Objectives: Through participatory research and open ended discussions with Maasai pastoralists of Kajiado District in the Rift Valley – including elders, youth, local policy makers and administrative leaders - the study aims to understand the customary laws and practices of the Maasai in traditional medicine. It aims to identify principles for protection and promotion of traditional medicinal knowledge, and help the Maasai to better understand ‘external’ threats and opportunities. It also aims to inform the development of national policy and law relating to traditional medicine, ABS and intellectual property, and enhance consideration of the interests and rights of Maasai Traditional Health Practitioners.

Context: The study area is typically arid, with temperatures soaring to 40° C. It is surrounded by hills with dense vegetation and wildlife. The areas close to the hills are characterised by green vegetation because the Ewaso Ngiro River flows through. The Maasai still retain their traditional nomadic-pastoralist lifestyle.

Challenges and Opportunities for Protection of Collective Bio-Cultural Heritage: The existence of Maasai customary laws and practices is threatened as the younger generation embrace modern lifestyles. This shift in identity and lifestyles has further weakened the obligations of individuals to their traditions and customs, making the ethnic community loose associations of people. The introduction of a central governing system (State control) has weakened the administrative powers of customary (village) elders. Customary law is subordinated to the written law in the Laws of Kenya, and only applies as a guide, that is, the courts are not bound to apply it. Kenya courts have tended to narrowly interpret customary law and administrative authorities have frequently ignored it. The Maasai land is still owned communally, but over time the land has continued to be privatized. The Maasai lost alot of land when Group Ranches were introduced, and even currently, they continue to lose land. Healing services are slowly evolving from communal welfare to commercial endeavors as the Maasai sink deeper into poverty.

The elders gave narrations of foreigners who come frequently under the guise of tourists and take away plant samples, with no regard for the rights of the community over these resources. This has contributed to free access of TK and other related resources by third parties, with no systems in place to govern access, PIC and benefit sharing.

The ongoing Constitutional reform process gives an opportunity for greater recognition of customary laws and practices and for incorporation of provisions such as compensation or royalties for the use of cultural heritage of communities through legislation and the introduction of traditional courts, and for recognition of the sovereignty of communities over their biological resources in introducing the concept of benefit-sharing. The reform process also presents an opportunity to streamline land tenureship. There are also several government initiatives underway in Kenya for promotion and protection of traditional medicine.

Interlinked Systems of Collective Bio-Cultural Heritage: The Maasai consider hills as sacred as this is where the formal induction into traditional healing takes place. The hills are greatly respected as they are the source of their knowledge. The Maasai believe in spirits as the givers of healing powers to their spiritual healers (Leibons), and in curses as effective punishment for offenders. They believe that all knowledge comes from a supreme being, Trees are also considered sacred. The Maasai are very conscious of the benefit of trees to their livelihoods such that it is forbidden (taboo) to cut down a medicinal tree.

Young Maasai boys aged about 15 are taken into the hills along with goats or cows for slaughter which they feed on with medicinal concoctions as they learn Maasai culture and traditions from their elders. This is known as the Orpul. The Orpul ceremony serves as one of the knowledge transmission processes that the Maasai have. At the end of the ceremony the boys are initiated into moranship (community warriors). The other ceremony that serves as a knowledge transmission process is the manyatta, which is meant to ensure continuity in knowledge. Male youths spend several days with elders being taught their traditions and basically recapping what they learned during Orpul.
At any given opportunity the men go into the forest with their wife and family, and collect herbs, slaughter an animal and feast on soup and meat mixed with the medicines, while explaining the names and uses of the plants. Through such ceremonies, it is ensured that women are just as knowledgeable as men and can identify medicinal trees and prepare concoctions.

A major setback to this interlinked system of biodiversity, knowledge, customs and beliefs is the privatization of huge tracts of the forest and communal land in the hills mainly by non-Maasais for commercial ventures, especially tourism. These privately owned sections of land are heavily guarded and so the Maasai have no access to the medicinal plants and other resources in them. This has also greatly affected the Orpul ceremony which now is performed nearer to the villages, diluting its relevance.

**Customary Laws and Practices:** The Leibon and the clan elders are the heads of Maasai governance. They all follow a certain unwritten code of conduct and traditions defining various aspects such as fines, penalties, taboo for institutions such as marriage, funeral, grazing and initiations. The hilly landscape and the pastoral life of the Maasai calls for adherence to effective management practices that ensure availability of pasture and water throughout the year, through rotational grazing, which is controlled by a traditional governance regime by the elders. They have a system of controlled pastoralism for sustainable use of resources with the elders being the decision makers on when and where to graze cattle.

The general medicinal knowledge is considered communal. Since the Maasai believe that all knowledge comes from a supreme being, they share the general knowledge freely with no restrictions including with other communities or non-Maasai. The majority of their land is communally owned. Other material resources such as trees are considered to belong to a supreme being and to everyone, which includes non-Maasai persons. The communal knowledge and resources are of free access to anyone. The only knowledge that is held more restrictedly is that of the Leibon, which is hereditary among the specific rightful clan. The sharing is based on the belief that the third party will put the knowledge to good use. Women also share their knowledge freely with other women, except for specialized knowledge like midwifes, which is transmitted from mother to daughter, or a close female relation.

The Maasai have no set system for receiving any benefits for accessed knowledge. However, there is a recently introduced requirement to access the community land generally for whatever reason. A third party is required to pay ‘gate-fees’ before accessing a group ranch. Since the Leibon and clan elders are the heads of governance and represent the whole community, it seems that consent by these entities should be given for PIC.

**Lessons for TK Protection and ABS:** There is a clear concern that the Maasai are sidelined by the mainstream system of governance in protecting their rights. Their main area of concern is ownership of their land and resources, and protection from exploitation. The Maasai seem not to attach too much importance to commercial exploitation of their resources, rather its sustenance. They also lack the know-how in regulating access to their resources due to the conflicts between their governance system and that instituted by the central government.

There is need for all-encompassing legislation for the protection and sustainable use of biodiversity. It should define coherent policy measures in the national context but also taking into account local situations due to the diversity of traditions, cultures and beliefs amongst Kenyan communities. All biodiversity-related rights of local communities must be protected by legislation to prevent biopiracy and unsustainable use of biodiversity. A regulation system designed especially to deal with the interests of local communities concerning specific categories of biodiversity is necessary as legislation does not encompass all the biodiversity-related problems coherently but concentrates only on specific areas which have to be protected.