this can be explained by looking into the different crops farmers grow, with farmers and herding farmers much more relying on cash crops, such as tobacco and watermelon.

Table 5.6. Means for land size (in acre) and number of cattle, goat/sheep, chicken, and assets

Economic	Land size	Cattle	Goat/sheep	Chicken	Assets
Herder	0	152.7	106.5	5.7	2.4
Herder with farming	2.9	118.0	118.6	5.7	1.5
Farmer	6.7	.4	.6	1.2	2.6
Farmer with herding	4.7	1.25	3.9	4.8	2.3
Total:	3.8	68.5	59.4	4.2	2.2

Source: Fieldwork author

When asked whether people had received any food aid during the last month, one quarter answered they had indeed received food aid. Here, the largest recipients were farmers, where almost 45% had received food aid, whereas for farming herders, herders, and herding farmers these rates were resp. 29%, 0% and 29%.

Respondents were also asked what they thought of the viability of their household’s main economic occupation. Generally speaking, people were either positive or neutral, with the majority being neutral (see table 5.7).

When asked whether people wanted to get into alternatives sources of income, 26% answered they did want to diversify their economic activities, 65.% answered ‘maybe’, with 9% answering they did not. There was little variation for the respondent’s main occupation. The bulk of economic activities respondents reported, were starting businesses, mainly by selling some livestock or selling land (without having any title deed).

Table 5.7. Frequencies attitudes on economic viability of household's economic main occupation

Economic	Herder	Herder w/F	Farmer	Farmer w/H
Very positive	0	0	0	0
Positive	40.0	35.7	25.0	50.0
Neutral	55.0	64.3	75.0	50.0
Negative	5.0	0	0	0
Very negative	0	0	0	0

Source: Fieldwork author (N=66)

Chapter 6: Explaining conflicts in the Tana Delta

In this chapter, the collected data will be analysed in order to answer the formulated research questions. First, the causes of conflict will be discussed, including the 2012/2013 clashes. This is followed by discussing the way natural resource management and conflict management are practiced in the Tana delta in, respectively, sections 6.2 and 6.3. In the final section, 6.4, large-scale land acquisitions in the Tana delta will be discussed, focusing on the case of Wachu ranch, on which a large-scale biofuel plantation was planned but never materialized.

6.1: Causes of conflict

This study aimed to determine the role of natural resources in conflicts between various interest groups. During the fieldwork period this objective became even more burning after a major conflict erupted between the Orma and Pokomo. The events of 2012-2013 will be discussed separately as they were of an extraordinary brutality and (geographical) scale. These happenings will be compared with other conflicts as they have occurred in the Tana Delta. In section 6.2.1, an overview is provided of the 'ordinary' conflict characteristics and their causes. This is followed by an analysis of the 2012-2013 clashes in section 6.2.2.

6.1.1: Conflict characteristics

Categorizing conflicts

In a series of questions, people were asked to report whether they had personally experienced conflicts in the last month and if so, what type of conflict. In table 6.1, the most severe conflicts are presented⁸². First of all, farmers experience almost twice as often human wildlife conflicts, which is likely to be explained by the fact that herders are more often in the vicinity of their cattle, than farmers to their farms⁸³ (although there is also a small number of farmers who had lost some goats because of crocodiles). When comparing reports on herder-farmer conflicts, there is no notable difference for farmers or herders. Only three herders had experienced conflicts between herders.

⁸² In case people had experienced multiple conflicts, conflicts with the highest impact were reported.

⁸³ Also, baboons, which pose the biggest threat to farmers, are more common than any predators.

Table 6.1. Conflicts experienced personally during the last month

	Farmers		Herders	
	Freq.	%	Freq.	%
No conflict	9	28.1	16	47.1
Human - wildlife conflict	16	50.0	9	26.5
Herder - farmer conflict	7	21.9	6	17.6
Herder - herder conflict	0	0.0	3	8.8
Total:	32	100	34	100

Source: Fieldwork author

Natural resources

When asked which resources were the subject of natural resource conflicts, people reported the land (as pasture and farmland) and water as most important in causing conflicts (see table 6.2). This was also confirmed by key informants⁸⁴. Water seems to be a more contested resource for herders than for farmers, which could be explained by the large reliance on rain-fed agriculture of farmers (fieldwork).

Herders indicate that conflicts over pasture are more frequent than conflicts over farm land, (94.1% vs. 44.1%), which could indicate that herder – herder conflicts are more frequent than herder-farmer conflicts. However, the high rate of conflicts over pasture can also be explained by diminishing pasture, for instance land cultivated by TARDA or farmers, which does not exclusively fit into herder-herder conflict scenarios. As seen in table 6.1, herder-herder conflicts were rarely reported, so the importance given to the role of pasture in conflicts is more likely to be related to diminishing pastures.

Although from this table you cannot exclude the possibility of farmer-farmer conflicts or herder-herder conflicts, based on earlier research and on the above reported personal experiences of conflicts, it is likely that also for the region, herder-farmer conflicts are the most common human conflicts.

When asked for where conflicts were most likely to be started, people reported Tarasaa and Kipini division (both inner delta areas) to be most conflict-prone (the other division, Garsen division, is made up from large tracts of arid land, where competition over natural resources is much less intense).

⁸⁴ In one interview, the chairman of the Tana Pastoralist Forum (TPF), also stated that oxbow lakes are subject to conflicts; when they dry up (which frequently happens), they become interesting for both farmers (as farmland) and herders (as pasture).

Table 6.2. Opinions of farmers and herders on most important natural resource conflicts for the Tana delta

	Farmers			Herders		
	Never	Some	Frequent	Never	Some	Frequent
Water	0	62.5	37.5	0	38.2	61.8
Farm land	0	0	100	2.9	52.9	44.1
Pasture	6.3	75.0	18.8	0	5.9	94.1
Forest	56.3	43.8	0	47.1	52.9	0
Fisheries	71.9	25.0	3.1	79.4	20.6	0

Source: Fieldwork author

Natural resource conflicts in the region

The results for reported conflicts for the entire region are split-out for the four livelihoods, farmers, herders and the two combinations herder with agricultural activities and farmer with herding activities (table 6.3). For both of the mixed categories, higher number of conflicts are reported than the farmer or herder categories. This is especially true for herders who also practice agriculture. This supports the idea that economic diversification leads to more conflicts. Ensminger argued that economic diversification has lead indirectly to the loss of authority of elders, thereby weakening the conflict and resource management mechanisms. However, it is likely that environmental stress has to be taken into account as well. At least for this dataset, the majority of people who are solely involved in herding, are not located in the inner delta, whereas the herders who are also involved in farming, are located closer, or inside, the delta, where competition over natural resources is higher. However, this requires further research.

The reported intra-group conflicts are generally higher than inter-group conflicts. One explanation why intragroup conflicts are less visible in every day live, is because intra-group conflicts are more settled within a community (sharing the traditional conflict mechanisms) and are therefore less visible and less likely to escalate. Conflict can vary from having a dispute to open warfare; quantifying conflicts does not take this into account.

People will likely report conflicts earlier in case community members are involved and when their (potential) interests are more at risk. This is illustrated by the fact that herders report more conflicts over pasture while farmers report more conflicts over farmland.

When asked about the trends of these type of conflicts, the vast majority of respondents in every category (ranging between 84 and 98%) answered that in the last years, there was an increase in conflicts, and that these conflicts will most likely become more frequent in the future.

Table 6.3. Reports of average estimated numbers of conflicts in the region in the last year for various livelihoods

	<i>Water</i>		<i>Farm land</i>		<i>Pasture</i>	
	<i>Intra-gr.</i>	<i>Inter-gr.</i>	<i>Intra-gr.</i>	<i>Inter-gr.</i>	<i>Intra-gr.</i>	<i>Inter-gr.</i>
Herder	3.8	2.1	2.4	2.1	5.0	2.1
Herder (with farming act.)	8.2	7.7	7.2	6.8	8.4	7.9
Farmer	3.0	2.6	3.4	2.9	0.8	1.3
Farmer (with herding act.)	3.4	3.9	4.6	4.2	3.1	3.7
Total	4.8	4.3	4.6	4.2	4.4	3.9

Source: Fieldwork author(N=66)

Herder-farmer conflicts

Although it is clear that there are other natural resource conflicts in the Tana delta, conflicts are more at risk of escalating when natural resource use is linked with ethnic communities, when compared to intragroup conflicts or herder-herder conflicts. It is therefore important to look into herder-farmer conflicts (while traditional herders, especially Orma, are indeed more involved in farming, for the vast majority, herding is still their main economic activity). The course of such conflicts fit in a regular pattern, identified by almost all informants.

Typically, these conflicts arise when cattle graze in farmland, destroying farmer's crops. In some situations, herders let their cattle graze in farmland because of the need to access a water point (Tana River or any of its branches) or if they need access to pasture. Occasionally, it also occurs that cattle graze in farmland by accident, when animals escape the attention of the herder. Informants also claim this to be caused by nowadays less experienced and less competent herder boys, which they ascribe to the growing enrolment in formal education. Herders accuse the farmers of encroaching them on their traditional pastures, specifically near the Tana River which provides the best farming land. Some Somali herderboys also claimed that Pokomo started farms during the dry season on areas where there was intensive grazing because of the manure, leaving rich nutrients.

Upon finding destroyed crops, the reaction of farmers varies. In some cases, the farmer keeps the animal (s) as a 'hostage' and tries to find the owner. If they can come to an agreement, by returning the animal and being provided compensation, the situation is likely to end well. However, in other situations either the herders do not want to compensate (e.g. if they think that the farm is built on a livestock corridor) or the farmers react violently (e.g. hurting the animals). If this animosity grows bigger, soon the ethnicity of the herders (Orma) and farmers (Pokomo) start to be involved as well, especially after instigation by others (such as elders or politicians) , transforming the conflict over natural resources into an ethnic conflict.

At the core of these natural resource conflicts, lies the institutional gap as present in the wider society of Tana delta. Natural resource conflicts between farmers and herders can be seen as a conflict between two groups who have contradicting interests; i.e., land and water for farming or for

livestock. The institutional incapacity to overcome these contradicting interests is key to the perennial violence in the Tana delta. Still, there are other factors at work which contribute to this institutional gap which will be discussed in the following sections.

Foreign pastoralists

Many residents point at the influence of the seasonal influx of foreign pastoralists⁸⁵ in causing conflicts, stating that the added pressure on natural resources increases the already tense relations between the local pastoralists (Orma, Wardei) and foremost Pokomo farmers.

Although foreign pastoralists formally have to report to the provincial administration, this rule is hardly followed. In other cases they report to village elders, county councillors or village chiefs, who can grant visitors access for a certain period, for example 6 months. In addition, they explain the bylaws and boundaries where to graze and fetch water. At least one organization, the Tana Delta Pastoralist Forum⁸⁶ is active in educating pastoralists to contact the county council and veterinary department when people encounter foreign pastoralists.

There is no clear data on whether foreign pastoralists report to any, formal or informal, authority (and whether they subdue to local regulations, but from all three ethnicities and from both pastoralists and farmers, there are reports that this is definitely not always the case. In ranches, fees can be expected to be paid by foreign pastoralists (this varies for local herders), but this is not the case for common land. At least one Wardei council of elders reported to keep track on foreign pastoralists and guide them towards places where they can stay.

Although many are opposed (especially farmers) to the influx of foreign pastoralists, some pastoralists indicate that they should be welcomed, since their animals are in need of pasture and water.

Human wildlife conflicts

Although human wildlife conflicts encompass a different type of conflict than human-human conflicts, because of the great impact on human life they will be briefly discussed in this section. As seen in table 6.1, human wildlife conflicts are most frequent conflicts to occur. For any local resident, the presence of wildlife means risks of personal attacks by crocodiles, lions, hyenas or buffalos. Furthermore, farmers risk crops getting destroyed by wildlife (e.g. baboons, buffalos, hippos, monkeys) and pastoralists risking their cattle getting attacked by predators, such as hyenas, crocodiles and lions. Destruction of livestock or farmland is not compensated by the Kenya Wildlife Service, which causes grievances for the local people, even more because of the severe consequences of killing any wildlife. The only compensation the KWS provides is in case of loss or damage of human lives⁸⁷.

It is important to note that the presence of wildlife interacts with human activity. In a discussion with Orma and Pokomo community leaders, tensions were reported between local Pokomo and

⁸⁵ In this context, foreign is meant as 'foreign to the Tana Delta'. As presented in figure 4.4, foreign pastoralists come from regions such as Wajir, Isiola, and others.

⁸⁶ A CBO, made up mainly from Orma and Wardei, aiming to lobby and advocate for pastoralist matters. Also involves in educating pastoralists to face challenges such as health issues, land rights, sustainable use of natural resources. This is mostly done by attending *barazas* in villages.

⁸⁷ One respondent's brother had lost part of his leg because of a crocodile attack but was still waiting for compensation.

'squatters', who had arrived from the settlements Muginidi, Akuseri, Malindi and Gede (allegedly because these areas were converted into conservancies). In 2004, the 'squatters' settled in Kon Dertu ranch. Their presence, and use of the forests for firewood, made wildlife (amongst others buffalos) move closer to Nduru, posing greater risks for residents there. In earlier situations, Pokomo from Nduru used to chase them away, but the informants stated that now, the settlers were with too many to chase them away (estimated to be 300 households/3000 persons).

This example illustrates that human wildlife conflicts can turn into human-human conflicts. Another example of human induced human-wildlife conflicts is described by Martin (2007). Traditionally, there were two types of water points, for livestock (*malka*) and human use (*chiko*). By separating these uses, there is less risk for humans when they use 'human' water points, since livestock can attract crocodiles. Martin (2007) describes a situation where Pokomo and Wardei lived close to each other. However, the Wardei did not recognize the difference in these uses (as they were newcomers to the area) and used the *chiko* for their cattle, causing animosity with the Pokomo.

Mwina Kulesa and intervention

To illustrate the dynamics of herder-farmer conflicts and the way they are settled, the events which happened in Mwina location in July 2012 will be discussed. In this location the villages of Mikameni (inhabited by Wardei pastoralists) and Kulesa (inhabited by Pokomo farmers) are found. On 12th July 2012, a delegation of about 10 village elders, peace committee members and provincial administration, sent by the DC and led by the senior chief of Mwina location, went to Kulesa, where residents from Mikameni and Kulesa would meet to hold a *baraza*, a public meeting in order to settle and discuss village or community affairs⁸⁸.

After a prayer, the assembly starts with introductions. Subsequently, three members of each community are invited to give their accounts of the events of the 10th July, 2012. They are urged to choose reasonable speakers and ask for order. The representatives are urged to only speak of events of 10th July and not on any earlier grievances. After collecting all weapons (some machetes, knives, and herding sticks), all six representatives tell their account of the story.

According to the Pokomo, a young (Pokomo) farmer was beaten up after he tried to chase some cows, belonging to Wardei, which were grazing in his *shamba*. His father went to the Wardei after he find out about his son, but was, once in Mikameni, threatened by Wardei, who were armed with knives and guns. When he left to take his son to hospital, he heard gunshots coming from the Wardei side. Another representative told that the police came that same day. They cooled down the tensions but could not find the guns. He stresses the need for peace, but also states that they want compensation for the destroyed crops.

⁸⁸ This can be held for any issue which needs to be settled by the community or for informative purposes, such as education on farm or livestock practices. These meetings are often held under mango trees, hence the titel.

Figure 6.1: Baraza held at Kulesa, 12 July 2012



Source: Author

According to a Wardei spokesman, the problem is caused due to encroachment of cultivated plots into pastureland and a lack of pasture, which is worsened because of the rising influx of foreign pastoralists⁸⁹. The Wardei spokesman also mentions the reaction of the Pokomo, according to him killing or hurting cattle whenever they are found grazing in their *shamba*, which contributes to escalation. Another Wardei claims they do not have any guns, and that it was the home guards who had fired their weapons. One representative, who is also an aspirant MP, causes some tumult, since he refers to events which had happened earlier. He is blamed for giving political talks and is urged to stop.

Both communities mention the inactivity of local peace committees as a factor contributing to the outbreak of violence, which they explain because of inactivity of the local peace committee and (related to that) lack of compensation for peace committees. Other issues which are mentioned are inactive elders, high amount of rumours, food shortages, and the undefined village boundaries.

The *baraza* ended with a –slightly forced- reconciliation between the two main actors, who promise to keep peace. In addition, more relief food is promised by the government.

14 July 2012

Two days later, another *baraza* was held, where the DC and area MP were present⁹⁰. Again, the community leaders expressed the importance for peace and three representatives from each community were invited to talk about the local issues. Extra emphasis was put on the importance of disarmament of the communities by the DC.

⁸⁹ Assumable because of the particularly dry wet season.

⁹⁰ Danson Mungatana, Pokomo

Although peace was restored for the time being, the root causes for the conflicts were still present and it is unclear what will be done about the main problems addressed:

- Inactive local committees
- Unclear village boundaries
- Lack of pasture
- Encroachment by Pokomo
- Food shortage
- Influx of foreign pastoralists
- Proliferation of firearms

6.1.2: The 2012/2013 clashes

Although tensions over access to natural resources between different ethnic groups seem to be permanent, yet varying over time, the 2012/2013 clashes do not seem to fit in the regular natural resource conflict discourse. Therefore, three stages of the 2012/2013 clashes will be discussed in the following section, starting with the run-up, from approximately April 2012 until the beginning of August, then discussing the escalation phase from August 2012 until early 2013 and, finally, the aftermath. The scenarios of what might have happened will be discussed.

*Run-up*⁹¹

In April 2012, after several plots of farmland were invaded by livestock from the Orma community, tensions rose between Pokomo and Orma (see figure 5.1 for location), who both inhabit the village of Kilelengwani. Orma lost livestock, either being stolen or killed, assumed by Pokomo (KNCHR, 2012).

In a focus group discussion, Orma indicated that in May, tensions rose after they tried to retrieve a lost cow, which according to them appeared to be slaughtered by Pokomo. The Pokomo however, claimed the cow was grazing on their land and was destroying their crops. This led to an argument in which one Orma was stabbed with a spear.

In a later incident in May, one (cultivator) Orma when walking to his *shamba* was killed with a firearm, and later beheaded. One person was arrested and identified the others, although they fled. He confessed the murder, and told the story that they sought revenge for their father, which they believed was killed by the Orma cultivator. In a related incident, Pokomo set a house on fire on the Orma side of Kilelengwani. One of the attackers was killed by Orma. In the end of June, one Pokomo youngster was killed while on his way home.

The murders between April and June and earlier (Pokomo elders also spoke of 4 killings between September 2011 and March 2012⁹²) caused great intercommunal tensions. For every murder, the first suspicions are towards members of the rivalling community.

During two focus group discussions, the following factors came forward as causes for the growing tensions in Kilelengwani:

⁹¹ The information in this section is based on interviews, focus group discussions, news articles, and a report published by the Kenya National Commission on Human Rights (2012).

⁹² One Orma, two Pokomo and one Kikuyu.

- Inactive government
- Impunity (even if people were arrested during these early skirmishes, many were later released by the police)

However, at the roots of the tensions in Kilelengwani, lie the competing use of natural resources. The Pokomo claim that the Orma had blocked the (shallow) river branch by building a dam/bridge, which Orma had built so their cattle could cross the water and surrounding mud. These bridges have been built (and destroyed) for many years, but at least up to 2012 this dispute has not been settled. Although the government promised to build a bridge during a peace rally in August 2012, this was met with suspicion. Pokomo responded to this promise as a proof of the governments' favour towards pastoralists. Because of inactivity, half way August the local administration decided that all 15 members from the peace committee were to be replaced.

On the 25th of July, another incident heated up the intercommunal tensions when cattle were found dead in a farm, belonging to a Pokomo. Five heads of cattle died after eating poisoned watermelons. Opinions on whether this was deliberately done vary, with some stating that the cattle were accidentally poisoned by pesticides.

Escalation

August 2012 – December 2013

On 5th of August 2012, a Wardei herdsboy, who at the time was herding cattle for Orma pastoralists, was attacked and killed near Kilelengwani⁹³. In addition, hundreds of cattle were slaughtered on the spot or taken hostage by the Pokomo.

Reports providing details on the happenings of 12th of August vary. Pokomo claim that Orma herders moved large numbers of livestock into Pokomo owned farms near Kau. This led to a confrontation between the two communities, in which the Orma eventually fled. Afterwards, Orma went to the local authorities to get their cattle back. The Pokomo who held their cattle claimed they held the cattle as proof of their invasion of farmland.

However, Orma claim that they moved through an apparent animal migratory route (*malka*), which had been illegally converted into farmland. When herding their cattle near Kau, 200 Pokomo youth, armed with machetes, guns and spears attacked them and stole over 600 heads of cattle. 50 cattle were killed right away, more were killed at a later moment. After intervention by the DO Kipini and the Kipini Divisional Peace Committee, 200 cattle were recovered (KNCHR, 2012).

The following morning, 13th of August, a supposedly revenge attack was carried out on Kau. Reports indicate that Orma tried to retrieve their stolen cattle. When they were confronted with armed Pokomo, fighting broke out, which left three Pokomo dead and several injured. 110 houses were torched by Orma (Daily Nation, 17/8/2012). During that day, two Orma from Handaraku, Wachu-Oda location, lost over 200 cattle in Kau. The following day in a forest near Kau, 198 heads of cattle were found dead by members of the District Peace Committee (DPC) and Administrative Police. After this discovery, the members of the DPC went to their respective communities to calm the situation. The Orma promised that they would not seek revenge if they were compensated, which would amount to

⁹³ Orma claim he was killed while moving through a livestock corridor, which is denied by the Pokomo.

approx. Ksh. 14.5 million⁹⁴ (ibid.). In this attack, the local health dispensary, food store and mosque were also damaged. The health dispensary was later set on fire and destroyed (Fieldwork, interview with KRCS).

On 16th August, compensation was discussed in a meeting convened by the Provincial Commissioner Samuel Kilele, but Pokomo refused to attend, stating that they feared an Orma attack. After this event, security was strengthened by approx. 100 security officers, drawn up from Administration Police, General Service Unit⁹⁵ (GSU) and regular police (KNCHR, 2012). It is important to note that residents were far from giving a warm welcome to these police forces, given their human rights records, and during the course of violence, several human right abuses by the GSU and other police agencies have been reported (Daily Nation, 27/9/2012).

However, this did not stop the ensuing violence. On the 22nd of August Pokomo raiders, reported to be approx. 200 in total, surrounded the village Riketa. During this attack, organization and training was evident. It is highly likely that the village was chosen because of its remoteness (surrounded by wetlands) and lack of security (the enhanced security presence did not lead to any change in Riketa). Reports indicate that part of the raiders, who were identified by their red ribbons, surrounded the village, armed with machetes and spears, while the others set the houses ablaze. Among the victims (52 in total) were 31 women and 11 children. 42 were killed by crude weapons while 10 were burnt to death. Other damage includes 78 burnt houses and 453 heads of cattle either killed or went missing (KNCHR, 2012.). The relatively low amount of male victims can be attributed to the fact that many men were staying in another village (informants speak of polygamy and economic activities as reasons for this). Any injured or killed attackers were carried away by other attackers (ibid.). During the attack, a boat, owned by Nature Kenya, was said to be used by the attackers. Although this obviously does not prove a relation between Nature Kenya and the violence, it has further damaged Nature Kenya's reputation in the delta.

After this attack, efforts to quell the violence were unsuccessful. Although many peace rallies were held, initiated by the Provincial Administration, some were only attended by one community. Others were successful in coming to an agreement, such as the Minjila declaration on the 29th August, but this appeared to be an empty shell (see section 6.3.3). Another measure taken by the Provincial Administration was the sacking of the chief and assistant-chief from Kilelengwani, and the chiefs from Ozi and Kau locations (Daily Nation, 26/8/2012). However, at least for the chief from Ozi, a Pokomo, Orma elders stated that he was sacked because he publicly denounced the clashes. They stated: "Mr. Omar Hamer is a victim of circumstance, and although he is a Pokomo, we will not be afraid to defend him. For several months before these clashes, he told the people to stop warmongering. We are asking Mr. Kilele [Coast Provincial Commissioner] to reverse his actions" (ibid.). The county councilor for Kipini East stated on this matter that the Coast PC was misinformed (ibid.). Another measure the Provincial Administration took was the instalment of a new intercommunal committee, consisting of 10 Pokomo, 10 Orma, and 10 Wardei elders, who are supposed to help reconcile the different communities (Daily Nation, 5/9/2012).

⁹⁴ 30,000Ksh for a mature cow, 10,000 Ksh for a calf.

⁹⁵ Paramilitary wing of the Kenyan Police Service

However, in a revenge attack on 7th September, an estimated 400 Orma youth undertook an apparent revenge attack on Chamwanamuma, killing 20 Pokomo⁹⁶. Some of the attackers were local residents, while others were said to be strangers (Daily Nation, 11/9/2012).

On 10th September, an estimated 200 Pokomo launched an attack on Kilelengwani-Orma, which was then protected by several police officers. They were unable to prevent another massacre. Nine police officers were killed, in addition to 29 Orma⁹⁷. Some of the raiders were identified as former classmates, neighbours and friends. The attackers wore red ribbons. After two hours, the police arrived. Although most of the victims had cut wounds, some were killed by gunfire. Security officers indicated that the attackers cut victims at the entry point of the bullets, in order to conceal the use of guns (KNCHR, 2012).

The following day saw retaliatory attacks on 4 Pokomo villages⁹⁸, resulting in the loss of four people and much property. The relatively low number of human victims can be ascribed to the fact that many people had fled their villages and were either residing in the inner forests or in villages outside the inner Tana Delta, such as Garsen or Witu.

December 2012 – January 2013

After the deployment of 2000 GSU units from 12 September onwards and several peace initiatives, no attacks were reported, up until late December 2012. During this period, police forces tried to disarm both communities, but with little success. While they retrieved machetes, knives, and spears, only 21 firearms were handed in as of 7 January, 2013 (Daily Nation, 7/1/2013). In addition, one can question the rationality behind the effect of disarming people from machetes and knives, as they are also necessary tools.

An attack on the 21st of December 2012 on Kipao, an Orma village, marked a period of new violence until late January 2013. A group of 200 raiders attacked at dawn, killing 11 men, six women and 13 children. Another 10 attackers were killed as well. When the authorities and the Kenya Red Cross tried to recover the bodies of the attackers, they were chased away by Orma, who burned their bodies. This attack happened two days after the completion of voter registration. One day prior to the attack, a peace meeting was held, in which both communities pledged to stop the violence. Two days after the attack, one suspected Pokomo raider was lynched, while a GSU officer went missing since (Daily Nation, 26/12/2012).

On 9th January, another attack occurred. An estimated 300 Pokomo raiders attacked Nduru, killing six Orma. Five attackers were killed. The presence of a GSU camp, 200 meters from the village did not prevent this attack. When the Tarasaa DO, accompanied with police, investigated the situation in Nduru, they had to flee when enraged residents threatened to attack them.

As revenge for this attack, the day after, 10 January 2013, the Pokomo village Kibusu was attacked by Orma. Residents claim that they warned the authorities the evening before the attack but no action was taken (Daily Nation, 12/1/2013).

⁹⁶ 16 men, three women and one boy.

⁹⁷ 16 men, five women, eight children.

⁹⁸ Shirikisho, Liani, Nduru-Pokomo, and Semikaro.

This has been the last reported act of violence from January up until October 2013. The elections, held in March 2013, were peaceful, and aspirants openly swore they would respect the outcome.

However, according to a report published in October (Standard, 11/10/2013), tensions were running high, after 30 youth raided cattle near Kilelengwani. The numbers vary from 20 (according to the police) to 500 (local residents). In other recent incidents, houses belonging to Giriama were set ablaze and two children went missing. Although these incidents are most likely not related to the 2012/2013 clashes, they do indicate the tensed situation in the Tana Delta.

Figure 6.2: Pokomo houses set ablaze in Kibusu village, January 2013.



Source: Gideon Maundu/Nation Media Group (10/1/2013)

Aftermath

Commission of Inquiry

After the first period of attacks (August/September), a commission tasked with investigating the clashes was installed, led by Lady Justice Grace Nzioka and operating from Mombasa. While initially they were ought to submit a report to then-president Kibaki, 30 days after their instalment, September 2012, the final report was only submitted 21th May, 2013 (Daily Nation, 21/9/2012; Daily Nation, 18/7/2013). During this period, the leader of the commission was attacked and held hostage in her home in Nairobi, where, amongst others, several documents and a laptop were stolen (Standard, 24/1/2013). However, it is unclear if this incident was related to her work in the Tana Delta. This incident contributed to the delay in submitting the report to the president.

The report has not been made public, but media list land tenure and natural resources as key causes of the violence, with other causes being influx of livestock, politics, illegal firearms and fear of marginalization (Daily Nation, 18/7/2013). In this news item, the report is quoted as follows:

“The commission established that several issues related to land were either the underlying, probable or immediate cause of the violence” (ibid.).

According to the report, the conflict resolved around land adjudication, immigrant settlements on trust land, settlement schemes, the concept of villagisation, the ban on use of canoes and lack of respect for property rights.

The commission also points at a border dispute between Tana River District and Ijara District, stating this had caused “bad blood” between Garissa Senator (and then Defence Minister) Yusuf Haji (Somali) and then Galole MP Dhadho Godhana (Orma). The rationale behind this is that Haji would have instigated the violence as a kind of punishment for not adjusting the border. During the clashes, the animosity between these two politicians became evident, often accusing each other in media. Godhana was dismissed from service and charged in court with incitement (Daily Nation, 24/9/2012), but has not been found guilty. Godhana accused Haji of being involved in the clashes, stating that: *“Mr Haji is the cause of insecurity. He has been agitating for the adjustment of the boundaries between Tana and North Eastern”* (Daily Nation, 25/8/2012). However, during the field research for this research, there were no signals which refer to this dispute and this link seems far-fetched, with Dhadho Godhana being an MP from another constituency. The villages where the border dispute is, are nowhere near the villages where the attacks took place. If Haji would have wanted to punish Godhana there would have been much more effective ways than starting an ethnic conflict (same if Godhana wanted to discredit or affect Haji in another way).

Another contributing factor provided by the report was the apparent government decision to increase the number of locations in Tana county from 14 to 42. The commission says the following on this matter: *“According to the Pokomo, these locations were politically instigated to allow the pastoralists to occupy the land within the Tana Delta District, which is trust land occupied by farmers”* (ibid.). By reallocating administrative borders, one can gain benefits for their community, since chiefs and sub-chiefs are from the respective communities. However, during interviews, or in any other sources, this argument was never mentioned. Also, the change in number of locations in the county is questionable, it is unclear in this article on the report whether this change is caused by combining the districts, making up Tana River County, or by an increase within the former Tana Delta District.

The commission also blames the violence on proliferation of firearms (ibid.). However, it is important to make the distinction between root causes and contributing causes, with this factor clearly falling in the latter category. Despite earlier disarmament processes, proliferation of firearms has continued in the Tana Delta. Furthermore, several reports indicated an influx in firearms in the Tana Delta when tensions rose. In addition, at least nine automatic rifles were looted from killed GSU officers. Still, the majority of victims were killed by crude weapons such as machetes and spears⁹⁹. The report speaks of bullets that are manufactured at the Kenya Ordnance Factory, which only supplies to the military, police and KWS (Standard, 11/5/2013). However, this could be attributed to the theft of the GSU rifles and ammunition.

Other findings list MRC activity among Pokomo youths (prior to the clashes) and the training of Orma youth by retired army and security officers to defend themselves. Furthermore, after the attack on Riketa, rumours stated that a MRC identity or membership card was found. On MRC activities, which were prior to the clashes known by agencies the commission says:

⁹⁹ For instance, one eyewitness described the attackers on Riketa village as, “[they] were armed with pangas [machetes], bows and arrows, while a few had guns” (Daily Nation, 25/8/2012).

“... The commission found no tangible action was taken by the security agencies to combat the alleged MRC activities”.

With regard to politics, the commission states the following: *“The commission found that all county leadership seats in the last election (2007) were won by pastoralists, who swore to repeat it on March, 4 2013. This allegedly made the Pokomo bitter and they vowed to fight back. That was an immediate recipe for violence”.* On the other hand, in the 2007 elections, the Pokomo did win the seat in Parliament.

The KNCHR (2012, 21 November) reported they are in possession of a list mentioning politicians and local businessmen who funded the clashes. However, they do not make clear whether this funding started before the eruption of violence, or afterwards. After the escalation, it is evident that part of the communities mobilized for warfare¹⁰⁰, but the pressing question should be whether this funding did start before there were signs of growing tensions.

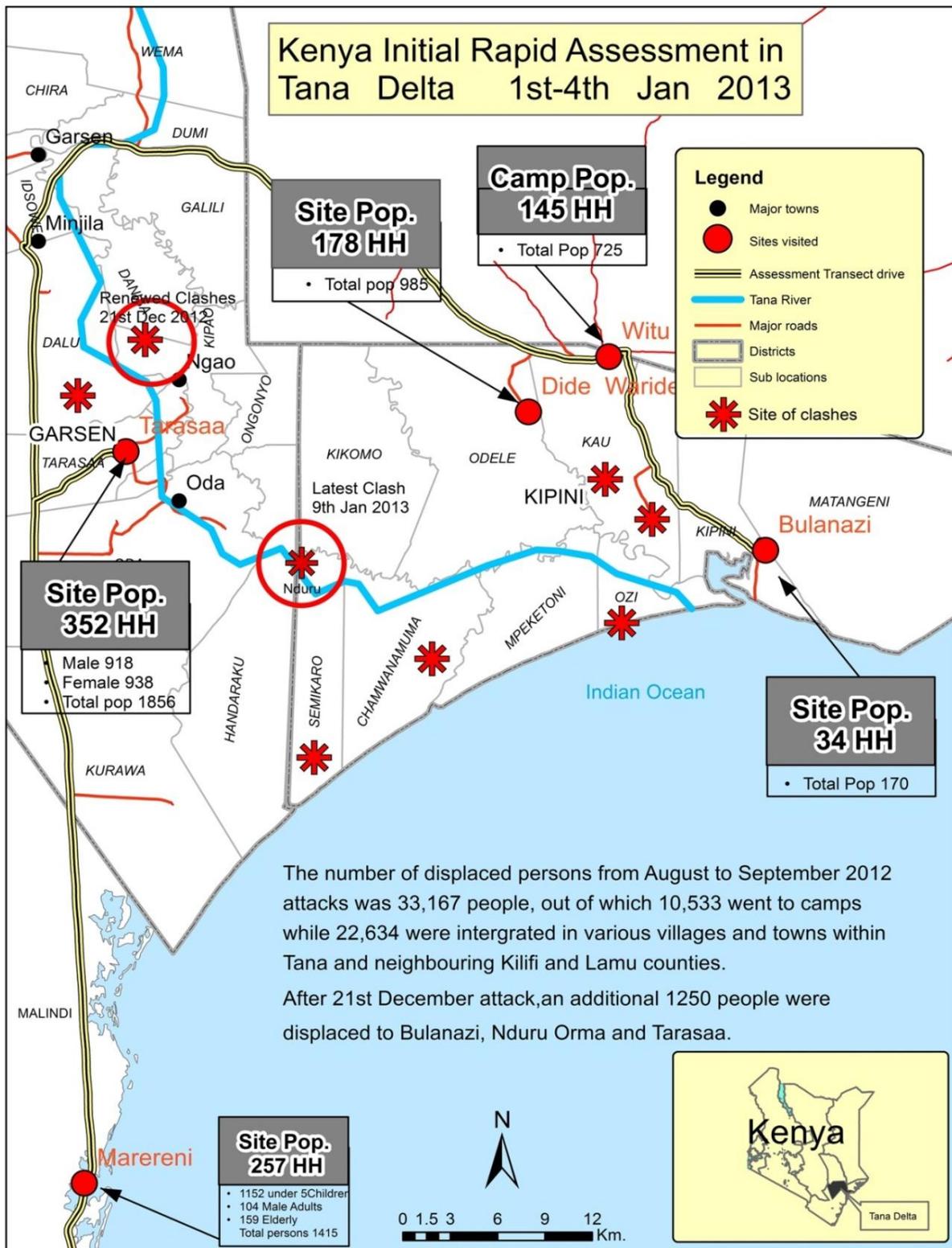
Consequences of the violence

The costs of human life, livestock and property have been huge, costing over 180 human lives, hundreds of cattle and numerous houses. The number of IDPs was estimated to be 33,000 after the August/September clashes, which rose with another 1250 after the clashes in December/January (OCHA, 2013). The curfew that was put in place late August was lifted in September 2013. Several NGOs¹⁰¹ have been active in the region since the eruption of violence. Figure 6.3 represents the location of the clashes and IDP camps.

¹⁰⁰ Even without the purpose of seeking retaliation this is a logical step, given the fact that clearly the government was not able to provide security.

¹⁰¹ KRCS, MFS, Action Aid.

Figure 6.3: Location of the clashes and IDP camps



The number of displaced persons from August to September 2012 attacks was 33,167 people, out of which 10,533 went to camps while 22,634 were intergrated in various villages and towns within Tana and neighbouring Kilifi and Lamu counties.

After 21st December attack, an additional 1250 people were displaced to Bulanazi, Nduru Orma and Tarasaa.

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the U.N.
 Map Data Sources: Admin boundaries Survey of Kenya; Roads Survey of Kenya; Towns Survey of Kenya; Site data Kenya Initial Rapid Assessment mission
 Compiled by: KIRA Team
 Projection: Decimal degrees
 Map datum: WGS 84
 Date: 9th January 2013

Source: OCHA (2013)

Rationale

When looking into the clashes, one can think of three scenarios of what has caused the violence in Tana Delta:

- 1) The clashes were fought over natural resources, despite all rumours of outside interference; the conflict was indigenous, which escalated into an ethnic conflict.
- 2) The clashes were sparked by a row on natural resources, but were then manipulated by outside interference¹⁰², which then became an ethnic conflict.
- 3) The clashes were started because of outside interference, disguised as a natural resource conflict.

Many stories on the 2012/2013 clashes involve some external factors which have contributed or caused the violence, either being MRC, nature conservation agencies (Nature Kenya), private companies/investors or government. Yet none of these rumours have been backed by clear proof.

Some point at the tactics which were used, bearing similarity to the tactics used by MRC attacks. Others have indicated that the MRC was setting an example, claiming that MRC approached the Orma community to gain support for their cause to seek independence from Kenya in a new coastal region, but denied support, leaving the MRC to set an example (fieldwork, August 2012). Yet as was seen in the report drafted by the Commission of Inquiry, there is no clear link between MRC and the Tana delta violence. The argument that MRC's involvement was proven because of a found MRC ID card is very much questionable. Even if MRC ID cards would exist, for an organisation which has been declared illegal for a period, would one carry one to an attack on another village? Remember, these attackers on their return have carried killed attackers with them to hide their identities.

With regard to multinationals, rumours involved the violence as acted under orders of multinationals or domestic companies active in the delta, in order to get rid of inhabitants, thus making the land available for profit. Yet, not a single proof for such a claim has been provided.

One of the key characteristics of the 2012 events is the brutality of the violence. Already in the first phase (killing of hundreds of cattle in early August), violence was disproportionate, which in recent times has only been witnessed in the 2001 conflict. Traditionally, rules of warfare were in effect amongst different ethnic groups. Based on focus group discussions and key informants, Martin (2012) speaks of the following rules of war from the Orma and Wardeji, which contain issues as the ban on killing of women, children and livestock (see appendix E). The Pokomo had rules of warfare for conflicts within Pokomo groups, such as limitations on the use of fists and clubs, when conflicts occurred between two Pokomo sub-tribes (Prins, 1952). Yet between other sub-tribes, violence was more severe, which often resulted in body mutilation (ibid.).

In the 2012-2013 clashes, clearly these rules of warfare were absent. Many women, children and livestock were slaughtered. The hiding of bodies of attackers who got killed¹⁰³, indicates that the

¹⁰² As in not-directly affected actors; although being indigenous, I consider local politicians as outside interference as well.

¹⁰³ During attacks, wounded or killed perpetrators were carried away. When the authorities suspected an area to contain bodies of attackers, they found two alleged mass grave to be empty, while it was evident that they had contained fresh bodies (Daily Nation, 20/9/2012).

perpetrators wanted to hide their identity (Daily Nation, 20/9/2012). These characteristics do not fit in the typical herder/farmer conflict template.

Still, it remains the question whether the conflict was orchestrated all along, or was only ‘hijacked’ after it broke out. Possibilities of orchestrated violence could be deliberately sending cattle into a *shamba*, provoking farmers, or by deliberately acting violently when cattle are found in a *shamba*, provoking herders. However, if some party aims to let the conflict escalate, this could also be done later during a conflict, for instance by disproportionate acts of violence.

While arguments pointed at influence of private companies or MRC seem questionable and mere speculation, the scenario of political influence cannot be dismissed so easily, most importantly because of the elections held in March 2013. Ethnic conflicts have often been manipulated by politicians in Kenya. More so, the stakes of the 2013 elections in the Tana delta were higher than any election before. The 2010 constitution has brought devolution, making the counties more important for local elections. The local positions of county governor, senator and Member of Parliament can be seen as zero-sum games. Whoever reaches the 50 per cent limit, gains the position. The winner takes it all and excludes the other parties contesting. Kenya’s then Deputy Prime Minister, Musalia Mudavadi, suspected that indeed, devolution did affect the conflict, stating that: “*The Impunity may be part of a larger political engineering that will affect the coming elections, and more so a plot to undermine implementation of devolved governments*” (Daily Nation, 11/9/2012).

During several interviews, pastoralists claimed that they had created a new coalition of pastoralist communities, including Orma, Wardei and several smaller pastoralist communities. The rationale was to win the most senior positions which over the years (as in 2007) had mostly gone to Pokomo aspirants (Kirchner and Rutten, forthcoming). This coalition¹⁰⁴ was also active in the County council elections¹⁰⁵, which were held in 2011. During those elections, the Orma, Wardei, Somali, Watta, Waluana and Mayoyayo voted together for a pastoralist chairman. According to a Wardei councillor, this was a signal for the Pokomo that they would lose more seats.

The outcome of the 2013 elections shows that the pastoralist communities succeeded in their strategy (shown in table 6.4).

Table 6.4 : Election outcomes Tana Delta March 2013

Position	Winner	Ethnicity
County Governor	Dado	Orma
Garsen MP	Sane	Wardei
Senator	Ali Abdi Bule	Wardei
Women repr.	Halima Ware Duri	Orma

Source: Kirchner (2013)

In addition to these positions, six county representatives were chosen. Out of these six representatives, only one Pokomo aspirant won in his ward, the other positions were obtained by either Orma or Wardei (Kirchner, 2013). By comparing the results of polling stations, it became

¹⁰⁴ One Wardei elder also claimed that the pastoral association had also led to the opening of ranches, although he stated that the main goal was politics. Although Orma ranch members claim that the ranches are open to others, several Wardei have disputed this fact.

¹⁰⁵ Every 1.5 year elections are held to divide the various positions in the County Council.

evident that many Orma voted for Wardei and vice versa¹⁰⁶ (ibid.). In a region where voting is much associated with ethnic kinship, this clearly suggests a trade off in voting. At least for IDPs from the 2012-2013 violence, ethnicity mattered for their voting for the March elections. Comparing IDPs who had changed their preferential candidates because of the violence, it became clear that out of those who did change their voting behaviour (57% of the total respondents), 87.8% would base their new preferential candidates on basis of their ethnicity. For respondents who stated that they would not change their voting behaviour, ethnicity mattered for only 25.5%, whereas competence was important to 87.3% (for the changed voters, this was 64.4%) (Kirchner, 2013: 112).

The fact that Orma and Wardei elders spoke openly about their plans for the elections, indicates that the Pokomo must have been aware of this as well. It is therefore possible that Pokomo, who were the most violent perpetrators in the 2012/2013 conflict, used the conflict in order to win the elections by displacing or killing as much 'contestants'. On the other hand, the violence also caused the displacement (and deaths) of many Pokomo. Although, for this hypothesis uncontested evidence also misses, it appears to be plausible, but since the report drafted by the Commission of Inquiry has not been made public so far, the truth about the clashes remains obscure for now.

During the clashes, a deep mistrust of the government became evident, with both sides accusing government officials of being biased and supporting the rival communities. This was at least partly fed because of the shown inability to stop the violence and provide security. For instance, in many situations, the security agencies only arrived after several hours after reported attacks. Although this was blamed on the lack of financial means, transportation and infrastructure, it did lead to growing mistrust of government agencies.

6.2: Natural resource management

In case of natural resource conflicts, natural resource management can be seen as conflict prevention. In the following section, different ways of natural resource management in the Tana delta will be analysed, discussing the differences between traditional and contemporary natural resource management and the role of local institutions.

6.2.1: Traditional and contemporary natural resource management

Traditionally, natural resources were, like other affairs, managed by the traditional authorities, the village elders (*Gasa* for the Pokomo, *Mathadeda* for the Orma, *Oodesh* for the Wardei). These traditional institutions made up laws and regulations which were essential for the group's survival.

For instance, the *Gasa* banned certain methods of fishing, e.g. with nets or spears. Small fish were returned in order to maintain the fish stock. In addition, fishing in the lakes was only permitted on certain days a week (Martin, 2007). In forests, the *Gasa* could restrict certain trees to be felled. Trees which were large enough were necessary to construct canoes, and people were only allowed to fell such a tree with permission of the elders. Other trees were also subject to the regulation of the elders, because they provided fruits which were vital in case of droughts and famine.

¹⁰⁶ For instance, the MP aspirant received 37.2% per cent of the votes, while the Wardei only make up for 12% of the population.

Wildlife was only killed in case it hindered human presence, e.g. by invading villages (ibid.). Martin (2007) also speaks of existing curfews in some areas, such as in mango farms where people were only allowed to collect mangoes at certain times. Other regulations involved the distance farms were allowed to be set up near the river, because of fear of causing erosion. If a Pokomo wanted to start a new *shamba*, he also had to go to the elders, pay a fee and ask for permission. Whenever these rules were violated, sanctions would be imposed (ibid.).

Known regulations by the Orma involved grazing restrictions (near villages, *shambas* or schools), trade revenues, watering point rights (Ensminger, 1992; fieldwork).

Agreements which affected both communities were settled by the elders, who met on such occasions. For instance, if the Orma needed a water point (*malka*), the Orma elders met with the *Gasa*. By conducting a ceremony, for which pastoralists provided a bull and farmers provide rice, tobacco or bananas, the deal was settled, allowing the pastoralists to water their animals at a certain point (Martin, 2007). Traditionally, there were two types of water points, one for animals and one for human use, due to the risk of wildlife attacks.

6.2.2: Contemporary natural resource management

In a number of focus group discussions, Martin (2007) discussed these inter-communal arrangements on natural resource use. Elders and locals indicated that since independence, these inter-communal arrangements are less and less in use, which has also been confirmed by informants in this study. Wardei indicate that they were aware of the existence of these arrangements between Orma and Pokomo, but are themselves little involved in arrangements with Pokomo¹⁰⁷. One Wardei elder claimed that, because of the *Gasa's* absence or lack of authority, they, as the *Oodesh*, made agreements with individual Pokomo rather than involve their respective elders.

Although residents indicated that the 2001 conflict led to the renewed sense of importance of making agreements on natural resources (Pickmeier, 2011), still many informants claim that there is an absolute lack of natural resource arrangements.

One of the most essential agreements involves water points (*malkas*). These agreements vary in their duration: since the river changes its course, the water point also changes. Therefore these agreements have to be renewed most seasons. In order to create a *malka*, pastoralists go to a farmer and ask if he is willing to give up a certain plot which can be used as a corridor to the river or as a *malka* itself. Informants say that the compensation for this is approximately Ksh. 10,000. However, this is not always the case. In Oda there are two *malkas* which have been there for years. Whenever people find out that the area is used for farming or other activities, the elders go there and attempt to stop this.

Still, it is clear that these (agreed-on) water points exist less and less. Also in the case of Kilelengwani, the lack of coming to an agreement over the use of the available resources, clearly contributed to the tensions between the two communities.

Part of this decline in mutual agreements can be ascribed to the loss of authority of elders and this gap which has not been filled by the local government. Another factor which has contributed to this

¹⁰⁷ According to an informant this was still the case, although he stated that the Wardei were intending to be more engaged with making agreements (fieldwork, August 2012).

decline is the growing influx of foreign pastoralists. For one, this has created extra tensions on existing natural resources, leaving less elbow room. Secondly, these agreements rely on trust and reciprocity. Many informants have indicated that the lack of agreements is especially true for foreign pastoralists and locals (both farmers and pastoralists). This difference is easy to explain; visitors have less to win with good relations, since they can always move to new areas. However, this aspect is likely to also have effect on the existing relations within the Tana delta communities. If party A and B see that another party can manoeuvre itself without complying with the existing local laws and not facing any consequences for this, this can also undermine the existing relationship between party A and B. This has also been the case when the Wardei arrived in the 1970s. The Wardei did not make any agreements with the Pokomo and did not abide by their local bylaws. According to Pokomo elders, this also led to Orma ignoring agreements made on natural resources.

Regulations by the local administration are not always respected, which is also due to the lack of capacity to enforce existing laws. This can be clearly seen for the regulations on farming near the Tana River. According to the Agriculture Officer, 10 meters from the River Banks should be protected, because of risks of erosion. However, this rule is hardly followed. The local administration also tries to achieve this by training local farmers, but so far with limited success.

Alternatives

As seen in section 6.1, natural resources are key to most conflicts in the Tana delta. It is therefore essential that natural resources are managed in a community supported way. Elders have lost much of their authority to do so; the local government never had this authority. It is a logical step to think that this gap could be filled by peace committees, since they combine community leaders, village elders and local administration.

However, peace committees have hardly involved themselves in making agreements on natural resources. There are a number of reports in which peace committees try to mediate in the creation of these arrangements, for instance in the case of Kilelengwani where the new peace committee, after the inactive one was sacked, tried to create a solution for the bridge. However, in the majority of these cases, this is only done after there are reports of tensions, or even conflicts, thereby annulling the preventative function. For instance, near Garsen, there was a conflict between farmers about the boundaries of their farms. After the local administration found out, the respective assistant-chief took the sub-locational peace committee to settle over the boundaries.

6.3: Conflict management and peace building

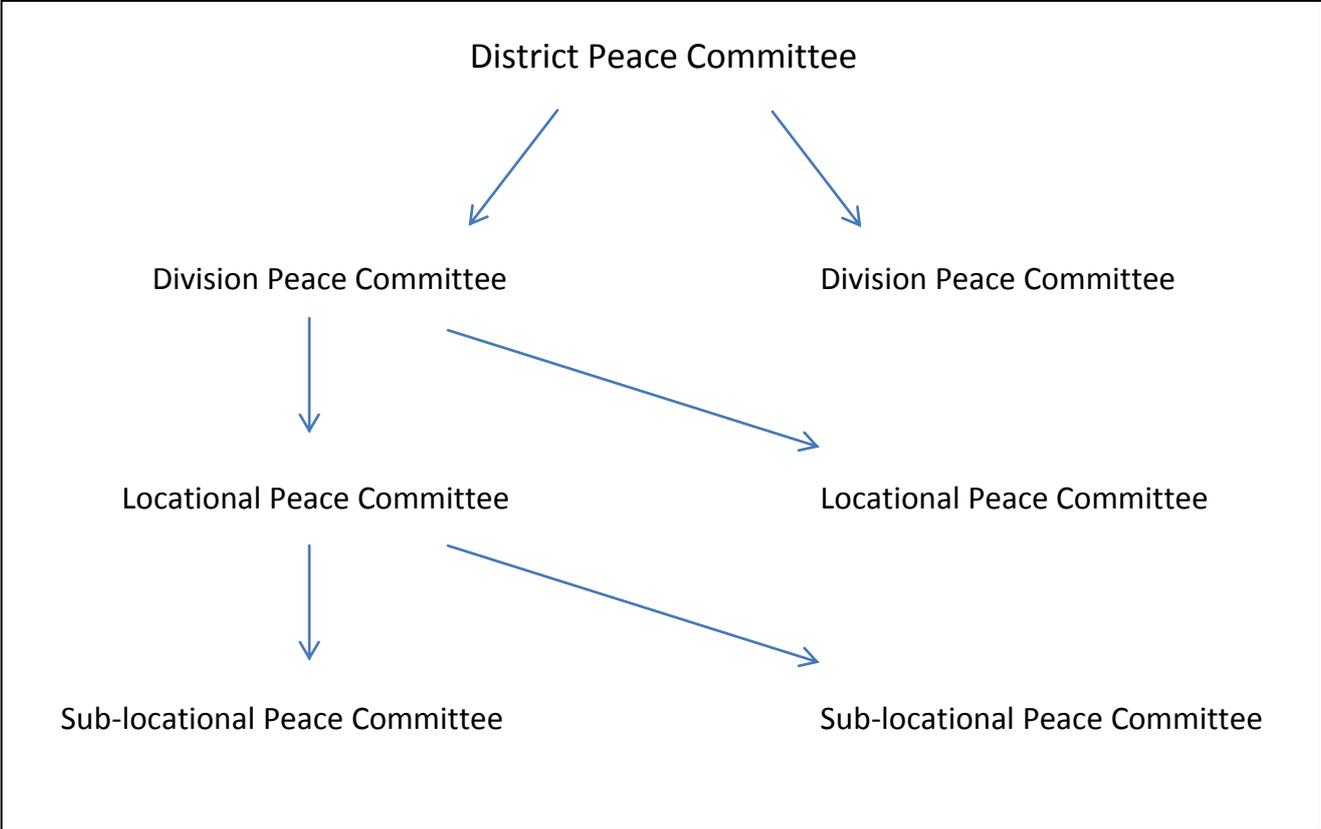
In the following section conflict management in the Tana Delta and the role of involved institutions will be discussed, whereby the focus lies on the role of peace committees. After discussing the characteristics of the peace committee model in the Tana Delta, an analysis is provided in which the weaknesses and strength of the peace committee is discussed, when compared to the alternative institutions, namely village elders and the government.

6.3.1: Structure peace committee model

As discussed in section 3.4, the peace committee framework falls under the auspices of the National Steering Committee on Peacebuilding and Conflict Management (NSC). In Tana River District, the

following structural framework has been put in place, which follows the administrative levels: district, divisions, locations and sub-locations. Every peace committee consists of 15 members.

Figure 6.4: Structure peace committees Tana Delta District



Source: Fieldwork

This structure allows for a far reaching scope of influence and intelligence gathering. Whenever a minor conflict is noticed by a sub-location or location peace committee, they can interfere and try to calm the situation. Whenever this is not sufficient, the assistance from the district or divisional peace committee can be requested. Members of the District Peace Committee (DPC) are also represented in the Coast Provincial Peace Forum, which is the overarching peace structure under auspices of the NSC.

6.3.2: Membership

Every peace committee consists of 15 members. Members are expected to serve the interest of the whole community. Members are chosen for three-year terms, after which new elections will be held. Elections are first held for the sub-location peace committees. Residents choose 15 members from the community, out of which two to three positions are reserved for women, youth and disabled persons. The last elections were held October/November 2011, meaning that new elections shall be held late 2014.

The elected sub-location peace committee members choose among themselves who is to take seat in the location peace committee. This process is consequently followed for the division and district peace committee. However, this would imply that a member of the DPC would have to be active in

four organs, which is not the case. During the interviews, peace committee members generally reported to be active in one or two levels of peace committees.

District Peace Committee

At the district level, the DPC consists of the following members. Out of 15 members, three are directly appointed, because they either represent women¹⁰⁸ or youth. If the chairman is male, it is laid down by the NSC that the vice chairman is female. Also, one position is reserved for the chairman of the Tana Delta chapter of the Coast Interfaith Council of Clerics (CICC).

The DPC in Tana Delta consists of the following members:

Table: 6.5: Composition district peace committee

Function	Sex	Age	Ethnicity	Division
Chairman	M	54	Orma	Garsen
Vice Chairman	F	56	Bangun	Kipini
Treasurer	F	46	Pokomo	Garsen
Secretary	M	55	Pokomo	Tarasaa
Vice secretary	M	55	Wardei	Garsen
Youth rep.	M	32	Orma	Garsen
Religious leader	M	62	Orma	Tarasaa
Women rep.	F	63	Pokomo	Garsen
Member	M	40s	Waluana	Garsen
Member	M	60s	Orma	Kipini
Member	F	40s	Pokomo	Tarasaa
Member	M	42	Wardei	Tarasaa
Member	F	32	Luo	Kipini
Member	M	39	Pokomo	Kipini
Member	M	40	Orma	Tarasaa

Source: Fieldwork

Summarized, this table shows that two-thirds of the DPC is male. Age varies from 32 to 63, with the majority being over 40 years old. Regarding the ethnic composition, it consists of five Orma, five Pokomo, two Wardei and three members from other ethnic groups. Six members reside in Garsen division, four in Kipini division, and five in Tarasaa division. Based on these characteristics, the peace committee seems indeed to be a representative organ. However, in every day practice, the reality is far from this representative view.

Several of the DPC members claim that they have far less influence than others. One minority (Waluana) DPC member even claimed that since the election, he has never been invited to attend any meeting or *baraza*. Part of this can be explained by the fact that the DPC hardly (perhaps even never) operates in its full extent.

Whenever the Provincial Administration urges the DPC to attend a *baraza*, only a couple of the members actually attend. This is partly related to the logistical issues the peace committees face. For transportation, they depend on others, due to the fact that the DPC does not have any mode of

¹⁰⁸ Reserved for the chairwoman of the district department of Maendaleo Ya Wanawake (MYWO), a women development organization active in Kenya.

transportation itself. In addition, transport from one side of the district to the other takes hours, which compromises the reactivity of the DPC. Still, even when taken these logistical factors into account, there are clearly other factors at work which exclude some members of the DPC.

The different positions in the DPC are divided by internal elections. Although some informants¹⁰⁹ suggested that the last elections for the DPC were partly rigged, they could provide no evidence. In another discussion¹¹⁰, it was stated that the elections for peace committees had become political, with communities making treaties to vote for certain candidates. Regarding the specific positions in the DPC, whether these positions truly reflect a specific role is debatable, with only the chairman and treasurer fulfilling their defined tasks¹¹¹.

Members of the DPC are also enrolled in courses, which are provided for by the NSC and the National Cohesion and Integration Commission (NCIC)¹¹².

6.3.3: Modus operandi

One of the questions imposed in the study involved the way peace committees, and other local peace initiatives operate in conflict management, peace building and prevention. In the following section, the main function of the peace committees, conflict management, will be analysed.

Actors

Conflict management in the Tana delta is practiced by a mixture of actors, either being the local government, peace committees, village elders or religious leaders. However, more often than not, there is not a clear distinction between these various actors. For example, peace committees involve elders, community leaders and women representatives, but also cooperate with community leaders and others. Peace committees also cooperate with religious leaders, who are sometimes part of peace committees as well (such as the DPC). One informant stated, on the relation between elders and peace committees that, "*elders are the eyes of peace committees*". However, other members of council reported to be not involved with peace committees in any form, marking the variety of these relations.

Although every peace committee has 15 members, they hardly ever operate in their complete formation, which is ascribed to logistical reasons (costs of transportation) and the voluntarily nature of the work. In most cases, only the chairman and two or three DPC members are present. According to the '*Standard guidelines and terms of reference for peace structure in Kenya*' (GoK, 2009), decision making should be based on a two-third majority rule, and in cases of emergencies one-half. Clearly, this guideline is largely ignored.

Peace committee interventions are initiated by the respective Provincial Administration leader. Whenever a conflict arises, the first step is that the Provincial Administration and the police forces move in, calming the critical situation. This is followed by the involvement of peace committees and elders. In a later phase (the same day or a couple of days later) a *baraza*, the main instrument of peace committees and elders, is organised.

¹⁰⁹ A location chief and the chairman of a locational peace committee, who are from different ethnic backgrounds.

¹¹⁰ With an Orma headman, Pokomo assistant chief and a Pokomo headman.

¹¹¹ To illustrate this, the DPC secretary was inactive in my fieldwork phase and the vice-secretary is illiterate, obviously an obstacle for duties as a secretary.

¹¹² This training was held as preparation for the 2013 elections.

During this *baraza*, people are allowed to give their side of the story, making it a useful mechanism to channel tensions. Furthermore, during peace *barazas*, people with authority, such as village elders and religious leaders, speak and preach for peace. The main antagonists are ought to come to an agreement and openly promise to keep the peace. Often, a number of *barazas* are held after a single conflict.

Figure 6.5: *Baraza* held in Kilelengwani, 17 August 2012



Source: Author

Disarmament

Furthermore, peace committees are also active in disarmament, in which they cooperate with the Provincial Administration and police. Previous efforts have been praised by the local authorities, indicating that the peace committee efforts bear fruit, most likely because of the roots of the peace committee in society, whereas the government institutions are often seen as outsiders. Still, the number of weapons which were handed in (previous to the 2012 clashes), were still limited (Division Officer 1¹¹³, August 2012). In 2009, a then-member of the DPC claimed, a disarmament programme in Tana Delta District led to the handing in of 70 weapons.

6.3.4: Legitimacy and legal position

Legal legitimacy

Currently, the legislative institutions in the Tana Delta can be divided in three groups who practice formal (magistrate), traditional (elders) and a mixture (peace committees) of legal ruling. Whether conflicts are treated by the authorities, elders or peace committee depends most importantly on the nature of the conflict. Domestic issues or issues within communities are either treated by the village

¹¹³ The DO1 also acts as the deputy District Commissioner.

elders or by the local magistrate, while intercommunal issues, such as conflicts can be treated by peace committees as well.

Peace committees are a hybrid form of authority, mixing legal and traditional forms of law. In traditional law mechanisms, customary law provides for the legal basis. In the Tana Delta, the elders applied these laws in case of domestic affairs, conflicts within their communities and other restrictions. Many of the laws which are currently used by the peace committees have their roots in these traditional laws. In line with the terms of reference, provided by the NSC, the Tana Delta DPC has a constitution, which is deposited at the Provincial Administration¹¹⁴.

With regard to statutory law, peace committees are dependent on the formal law institution; in the Tana delta this is the magistrate. The magistrate is aware of the bylaws which are practiced by the DPC and a number of council of elders (the majority of council of elders do not cooperate with the formal law institutions). However, after several attempts to view the documents of the DPC, neither the NSC coordinator, chairman, treasurer or vice-secretary knew where they were.

The local magistrate is, in accordance with the 2010 constitution, allowed to make use of customary law. Article 159 provides for the legal backing of the use of customary law, stating that alternative forms of dispute resolution shall be promoted, although in case of ambiguity, statutory law prevails over customary law. It states that *'alternative forms of dispute resolution'* should be encouraged to do so¹¹⁵. In the majority of the cases in which customary law is used, the magistrate can simply confirm the outcome which has been agreed on by the involved parties and the mediating elders, chiefs or peace committees. In case people do not agree to customary settlement, they can go the legislative offices and proceed in a formal legal procedure.

Using customary law is also included in the Criminal Procedure Code, section 175, which states that: *"In all cases the court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, or terms of payment of compensation or other terms approved by the court, and may there upon order the proceedings to be stayed or terminated"*.

Social legitimacy

Besides legal legitimacy, institutions also require social legitimacy. Peace committees and elders lack power and are dependent on their legitimacy in order to have influence. Even without security officers (or equivalents), power was practised through the elders' traditional power. If people did not live up to the existing laws, they became outcasts in their society. It is likely that such an effect is nowadays much weaker, since the area is more heterogeneous and people can migrate more easily.

According to the respondents interviewed, every single respondent claimed to support peace committees (with 10% claiming to be 'very positive' and 58% 'positive' and 33% 'moderately positive'). However, these numbers seem unrealistically high, since at least a significant portion of the key informants had at least some criticism on the functioning of the peace committees, and should therefore be treated with caution. Furthermore, these attitudes were measured before the

¹¹⁴ However, along with the documentation of the bylaws, the Provincial Administration nor the DPC were able to provide any copy, since they could not find it in their archive.

¹¹⁵ See appendix C

2012/2013 clashes. It is hard to tell what the consequences of these clashes are for the local peace initiatives. During the fieldwork phase, it became clear that both communities blamed the government for being biased and favouring the rival community. It is plausible that peace committees have lost support as well, given their association with the Provincial Administration, and the fact that despite numerous efforts and peace rallies, the violence did not stop. Already during the first stage of the conflict, the chairman of the district *mathadeda*, expressed that their new set-up pastoralist association would eventually also be involved with conflict management. According to the chairman, they would involve community leaders, who have more respect than PC members. When asked for why these people had more respect, the chairman stated it was because PC members were associated with the government. It is unclear how serious these plans are, but still this illustrates the lack of faith in the government and anyone who is associated with them. It remains to be seen whether peace committees can rebuild this trust.

Foreign pastoralists

Peace committees are established for a period of three years in their respective administrative units. One could argue that this does not reflect the dynamic (partly migratory) nature of the Tana Delta demography. During interviews, foreign pastoralists expressed their discontent with peace committees, stating that they do nothing with regard to pastoralists from outside, since they are seen as outsiders and therefore not entitled to the Tana delta resources. On the other hand, many locals associate foreign pastoralists with conflict, arguing that foreign pastoralists do not abide by the rules. Even if foreign pastoralists could be incorporated in peace committees, not regarding the impracticalities such as their nomadic nature and their ethnic variety, locals are most likely against any attempt to do so, also because it would mean acknowledging their presence.

Therefore, the peace committee model, in this regard is limited. The soft power it yields, is based on trust and reciprocity (Adan & Pkalaya, 2006), which is hard to establish with migrating groups. This is, and was, also the case for the traditional council of elders. Ensminger (1992) already described the collaboration of some council of elders with the provincial administration, in order to drive off foreign pastoralists, illustrating the difficulties of dealing with foreign pastoralists with only customary law on your side. Active local Provincial Administration leaders are therefore necessary to engage with foreign pastoralists in order to ensure good relations with local groups.

Elders

As mentioned earlier, elders have lost much of their legitimacy in the last decades. However, for some matters, such as domestic issues, they are still relevant. Furthermore, they can contribute to the legitimacy of peace committees when cooperating and acting together. Yet as an institute acting on its own in situations as intercommunal conflicts, its legitimacy is limited. Informants give mixed narratives, including elderly people themselves. Some state that their influence is long lost whereas others indicate that elders are still important in conflict management and conflict prevention. For instance, one Orma elder stated that during a conflict in 2010 between Orma and Wardei, peace committees did not intervene, but the elders settled and solved the conflict. Also in 2007, a conflict between Wardei and Orma was settled by elders from both communities. It is likely that conflicts between Wardei and Orma are easier to resolve by elders because their culture (and ways of reconciliation) is more related to each other than Orma or Wardei compared to Pokomo. Early 2012, the newly formed pastoralist association already harmonized the bylaws between Orma and Wardei (fieldwork).

In addition, the Pokomo elders seem to be much more divided. One elder spoke of a split within a Pokomo district level *Gasa* in 2009, although he could not tell the reasons for this. In Garsen area, there were also two different *Gasas* active, one for only Pokomo and one for Pokomo and Waluana¹¹⁶. One Pokomo elder also spoke of a series of meeting in order to settle land issues near Gamba. The social community officer tried to get the Pokomo to unite in one council of elders, but he had no success so far. This division is also likely to affect the Pokomo elders' authority.

This division is far less the case for Orma elders. Orma also have an overarching structure in the Tana delta. According to one Orma informant, the chairman of this overarching structure¹¹⁷ has more authority than the chairman of the District Peace Committee (also Orma).

The importance of elders was also seen in Wachu-Oda on the day of the attack on Riketa¹¹⁸. On this day, the whole region was marked by severe tensions. When arriving in the village, all shops were closed and the youth were standing armed in the main street. Rumours of neighbouring villages being attacked were abundant which incited the youth even more. However, the chief summoned the elders from both communities. They agreed that what happened in Riketa, should not affect Wachu-Oda. After their meeting at the chief's office, the elders talked to the youth and calmed them down. Although some of the elders were also part of the local peace committee, the peace committee as an institution was not involved at that point. Involved elders claimed that the local peace committees were inactive. Yet in the conflict in Kilelengwani, the elders (like the peace committees) were blamed for their inactivity and their unwillingness to intervene¹¹⁹.

The use of customary and statutory law

To illustrate the varying effects of use of customary and statutory law: in one case a cow was stolen. Instead of compensation for the victim (which would have been suitable according to customary law), the perpetrator was sentenced to two years of probation (de facto not being punished). The victim and his community members disagreed with this way of justice and burned the thief, illustrating the precarious position of formal law mechanisms. The traditional reconciliation of compensation could have likely prevented this.

Another example involved manslaughter within a family, when one brother killed his sibling. They both had five children, who would be worse off with their uncle dead and their father in prison. This was settled by forcing the murdered to pay 50 cows as compensation to his brother's family. After a cleansing ceremony, this case was settled.

However, the local magistrate acknowledges the difficulties of these bylaws for settling differences between members of different communities, since they differ in social and cultural values. This can be illustrated by an example of a conflict between Pokomo and Somali. The Pokomo had to be compensated with 10 cows (as was estimated to be worth the amount of damage done by Somali). But the Pokomo did not want 10 heads of cattle, since they were not practicing pastoralism and were afraid that the cows would be stolen. Some residents do not want to be compensated with money because they believe that the money will be cursed or bewitched.

¹¹⁶ Who also have a council of elders for solely Waluana near Garsen

¹¹⁷ Who is also the chairman of the association for pastoralists

¹¹⁸ Which occurred at dawn, 22 August.

¹¹⁹ Even leading to the replacement of the peace committee by 15 new members.

The average amount of legal cases per year which are treated in the Garsen legal office, which covers the whole of Tana Delta District, is estimated to be 50, out of which 10 involve a peace committee (fieldwork, interview with the magistrate).

Peace committees also make use of customary law in order to settle conflicts. For instance, the relatives of someone murdered should be compensated with 50 cows. If a man is seriously wounded, he should be compensated with four cows. However, for peace committees, this is often enforced by the local magistrate. The bylaws used by peace committees are much based on the laws used by elders.

Whether peace committees got involved with reconciliation efforts after the 2012/2013 clashes is unclear, but nevertheless this should be encouraged. During the conflict, the governments' incompetence was plain, with high end officials stating fear of ICC persecution as an excuse not to act. Other cases, such as the lynching, animosity towards government officials and the lack of consequences after the report of the Commission of Inquiry, make another scenario of further impunity highly likely.

It is hard to determine what the best way of reconciliation is. Although customary law is still much used, according to several informants (both Pokomo and others) there is especially among Pokomo, growing favour towards reconciliation through statutory law. One Wardei councillor expressed this as follows: "The Pokomo lifestyle has changed. They went to school and have changed. They want a judicial system instead of the traditional elders way". He added to this that Pokomo politicians have promoted using statutory law.

Minjila agreement

If necessary, written agreements are made at *barazas*, but this is only done at extraordinary situations, such as happened during the 2012/2013 events. On the 29th August, community leaders, religious leaders, elders, peace committee members, government officials and provincial administration gathered in Minjila in an attempt to quell the violence. Although the community leaders and peace committee members I spoke prior to the meeting were sceptical about the result, the meeting did lead to the attendants signing an agreement, called the Minjila-agreement (see table 6.6).

Figure 6.6: Peace meeting held in Minjila, 29 August 2012



Source: Author

In this agreement, 18 points have been included which should have led to a return of peaceful relations. Its contents are more involved with declaring peaceful intentions and ceasing violence. In more extensive agreements such as the Modogashe-Garissa declarations there is more emphasis on preventing violence, for instance by stating bylaws and their consequences. A number of points will be discussed here for their contents.

Article 8 states that people who have fled their houses should be encouraged to return. Given the security status at that point, nobody had spoken of a large contingent of GSU officers yet, was clearly lacking and the violence continued in the ensuing weeks. It is unlikely that this has had any effect.

In a number of other articles, the government is called upon to compensate lives and property lost or damaged, to provide security and to provide for humanitarian assistance. However, compensation of the government has not been the case and humanitarian assistance has been mostly organised by the KRCS. The structural issues which are addressed are inactive peace committees (yet not explicitly) in article 15 and the call for a county development plan in article 18.

Article 10 states that perpetrators should be prosecuted. According to a Pokomo elder, this point was much debated, since, he claimed, Orma were favouring traditional ways of settling the conflict, yet Pokomo favouring modern law. How this will be settled in the future is uncertain. As discussed in section 6.3.4, magistrates have the position to choose between using statutory and customary laws, but when one party favours statutory law, the party favouring customary law has to subdue.

The day after, the agreement was made public and discussed in a *baraza* held in Garsen. Both communities were present and the contents seemed well received.

It is hard to assess the effect of such agreements. Obviously, it did not stop the violence, but still it could have prevented violence, showing that community leaders have urged the wish to cooperate and coexist which can be witnessed by the whole community, although they can still express the wish to continue violence in their own circles.

Table 6.6: The Minjila declaration, drafted and signed on 29th August, Minjila

1. *We shall keep the peace*
2. *We shall go with a programme of peace to all locations and sub-locations*
3. *We shall talk to our people about peace on a continuous basis.*
4. *Government is to compensate for lives and property lost and houses burnt*
5. *Those with firearms in illegal possession should surrender them voluntarily.*
6. *People to respect each other including their property.*
7. *Government is to provide security in trouble spots of the district.*
8. *Those that fled their houses should be encouraged to return.*
9. *Humanitarian assistance, food & non-food items should be provided by GoK*
10. *Those who incited, funded and/or committed crime should be prosecuted and made to face the law.*
11. *Those with crucial information should bring it forward*
12. *As leaders, we should spearhead the healing process.*
13. *Forgive each other to support the healing process.*
14. *The youth, women and religious leaders be involved in the peace process.*
15. *Intercommunity committee (pastoralist/farmer) be revived to intervene in conflicts*
16. *Sitting MP, politicians, aspirants be in the fore front in the peace process.*
17. *Commission of inquiring be instituted to investigate into the cause and perpetrators of the violent conflicts.*
18. *Develop a county strategic plan for Tana River County for development.*

Source: Fieldwork

6.3.5: Challenges

By having analysed this data, the challenges peace committees face can be analysed. When looking into weaknesses of the peace committee model, the difference between structural and incidental problems should be made.

Incidental issues

The incidental problems peace committees face in the Tana delta are fairly visible and will be briefly discussed in this section.

Inclusiveness

Gender

One of the arguments in favour of the peace committee model involves the inclusiveness of peace committees, incorporating also women, youth and disabled persons rather than only male elders. In reality however, this inclusion is rather limited. Women and minority members in the DPC express dissatisfaction with their lack of involvement, claiming that male elders still have far more influence.

Traditionally women have had much influence on the background in stopping and preventing conflicts. Although their influence was mostly advisory, they had an important role in influencing their male relatives to stop further violence. In pre-colonial times, Orma women were organised in a women's network, called *Siqqe*. In case of conflicts, Orma women tried to stop conflict by using the *Siqqe* institution. An elderly Orma woman stated the following:

"In my Orma community, incidences of conflicts occurred mostly during the drought seasons. I remember how warriors used to raid the Pokomo farmers of their produce. We didn't welcome these as women; we wanted always to live in peace with our neighbors. Although we were consulted as elders in our community before the outbreak of hostilities, our decisions were not final; our roles were mostly advisory as the decisions were taken by men. We don't go to war; we stay home and pray for our husbands, sons, and brothers to come back home alive. We do this as a sign of peace... We dislike wars!" (Retrieved from Guyo, 2009).

Pokomo women were less organized but still were an important mediating force, especially in domestic conflicts and conflicts between women. Women from both communities claimed that their position had been weakened after the colonial time, because the colonial powers ignored them and their institutions (ibid.). Still, if women's influence can grow once again by incorporating women in peace committees, such attempts should be encouraged.

On the other hand, if favouring towards male elders represents the cultural values of Tana delta residents, it would positively affect the peace committee's legitimacy. This raises the question what's more important, having more inclusive, yet less legitimate decision or vice versa. This difficulty is also described by Chopra (2009), where the attempt to include women undermined the peace committee's authority because of men's reluctance to comply.

Ethnicity

Inclusiveness is also an issue regarding the various ethnic communities. Although the vast majority of Tana delta communities are somehow represented in the peace committee model, their actual influence in peace committees varies significantly. Some members report that they are less, or even never, invited. While this cannot be confirmed this is due to their ethnic background, it does raise the suspicion of ethnic favouring.

Specifically from August onwards, when tensions rose, animosity between rivalling peace committee members became more pronounced, which is not surprising, but still indicates that peace committees have a limited reach, whenever conflicts become too big, the peace committees become affected themselves; during my interviews with DPC members, it became clear that animosity grew and trust was fading.

Voluntarily

One of the main issues people reported on the weaknesses is inactivity. People relate this at least partly due to the fact that the work is voluntarily. For some trainings provided by NGOs or government agencies¹²⁰, sitting allowances and transportation costs are provided, but this is not the case for other peace committee activities, where generally only transport is provided for (mainly provided for by the Provincial Administration). Given the economic situation of most residents, it is understandable that economic positions are favoured over peace committee work (for instance, one DPC member claimed this would be her last term, since she needed more time for her business to develop). Nonetheless, it seems that the voluntarily aspect should not be abandoned completely, so financial motivations (e.g. sitting allowances) will not compete with dedication to a peaceful society. A balance between these matters should be sought.

Funding

Peace committees rely on funding from the UNDP, which is distributed by the NSC. However, all informants indicate that funding is not sufficient. The annual funding is Ksh. 600,000¹²¹ for the DPC and lower-level peace committees and is transferred quarterly. However, the treasurer claimed that by July 2012, they had not received any funding for that year, which was due to the refusal of NSC to transfer any funding because of irregularities with financial reports of other DPCs (Interview treasurer, July 2012).

After the escalation in August, the NSC declared it would resume funding. Since most people lack means of transportation, this makes the peace committees reliant on transportation provided by others. Especially for the DPC, this can be costly and time consuming, since they cover a wide area with minimal infrastructure. During the fieldwork, these occurrences were witnessed several times, where there were plans to intervene with Provincial Administration officers and a peace committee, but plans had to be abandoned because of lack of transportation.

The lack of funding also applies to the provincial administration. For instance, the Divisional Officer of Kipini does not have any means of transportation, relying on motorbike taxis in order to go to conflict areas.

Structural issues

Despite these challenges, it is more important to address the structural weaknesses of peace committees. By performing this analysis, four main structural weaknesses can be identified.

SCOPE

The 2012/2013 clashes made it clear that the reach of the peace committee model is limited, since a large-scale intervention from the central government was necessary to quell the violence. Although it has never been intended to replace the government altogether, it is important to be aware of the limitations of the peace committees. Whenever the intercommunal tensions become too grave, the soft power which is used by peace committees is insufficient.

Root causes

As seen in previous examples, peace committees can have a positive influence by preventing conflicts from escalating, by preaching for good relations between communities and using their influence to

¹²⁰ Which mostly take place outside of the Tana delta, e.g. Malindi or Hola.

¹²¹ Approx. US\$7000 (17/8/2013).

stop people from acting violently. However, as is also seen in numerous examples, the root causes which caused the conflict in the first phase are rarely addressed. Some of these root causes cannot be solved by the peace committees and require perhaps decades, but still there are more ways for the Tana delta peace committees to be involved in preventing future violence by addressing the root causes, most importantly by increasing their efforts on natural resource arrangements. More means and a stronger commitment to install natural resource arrangements from both peace committees, elders and the Provincial Administration is therefore essential.

Legal position

Although the legal position has been strengthened in the past few years, with the acknowledgement of customary law institutions in the 2010 constitution, the legal position is still ambiguous. Peace committees can resolve conflicts, but if one party wants the conflict to be settled by statutory law, the customary resolution is unlawful. Also, in case statutory law contravenes customary law, statutory law overrules the latter. This is especially important given the differences in attitudes towards customary settlement. During this research, it was made clear that Pokomo are more in favour towards the judicial system than other ethnic groups. This was also made clear during the negotiations prior to the Minjila declaration when several Pokomo were in favour of reconciliation by statutory law whereas others wanted reconciliation by customary ways. Although it was not listed in the Minjila agreement, according to some attendants, the eventual outcome was that perpetrators should be taken to court, but with using the bylaws. In that case, the use of statutory law is still possible.

Long term perspective

As discussed in section 2.5, hybrid organisations such as peace committees, create a parallel judicial and executive system. The long term perspective towards nation building remains unclear, since these parallel structures potentially contravene this process. On the other hand it can act as a link between traditional systems and formal authorities. Given the fact that the government itself clearly lacks the authority to govern the area, it seems that, at least for now, the peace committee model will benefit the community (of course taken the above mentioned issues in account).

In the long term perspective, the difference between statutory and customary law should also be regarded. If these preferences diverge further, it would end up with at least one community not supporting the used law system, thereby undermining its legitimacy.

6.4: Large scale land acquisitions

In an area where competition over natural resources is so fierce, it is important to look at the intentions of investors. In the past 5 years, there have been several reports on large scale land acquisitions in the Tana Delta. However, despite these reports, currently there is only one project active (TDIP), while another is still in the preparatory phase (TISP) and is subject of legal quarrels and financial matters¹²². Other projects which are abandoned are the Bedford Biofuel project, MAT international project, and the G4 project. The G4 project was intended to involve growing castor,

¹²² Early March, Mumias, declared it would put its plans for the Tana Delta on hold, which has been associated with the financial problems the company faces (Daily Nation, 5/3/2013). 1st of March, Mumias issued a profit warning for its full year results, after having a Sh. 1.5 billion half-year net loss (Daily Nation, 13/8/2013). Part of this loss has been associated with disappointing profits from distilling ethanol (ibid.).

sunflower and crambe, in order to create biofuel. The Wachu ranch (see map 4.6) had been sub-leased for these purposes. Out of the 28,900ha, 10,000ha were reserved for growing these crops, which were to be irrigated by the Tana river. Although several preparatory procedures were followed and was granted a license too, the project has never been operational.

6.4.1: Wachu ranch

Wachu ranch was established in 1974 by local Orma, with the lease granted in 1976. It was founded as an agricultural company ranch. Since then, the main economic activity has been livestock breeding, while some minor plots are used for growing animal feeds. The ranch company owns approx. 1000 head of cattle. Other herders can use the ranch and officially have to pay a fee (except during droughts). It is also an important source of firewood for surrounding villagers.

While the process of starting Wachu ranch in the 1970s is currently seen as controversial by many residents, informants claim that during those days, there was little opposition, mainly because the alternative was the area turning into a game reserve. Currently, they have 80-83 members. Membership is alleged to be open to others, but this been refuted by others. According to the ranch management, membership can be obtained by buying a number of shares and paying a member fee.

Bedford Biofuels also had an interest in sub-leasing the Wachu ranch but the ranch management stated it favoured G4's plans for its smaller scale and better terms.

6.4.2: G4 industries

October 2011, G4 declared it would stop further activities, while declaring that their abandoning of the project was due to environmental concerns (RSPB, 21/10/2011). However, ranch owners claimed that the problem was because of a lack of finances and stated that G4 continued efforts to raise the financial means, after their declaration of stopping further activities (fieldwork, July 2012). Up to July 2012 they had not renewed any activities in the delta.

During the fieldwork phase of this study, two other interested investors contacted the ranch management. Del Monte Kenya¹²³ expressed interest in sub-leasing (parts of) the Wachu ranch in order to grow pineapple, mango and bananas. Two weeks later, another investor expressed their interests, claiming they wanted to grow sugarcane. Although the name of the company was not given, the ranch management stated it was an India-based company¹²⁴ which is also active in Uganda and Ethiopia¹²⁵.

In both scenarios, irrigation is likely to be a necessity in order to become economically viable, as was the case for G4. When asked for any potential irrigation plans for the Del Monte, ranch officials told me that they would have to close off Matomba Brook (see figure 4.6). The river branch that covers the west part of the delta dries up during dry seasons, making use of the main branch necessary in order to have a continuous source from the Tana River. Obviously, closing of the Matomba branch would have great consequences for people living downstream. Nevertheless, as with the majority of earlier plans, it remains to be seen whether either one of these two investors actually pursue their plans. The recent outburst of violence is not likely to increase these interests.

¹²³ Based in Thika, Central Kenya.

¹²⁴ Said to own at least 17 companies in India.

¹²⁵ However, cross-referencing Indian investors active in Uganda and Ethiopia did not lead to any result.

6.4.3: Local attitudes on G4 and Wachu ranch

By conducting interviews and using questionnaires among respondents, the following opinions concerning these plans and failure of G4 can be reconstructed.

G4's failure

Several headmen and chiefs from Nduru and surrounding villages (from both communities) claimed they were happy with G4's plans for Wachu ranch, since G4 would open the wildlife corridor, which was covered with *shambas*, and would create job opportunities, although they acknowledged that most jobs would be casual work. The importance of job creation was also mentioned by chief and sub-chiefs from Oda location, especially given the high youth unemployment. This was not only stated by Pokomo, whom you can expect to be more in favour of large-scale farming since they are expected to favour casual work on a plantation more than Orma.

However, some Orma headmen or chiefs were strongly opposed to any large-scale project, including the G4 project, since it would mean the loss of pasture. For instance, during dry season, cattle from Madingo village (see figure 4.6) relies almost completely on Wachu ranch. If the G4 project would have materialized, these pastoralists would have to graze in other areas, increasing environmental pressure there.

When asked for their opinions on the failure of the G4 project, local residents reported the following opinions (see table 6.7). When comparing these attitudes, it becomes clear that farmers are more negative towards the abortion of the G4 project than herders, which is as expected; farmers are more likely to profit from casual work (see also below) while herders are more subject to the negative consequences of the possible fencing of the ranch, which was also concluded by Pickmeier (who did fieldwork in Tana Delta in 2011).

Table 6.7. Attitudes towards the abortion of the G4 project

	Farmers		Herders		Total	
	Frequency	%	Frequency	%	Frequency	%
Very positive	0	0	9	40.9	9	21.4
Positive	3	15.0	6	27.3	9	21.4
Neutral	9	45.0	7	31.8	16	38.1
Negative	4	20.0	0	0	4	9.5
Very negative	4	20.0	0	0	4	9.5
Total:	20	100	22	100	42	100

Source: Fieldwork author

In comparison, respondents were also asked what they thought of LSLAs in general (see table 6.8, *note this question is formulated positively while the former is formulated negatively*). Farmers take a neutral position, with little supporters nor opponents. Surprisingly, herders are much more mixed in this matter, also when compared to their attitudes on the G4 project. While the majority was either positive or very positive about cancelation of the G4 project, when speaking of LSLAs in general there seems to be a vast group who are not principal opponents, with 45.4% stating that they think LSLAs

are a positive development for the region. While these reported numbers are only for residents of Oda location, this mixture of attitudes is also true when including residents from Kilelengwani and Mwina/Kulesa.

A possible reason for these differences could be the association with different LSLA-agents. For instance, during interviews some herders said they were pleased with the development plans of Bedford Biofuels, since they promised to get rid of Mathenge, which can be harmful to humans and livestock. The two LSLAs which were ‘active’ in that period were Bedford and TARDA. It is possible that farmers primarily look at the effects of TARDA, which is highly controversial, whereas farmers also looked at the effects of Bedford, which had some (promised) benefits for the pastoralist communities.

It is likely that the failed investment of Bedford (which happened after these measurements) will negatively affect these attitudes, since again several promises (such as development plans, schools, etc.) were made by investors, and again these have not been fulfilled.

Table 6.8. Attitudes towards the LSLAs in general

	Farmers		Herders		Total	
	Frequency	%	Frequency	%	Frequency	%
Very positive	0	0	5	22.7	5	12.8
Positive	2	10.0	5	22.7	7	17.9
Neutral	17	85.0	7	31.8	24	53.8
Negative	1	5.0	2	9.1	3	7.7
Very negative	0	0	3	13.6	3	7.7
Total:	20	100	22	100	42	100

Source: Fieldwork author

Working for G4

Respondents were also asked whether they preferred to work on the G4 plantation, resulting in the following figures (table 6.9). As expected, farmers were more in favour of working on the G4 plantation, with 60% being either very positive or positive. Results for herders are more varied, with only a small portion reported to be positive on working for G4. When asked for the estimated monthly salaries, farmers reported on average to earn Sh. 21,050, which would be approximately 124 shilling per day¹²⁶ (near US\$ 1,5 per day). For herders, only four respondents reported an estimated salary, ranging from Ksh. 6,000 to 20,000. In comparison, people who work for TARDA are reported to earn Ksh 200-250 per day (fieldwork).

¹²⁶ For a 40 hour week.

Table 6.9. Attitudes towards working on the G4 plantation

	Farmers		Herders		Total	
	Frequency	%	Frequency	%	Frequency	%
Very positive	2	10.0	0	0.0	2	4.9
Positive	10	50.0	2	9.5	12	29.3
Neutral	8	40.0	8	38.1	16	39.0
Negative	0	0	7	33.3	7	17.1
Very negative	0	0	4	19.0	4	9.8
Total:	20	100	21	100	41	100

Source: Fieldwork author

Land use of Wachu ranch

In order to determine resident's preference over the future of Wachu ranch¹²⁷, a list of choice was presented (see table 6.10). Although it was optional to state alternative purposes for Wachu ranch, none were given. Unsurprisingly, farmers and herders are most in support of their traditional land use, rain-fed agriculture and grazing land. What is more interesting is the support for large scale irrigated agriculture: 75% of the farmers are in favour of using Wachu ranch for large-scale agriculture projects, with also a considerable part of the herder population being in favour of this purpose. What is also interesting is the support for using Wachu for other purposes than the respondent's main occupation, with still 65% of the farmers being in favour of using Wachu ranch for grazing, and 54.5% of herders being in favour of using Wachu ranch for rain-fed agriculture. When disseminating these results in order to look at differences for herders who also farm and farmers who also herd, it became clear that this is at least partly the result of these mixed livelihoods: Farmers who also have cattle are more in favour of using Wachu for grazing land than those without cattle (100% vs. 30%). This can also be witnessed for the preference for rain-fed agriculture: herders who do practice agriculture are more in favour of rain-fed agriculture than herders who only practice pastoralism (resp. 66.7% vs. 28.6%). When asked for their first choice, farmers and herders clearly favoured respectively rain-fed agriculture and grazing land.

Table 6.10. Preferences for the future of Wachu ranch

	Farmer		Herder		Total	
	Freq.	%	Freq.	%	Freq.	%
Grazing land	13	65.0	21	95.5	34	81.0
Large scale irrigated agriculture	15	75.0	7	31.8	22	52.4
Small scale irrigated agriculture	3	15.0	1	4.5	4	9.5
Rain-fed agriculture	19	95.0	12	54.5	31	73.8
Total:	20	100	22	100	42	100

Source: Fieldwork author

¹²⁷ None of the respondents were member of Wachu ranch.

It is unclear what the current status is of the Wachu ranch. As was seen in many other cases, numerous signs of interests from investors has not led to any materializations in the Tana delta. It is likely that any new plan will be met with suspicion given the history of failed projects, the tensions between communities and the fears of losing farmland or pastureland.

Currently, the ranches in or surrounding the Tana delta, which make up 212,228ha, are under the control of approximately 769 members¹²⁸. In a region with almost 100,000 inhabitants, this raises the question how people will regard these ranches and their legitimacy (also since membership is often disputed). So far, the ranches, including Wachu ranch, have been mainly dormant and are being used for herding and cultivating practices. While future investment plans could benefit local communities, many residents fear the potential negative effects.

Although it is premature to link conflicts in the delta with LSLAs, the interest of investors has increased making people fear the viability of their livelihoods. This fear is likely to have contributed to violence in the Tana delta in general, and specifically, in the 2012-2013 clashes. Therefore, any future investment should be monitored closely, and take the interests of all communities into account.

¹²⁸ Assuming that no single person is a member of multiple ranches.

Chapter 7: Conclusion and discussion

7.1: Conclusion

This research has aimed to provide further insight in the relation between conflicts and natural resources, with a specific focus on the role of local institutions. In order to do so, five research questions were formalized in the first chapter, comprising questions on the causes of conflict, the way natural resources are managed, the resolution and prevention of conflicts and the role of LSLAs in conflicts. In the following section, the answer to these questions will be summarized.

7.1.1: Causes for conflict

The 2012/2013 clashes have, again, illustrated the precarious relations between the two dominant communities, the Orma and the Pokomo, in the Tana delta. Although no evidence has been provided which proves that herder-farmer conflicts are on the rise (Hussein et al., 1999), the recent history of the Tana delta at least proves that they are still relevant. Although this research has shown that human-wildlife conflict, and conflicts within ethnic communities, are more likely to occur, the potential damage of these conflicts is far less severe than herder-farmer conflicts, as can be seen for the 2012/2013 clashes.

In order to understand the causes of conflict, the various stages of conflicts are important. As seen in figure 2.1, at the roots of conflicts lie differences and contradiction. For the Tana delta, this revolves around the competing use of natural resources (water, pasture, and farm land). In several examples provided, conflicts started over cattle grazing in farms, or pastoralists being blocked from pasture or water, especially in the dry seasons when scarcity is highest (such as for 2012, when the preceding raining season was particularly dry).

However, what causes these contradictions leading to actual violence, is the institutional gap to manage these differences. With the affiliation of livelihoods with ethnic identity, conflicts were able to transform into ethnic conflicts. Agreements over natural resource use between Orma and Pokomo, have become less in use over time, with Wardei claiming they have never have been in any agreements with Pokomo at all. As described in various literature, the erosion of elder's authority has also happened in the Tana delta. So far, the government, or any alternatives, have not been able to fill the institutional gap, whereas the urgency to do so will only increase with Tana delta's growing population.

Ensminger argued that economic diversification has caused this erosion of elder's authority. As was seen in section 6.1.1, indeed, those who had diversified their income (particularly herders who are also active in farming) do experience more conflicts than people who solely farm or keep livestock. However, this cannot be exclusively attributed to the loss of elder's authority, since the differences in environmental impact of these economic activities should also be taken into account. Still, while the mechanism behind this is not fully investigated in this research, these research findings do support the hypothesis that economic diversification leads to an increase in conflicts.

For the 2012/2013 clashes, intercommunal tensions have had a clear role in the violence. Although it is still unknown whether the conflict was planned all along, it seems evident that at least during the conflict, local elites have been involved in mobilizing resources for the clashes, and instigation of

attackers. Already in the first phases of the conflict, violence was disproportional, making it unlikely that this has been the result of a typical herder-farmer conflict. Still, the results of years of intercommunal tensions, have contributed to this, by making it possible to instigate in the first place. However, it is hard to ignore the March 2013 elections in this matter. As discussed, a voting alliance was made between the pastoralist groups in order to block the Pokomo from winning any positions, and, with the constitutional reforms, the stakes were made higher to win the electoral offices. As can be seen, the voting alliance did have effect, with nearly all positions won by pastoralist representatives. This mixture of natural resources and politics, indicates the importance of how natural resources are divided.

An often heard explanation for violence in the Tana delta, and other ASAL regions in Kenya, is the proliferation of SALWs. One can wonder however, how useful the disarmament attempts are. The government agencies cannot provide security, especially for mobile pastoralists. So even when disarmed, it is much likely that people will attain new SALWs anyway. In the Tana delta, security forces were involved with disarming crude weapons as well, yet again, people will regain these anyways, especially since these weapons are also used as tools. The majority of people killed, died because of crude weapons. Government efforts should be diverted, as the proliferation of SALWs is more a symptom of the region's insecurity, rather than a root cause for violence.

During this conflict, both sides of the community have accused the local administration of being biased, and indeed the action of local administration and the security services can be much criticized. In many cases, the police acted slowly and were (especially before the deployment of GSU officers) lacking in numbers and capacity. Although one of the answers of the government was the instalment of a Commission of Inquiry, it remains a big question why this report has never been made public.

7.1.2: Natural resource management and conflict prevention

Customary institutions remain to be important for natural resource management in the Tana delta. However, the erosion of authority of elders has also affected natural resource management. As a result, less agreements are made between various users of natural resources. The direct effects of this decline can be witnessed, as many natural resource conflict could have been prevented by proper natural resource management.

Currently, natural resource management is practiced by a combination of elders and the provincial administration. While within ethnic groups, this does not seem to cause much problem, this is different for natural resource management involving different council of elders. While some elders have good ties with elders from other ethnic groups, others hardly cooperate. Apparently in such cases, the chief or sub-chiefs are also not able to bring these groups together. Peace committees have hardly involved themselves with this issue, while they do have great potential in this matter.

The ability to manage natural resources is severely obstructed by the influx of foreign pastoralists. Both Orma and Pokomo claim foreign pastoralists do not abide to the existing rules, which causes tensions. Although the government, elders and peace committees put effort in explaining existing bylaws, so far, this has had little effect. Still, since it would be impossible to forbid foreign pastoralists from the delta, initiatives to engage foreign pastoralists in cooperation, should be encouraged.

Although attempts have been made to make a Land Use Plan, it remains the question if land adjudication will happen any time soon, given the precarious process (triggering conflict in 2001) and

the tensions in the region, which are still high. Furthermore, the involved NGO, Nature Kenya, was already dealing with mistrust from the local population, which seems to have only increased during the 2012/2013 clashes. The involvement of Nature Kenya in the whole Land Use Plan exercise is likely to affect the support for any land adjudication process.

Therefore, customary rights are still to be used, at least on the short and middle term. Since natural resource conflicts have been so detrimental, this asks for serious efforts into strengthening natural resource management institutions. Environmental stress is not likely to decrease, on the contrary, leading to an even higher urgency for functioning institutions. In addition, other initiatives which can reduce environmental stress should be initiated as well, which will lead to managing institutions having more latitude.

7.1.3: Local institutions and conflict management

In Tana delta, multiple institutions are involved with conflict management, with the most important being the local administration, village elders and peace committees. These can be seen as respectively formal, informal and hybrid institutions. As noted in literature on conflicts in rural areas, the erosion of elders' authority has also been a major contributor to violence in Tana delta. Although in some villages they still have considerable authority, in a large part of the Tana delta elders are less and less involved with dealing with intercommunal conflicts.

In one of the interviews, an Wardei elder stated that the Pokomo did not listen to their elders anymore, because they had gone to school. With growing enrolment of children in school, and by growing exposure to modernisation, it remains the question how this will affect the authority of elders from pastoralist groups.

As for peace committees in the Tana delta, there are several issues which peace committees are facing, such as a lack of funding and transportation. Furthermore, at least for the DPC, the inclusiveness is limited, with women and minorities being much less involved than others. What's more important, are the structural issues peace committees are dealing with, especially their lack of addressing root causes and their legal position. Regarding the latter, there seems to be a growing divide between those in favour of customary law, by herders (Orma and Wardei), and statutory law, by farmers/Pokomo, in order to manage conflicts. This makes the harmonization of reconciliation efforts for intercommunal conflicts more difficult. One of the main strengths of peace committees, is that they are perceived as more legitimate than statutory mechanisms, but if half of the population disagrees, this would undermine the authority of peace committees.

In this research, the scope of peace committees was rigorously made clear when peace committees were unable to stop the violence in 2012/2013 clashes. Still, to use this as an argument to dismiss peace committees would be unfair. Peace committees are never intended to stop violence at such a large scale. Peace committees, and elders, rely on their soft power, they cannot replace the security forces.

Regarding the long term perspective of peace committees, Menkhaus (2008) considered the possibility of hybrid authorities, *the mediated state*, as an alternative model to the formal state model. However, given the fact that the majority of Pokomo are already seems to be favouring statutory ways (at least for conflict resolution), this scenario is questionable. If these attitudes keep diverging, it will become harder and harder to harmonize bylaws peace committees use, which could

undermine their legitimacy. This would make a long term scenario of peace committees as hybrid authorities unlikely.

Still, for the short and medium term, peace committees should not be thrown overboard. Despite the issues they struggle with, they are important instruments in settling and managing conflicts. If they would act less as ad hoc solutions and engage themselves more with preventing conflicts by promoting cross communal natural resource agreements, at least up until land adjudication has taken place, their efforts can be a great contribution to Tana delta's future development.

7.1.4: Large-scale land acquisitions

In this research I have investigated the role of LSLAs in conflicts in the Tana delta. While there is no direct relation between these two, LSLAs contribute to conflicts in the Tana delta indirectly, by increasing the tensions between communities. Tensions are increased because people fear that LSLAs will affect their lives by encroaching them, losing pasture or farmland.

On the other hand, the potential benefits are acknowledged as well, with people expressing hopes of payments for leasing out land, clearing of mathenge and generating employment. Generally, differences between herders and farmers are clear, with farmers having higher expectations towards newly created jobs and herders fearing encroachment more than farmers, but it is important to note that there is much variety among these groups as well. Furthermore, other factors have to be included as well, such as the opening of corridors for wildlife or livestock (which was the reason for some to be in favour of the G4 plan) or clearing the area from mathenge (which was the reason for many to support the Bedford plans (Pickmeier & Rutten, 2013)).

Still, although there has been much exposure on investors and their plans for the Tana delta, to this date all of these projects have been abandoned prior to any materialization, with only Bedford and the TDIP having cultivated land, yet in both cases still much smaller than planned. Although before the recent clashes, two investors had showed their interest in Wachu ranch, to this date there has not been any follow up. With the departure of Bedford, the other ranches will have to find new purposes as well. As for Wachu ranch, many residents (both farmers, herders and combinations of these two) made clear that they wanted to use the ranch for grazing land, along with the majority of farmers wanting large-scale agriculture and rain-fed agriculture. If it us up to the ranch owners, large-scale agriculture will happen. However, whether this will happen anytime soon is much uncertain.

7.2: Discussion

In this research, I have attempted to explain conflicts in the Tana delta, by looking into their causes and how they are managed. Furthermore, I have looked into the role of natural resource management and what the (potential) effects of LSLAs are for the region. Still, there are many questions left open.

This was partly due to methodological reasons. For the questionnaire, it became clear that answers on several questions did not stroke with reality. For instance, questions on the performance of local peace committees were unanimously answered positively, whereas key informants expressed very different opinions. This was also true for some questions on conflicts. It is likely that this was caused by a combination of sensitivity and length of the questionnaire (questions answered in the final pages of the questionnaire suffered more from this than earlier asked questions). In addition, in the quantitative part of this study, the number of conflicts was measured, showing that intragroup

conflicts were just as likely, or even more likely to happen than intergroup conflicts. However, the definition of conflicts is broad and can encompass quarrels to open warfare. Therefore, in future research, it is advised that also the impact of the conflict is to be assessed, for instance by looking at the destruction of human life, livestock and property.

Also during the interviews, several barriers which may have affected the data became clear. First of all, the use of an interpreter was necessary, but this could have led to a loss of information reaching the researcher, especially during village meetings, where discussions had to be summarized in order to keep up with the speakers. The sensitivity of subjects, especially land and conflicts, has also affected the information which was provided. In several cases, informants were giving contradictory information. Even though information was cross-checked as much as possible, in some cases this was not possible. Especially when the conflict became fiercer, it appeared that 90% of what the local residents told were rumours, and it was very hard to tell facts from rumours.

For future research, it would also be helpful if either the research area was to be reduced, or the research capacity enlarged. In the Tana delta, there should be 34 sub-location peace committees, 15 location peace committees, three division peace committees and a District peace committees active, in addition to several council of elders. While I partly focused on the District Peace Committee, an emphasis on the lower level peace committees should be encouraged in future research. Since these committees cover a smaller area, they are likely to be less involved ad hoc, whereas the District Peace Committee reacted when there were larger conflicts and during these follow-ups, but were less involved in peace building and earlier stages of conflict. Information on the number of cases every peace committee on all levels deal with, how these are settled, and whether these settlements were successful would therefore be much wanted in any future research on informal peace mechanisms. However, given the fact that these initiatives are informal (the majority of lower level peace committees' actions are not reported to the Provincial Administration or DPC), a systematic analysis is challenging at the least.

Since Kenya is still in the process of their constitutional reforms, it will be interesting how this will affect the Tana delta. Devolution is likely to lead to a perceived (geographical and cultural) smaller distance between the Tana delta and the government. Although this won't make Tana delta residents embrace the government, it could eventually lead to greater trust of the authorities, which would also affect peace committees. On the other hand, the stakes for regional political control are now higher than before. Accountable governance, so governance is not used to the benefit of one community, is therefore a necessity. Currently, the Pokomo have almost no political representation. If this leads to (political) marginalization in the coming years, violence is not likely to stop.

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Appendix

Appendix A: Interview guide

Interview outline

1. Introduction (note down: date, time, place, attendees, weather, special surroundings)

- Welcome: name; master student in human geography at RU Nijmegen
- Topic: Interest in the interplay of local livelihoods in Tana Delta region, especially if and how livelihoods and conflict situations between communities are/ will be affected by the leasing out of large land tracts in the delta to domestic and international investors, specifically G4; plus the role of peace committees, both at district level and local peace committees
- Purpose of research: master thesis; CoCooN (Conflict and Cooperation over Natural Resources in Developing Countries – program funded by several Dutch institution; research taking place in seven nations including Kenya with several sub projects in each country including Tana Delta; link between conflict/ cooperation and natural resources)
- Role of interviewee: one interview of about one hour; data will be used anonymously (make sure to articulate this in a careful way, so interviewee is not scared); remind that he/ she can speak in his/ her native language (translator)
- Thanks for collaboration

2. Entry to and development of the topic

- 2.1 Description of family livelihood on a daily and a seasonal basis
(2.1.1 Beforehand note household characteristics: members; age; education; ethnicity; sources of income next to main means of subsistence if existent)
 - Means of subsistence
 - Sedentary or movements according to seasons
 - Dependence on/ use of natural resources (water; pasture etc)
 - Production for market or only for oneself; future potential
- 2.2 Personal attachment to/ identification with this particular way of life
 - Self-understanding as a member of particular community
 - Plans for own future working life (wishes; realistic expectations)
- 2.3 Interplay of distinct livelihoods in the Tana Delta/ Conflict Situations (remind of anonymity if necessary)
 - Perceptions of the conflict situations; between whom; underlying reasons
 - Perceptions of distinct communities; why stay livelihoods distinct (e.g. no intermarriages)
 - Personal experiences of conflicts; own involvement
- 2.4 Peace committees
 - Which peace committees are active in your area? Which should be active?

- Describe the main characteristics (age(group), ethnicity, gender, village) of the location and sub-location PCs
- History of the Peace Committee, when initiated and by whom?
- Which bylaws are used, and how do these relate to traditional laws?
- Funding, by whom, etc.
- Volunteerism, an issue? Any compensation?
- Representation, people feel well represented? How are elections done, how are these minority positions divided?
- Dealing with conflicts:
 - Preventing conflicts
 - Settling conflicts (short term and long term)
- An account of the last conflicts the PC was involved with
- What are the hotspot areas for conflicts
- When is which level peace committee active?
- Is there interference from politicians?
- What is the role of the government in peace committees?
- What is the legal position of peace committees? Use of statutory or customary law?
- What is the consequence of foreign pastoralists? How do peace committees deal with foreign pastoralists?
- What is the role of the elders? (authority, NRM, intercommunal conflicts, politics)

2.5 Large scale land acquisitions

- Personal knowledge about ongoing investment activities
- Personal opinion concerning the investments; perceived as opportunity (wage employment, secondary labor conditions like insurance etc) or threat
- Opinion concerning impacts on local livelihoods
- Involvement of local people/ communities/ institutions/ organizations; what kind of involvement; positively or negatively perceived

2.6 G4 / Wachu ranch

- Interviewee a ranch member?
- History of the Wachu ranch
 - Who started it?
 - Controversy surrounding ranches?
 - Activities until now ?
 - Future plans?
- Current status leasehold
- G4 deal:
 - Who took the initiative
 - Reception G4 plan
 - Bedford also in the picture?
 - Current status G4 now?
 - Reason G4 pulled out
 - Opinion on this
 - Heard of newly interested investors? Del Monte?
 - Initiative by whom?
 - Which crops will they grow?
 - Where? Size plantation

- Employment opportunities?
- Processing fruits?
- Heard anything on 'squatters'?
- Lease periods mentioned with Del Monte?

2.7 Impacts on conflict situations

- Potential effects of investments on local conflict situations (reasons)
- Potential new forms of cooperation (e.g. joint position in negotiations to strengthen negotiating power) between local communities (reasons)
- Potential of new conflicts (new actors; different levels; different ways; e.g. between locales and investors)

2.8 Ideas concerning improvements of investments

- Characteristics an investment should have to bring benefits to locales
- Personal thoughts on ways new conflicts or further fuelling of existing conflicts could be avoided

3. Closing

- Characteristics of interviewee: age; sex; education; hometown; community belonging (tribe); membership in or support of a certain local organization (lobby)
 - At least one of the following three proxies for social class:
 - Monthly family income
 - Size of land under cultivation
 - Number of animals owned/ herd size
- Thanks for collaboration
- Note down: ending time

Appendix B: Questionnaire

Name of interviewer:

Nr. Questionnaire: Date: __. __. 2012

A: PERSONAL CHARACTERISTICS OF HEAD OF HOUSEHOLD

Name of head of household:

Name of respondent (if different):

Q1. Sex: m/f

Q2. Age:

Q3. Marital status:

(1=single; 2=married monogamous; 3=married polygamous; 4=divorced/ separated; 5=widowed)

Q4. Ethnic group/ Community:

Q5. Main location of residence:

Q6. since: _____

Location of Interview:

Q7. Education:

(0=none; 1_=primary school; 2_=secondary school; 3_=college; 4_=university 5 (Koranic school)

(indicate the last class as well, e.g 14 = primary school, standard four), 23 = secondary school form three).

B: HOUSEHOLD CHARACTERISTICS AND AVAILABILITY OF NATURAL RESOURCES

Q8. Household composition

	Male	Female
Number of children (0-4 years)		
Number of children (5-19 years)		
Number of adults (20-59)		
Number of adults (60+)		

Q9. Main household occupation/ main source of income:

(1)=livestock keeping; (2)=farming; (3)=fishing; (4)=hunting/ gather.(5)=shop keeping; (6)=trading (agr); (7)=trading (non-agr); (8)=white collar job; (9)=blue collar job (10)other:specify _____)

Q10. Other sources of income next to main occupation (more than one answer possible):

(1)=livestock keeping; (2)=farming; (3)=fishing; (4)=hunting/gathering;(5)=shop keeping; (6)=trading (agr); (7)=trading (non-agr);(8)=white collar job; (9)=blue collar job (10)other: _____)

Q11. Number of animals belonging to the household:

	Nr
Cattle	
Goats/ Sheep	
Camels	
Chicken	
Others/Specify:	
1.	
2.	

Q12. Is this number of animals sufficient for the household's milk consumption need? ++ / + / ± / - / - -DN NA

Q13. If yes: do you sell milk? Yes / No

Q14. If no: did you ever have a sufficiently large herd? Yes / No
Years ago _____

PASTURE (for households normally involved in herding animals (if not applicable use code NA))

Q15. Is the pasture in use by the household an:

Individual ranch O / group ranch O / company ranch O / trust land O else _____ O

Q16. Which areas do you use to graze your animals?

- Near homestead O / else _____ O _____ km

Area	When (Dry season/Wet season)	Kilometers from Homestead

Q17. Is there enough grazing land available for your household in the dry season? ++ / + / ± / - / -- DN NA

Q18. Is there enough grazing land available for your household in the wet season? ++ / + / ± / - / -- DN NA

Q19. If negative: since which year does the household lack sufficient grazing pastures? YEAR _____

Q20. how would you indicate the trend of **good grasses** available in recent years compared to 1990

++ / + / same / - / --

Q21. how would you indicate the trend of **bad grasses** available in recent years compared to 1990

++ / + / same / - / -- (++ means many more bad grasses!)

Q22. If quality of pasture is decreasing please indicate reasons for this negative trend

	Agree/disagree	DN	NA
1. more animals (overgrazing – erosion)	++ / + / ± / - / --	DN	NA
2. less animals (undergrazing – shrub/bush)	++ / + / ± / - / --	DN	NA
3. (bad)invading plant species (<i>mathenge</i>)	++ / + / ± / - / --	DN	NA
4. salty water flooding	++ / + / ± / - / --	DN	NA
5. salinization of groundwater	++ / + / ± / - / --	DN	NA
6. more shambas encroaching on pastures	++ / + / ± / - / --	DN	NA
7. more wildlife competing over grass	++ / + / ± / - / --	DN	NA
8. new (fenced) activities, e.g. <i>jatropa</i>	++ / + / ± / - / --	DN	NA
9. Lack of finances to buy/lease pasture	++ / + / ± / - / --	DN	NA
10. less flooding of river /drying of water sources	++ / + / ± / - / --	DN	NA
11. less rainfall	++ / + / ± / - / --	DN	NA
12. longer dry seasons	++ / + / ± / - / --	DN	NA
13. higher temperatures	++ / + / ± / - / --	DN	NA
14. urbanization	++ / + / ± / - / --	DN	NA
15. _____	++ / + / ± / - / --	DN	NA

ARABLE LAND (SHAMBAS) (If applicable)

Q23. Which areas does your use to cultivate? – near homestead O / else: _____ O

Q24. Size of land/ Crops under cultivation

	acres	Rainfed/irrigated		acres	Rainfed/irrigated
Maize			Tomatoes		
Beans					
Peas					
Rice					
Vegetables					
Cassava			Land cultivated		
Tobacco			Land idle		
Watermelons			Land owned		
Onions			Land rented		

If idle land mention reason: lack of labour O/ lack of finance for inputs O / environmental reasons O / other O (explain)

Q25. Is there enough good arable land available for your household? ++ / + / ± / - / -- DN NA

Q26. If less good arable land available in this region what are the reasons for this trend:
agree/disagree

- | | | | |
|---|---------------------|----|----|
| 1. Absolute lack of arable land/head(pop density) | ++ / + / ± / - / -- | DN | NA |
| 2. Relative lack of arable land due to skewed ownership | ++ / + / ± / - / -- | DN | NA |
| 3. Lack of finances to buy/lease a shamba | ++ / + / ± / - / -- | DN | NA |
| 4. Increasing pressure from herds on arable land | ++ / + / ± / - / -- | DN | NA |
| 5. Increasing pressure from wildlife/tourism on arable land | ++ / + / ± / - / -- | DN | NA |
| 6. New (fenced) commercial activities, e.g. jatropha | ++ / + / ± / - / -- | DN | NA |
| 7. Salty water flooding | ++ / + / ± / - / -- | DN | NA |
| 8. Salinization of groundwater | ++ / + / ± / - / -- | DN | NA |
| 9. Less flooding of river | ++ / + / ± / - / -- | DN | NA |
| 10. Reduced soil fertility | ++ / + / ± / - / -- | DN | NA |
| 11. Increased soil erosion | ++ / + / ± / - / -- | DN | NA |
| 12. Urbanization competing over land | ++ / + / ± / - / -- | DN | NA |
| 13. _____ | ++ / + / ± / - / -- | DN | NA |

Q27. On your **shamba** is there a noticeable erosion/denudation of the soil? ++ / + / ± / - / -- DN NA

Q28. Are measures taken to

- | | | | |
|----------------------|--------------------|---------------------------------|--------------------|
| A. reduce erosion | O yes – no O DN NA | B. improve soil nutrient levels | O yes – no O DN NA |
| - gabions | O yes – no O DN NA | - farmyard manure | O yes – no O DN NA |
| - fanya juu terraces | O yes – no O DN NA | - artificial manure | O yes – no O DN NA |
| - _____ | O yes – no O DN NA | - fallow | O yes – no O DN NA |
| | | - crop rotation | O yes – no O DN NA |
| | | - _____ | O yes – no O DN NA |

WATER RESOURCES

Q29. Does your household use water from:	ALWAYS	AFTER RAINS ONLY	STRESS PERIOD ONLY	DIS-TANCE	OWNERSHIP	LIVESTOCK USE (give order importance)	HUMAN CONSUMPTION (order)	USED FOR CULTIVATION (order)
1. shallow well	y / n	y / n	y / n	km	ind/gr/gov	y / n ___	y / n ___	y / n ___
2. borehole	y / n	y / n	y / n	km	ind/gr/gov	y / n ___	y / n ___	y / n ___
3. water pan/hole	y / n	y / n	y / n	km	ind/gr/gov	y / n ___	y / n ___	y / n ___
4. dam	y / n	y / n	y / n	km	ind/gr/gov	y / n ___	y / n ___	y / n ___
5. roofcatchmentwaterjar	y / n	y / n	y / n	km	ind/gr/gov	y / n ___	y / n ___	y / n ___
7. pipeline watertap	y / n	y / n	y / n	km	ind/gr/gov	y / n ___	y / n ___	y / n ___
8. river	y / n	y / n	y / n	km	ind/gr/goc	y / n ___	y / n ___	y / n ___
9. _____								

Q30. Is there enough water available for your **household (human) consumption**? ++ / + / ± / - / -- DN NA

Q31. If negative for how long (months) do you experience scarcity of drinking/cooking water? _____

Q32. Reason for drinking water scarcity (e.g. cost, absolute availability):

Q33. Is there enough water available for your hh's **economic activities (agriculture)**? ++ / + / ± / - / -- DN NA

331- rainfed agric. ++ / + / ± / - / -- DN NA how long (in months) do you miss water: trend (10yrs) : + ± -

332- irrig. agric.: ++ / + / ± / - / -- DN NA how long (in months) do you miss water: trend (10yrs) : + ± -

333- livest. keeping : ++ / + / ± / - / -- DN NA how long (months) do you miss water: trend (10yrs) : + ± -

334- fishing ++ / + / ± / - / -- DN NA how long (in months) do you miss water: trend (10yrs) : + ± -

Q34. How is the quality of the water for:

351 human consumption ++ / + / ± / - / -- DN NA

352 for agricultural purposes ++ / + / ± / - / -- (explain if negative) DN NA

FOREST PRODUCTS (if applicable)

Q35. Quantity of trees in the area ++ / + / ± / - / -- Explain trend (last 10yrs) : + ± -

Q36. Does your household use trees/forests for:

361 Firewood O yes / No O

362 Charcoal O yes / No O

363 Honey collection O yes / No O

364 Medicines O yes / No O

365 _____ O yes / No O

Q37. Are there sufficient forest resources available for your household?

371 firewood ++ / + / ± / - / -- DN NA

372 honey ++ / + / ± / - / -- DN NA

373 medicines ++ / + / ± / - / -- DN NA

374 _____ ++ / + / ± / - / -- DN NA

FISHERIES (if applicable)

Q38. Quantity of fish in the area ++ / + / ± / - / -- Explain trend (last 10 years): : + ± -

Q39. Does your household catch fish for:

391 Home consumption yes / No

392 Commercial purpose yes / No

Q40. Is there sufficient fish available for your household?

401 Home consumption ++ / + / ± / - / -- DN NA

402 Commercial purpose ++ / + / ± / - / -- DN NA

WILDLIFE (if applicable)

Q41. Quantity of wildlife in the area ++ / + / ± / - / -- Explain trend (last 10 years): : + ± -

Q42. Does your household use wildlife (products e.g., feathers) for:

421 Home consumption yes / No

422 Commercial purpose yes / No

423 Main source: (eg.) _____

Q43 Are there sufficient wildlife products available for your household?

431 Home consumption ++ / + / ± / - / -- DN NA

432 Commercial purpose ++ / + / ± / - / -- DN NA

OTHER NATURAL RESOURCES (e.g. sand harvesting, minerals, precious metals, etc)

Q44 Quantity of other resources in the area ++ / + / ± / - / -- Explain trend (last 10 years): + ± -

Q45 Does your household use other natural resources (**specify**) for:

451 Home consumption yes / No

452 Commercial purpose yes / No

Q46 Are there sufficient other natural resources available for your household?

461 Home consumption ++ / + / ± / - / -- DN NA

462 Commercial purpose ++ / + / ± / - / -- DN NA

C: CONFLICTS/COMPETITION OVER NATURAL RESOURCES

Q47 Which statement would characterize the use of natural resources in this **REGION** best:

In this region the people use the natural resources available:

471 WATER: Without conflicts / some conflicts / frequent conflicts

472 LAND (SHAMBA): Without conflicts / some conflicts / frequent conflicts

473 LAND (Pasture): Without conflicts / some conflicts / frequent conflicts

474 FOREST/WOOD: Without conflicts / some conflicts / frequent conflicts

475 FISHERIES Without conflicts / some conflicts / frequent conflicts

476 WILDLIFE Without conflicts / some conflicts / frequent conflicts

477 OTHER _____ Without conflicts / some conflicts / frequent conflicts

D: CONFLICTS OVER NATURAL RESOURCES EXPERIENCED BY THE HOUSEHOLD MEMBERS THEMSELVES !!!

Q48 Please specify all conflicts experienced by your households. Please mention the kind of conflict, natural resource involved, the cause, the other party involved besides the household, the intensity, the outcome for the household) (e.g. Human-wildlife: all maize (1 acre) eaten by baboons, somehow positive outcome for hh because of compensation by KWS).

For every conflict-time frame the following questions will be asked: use same scale as other questions (++ / + / ± / - / -- DN NA)

- A. During this specific conflict, was there any involvement from a peace committee?
- B. If yes, which peace committee intervened? **(If this is not the TDPRC, write down name and the main members involved, age(group), gender, ethnicity and village)**
- C. During this specific conflict, how active was the peace committee in finding a resolution to settle the conflict?
- D. During this specific conflict, how beneficial to you, was the intervention of the peace committee?
- E. During this specific conflict, how beneficial to the other party, was the intervention of the peace committee?
- F. Have you changed your opinion on the peace committee after its involvement and in what way?

481 The last month:

481A PC active: O yes / No O

481B Which PC: _____

481C How active: ++ / + / ± / - / -- DN NA

481D Beneficial to you ++ / + / ± / - / -- DN NA

481E Beneficial to other ++ / + / ± / - / -- DN NA

481F Changed opinion? ++ / + / ± / - / -- DN NA

482 The last year (excl last month):

482A PC active: O yes / No O

482B Which PC: _____

482C How active: ++ / + / ± / - / -- DN NA

482D Beneficial to you ++ / + / ± / - / -- DN NA

482E Beneficial to other ++ / + / ± / - / -- DN NA

482F Changed opinion? ++ / + / ± / - / -- DN NA

483 The last 10 years (excl last year)

483A PC active: O yes / No O

483B Which PC: _____

483C How active: ++ / + / ± / - / -- DN NA

483D Beneficial to you ++ / + / ± / - / -- DN NA

483E Beneficial to other ++ / + / ± / - / -- DN NA

483F Changed opinion? ++ / + / ± / - / -- DN NA

484 Ever (excl last 10 years)

- 484A PC active: O yes / No O
 484B Which PC: _____
 484C How active: ++ / + / ± / - / -- DN NA
 484D Beneficial to you ++ / + / ± / - / -- DN NA
 484E Beneficial to other ++ / + / ± / - / -- DN NA
 484F Changed opinion? ++ / + / ± / - / -- DN NA

Q49. The conflict that was most severe for the household's economy was: (explain)

Q50. Please indicate what the frequency of conflicts over the different **NATURAL RESOURCES in the REGION** (not necessarily directly involving the HH members) are in the LAST YEAR (e.g. 5 = five conflicts last year). **CIRCLE THE CONFLICT THAT IS MOST SEVERE IN IMPACT ON THE REGION' S ECONOMY!**

Conflict over	Water	land cultivation	land grazing (pasture)	Forest/wood	Fisheries/wildlife	Other/ specify:
Party involved						
Intra-group						
Inter-group						
Group – government						
Group-private business						
Human- wildlife						
Other:						

Q51 Which of these conflicts have been on the INCREASE/DECREASE in recent years? USE ++/+/±/-/ --

Conflict over	Water	land cultivation	land grazing (pasture)	Forest/wood	Fisheries/Wildlife	Other/ specify:
Party involved						
Intra-group						
Inter-group						
Group – government						
Group-private business						
Human- wildlife						
Other:						

Q52. Which of these conflicts will likely INCREASE/DECREASE in the near future? ++/+/±/-/-

Conflict over	Water	land cultivation	land grazing (pasture)	Forest/wood	Fisheries/wildlife	Other/ specify:
Party involved						
Intra-group						
Inter-group						
Group – government						
Group-private business						
Human- willdife						
Other:						

E: CO-OPERATION/RECONCILIATION

Q53. Which institutions have been effective in resolving conflicts in the past? Please use +++/ ++ / +
If a conflict type does not exist in your opinion please mark it with the letters NA.

Conflict over	Traditional peace committee	Government (e.g. police)	Religious organizations	NGOs (local/international)	Other
Party involved					
Intra-group					
Inter-group					
Group – government					
Group-private business					
Human-wildlife					
Other:					

Q54. Beside reconciliation efforts which actions would be most helpful to prevent the occurrence of conflicts in general:

- 541 Gazette the (contested part of) basin as a conservation area managed by KWS ++ / + / ± / - / - - DN NA
 542 Gazette the (contested part of) the basin as community land ++ / + / ± / - / - - DN NA
 543 Gazette the(contested part of) the basin as a private land ++ / + / ± / - / - - DN NA
 544 Start joined econ activities of women groups (e.g. pastoralists and cultivators) ++ / + / ± / - / - - DN NA

545 Start joined econ activities of youth groups (e.g. pastoralists and cultivators)	++ / + / ± / - / - -	DN NA
546 disarm warriors	++ / + / ± / - / - -	DN NA
547 education	++ / + / ± / - / - -	DN NA
548 promotion of non-natural resource based employment	++ / + / ± / - / - -	DN NA
549 other:	++ / + / ± / - / - -	DN NA

And in relation to specific natural resources:

Q55. LAND/PASTURE	551 introduce better/other breeds of animals	++ / + / ± / - / - -	DN NA
	552 upgrade dry season grazing areas	++ / + / ± / - / - -	DN NA
	553 fodder provision in dry season (feedlots)	++ / + / ± / - / - -	DN NA
	554 land tenure change (specify how)	++ / + / ± / - / - -	DN NA
	555 other:	++ / + / ± / - / - -	DN NA

Q56. LAND/ARABLE	561 improve soil fertility	++ / + / ± / - / - -	DN
	562 improve seeds	++ / + / ± / - / - -	DN NA
	563 turn rainfed into irrigated agriculture	++ / + / ± / - / - -	DN NA
	564 better fencing	++ / + / ± / - / - -	DN NA
	565 extension grass feedlot for pastoralists	++ / + / ± / - / - -	DN NA
	566 farming land redistribution	++ / + / ± / - / - -	DN NA
	567 farm land tenure change (specify how)	++ / + / ± / - / - -	DN NA
	568 provision of corridors	++ / + / ± / - / - -	DN NA
	569 other:	++ / + / ± / - / - -	DN NA

Q57. WATER	571 Increase use of roof water harvesting	++ / + / ± / - / - -	DN NA
	572 increase/reduce number of shallow wells	++ / + / ± / - / - -	DN NA
	573 increase/reduce number of boreholes	++ / + / ± / - / - -	DN NA
	574 enhance watershed man. by reducing run-off water	++ / + / ± / - / - -	DN NA
	575 control upstream river water extraction	++ / + / ± / - / - -	DN NA
	576 control upstream river water pollution	++ / + / ± / - / - -	DN NA
	577 other:	++ / + / ± / - / - -	DN NA

Q58. FOREST	581 stop cutting trees	++ / + / ± / - / - -	DN NA
	582 reforestation of riverine area	++ / + / ± / - / - -	DN NA
	583 alternative sources of income to charcoal burning	++ / + / ± / - / - -	DN NA
	584 provide alternative sources of energy for firewood	++ / + / ± / - / - -	DN NA
	585 Other:	++ / + / ± / - / - -	DN NA

Q59. FISHERIES	591 adapt fish extraction to sustainable.level	++ / + / ± / - / - -	DN NA
	592 re-stocking water sources with fish	++ / + / ± / - / - -	DN NA
	593 upgrade/protect breeding grounds	++ / + / ± / - / - -	DN NA
	594 promote pond fish (aquaculture)	++ / + / ± / - / - -	DN NA
	595 other:	++ / + / ± / - / - -	DN NA

Q60. WILDLIFE	601keep wildlife in sustainable numbers (cropping)	++ / + / ± / - / - -	DN NA
	602 implement wildlife damage compensation programmes	++ / + / ± / - / - -	DN NA
	603 provide wildlife corridors away from shambas	++ / + / ± / - / - -	DN NA
	604 start genuine community based tourism projects	++ / + / ± / - / - -	DN NA
	605: other	++ / + / ± / - / - -	DN NA

Q61. OTHER	611 control harvesting of sand/gypsum/etc.	++ / + / ± / - / - -	DN NA
	612 other	++ / + / ± / - / - -	DN NA

F: CAPITAL ASSETS/FUTURE

- Q62. Does the household receive remittances/gifts? on average Ksh _____ per _____ from _____
- Q63. Does the household have a commercial plot? no/yes nr _____ Where _____
- Q64. Does the household have a residential plot? no/yes? Number _____
- Q65. Does the hh have a brick house O / iron sheet roofing O/ car O / motorbike O/ bicycle O / donkeycart O / TV O / radio O/ mobile telephone O/ biogas O/solar energy O/ electricity line O/ bank account O
- Q66. Did the household receive food aid in the last month? O no/yes O
- Q67. Is the household member of a co-operative group/society O no/yes O
- Q68. Could you mention the three major problems this household is facing?
 1. _____ 2. _____
 3. _____

Q69. Please indicate your opinion on the future's viability of the household's main occupation on a scale from
 ++ / + / ± / - / -- DN NA

Q70. Does the household intend to specialize further in this main occupation? Yes O / Maybe O / No O DN NA

Q71. If negative opinion for what reason?

Q72. Does the household intend to (further) diversify its economic activities? Yes O / Maybe O / No O DN NA

Q73. If yes, in what kind of activity will the household diversify its economic activities? (open question, explain

TANA BASIN SPECIFIC QUESTIONS

Large scale investments

In recent months and years several institutional and commercial investors originating from Kenya as well as from abroad expressed their interest in long term leasing of large land tracts in the wider Tana Delta region in order to grow crops for bio fuel production, food crops and also to start mining activities. The first questions will be on large scale investments in general, later on we will focus on the G4 planned investment.

Q74. Of how many proposed investment projects are you aware next to the TARDA plantation and the Bedford biofuel project? (please give names/descriptions):

Q75. Do you feel sufficiently consulted about the proposed projects either by government authorities or by the potential investors?	TARDA/Mumias	++ / + / ± / - / --	DN NA
	Bedford biofuels	++ / + / ± / - / --	DN NA
	Other: _____	++ / + / ± / - / --	DN NA

Q76. Do you expect these investments to create jobs with reasonable payment and working conditions for local people? ++ / + / ± / - / -- DN NA

Q77. Would wage-labour on these plantations be a desirable option for members of this hh?
 ++ / + / ± / - / -- DN NA

Q78. Do you expect these investments to increase water scarcity? ++ / + / ± / - / -- DN NA

Q79. Do you expect these investments to increase scarcity of crop land? ++ / + / ± / - / -- DN NA

Q80. Do you expect these investments to increase scarcity of grazing land? ++ / + / ± / - / -- DN NA

Q81. If the delta is lost for grazing/agriculture where would your household go and where as a result might competition increase?

Q82. Do you fear to be evicted from your place of residence because of these large scale investments?
 ++ / + / ± / - / -- DN NA

Q83. Please indicate which local communities will be affected from these investments for what reason in the following matrix using ++ / + / ± / - / -- DN NA

	Farming communities	Pastoralist communities	Landless communities	Other/ specify:
Payment of rents, compensations				
Infrastructure improvements				
Employment opportunities				
Other/ specify:				

Q84. What is your overall opinion concerning the impacts of these investments on local development?

++ / + / ± / - / -- DN NA

Q85. Please indicate if these investments will increase EXISTING conflicts and for what reason using the following scores ++ / + / ± / - / -- DN NA

	Intra-group	Inter-group	Human-wildlife	group-government	Group-private	Other/specify:
Increased water scarcity						
Increased crop land scarcity						
Increased grazing land scarcity						
Displacements						
Other/ specify:						

Q86. Will there be a NEW type of conflict between local groups and the new investors

(very likely) ++ / + / ± / - / -- (very unlikely) DN NA

Q87. Will there be new types of cooperation between local groups because of these investments? (more than one answer is possible):

(1=no; 2=common resistance; 3=joint positions in negotiations; 4=new rules of water sharing; 5=new rules of land sharing; 6=other/ specify)

G4 plantation

In 2010 a British company, G4 Industries , was planning to start a sunflower-based biofuel project in the Tana Delta at the Wachu Ranch. In the end, the project was cancelled because of environmental concerns.

- Q108. In January 2010, were you consulted by the G4 company? O yes / No O
- Q109. Were you satisfied with this consultation? ++ / + / ± / - / -- DN NA
- Q110. How well were you informed on the contents of the G4 project? ++ / + / ± / - / -- DN NA
- Q111. Were there promises made to you concerning newly created jobs? O yes / No O
- Q112. Would you have preferred working for the G4 project ? ++ / + / ± / - / -- DN NA
- Q113. What did you expect you would earn if you would've been working for G4? Ksh_____ per month
- Q114. Did G4 ever contact you about out-grower schemes? O yes / No O
- Q115. If yes, what was your opinion on these out-grower schemes? ++ / + / ± / - / -- DN NA
- Q117. Did you hear of evictions from the Wachu ranch? O yes / No O
- Q118. Were you evicted from the Wachu ranch? O yes / No O

In case of eviction respondent: Write down details: When was the eviction, how much households were affected, compensation, where did they settle?

- Q119. According to you, how should the Wachu ranch be mainly used in the future?
- O Grazing lands
 - O large scale irrigation project
 - O small scale irrigation projects
 - O Rain fed agriculture
 - O Other: _____

- Q120. Do you grow (or tried) any of the following crops in order to make biofuel:
- | | |
|--------------------|------------------|
| Sunflower | O Grow / O Tried |
| Groundnut | O Grow / O Tried |
| Crambe | O Grow / O Tried |
| Jatropha Curcas | O Grow / O Tried |
| Pongamia | O Grow / O Tried |
| Jatropha multifida | O Grow / O Tried |
| Castor | O Grow / O Tried |
| Other | O Grow / O Tried |

- Q121. Consider it successful growing this crop?: Crop #1: _____ ++ / + / ± / - / -- DN NA
 O Own use / O Commercial use
- Answer only if crop is grown (or tried) by resp.**
- Crop #2: _____ ++ / + / ± / - / -- DN NA
 O Own use / O Commercial use
- Crop #3: _____ ++ / + / ± / - / -- DN NA
 O Own use / O Commercial use

Q122.. In general, how do you feel about the cancellation of the G4 project? ++ / + / ± / - / - - DN NA

Tana Delta Peace committee

Q123. How familiar are you with the TDPRC? ++ / + / ± / - / - - DN NA

Q124. How do you feel about your representation in the Tana Delta district peace committee?
++ / + / ± / - / - - DN NA

Q125. If unsatisfied, what are the main problems? O Underrepresentation of respondents gender
O Underrepresentation of respondents age group
O Underrepresentation of ethnic group
O Other:

Q126. How much trust do you have in the current Tana Delta district peace committee? ++ / + / ± / - / - -
DN NA

Q127. How much trust do you have in the current Tana Delta district committee in **settling conflicts**?
++ / + / ± / - / - - DN NA

Q128. How much trust do you have in the current Tana Delta district committee in **preventing future conflicts**?
++ / + / ± / - / - - DN NA

Local peace committee

Q129. Is there a **local** peace committee active in your village? O yes / No O

Q130. How familiar are you with the local peace committee? ++ / + / ± / - / - - DN NA

Q131. How do you feel about your representation in the local peace committee? ++ / + / ± / - / - - DN NA

Q132. If unsatisfied, what are the main problems? O Underrepresentation of respondents gender
O Underrepresentation of respondents age group
O Underrepresentation of ethnic group
O Other:

Q133. How much trust do you have in the current local peace committee in **settling conflicts**?
++ / + / ± / - / - - DN NA

Q134. How much trust do you have in the current local peace committee in **preventing future conflicts**?
++ / + / ± / - / - - DN NA

In case of a local peace committee, write down the main members (if you didn't do this in Q.48), age(group), sex, ethnicity and village they are based)

Appendix C: Sections of relevant law codes

Kenya constitution, Article 159

159. (1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.

(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

(a) justice shall be done to all, irrespective of status;

(b) justice shall not be delayed;

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);

(d) justice shall be administered without undue regard to procedural technicalities; and

(e) the purpose and principles of this Constitution shall be protected and promoted.

(3) Traditional dispute resolution mechanisms shall not be used in a way that—

(a) contravenes the Bill of Rights;

(b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or

(c) is inconsistent with this Constitution or any written law.

Criminal Procedure Code, section 175: Promotion and reconciliation

“In all cases the court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, or terms of payment of compensation or other terms approved by the court, and may there upon order the proceedings to be stayed or terminated”

The Judicature Act, Section 3: Mode of exercise of jurisdiction

1) The jurisdiction of the High Court, the Court of Appeal and all subordinate courts shall be exercised in conformity with:

a) The constitution

b) Subject thereto, all other written laws, including the Acts of Parliament of the United Kingdom cited in Part I of the schedule to this Act, modified in accordance with Part II of this schedule.

c) Subject thereto, and so far as those written laws do not extend or apply, the substance of the common law, the doctrine of equity and the statutes of general application in force in England on the 12th August, 1897, and the procedure and practice observed in courts of justice in England at that date.

But the common law, doctrines of equity and statutes of general application shall apply so far only as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.

Appendix D: Rules of war for Orma and Wardei

1. Women, children, the very old and mad people are not to be killed or attacked and should not go to war. People who kill such people become Yakka or outcasts. Also it is believed that killing such people leads to bad luck during conflicts – such as defeat.
2. Food stores and livestock were not to be destroyed or killed.
3. Women should not be raped. Women and children may be captured. Women in captivity should not be “touched” until they are socialized into the community and then married off properly in the community. Alternatively, if they wish, they should be returned to their own communities after the conflict is over.
4. In the process of spying or Doya, spies should not be killed. They should be taken to the Matadeda elders where they would be warned and released.
5. People found worshipping should not be killed.
6. Taking loot is acceptable.
7. The Pokomo should be fought only with walking sticks and not the spear or a knife so that no blood is shed since they are weaker in strength and are like brothers.
8. Fugitives even if they belong to the enemy camp should not be killed, but should be taken care of until it is peaceful for them to go to their land.

Source: Retrieved from Martin (2012).