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A victory in theory, loss in practice: struggles for political representation in the Lake Baringo-Bogoria Basin, Kenya

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ABSTRACT

This article addresses political rights and identity among Il Chamus of Baringo District, Kenya, a small group of agro-pastoralists related to the Maasai. It discusses an important 2006 judicial ruling from the High Court of Kenya that specified a political constituency and national representation for the community, and shows how the state and its actions undermined its implementation. By examining the historical events and struggles leading up to the court ruling and the local violence associated with it, the article describes how Il Chamus have been forced to negotiate – even publically legislate – their histories and identities (indigeneity) to make claims to citizenship and territory. It concludes with a discussion of the impacts of the new 2010 constitution on the Il Chamus political movement and those of other minority and indigenous groups who have petitioned for increased political representation during the last two decades.

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On 6 December 2006 judges in the High Court of Kenya ruled that Il Chamus, a small community of Maa-speaking agro-pastoralists in Baringo District, should have their own political constituency and Member of Parliament (MP) because of their minority status. This judicial case and its timing reflect a period in Kenyan political history when small indigenous communities were taking advantage of democratic reforms and a clause in the old Kenyan constitution about political representation for minority groups. Most surprising in the Il Chamus case, however, was the fact that this court ruling divides up the home constituency of former President Daniel arap Moi, a blow to his legacy and the political prospects of his sons. The judges agreed with the community's petition that, because of their minority status and small size, they could not be effectively represented by a MP from Baringo's majority group, Tugen. The legal victory, which followed more than three years of court proceedings, was celebrated among minority and indigenous rights organizations, and featured in a story by the British Broadcasting Company (BBC) with the headlines "Landmark ruling for Kenya nomads."¹ Although the ruling was reconfirmed in the courts in 2007, the Il Chamus community still remains without a political constituency and MP as of 2015.

This article captures both the turbulent period of the 1990s when Kenya's ruling political party, Kenyan African National Union (KANU), begrudgingly gave into demands for multi-party democracy, and the post-Moi period (post-2002) when increased political space allowed Il Chamus to seek their own political representation, a strategy that invoked considerable violence against them. As the discussion will show, small groups like Il Chamus have been forced to negotiate – even publically legislate – their histories and identities to seek political representation and, ultimately, solidify rights to territory. In doing so, Il Chamus, who number about 35,000, sought strategic alliances with other minority groups, as well as drew on support from concerned international and local non-governmental organizations (INGOs and NGOs). By addressing Kenya's national political dynamics, the article argues that the ambiguities and uncertainties over judicial rulings and authority, indigeneity, and minority status are part and parcel of a political culture where real power and political intent are masked by democratic and legal performances and rituals that seemingly support political decentralization and citizens' rights, but in reality constrain them. It concludes with a discussion of the country's new constitution of 2010 and its implications for minority groups, such as Il Chamus.

History, land and the negotiation of identity

Il Chamus pursue pastoralism, wage employment, and crop cultivation, with the latter two activities increasingly important since the 1980s.² A section of the group, called Keroi, are considered the original population, and still referred to locally as “true” Il Chamus. During the past 200 years Il Chamus have incorporated families and fragments of clans from Maasai, Samburu, Tugen, Rendille, and Turkana that complicate notions of cultural identity even today.³ As was true for other groups in northern Kenya, the advent of British colonialism forced Il Chamus to accept more of a corporate identity and sense of territoriality than at any time in their history. They had to negotiate and defend a certain identity in order to claim a homeland, even when traditions and histories had to be modified or invented. Unlike larger groups such as Maasai and Kikuyu, who were well known to the colonial state, Il Chamus were especially challenged to defend their historical narrative and cultural identity. Even today, Il Chamus culture and history are not well known to most government officials and they are forced to defend territorial rights; although, as will be shown later in the article, their well-publicized court cases against the state have increased their public visibility.⁴

In the mid-1930s the colonial state established the Kenya Land Commission (KLC) to investigate “native” land rights and resolve disputes.⁵ The leaders of different ethnic communities – including Il Chamus – were asked to provide historical and cultural evidence of their movements and territorial claims, involving narrated histories of migrations, land rights, and cultural traditions. In some respects, KLC resembled a judicial hearing where colonial administrators served both as jury and judge, empowered to rule on the authenticity of a particular culture, its history, and claims to territory. At these deliberations Il Chamus elders emphasized the pastoral orientation of their economy and their close ties to Maasai, because the latter group held a special place in the colonial schema of ethnic politics and land rights. The proliferation of Maa names for geographic features and locations in Baringo is clear evidence of a Maasai legacy in the region. To their advantage, the cultural and historical evidence of Il Chamus were accepted by the KLC, and the

colonial state confirmed their rights to key grazing and water resources and formally tied their culture to a piece of territory called Njemps Reserve.

Even before the KLC hearings, Il Chamus faced serious disputes and conflicts with the Kalenjin-speaking Pokot, a considerably larger ethnic group than them. The Pokot community today continue to claim that the KLC and other administrative rulings misread the northeastern boundary between Il Chamus and Pokot by demarcating the border about 13 km within Pokot territory.⁶ Between 2002 and 2014 there were more than five major conflicts between the groups involving loss of human life and the theft of large numbers of Il Chamus livestock, as well as many smaller skirmishes. In conflicts with larger groups, such as Pokot or Turkana, Il Chamus usually sought government assistance and were considered to be allies (“good natives”) of the state, especially the colonial state. Despite the KLC rulings and occasional support from the colonial administration, Il Chamus confronted frequent land encroachments and livestock raiding by Pokot along the disputed northeast boundary, as well as lose of land to Tugen settlers along their southern and western borders. It is not my intention here to defend or validate the different historical claims to land by Baringo’s various communities, either based on the KLC hearings or subsequent deliberations in post-colonial Kenya. Instead, the purpose is to show how current conflicts over land and identity have deep historical roots in the area, and that these continue to flavor contemporary politics and struggles in Baringo.

Regardless of the KLC ruling on boundaries, Il Chamus continued to lose large chunks of their territory to neighboring groups. By Kenya’s independence in 1963, they had relinquished to Tugen about 75% of Arabel, a key grazing zone.⁷ The situation only worsened in the post-colonial period with the political ascendance of Tugen leader and local MP Daniel arap Moi, who was Vice President from 1967 to 1978 and President from August 1978 to December 2002. By the late 1980s, highly prized Arabel and Nglesha – near Laikipia District to the east – were fully occupied by Tugen. In 2002, the locations were placed in a newly formed administrative unit called Mochongoi under control of the Tugen community. Along the western boundary of Il Chamus, a government-sponsored irrigation scheme for Tugen farmers excised a large amount of that area during 1986–1990 to farmers who are now settled up to 3 km inside Il Chamus borders.

Global partners, local courts

As a result of such assaults on their lands and political rights, a strong local movement by Il Chamus for an independent political constituency began to emerge. The consensus by the late 1990s was that only by having their own MP could their lands and livelihoods be protected. But to achieve this they needed support, including legal assistance. One of their strategies was to petition the courts and the Election Commission of Kenya on the grounds that their constitutional right of representation was being denied under the existing political environment. Although Il Chamus leaders claim to have notified the government about a separate political constituency as early as 1998, an active political movement did not take place until President Moi announced his intentions to retire from politics in 2002. If Il Chamus were to be awarded a separate political constituency, it would need to be carved out of Moi’s Central Baringo constituency, which would have been highly unlikely to happen or even be debated during his presidency.

The Il Chamus movement for political representation needs to be understood against the backdrop of sweeping political reforms in Kenya that began in 1991 when the Moi regime, under pressure from Western governments and international donors and in desperate need of economic aid, agreed to multi-party elections and democracy. After more than 25 years as effectively a one-party state, opposition political parties were allowed to form and compete for local and national elections in Kenya, albeit against strong political odds since power remained concentrated in the executive (President) office. In fact, while these changes gave political voice to marginalized groups like Il Chamus, they also created what Nasong'o and Murunga call "democratic dictators"⁸ where a leader, such as Moi, could further consolidate power and punish opposition groups. The 1990s wave of political reforms in Kenya resulted in vicious ethnic politicking as leaders strongly appealed to primordial loyalties and pursued an ethnic-based divide and rule policy. Nobody was better at this than Moi, who saw ethnicity as a convenient vehicle to (1) mobilize support among rural constituents and (2) sharpen (often violently) existing ethnic cleavages. The terrible and well-publicized post-election violence of 2007–2008 brought the country to the brink of collapse, but widespread ethnic-based violence was associated with every multi-party election in Kenya beginning with the first contest in 1992.

The announced retirement of President Moi in 2001 was welcome news to many Il Chamus, but to the community's chagrin his son, Gideon, was designated by the ruling KANU party as heir apparent to the Central Baringo constituency. Although Gideon Moi was elected to his father's parliamentary seat unopposed in 2002 after two candidates withdrew (including an Il Chamus), local resentment emerged almost immediately. A major complaint was that Gideon Moi was little concerned with Il Chamus affairs and rarely visited the area, not even when the community suffered from food problems and attacks by Pokot raiders. As a prominent leader from the area explained to me in 2007, "Our MP does not visit Il Chamus much because he is involved in so many businesses." Another respondent stated: "He [Gideon] was raised in Nairobi and schooled in Europe. He knows nothing of our problems and does not visit the area."⁹ It is generally known in Kenya that Daniel arap Moi's personal fortune exceeds US\$2 billion, while Gideon Moi's wealth probably exceeds US\$200 million.¹⁰ In addition to concerns about his wealthy lifestyle and excessive business interests, others were upset that the MP showed little concern for Il Chamus after a series of deadly attacks by Pokot in 2004 and 2005. A common complaint was that he never attended the local memorials for the deceased or even sent his *pole* (condolences) to the affected families.

In the same year (2002) that Gideon Moi was elected, the government formed a commission to revise the Kenyan constitution. This body provided a national forum for Il Chamus leaders and others to make their cases for political discrimination and injustices. Indeed, the Kenyan Constitutional Reform Commission (CRC) provided a national platform for many communities, especially those that had participated little in national politics, to openly present their cases for representation and retribution for past grievances, including losses of land. Politically underrepresented groups, such as Il Chamus and Ogiek, who are a Kalenjin-speaking group of hunter-gatherers, presented their cases both for political recognition and the recovery of "ancestral lands." To bolster support during the CRC hearings, Il Chamus formed an alliance with a group called the Pastoralists Hunter and Gatherers Ethnic Minority (PHGEM) Network. PHGEM, in turn, made a joint appeal to the CRC on behalf of pastoralists, including Il Chamus, and

hunter-gatherers highlighting the historical abuses they had suffered since the colonial period. To strengthen their appeal, the document produced by PHGEM cited United Nation (UN) and International Labor Organization (ILO) protocols, and drew on other global and legal discourses about indigeneity and human rights.¹¹

Around this same time, Il Chamus leaders began to refer to their community as a minority rather than indigenous group. They did so because of (1) difficulties surrounding the term indigenous in Kenya and Africa generally, and (2) their interactions with global minority rights groups that emphasized the term (for example, the UK-based Centre for Minority Rights Development (CEMIRIDE)). It was a phrase that I had not encountered in any of my earlier work among Il Chamus, but its use was prevalent post-2002. Other minority (indigenous) groups in Kenya pursued similar strategies and alliances with global human and minority rights groups.¹²

Il Chamus' concerns about political marginalization and injustices led to their membership in another organization, the Maa Pastoralists Council (MPC), which represents the views of the larger Maa-speaking community. It includes the Maa-speaking groups of Kenya, including Il Chamus, Maasai, Mukugodo Maasai, and Samburu. Maasai, who number more than 800,000 in Kenya based on the most recent census (2009), were (are) the driving force behind the alliance. The MPC's document that was presented to the CRC highlighted the political marginality and considerable land losses suffered by Maa-speaking peoples, especially the well-known historical removal of Maasai families from the Laikipia Plateau to open the area for European settlement, an event that still enrages most Maasai.¹³ Il Chamus leaders recognize the significance of the MPC for the greater Maa community, but also recognize that the grievances and agendas of Maasai and other Maa speakers, and their historical narratives and political resources, are different than their own. In the words of Joseph Lekulele,¹⁴ an educated Il Chamus civil servant who works in Nairobi: "We do collaborate with other Maa groups, but their situation is different and we are very small. They have their own set of problems – we have ours."¹⁵

The business of the CRC continued until 2005, when a national referendum on a new constitution was held. Prior to the historical vote, the Maa community organized a major political rally at Suswa, northern Narok District, a sacred ritual area for the Maasai community. Il Chamus leaders attended the event. The draft constitution that had come out of the CRC hearings (called the Boma draft) was acceptable to many underrepresented groups in Kenya, but Parliament's revised version of it was opposed by most minority groups. The earlier version included provisions for education, opportunities for minority groups and protection against private land sales of communal lands in pastoralists' areas, which were of great concern for PHGEM, MPC and Il Chamus. Most of the protections and affirmative actions for minority groups were removed in Parliament's version that served as the final document for the national referendum.¹⁶ The collective statement composed at Suswa against the constitution came to be known as the Suswa Declaration, and was acknowledged as an important experiment in democracy and Maa politics. One report from an INGO claimed that:

The Maasai viewed the proposal [Wako draft] with great alarm, and subsequently a myriad of religious organizations, non-governmental organizations, community organizations, and civic leaders successfully spearheaded what one citizen called "one of the fiercest civic education campaigns ever witnessed" in Maasai land.¹⁷

When the national referendum for the new constitution was held in November 2005, it was soundly defeated by a vote of 58% opposed to 42% in favor, which meant that many Kenyans beyond the MPC and PHGEM alliances were against it.

Prior to this vote, a group of four Il Chamus leaders turned to a small law firm in downtown Nairobi, managed by an Il Chamus lawyer, to seek legal advice on strategies for achieving a political constituency. This lawyer had already achieved success and considerable national publicity by representing the Il Chamus community in a well-known law suit against the Government of Kenya for introducing the invasive browse species, *Prosopis juliflora*. This thorny and noxious plant destroyed (and still destroys) local grasslands and waterways. The national media loved the colorful case because herders brought sick goats to court to demonstrate how the plant was harming their livelihood.¹⁸ Using clauses in the constitution that allow a minority group to have their own constituency or be classified a special interest group worthy of national representation, the Il Chamus lawyer and his associates formally petitioned the government on behalf of the community. They argued that the community be allowed a national representative (MP) either by granting them an autonomous political constituency or appointing a designated MP from the community under the constitutional clause that allowed designated appointments for special interest groups. The Il Chamus petition was submitted to the government on 12 March 2004 with 19 declarations, including these two statements:

A declaration that the fundamental right of representation in the National Assembly of the Republic under the provisions of Section 1A of the Constitution of Kenya, has been effectively denied to the Il Chamus Community;

A declaration that the fundamental right of expression protected by section 79 of the Constitution of Kenya has been, is being and is likely to be contravened in relation to the Applicants and the Il Chamus community.¹⁹

As noted above, the petition drew on the provision in the Kenyan constitution that ensures the rights of minorities to political representation. This position is also captured in the claimants' sixth declaration "that the constitutional machinery for the representation and protection of minorities, including the Il Chamus community, to wit the provisions of Section 33 of the Constitution of Kenya, has not been implemented as by the Constitution required."²⁰

To represent them in court, the Nairobi advocates recruited a well-known human rights lawyer, Pheroze Nowrojee, as their legal counsel. A US Library of Congress document on human rights lawyers in Kenya refers to Nowrojee as "one of the most prominent human rights activists in Kenya."²¹ That an award-winning international jurist, such as Nowrojee, would agree to take on the Il Chamus case was an important milestone and a ringing vote of confidence in the legal merit of the case.

Despite their strong cultural and historical ties to Maasai and Samburu, who are another Maa-speaking group in Kenya, the legal team used a strategy that highlighted the cultural distinctiveness of Il Chamus. This approach was a marked departure from the tactic they employed during the colonial and most of the post-colonial periods that highlighted their Maasai heritage. Distancing themselves from Maasai and, to a lesser extent, Samburu cultures was taken to counter the government's initial position that Il Chamus was only a sub-group of Maasai and could not qualify for national political representation.²² The government lawyers argued that they are not a distinct community but

are “a Masai clan in Kenya. ... Representations cannot be based on clans.”²³ They also noted that Il Chamus numbered less than 17,000 and mainly lived among Maasai and Samburu rather than in a distinct territorial homeland in central Baringo. To counter the government’s claims about their autonomous ethnicity, Il Chamus claimants presented ethnographic books and articles, including some publications written by me, as evidence of a culturally distinct minority.²⁴

In their struggle for political representation, Il Chamus clearly benefited from political coalitions formed during the CRC debates and the national exposure that these alliances received. The two judges who heard the case even mention the importance of the MPC document representing Maa peoples, including Il Chamus, in their legal judgment. As one journalist noted, these alliances among indigenous (minority) groups represented a distinct break with Kenya’s political *status quo*: “Names such as Ilchamus, Wakaa, and Sengwer communities, which few Kenyans had heard of featured prominently. These are communities marginalized by past regimes almost into oblivion.”²⁵ Although the Il Chamus community positioned themselves as a distinct cultural minority worthy of national political representation, they paradoxically sought key alliances with Maasai and other identities spread across a wide geographic space to support their case.

Boundary making through force

Within four months of the date that the Il Chamus’ lawyers formally petitioned the courts, the community was attacked by armed Pokot who made off with more than 2000 cattle and hundreds of goats and sheep. This assault was followed by smaller raids. According to local leaders, these attacks resulted in the deaths of more than 12 Il Chamus during March–May 2005.²⁶ The suspicious timing of the raids was not lost on residents in the area who felt they were reprisal against Il Chamus for seeking their own political representation. One prominent leader, Lenekariapo, noted how “many people feel that this was not a coincidence and when it happened people immediately thought that it had to do with politics.” In one of the largest attacks armed Pokot came through the Tugen area, which is why some community members felt the MP must have known about the attack.²⁷ Another elder explained:

The coincidence is that, just about when they sued and put the case to the court, the raiding in Chamus began. ... Some powerful people do not want the Il Chamus to form their own constituency. ... In Mukutan it is more than just stealing animals. They have burned houses and stolen the metal sheets from the roofs.²⁸

By May 2005, approximately 20% of Il Chamus territory was unusable due to heightened insecurity. Similar to what historian Charles Tilly describes for much of Europe’s modern history, real political boundaries in Baringo increasingly were (are) being made through violent force.²⁹

In the words of Solomon Leleya, a local resident, the attacks left the community in a desperate situation:

Nobody will speak for us in parliament ... I do not know why they are trying to finish us. We have been loyal friends of the government and have never disturbed anybody. We just want to live in peace and help our families. We are not armed like the Pokot, so we depend on the

government to help us ... They are profiting from these raids and the government is doing nothing.³⁰

By September 2006, most of the eastern half of Il Chamus territory was no longer under their control. Unlike past conflicts, this was more about political revenge and moving the boundary between Il Chamus and Pokot through force than about raiding the community for their cattle.³¹ As another prominent elder explained in a later interview:

No Il Chamus live in Mukutan, Nasoguro or Rugus. The Pokot have taken over these areas. They have even destroyed schools by taking metal roofs, which shows that they do not want Il Chamus to return. This has now been about two years and people have still not moved back there.³²

Some herders periodically move their cattle to these areas when they are assured that a military camp is there to protect them. Although the government occasionally sends the army or the General Services Unit (GSU) there to protect Il Chamus property and lives, most members still feel the state is doing very little to halt the violence and encroachment.

The bewilderment of being abandoned and unprotected by the government was a source of strong contention for Il Chamus, who for more than a century viewed themselves as peaceful and loyal allies of the state. Even before colonialism, European explorers such as Joseph Thomson referred to the community as “most pleasing natives” and a pleasant contrast to “the ferocious and arrogant warriors of Masai country.”³³ Leleleboo, a male about 50 years old, supports Solomon’s claim mentioned earlier that the government is not doing anything:

They [Pokot] want our land for grazing their animals. In the past year or so it has been almost every few weeks that there has been a raid. ... We think that it might have something to do with us requesting a constituency. That upset the old man’s son [Gideon Moi]. We wonder why the government and the MP are not doing anything about it. We have sent people to Nakuru [capital city of Rift Valley Province] to complain and even to the old man [President Moi]. We do not understand why they want us to get finished. ... Perhaps if we had our own MP this would not be a problem. We could have somebody who could stick up for us in parliament and speak for us.³⁴

A legal victory – in theory

In December 2006, the two judges hearing the Il Chamus legal case ruled in a lengthy written judgment that the community should have their own political constituency. The legal report drew heavily on UN and ILO proclamations regarding indigenous peoples and their rights as well as international cases from Canada and Australia. The judges also presented considerable historical, ethnographic, and statistical data in support of their judgment that the Il Chamus are a unique cultural community that “constitutes a special interest as contemplated by the mandatory purposes of Section 33 of the Constitution of Kenya.”³⁵ They directed the Election Commission of Kenya (ECK) to:

[...] take into account all the requirements set out in Section 42, of the Constitution of Kenya and in particular the need to ensure adequate representation of sparsely-populated rural areas, population trends, and community of interest, including those of minorities especially the Il Chamus of Baringo Central Constituency. In the event of any future constituencies being created by an Act of Parliament or any other review being undertaken the Il Chamus claim be processed by the ECK with the defined criteria herein in view.³⁶

The court's ruling was perceived as a resounding victory for Il Chamus and much celebration took place in the community. A large gathering and "day of prayer" for their victory was held on 3 February 2007 which brought together leaders of several Maa groups (Maasai, Samburu and Mukugodo), including Mzee ole Kaparo, the Speaker of the House in Parliament and a Mukugodo MP. In attendance also was the legal team for the case who were awarded status as honorary elders, and officials from several supportive NGOs and civic organizations, such as the MPC.³⁷ On the global level, not only did the BBC applaud the judicial triumph in a story that was cited earlier, but the London-based INGO Minority Rights Group International also celebrated the judgment that "the Ilchamus qualified as 'special interest' group under the current constitution."³⁸

After the judicial ruling there was great optimism among Il Chamus. Prominent residents believed the community had a very good chance to be given a constituency in time for the 2007 elections or, at the very latest, the 2012 elections. One optimistic woman leader from Marigat expressed to me in an interview in June 2007 that "next week they [ECK] will be ruling on how many new constituencies there will be for the 2007 elections. ... We are hopeful that they will rule in our favor so we can have elections in December 2007." Others believed the timing of their new constituency depended on how many new constituencies were designated by the ECK prior to the 2007 elections. If it were to be more than 45, many Il Chamus leaders believed they would receive a new constituency that year. Others were less assured for 2007, but assumed that the new constituency would at least be in place for the 2012 elections. After all, they have been without their own MP since Kenya became independent in 1963, so what would another 5 years matter!

Despite the favorable verdict and widespread national and international publicity, the ECK "dragged their feet" on enacting the court ruling. In a 2007 interview at his Nairobi office, the key Il Chamus legal advocate reflected a more subdued assessment:

In Kenya it is one thing to win a ruling and another to actually get something done. We won in theory, but in practice still no commission [or constituency] has been formed. ... We are a marginal group and nobody listens to us even when we win our case.³⁹

Much of the discussion in the Il Chamus area during the summer of 2007 was about the judicial ruling and its political ramifications. From interviews with those involved in the legal case, it was clear that neither former President Moi nor Gideon Moi were happy with the possible subdivision of the Central Baringo constituency to provide political space for Il Chamus. They both wanted the Maa-speaking community to remain part of the Central Baringo constituency or be included in a new constituency based on the Tugen-controlled Mochongoi area. An Il Chamus civil servant based in Nairobi described it to me:

The former President and Gideon Moi want an Il Chamus constituency to be combined with Mochongoi, which is dominated by Tugen. If we have to be combined with Mochongoi, we will lose the election to Tugen and it will be just like the past. The Endorois people of central Baringo, who most Il Chamus view as a division of Tugen, also want their own constituency.⁴⁰

Regardless of how they are perceived by Il Chamus, Endorois view themselves as distinct from the Tugen and also have been advocating for their own political constituency. Moreover, they successfully sued the government for monetary compensation because of

land lost and displacement associated with the creation of the Lake Bogorio National Reserve, Baringo District, in 1973.⁴¹ When the Kenyan judicial branch – under strong pressure from the government – threw out the Endorois case, they went to the court of the Human Rights Commission of the African Union, the continent-wide political union based in Addis Ababa, Ethiopia, with strong support from the INGO community. They won a favorable non-binding decision that was widely celebrated by the human rights and indigenous people advocates.⁴² Similar to the Il Chamus case, the Kenyan government has not acted on their ruling. As will be shown later in the article, the political move by Endorois to seek their own constituency complicates Baringo politics and dilutes the Il Chamus case for political representation.

During June 2007, a small delegation of Il Chamus elders, including the senior Il Chamus chief at the time, met with the ECK commissioners in Nairobi to discuss their electoral problem. In an interview with a member of the delegation, the individual referred to one of the delegates as a “Maasai from Narok District” who he assumed would be a sympathetic ally.⁴³ As noted earlier, almost all local and national politics in Kenya increasingly are gauged in ethnic terms, so it is unsurprising that the individual was attuned to the ethnicity of different ECK members.⁴⁴ They met a second time, but only with the Maasai commissioner who promised to meet with Kenya’s Attorney General about the matter. This response provided some hope that the legal ruling might be honored and a political constituency awarded.⁴⁵ In financial terms, the stakes were high; at the time each constituency received its own Constituency Development Fund (CDF) under the control of their MP that could exceed Kenya Shillings 60 million per year (approximately US\$7.5 million in June 2007). As one member of the delegation explained, “that would be a lot of education fees for Il Chamus.”⁴⁶

Not surprisingly, the government (ECK) did not approve a political constituency prior to the 2007 election despite the strong belief among some Il Chamus that it would happen. They were later to learn that the 2006 court ruling was not binding and the judges could not force the ECK, Parliament, or the government to allocate a political constituency and/or a designated MP for Il Chamus.⁴⁷ The Il Chamus lawyer who initiated the original case was back in court after the unfavorable judgment. Rather than pursue a separate constituency for the community, he argued that the government should award Il Chamus an MP under the special interests provision of the constitution. In conversations with him in June 2007, the young Il Chamus attorney had already expressed considerable frustration with the lack of government progress in implementing the court’s ruling and had indicated that he might initiate another court case.⁴⁸ Although he had once stated that “we started the campaign to have our own constituency and nothing will stop us,”⁴⁹ the lawyer was now seeking a specially designated MP for the community. Thus in January 2008, he filed a legal application with the court that the President appoint an Il Chamus as an MP. With a different set of judges than heard the 2006 case, the court did not accept the lawyer’s application as valid and dismissed it. The court’s judgment also challenged the 2006 ruling by emphasizing that the High Court in Kenya only has “supervisory jurisdiction” with regards to the ECK and the commission ought to “be left alone and allowed to discharge its constitutional mandate at all times without interference from any quarter.”⁵⁰ It indicated that if an Il Chamus wanted to be an MP, the individual would need to be nominated by a political party like other candidates and contest for the office in an existing constituency. The new ruling was a blow to the Il Chamus’ case

and revealed the ambiguities and uncertainties surrounding government policy, law and the authority of different legal bodies, including the country's own High Court. Il Chamus leaders were not going to give up their case because of this setback, but it was increasingly clear that the state was not going to award them or any other minority group political representation without a forceful challenge.

In the same year (2008) as the new court ruling, politics and institutional dynamics in Baringo entered a new stage of complexity and murkiness when the government created Marigat District in central Baringo. The widespread creation of new administrative districts with potential jobs during the latter part of the Moi era and for most of the Kibaki regime (2002–2013), was a political strategy to thwart local opposition as well as reward loyal clients with patronage.⁵¹ Of course, the tactic was always politically defensible along the lines that it brought services and government closer to constituents despite the high costs of new infrastructure and personnel. During 1994–2009, the number of districts in Kenya grew from 47 to 177, with more than 100 new ones, including Marigat, created just since 2002.⁵² Many of the new districts had very little infrastructure and were without District Commissioners (DCs) for much of the time. New districts were being created so fast that there was even confusion about the actual number of official districts, with some reports indicating that there were more than 280 districts by 2010,⁵³ while others showed considerably fewer than this.⁵⁴ Not surprisingly, there was considerable confusion in places like Marigat between the physical boundaries of the “haphazardly created districts”⁵⁵ and demarcations of existing political constituencies.

Thus, Marigat District became the fourth new administrative district created in Baringo since 1994, an act that further complicated the issue of local political representation and diluted claims that the government was not concerned with Il Chamus welfare. From the perspective of the central government, the new district showed it was concerned with Il Chamus demands for better access to government resources. Even some Il Chamus were unsure what the new district meant for their legal claims for political representation and were appreciative of the potential for new government jobs.⁵⁶ For political realists, the question was why the government would award a constituency to Il Chamus when they had just created a local district (Marigat) in their area? However, the obvious difference between a district headed by a DC and a political constituency headed by an MP is that a DC is appointed, paid by and accountable to the executive branch of government (i.e. the President), while an MP is elected by and accountable to the community. The excessive expansion in administrative districts created further uncertainties about borders and authority, which was a benefit for a government that had shown little intention of granting new political constituencies for groups like Il Chamus. In effect, the creation of Marigat District allowed the state to achieve the goal of confusing and dividing an opposition group that was already weakened by recent legislative and judicial decisions.

Following Kenya's destructive post-election violence from December 2007 to March 2008, the ECK was replaced by an Interim Independent Electoral Commission (IIEC) of nine presidentially nominated commissioners whose collective goal was to improve electoral procedures and, thereby, avoid the problems that surrounded the 2007 election. The IIEC was formally approved by Parliament in 2009, as was an Interim Independent Boundaries Review Commission (IIBRC), whose mandate was to address constituency boundary issues and make recommendations on new constituencies.⁵⁷ The latter commission, often called the Ligale Commission after its chairperson Andrew Ligale, was the most

important for Il Chamus since it dealt with the issue of new constituencies and political boundaries. As will be discussed in the next section, however, the recommendations of the newly formed IIBRC turned out not to be what Il Chamus were hoping for and anticipating.

And the story goes on ...

The approval of a new constitution after a national referendum held in 2010 placed an additional political impediment for Il Chamus. While the document is a great improvement over the earlier version, with positive language about protecting the rights of minority and disadvantaged groups, it offers little guidance or recommendations for creating new constituencies for minority groups.⁵⁸ Instead, the new constitution returns the country to the number of districts (47) that were in place in 1994 and renames them counties headed by an elected governor, a senator and elected and nominated MPs. Importantly, it also reduces the power of the executive branch (President) by eliminating district and provincial administrative structures that reported to the Office of the President. The five districts of Baringo were consolidated into Baringo County, but in practice the elements of the old administrative structure remain in place. In 2013 a DC was still operating in Baringo County, which shows newly elected President Uhuru Kenyatta is trying to hold onto the old administrative structures appointed by him and inherited from the colonial era. This struggle over executive control and local representation is unresolved and presents a strong challenge to the devolution of power in Kenya mandated in the new constitution. There also are pronounced problems over how budget allocations will be made to counties versus national line ministries, even though the new constitution directs the government to decentralize more budget control to local government offices and elected officials.⁵⁹ Thus with the daunting tasks of implementing budget reform and radically different political and administrative structures under the new constitution, it is highly unlikely that a political constituency for Il Chamus will be high on the national agenda in the near future.

The new constitution had a provision to create a new electoral commission called the Independent Electoral and Boundaries Commission (IEBC). Approximately one year after the new constitution was approved, the commission was established and replaced the interim IIEC and IIBRC.⁶⁰ The nine members of the IEBC were appointed by the President upon approval by Parliament in November 2011. By this time, however, the IIBRC already had made its recommendations to Parliament on the number and boundaries of political constituencies, including recommendations for new constituencies. Thus, among the early duties of the newly formed IEBC was to make recommendations about boundaries and new constituencies using “the Report of the former Boundaries Commission [IIBRC] as its primary reference material.”⁶¹ Strategically, President Kibaki appointed the same Il Chamus lawyer to the IEBC who had brought the original case against the government and was a persistent advocate for the community. Although he is well qualified to serve on the IEBC and should not be second-guessed for accepting the prestigious position, this appointment by the state effectively removes the Il Chamus lawyer from any further constituency advocacy on behalf of the community or other minority and indigenous groups. This outcome clearly is in the interests of a government that wishes to maintain the status quo, but is a major setback for Il Chamus.

A new constitution, however, did not stop Il Chamus activists from continuing to make their political case. Very soon after the constitutional referendum was approved, Il Chamus were back in court with almost the same legal team as before, once again arguing that the judicial decision of 2006 should be enforced and that “they should be given their own constituency.”⁶² The new constitution still had a provision for nominated MPs and their advocates, including celebrity lawyer Pheroze Nowrojee, argued that the community should be awarded one of the 12 nominated MPs allowed in the constitution.⁶³

The protests continued and grew even louder in 2012 when the recommended list of new political constituencies, including those for central Baringo, were announced.⁶⁴ An Il Chamus constituency was not on the list but, instead, a Mochongoi unit was recommended that would include Il Chamus as a minority again in a Tugen-dominated constituency.⁶⁵ Il Chamus leaders met with representatives of IEBC and were said to have “instructed their seasoned lawyer Pheroze Nowrojee to move to court urgently and challenge the creation of new boundaries after they missed out in the new political constituencies.”⁶⁶ Out of the 80 petitions for new constituencies that were submitted to a review board by indigenous and minority groups, including Il Chamus, 77 were rejected.⁶⁷ Only the Okiek and two other smaller groups of western Kenya were awarded their own political constituencies. Thus, for Il Chamus and most other minority groups in Kenya the new constitution did little to help their political causes.

The reality of being included in a Mochongoi constituency added to already existing tensions and violence in Baringo. Periodic raids by Pokot and general insecurity remained endemic in the area, but the IEBC recommendations fueled a new conflict in the district between Il Chamus and their neighboring Endorois community, who, as noted earlier, also sought their own political representation.⁶⁸ Both communities have been politically marginalized by the state, but now are pitted against each other under the new political configuration. In the words of one Il Chamus elder: “With the creation of the new Mochongoi constituency, we will have nothing to gain as our Tugen [including Endorois] brothers will continue dominating us. We have been brought together again, yet we have nothing in common.”⁶⁹

In a move to diffuse Il Chamus anger, the Mochongoi constituency was renamed Baringo South, in order to avoid association with a Tugen location name. Both the Il Chamus and Endorois communities are included in Baringo South Constituency. This political maneuver did little to dampen the anger of the communities, which increasingly was directed at each other in verbal and, in some cases, armed attacks.⁷⁰ In one media account, an Endorois leader claimed that the Il Chamus lawyer on IEBC used his influence to deny them their own constituency. The commissioner responded by stating, “I’m a national servant serving all Kenyans irrespective of their political or ethnic affiliations.”⁷¹ These kinds of exchanges reflect the heightened political tensions in the area, but in reality both Endorois and Il Chamus are losers under the recent IEBC decision regarding political constituencies. Tragically, in 2012 the communities launched a number of armed attacks against each other with loss of life and property on both sides, rather than celebrate much anticipated political victories.⁷²

The 2013 elections in Kenya were held and as usual a non-Il Chamus was elected as the community’s MP. The former and unpopular MP, Gideon Moi, was elected as Baringo County’s first and only senator. A conversation with an Il Chamus leader in October

2013 indicates that their political movement has noticeably slowed, in part because many of their few educated leaders have accepted important presidential appointments, including on the Judicial Service Commission and the KLC. The latter commission, comprised of nine Presidential appointees, has the important task of examining and making recommendations about existing land conflicts, property rights and land tenure systems in the country. In the words of one of these prominent individuals:

The constituency movement created a lot of problems as local elites began to jockey for their own possible candidacy ... and there was a lot of money involved. Right now it will be based on population, not ethnicity, and, if not, then every little tribe will fight for its own tribe and constituency. Maybe when our population grows there will be a constituency in the future.⁷³

These words from a former strong advocate for an Il Chamus constituency implies that the push for political representation has diminished.

The different Maa alliances that were so important for the Il Chamus cause also have been noticeably silent in the past few years. The differential allocation by government of senior positions has helped to fracture some of these alliances, including with Maasai who were very upset that they were left off the recently formed KLC. In fact, their vocal leader William ole Ntimama, and his followers brought a claim in court against the government to halt the approval of the commission appointees because of their concern that no member of the Maa community was included on the board.⁷⁴ The legal injunction was eventually thrown out of court and nominations for the Commission were approved in 2013, but it is informative that a Maa-speaking Il Chamus appointee was not perceived as a sufficient representative of the Maa community to adequately represent the interests of Maasai. In this case, the strategic allocation of important political positions has served to divide a collective Maa community that had come together only eight years earlier to celebrate the Il Chamus court victory and rally against an earlier version (2005) of the national constitution.

Conclusion

This article has documented the different events that have shaped a political identity among Il Chamus in the twenty-first century, a community that now has national and international media recognition. It has documented the plethora of state actions, reforms and political alliances during 2002–2013 that make it appear as if there has been considerable political and economic progress for Il Chamus. In reality, however, the situation is analogous to an automobile with many moving parts that seem to work, but advance the vehicle very little. The current Il Chamus movement for increased political representation has had many moving elements and lots of motion and noise, but its overall progress has changed little in the past two decades. The Kenyan state, especially the executive branch, brilliantly performs its political rituals of establishing commissions, review teams, constitutional referendums, administrative districts and other performative actions that foster an illusion of support and advancement for minority groups, such as Il Chamus, but in the end wavers little on macro political issues, such as the demarcation of new constituencies or designation of MPs.⁷⁵ Did the government of Kenya ever intend to implement the recommendations of its own courts to award local constituencies to minority groups such as Il Chamus? Evidence presented in this article suggests a definitive No!

The findings also reveal an INGO community amazingly naïve about local politics and the fundamental struggles over land in Kenya's Rift Valley. By negotiating a certain identity (indigenous or minority) that is supported by INGOs and other external actors, a local community can make a claim to a territory and, in some cases, a political constituency that other groups – unbeknownst to external parties – have counter claims to and, more importantly, a capacity to forcefully defend them. Thus, the judicial victories of Il Chamus and Endorois for autonomous political representation were both celebrated and advocated by minority and human rights INGOs, but now they are in armed conflict with each other. It is a contestation that obviously was not anticipated by INGOs, although it also has not evoked much response from them in the media. As the materials presented here show, political boundary making by IEBC opened a new source of destructive conflict in Baringo. By fragmenting the political opposition and pitting local groups against each other over limited political spoils, the Kenyan state continues to demonstrate a “divide and rule” policy that has been followed since the colonial period. Il Chamus, in turn, still point to their lack of political representation as a key problem in these conflicts.

So the story of hardship and political marginalization continues in Il Chamus, with the latest disaster being the flooding of Lake Baringo in 2013 and the displacement of more than 2,000 residents.⁷⁶ Similar to the *Prosopis* invasion discussed earlier, this latest natural disaster results in additional land loss for Il Chamus, but this time it is the muddy waters of Lake Baringo – not encroachment or attacks from neighboring groups – that is the culprit. Thus, Il Chamus continue to confront conflict, violence, hunger and political marginality that have marked the area since the nineteenth century, but could eventually challenge their very existence as a distinct community with their own territory in the twenty-first century.

Notes

1. British Broadcasting Corporation (BBC), “Landmark Ruling.”
2. Parts of this section are based on Little, “Masaai Identity,” 445–9; and Little, *Political Economic Reform*, 91–115.
3. Anderson, *Eroding Commons*; Little, *Elusive Granary*; and Spencer, *Pastoral Continuum*.
4. When I first worked in Baringo in 1980 almost none of my Kenyan colleagues had heard of Il Chamus, who at the time were known as Njemps.
5. Kenya Land Commission, *Kenya Land Commission*.
6. Greiner, “Guns, Land, Votes,” 228.
7. Food and Agricultural Organization, *Survey Njemps Territory*.
8. Nasong'o and Murunga, “Prospects for Democracy in Kenya,” 8.
9. Author's field notes, June 2007.
10. Nzioka, “Political Families.”
11. Pastoralists Hunter and Gatherers Ethnic Minority Network, *Case Recognition*.
12. Lynch, “Becoming Indigenous,” 25–8 and 41.
13. Hughes, “Malice Maasailand,” 209; and Hughes, *Moving the Maasai*.
14. Pseudonyms are used here and elsewhere in the article to protect the identity of respondents.
15. Little, *Economic Political Reform*, 100.
16. Author's field notes, June 2006.
17. Cultural Survival, “Maasai-led Grassroots,” para. 6.
18. Kadida, “Court Case.”
19. Kenya, *Matter Il Chamus*, 2.
20. Ibid.

21. Nowrojee, *Kenyan Interviews*, 1.
22. Author's field notes, June 2007.
23. Kenya, *Matter Il Chamus*, 18.
24. *Ibid.*, 2–3, 9.
25. Okello, "Giant Step," 1.
26. Author's field notes, June 2005.
27. *Ibid.*, June 2006.
28. *Ibid.*, June 2005.
29. Tilly, *Coercion*.
30. Author's field notes, June 2007.
31. See Greiner, "Guns, Land, Votes."
32. Author's field notes, September 2008.
33. Thomson, *Through Masai Land*, 234.
34. Author's field notes, June 2007.
35. Kenya, *Matter Il Chamus*, 2.
36. *Ibid.*
37. Masibo, "Kenya: Njemps," paras. 1–4.
38. Minority Rights Group, *Kenya One Year On*, 6.
39. Author's field notes, June 2007.
40. *Ibid.*
41. Lynch, "Becoming Indigenous," 24–5.
42. Claridge, *Landmark Ruling*.
43. Author's field notes, June 2007.
44. Little, *Economic Political Reform*, 91–92.
45. I do not know if the meeting between the ECK member and the Attorney General ever occurred.
46. Author's field notes, June 2007.
47. Ogutu, "Njemps Case."
48. Author's field notes, June 2007.
49. Masibo, "Kenya: Njemps," para. 10.
50. *Ibid.*
51. For another East African example [Uganda] of the politics of 'district creating,' see Green, "Patronage, District Creation."
52. Institute for Social Accountability, "New Districts."
53. World Bank, *Kenya: Executive Summary*, vii.
54. Institute for Social Accountability, "New Districts."
55. *Ibid.*
56. Author's field notes, September 2008.
57. Karume, "Kenya: Independent," paras. 3–4.
58. Kenya, *Matter Il Chamus*.
59. Institute for Social Accountability, "New Districts"; and Wafula and Odunga, "Governors."
60. East African Law Center for Justice, "Evolution."
61. Hassan, "Politics Boundaries," 6.
62. Daily Nation, "Kenya: Ilchamus," para. 2.
63. Thuku, "Il Chamus IEBC," paras. 17–21.
64. Independent Electoral and Boundaries Commission (IEBC), *Preliminary Report*, 117–20.
65. Mochongoi Division was formed by the Moi government in 1998 to make room for settlement by members of his Tugen community, and to punish his main political opponents, Kikuyu. The division was carved out of the Marmanet Forest zone near the Baringo/Laikipia District border. To the strong protests of Laikipia District's leaders, the state formally annexed the area at the expense of Laikipia's residents and their lands and placed the new division within Baringo District. See Little, *Political Economic Reform*, 95–97.
66. Thuku, "Il Chamus IEBC," para. 5.
67. Minority Voices Newsroom, "Kenya: Court's Ruling," paras. 10 and 19.

68. IEBC, *Preliminary Report*, 118.
69. Kipsang and Cheploen, "Ilchamus, Endorois," para. 30.
70. Cheploen, "We'll Meet."
71. Kipsang and Cheploen, "Ilchamus, Endorois," para. 36.
72. Kipsang and Cheploen, "Ilchamus, Endorois," paras. 1–4.
73. Author's field notes, June 2012.
74. Wanambisi, "Kenya: MPs Approve Land Commission," para. 5.
75. The government even supported a Truth, Justice and Reconciliation Commission during 2012–2013 to examine past injustices and violence, including the post-2007 election violence. However, the commission had no authority to enforce its endorsements, which included a recommendation that the government implement the court's ruling on an Il Chamus political constituency. See Truth, Justice and Reconciliation Commission, *Report*.
76. Kipsang, "2,000 Displaced," para. 1.

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