

**Effectiveness of Legal and Non-Legal Processes In Managing Land
Conflict: A Case Study Of Narok County, 1992-2012**

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R50/64803/2010



**A Project Submitted In Partial Fulfillment of the requirements of the
Degree of Master of Arts In International Conflict Management,
Institute of Diplomacy and International Studies (Idis), University of
Nairobi**

October, 2012

Dedication

This project is dedicated to two lovely sons; Eric and Ian Waitaha who made me see the world in a different perspective and for hoping in me that I would be a victor in all this. I would also like to appreciate my friends, colleagues for keeping my spirits up when the muses failed me and without them lifting me up when this project seemed interminable, I doubt it should ever have been completed.

Acknowledgments

First and foremost, I would like to express my sincere appreciation to my supervisor Prof. Makumi Mwagiru for the continuous support of my Masters Study and research, for his patience, motivation, enthusiasm and immense knowledge. I could not have imagined having a better supervisor and mentor for my masters than him.

I would also like to express my gratitude to the Institute of Diplomacy and International Studies for giving me this most precious opportunity of being their student and for their great work in nurturing me.

My sincere thanks also go out to Rtd. Major Lparteleg and Mr. Lenasciya of Narok County, for their immense output and knowledge and for their mobilization of the different people to be interviewed in Maa language, regardless of whether they knew me.

Special thanks go to Elizabeth Nthenya, my domestic helper who stood in the gap and ensured all domestic and kitchen work was well done when I was busy pursuing my masters program.

Last but not the least, I would like to thank my family my friends and everyone that was with me along this journey for supporting me spiritually throughout my life and for being there for me even when things seemed tough and unbearable.

Abstract

The main purpose of the study was to examine effectiveness of legal and non-legal process in managing land conflict in Narok County, examines who have suffers from such conflicts, and measure the impacts of land conflicts on farm input application in Kenya. The function of legal process is to establish" rules and procedures that constrain the power of all parties, hold all parties accountable for their actions, and prohibit the accumulation of autocratic or oligarchic power. Conflict in Narok is rooted in ongoing land issues and the escalation of small-scale tensions through the spread of rumors. Data was mainly be derived from secondary and primary sources. The data collection tools for the secondary data that were in-depth information gathering, and document analysis. The study concludes that legal systems lack the capacity to build long lasting consensus between parties involved in land conflicts in Narok County. Unlike legal systems, the non- legal systems such as mediation allows for capacity-building workshops, sensitization and listening forum. The study concludes that mediation-based solutions to land disputes contribute to durable individual solutions. Mediation and CBWs have important social, emotional and institutional impacts, directly contributing to local conflict management capacity and a mediation culture

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List of Abbreviations

CEWERUs	Conflict Early Warning Response Units
IGAD	Intergovernmental Authority on Development
KACA	Kenya National Commission on Human Rights.
NEPAD	New Partnership for Africa's Development
RECSA	Regional Centre for Small Arms
SID	Society for International Development

Chapter One

Introduction of the Study

Introduction

Land is increasingly becoming a source of conflicts in Sub-Saharan Africa, where land access had traditionally been characterized as relatively egalitarian¹. It has been shown that local land conflicts can erupt into large-scale civil strife and political movements. Some underlying factors, such as population pressure, agricultural commercialization, and urbanization, have contributed to the increasing number of land conflicts, and the current land tenure systems in Africa may not be well-equipped to resolve such conflicts. In many African countries, formal institutions for land administration were often simply superimposed on traditional structures without a clear delineation of responsibilities and competencies, implying that they lack both outreach and social legitimacy².

Conflict in Narok is rooted in ongoing land issues and the escalation of small-scale tensions through the spread of rumors³. Land conflict at the local level often stems from issues of double leasing. Double leasing occurs when the owner of the land leases the land to two different people and thus creates a conflict between the two lessees, both of whom believe the land rightfully belongs to them. These small-scale conflicts over

¹ Andre, C., and J.P. Platteau. "Land Relations Under Unbearable Stress: Rwanda caught in the Malthusian Trap." *Journal of Economic Behavior and Organization*, (vol. 1998, Vol. 34, No. 1, PP 1-47.

² Djoudi, J. 2002. "Land as a Source of Conflict and in Post-Conflict Settlement." World Bank Regional Workshop on Land Issues in Africa and the Middle East, April 29-May 2, 2002, Kampala, Uganda.

³ Georgina Mbugua, *Pastoralism and Conflict: Getting Policies Right* Policy Briefing (2009, paper no.10)

Individual plots of land are exacerbated by a lack of local knowledge on how to legally solve such conflict and a lack of alternative means for dispute resolution. The spread of rumors escalates this type of small-scale conflict into violence or the threat of violence between entire ethnic communities. Politicized and inciting rumors often become self-fulfilling, spreading fear within different communities and often leading to eventual conflict. A conflict between two individuals enters the rumor mill as a conflict between two ethnic communities, leading these communities to arm themselves, treat one another with suspicion, and at times to fight one another⁴

The function of legal process is to establish "rules and procedures that constrain the power of all parties, hold all parties accountable for their actions, and prohibit the accumulation of autocratic or oligarchic power. It provides a variety of means for the non-violent resolution of disputes between private individuals, between groups, or between these actors and the government" Sources of legal process can be broken into three camps: natural law, positive law and realism. Conflict is inevitable and perpetual in human interaction. MacFarlane underscores the need for the evaluation of the relationship between the role of law and the management of conflict when she says: "Modern conflict theorists have moved away from the study of rules and systems and toward the study of disputes themselves⁵."

Edward K. Mbugua & Mohammed Hussein, 2003, *Customary Institution of Conflict Management among Pastoralist Communities in Kenya: the Case of the Turkana, Borana and Galla Communities*, Oxfam GB, Nairobi

MacFarlane, J. (Ed.), *Dispute Resolution: Reading and Case Studies*. (Toronto: Edmond Montgomery Publication Limited, 1999).

Statement of the Research problem

Conflict management of land through the legal process continues to face major challenges in the current national and regional environment. Instability in neighbouring states has resulted in increased cross border conflicts, proliferation of small arms and humanitarian crisis resulting in the loss of life and property. Institutional challenges such as the capacity of security forces and other government agencies to prevent, mitigate and manage conflict remain despite the growing recognition by the government of the need to proactively address conflict as a development issue in collaboration with other partners such as civil society, private sector and development partners. Despite the increasing incidences of land conflicts, previous studies on this topic have been limited to some specific incidences that are related to large-scale civil strife or politically motivated conflicts. A recent study in Uganda, however, shows that rural households experience small-scale land conflicts with relatives, neighbors, landlords, or local governments, and that such small-scale conflicts may have significant impacts on their agricultural productivity.

This study, assesses effectiveness of legal and non-legal process in managing land conflict in Narok County, examines who have suffers from such conflicts, and measure the impacts of land conflicts on farm input application in Kenya. The determinants of land conflicts are at three levels (concerned about future conflicts, pending current conflicts, and resolved past conflicts). The impacts of land conflicts on farm input application (organic and inorganic fertilizer) at the plot level, since Kenya has one of the most advanced land titling systems in Africa, the findings from this country will provide

valuable lessons to other African countries that are in the process of modernizing their land titling systems.⁶

Objectives of the Study

The objectives of this study are to,

- i. Investigate the causes of land conflict in Narok county
- ii. Examine the effect of legal system in managing land conflict in Kenya.
- iii. Investigate the effectiveness of legal and non-processes in managing land conflict in Narok county

Literature Review

The literature is reviewed according to the following broad themes: literature on formal justice in Kenya on land issue, legislative framework and effects of legal system on legal process in managing land conflict.

The Formal Justice System

The most predominant methods of conflict management recognized under law in Kenya currently are adjudication and arbitration. Countries like Kenya, which was ruled by the British, had the English common law imposed on them. It is widely acknowledged that only half-hearted measures were made to retain certain African customs and, even then, under very stringent conditions⁷. To ensure that the law performs its role of conflict resolution, the western legal system laid great emphasis on courts. Courts were seen as the arbiters of disputes either between the citizen and the state and/or between citizens

⁶ Georgina Mbugua and Wahu Kaara 2003, *Community Led Advocacy and Lobbying*, Forest Action Network, Nairobi.

⁷ Kamunyu, Mwachofi and Watragu, *Terrorized Citizen Profiling Small Arms and Insecurity in the North Rift Region of Kenya*, Security Research and Information Centre, Nairobi, 2003

themselves. Courts are deciders of disputes authorized to involve socially – endorsed force to carry out officially recognized conflict management. Courts are very central to dispute resolution in the modern state. A glance at Kenya and the dispute resolution mechanisms that exist will clearly reveal that the primary state sponsored institution for dispute resolution is courts. Courts by their very nature are highly formal⁸

Conflict management through the judicial system is made difficult by a population poorly informed of its legal rights and responsibilities, high costs and complex procedures, inadequate staffing of the judiciary, sometimes strong links between the executive and judiciary, manipulation and selective application of the law in certain instances⁹. Perhaps even more important, the judicial structure inherited from the British, does not accurately and adequately reflect Kenya's demographic dynamics, social values, and socio-political organization. These circumstances add to the burden of legal complications in the ever-increasing land and resource conflicts¹⁰.

The common citizen's perception of the court is a highly technical and sophisticated place that one should avoid as much as possible. Indeed, most citizens would rather let their disputes go unresolved than resort to courts. It is partly due to this and also due to the disadvantages associated with courts, ranging from expense, technicalities, to delays, that there is now a discernible shift to alternative methods of dispute resolution. Such alternative methods include arbitration, negotiation and

⁸ George Mbugua and Wahu Kaara 2003, *Community Led Advocacy and Lobbying*, Forest Action Network, Nairobi.

⁹ Ruto Pkalya, Mohamad Adan, Isabella Masinde, 2004, *Indigenous Democracy: Traditional Conflict Resolution Mechanisms. The Case of Pokot, Turkana, Samburu and Marakwet communities*, ITDG, Nairobi.

¹⁰ Bierwanger, H. P. and M. K. Roserizweig (1986). 'Behavioural and Material Determinants of Production Relations in Agriculture', *Journal of Development Studies*, Vol 22, 503-39

Legislative Framework

Kenya is obliged under international law to ensure the security of its citizens and protect and promote their human rights that ensure they achieve their full potential for human development. Regionally the African Union, The New Partnership for Africa's Development (NEPAD), The Intergovernmental Authority on Development (IGAD) and the East African Corporation (EAC), have established peace and security initiatives whose mandates are to enhance the capacity of member states to address the scourge of conflicts by promoting collective security, durable peace and stability on the continent. The key characteristic of the initiatives has been an emphasis on early warning and coordinated response such as the in-state Conflict Early Warning Response Units (CEWERUs) and the National Focal Points on Small Arms and Light Weapons.¹⁴

Kenya has established two such institutions and hosts the secretariat of Regional Centre for Small Arms (RECSA). The challenge lies in ensuring coordination of the activities of the different agencies, the harmonization of national legislation with those of neighbouring states to give effect to the collaborative and cooperative nature of the international agreements and the enactment of laws and development of related policies that implement these international treaties and agreements.¹⁵

The regulatory regime at a national level for conflict management comprises of laws that establish formal adjudicatory processes that seek to administer justice in all civil and criminal matters, empower security forces and other administrative agencies to

¹⁴ Okoth-Ogendo, H. W. O. (1976). 'African Land Tenure Reform' in Hinga, J et al (eds). *Agricultural Development in Kenya: An Economic Assessment*. Oxford University Press.

¹⁵ Ertkann, S. E. Ouko and N. Marakia (1996). 'Land Tenure and Wildlife management' in Juma, C. and J. B. Ojwang' (eds) In *Land We trust: Environment, Private property and Constitutional Changes*. Initiatives Publishers, Nairobi.

respond to crisis caused by conflicts. The relevant laws are contained in the constitution through the bill of rights and provisions relating to the administration of justice. Related provisions that impact on conflict situations and their impact are to be found in the Penal Code, Civil and Criminal Procedure codes, the Evidence Act, the Commission of Inquiry Act, the Magistrate Court Act and the Kadhi's Court Act. Sectoral laws such as the Agriculture Act, Forests Act, Water Act, Environmental Management and Coordination Act, the Wildlife (Conservation and Management) Act, laws relating to land, labor laws, the Local Authorities Act, the Chiefs Act, the Preservation of Public Security Act among others contain provisions that address conflict to the extent that conflict affects those sectors.

Dispute resolution processes have been established under sectoral laws for their sectors independent of other existing mechanisms constituted under other laws or with no regard to the existence of mechanisms at local community levels¹⁶. Certain institutions such as the Kenya National Commission on Human Rights, KACA, ECK, and National Environmental Management Agency are established by statute and handle issues that relate to conflict situations.

These institutions and dispute resolution processes by and large reflect an adversarial tradition where the goal is not to resolve the dispute amicably with reference to the social context of the problem. Rather, they adjudicate and impose final decisions on parties, which are enforceable under the law. These processes tend to rely heavily on

¹⁶ Ogolla, B. D. and J. W. Mugabe (1996). 'Land Tenure System and Natural Resource Management in Juma, C. and J. B. Ojwang'(eds). *In Land We trust Environment, Private Property and Constitutional Changes*. Initiatives Publishers, Nairobi

the formal legal system. Kenya does not have a comprehensive and holistic legislation that focuses on conflict management. The impact of this gap is that some conflict management initiatives such as the traditional justice mechanisms have no legal framework. Those that have legal recognition are diverse and operate independent of each other in an uncoordinated manner that can cause confusion and lead to the ineffective administration of justice.

Effects of the Legal System on land conflict Management

The evolution of legal instruments outlined in the previous sections and their application over the years has had a number of outcomes with implications on land use and ownership and on agricultural development in Kenya. The legal system has precipitated into: The existence of a dual land tenure system comprising of customary rights to land and individual title; A system of law that is inclined towards individualisation or privatisation of land ownership; Multiplicity of formal land laws and therefore duplication of agenda among varied institutions; Excessive powers in the hands of the executive in land management and land governance; and Multiplicity of land enforcement organisations, raising the costs of arbitration and conflict resolution¹⁷.

Dual tenure system

As already mentioned, land in Kenya is governed by a complex mixture of English law and traditional customary law. The colonial powers introduced the English system to facilitate the appropriation of prime agricultural land, the 'white highlands'.

¹⁷ Ototo-Ogendo, H. W. O. (1984). 'Development and the Legal Process in Kenya: An Analysis of the Role of Law in Rural Development Administration'. *International Journal of the Sociology of Law*, Vol 12, PP 59-83

Parallel to this were policies that restricted the access to and control by Africans to designated reserves under customary tenure system. While there are obvious strategies to recognise formal law today, the character of the legal system encourages dismantling of the customary tenure system and its replacement with English law. Nevertheless, the customary land system still prevails even in areas where land adjudication has been done. This has created a dual tenure system on agricultural development:

Persistent conflicts

The post-colonisation period in Kenya has been characterised by persistent conflicts between customary rights to land and individual title acquired following land registration under the Registered Land Act (Cap 300). This has generated many land disputes that consume work time and material resources that can be used to enhance agricultural production through sound utilisation of agricultural land. At the same time, litigation has held huge chunks of land in abeyance pending legal resolution. Although it is difficult to measure the economic cost of non-utilisation of such land, it is reasonable to believe that the cost is high given the large number of land-related disputes in courts

An issue that keeps coming up is whether registration of individual land under the Registered Land Act extinguishes the customs rights of access and use that other people may be having with regard to a piece of land⁸. The land clashes in parts of the Rift Valley Province in 1997, though indicative of the politicisation of land ownership in Kenya, are also pointer to uncertainty in land holding. These clashes shook the very

⁸ Kanyinga, K. (1998). *The Land Question In Kenya: Struggles, Conflicts and Politics* Phd Thesis, Center for Development Research, Roskilde University, Copenhagen

concept of security of tenure and had a negative impact on agriculture and other economic activities such as tourism¹⁹.

The dual system of land tenure excluded indigenous Africans from access to land during the colonial period leading to serious landlessness in Kenya. In recent times, this phenomenon has manifested itself in marginalisation of the poor by the rich and the politically well-connected. The result is that agricultural land has ended up in the hands of people who do not necessarily 'need' it and are therefore not inclined to use it efficiently or conserve it. This has led to neglect of land and 'absent landlordism', and is associated with low agricultural output, soil erosion and land degradation.

Dual tenure systems have also created uncertainty in the land market, slowed down land mobility, and impacted on the growth and intensification of agricultural land use²⁰. In areas where customary law is recognised, individuals are increasingly relying on formal registration as the surest tool for claim to land. This change is however not reflected in land use and intra-community land rights that have remained informal. The informal-formal law duality has tended to become more complex and entrenched and this has impacted on the land market and transactions and therefore on land activity.

Individualisation of land tenure

Kenya's land laws have been inclined towards individual tenure. At independence, the government retained this system of tenure from the colonial period and in addition restated its resolve to accelerate adjudication, consolidation and registration of

¹⁹ Harrison J. W. (1973) *Nation Building in Kenya: The Role of Land Reform*. Northwestern University Press, Evanston

²⁰ Mweseli, T. O. A., 'The Centrality of Land in Kenya: Historical Background and Legal Perspectives' in Wanjala, S. (Ed). *Essays on Land Law: The Reform Debate in Kenya*. Faculty of Law, University of Nairobi, 2000. PP. 34

land²¹. This policy and the laws it generated were premised on the Swynnerton Plan which emphasised the link between agricultural development and individual tenure. It stated: "Sound agricultural development is dependent upon the system of land tenure which will make available to the African farmer a unit of land and system of farming whose production will support the family...He must be provided with such a security of tenure through an indefeasible title as will encourage him to invest his labour and profits into the development of his farm as will enable him to offer it as security against such financial credits as he may wish to secure from such sources as may be open to him"²².

The impact of land reforms and in particular land registration on agricultural development in Kenya has attracted the attention of many analysts Okoth-Ogendo²³. These authors agree that individual tenure in Kenya has not significantly increased agricultural production. The explanation for this failure has focused on the inability of individual tenure to provide free land mobility and the inability to develop a land market that could, among other objectives, enable solicitation of agricultural credit in open markets. They note that despite adjudication, land registration only served to marginalize areas that were not in the former 'white highlands'.

According to these protagonists, pre-colonial adjudication, farm size, the nature of land use, and the existence of agro-finance infrastructure were a stronger determinant of agricultural credit availability than registration. Whereas a considerable number of farmers, especially small-scale farmers, hold title over their land, securing credit using

²¹ Heyer, J and J K. Waweru, 'The Development of The Small Farm Areas' In Hinga, J. Et Al (Eds). *Agricultural Development in Kenya: An Economic Assessment*. Oxford University Press, 1976, pp 12

²² Swynnerton, R.J.M., *A Plan to Intensify African Agriculture*, 1954

²³ Okoth-Ogendo, H.W.O. "African Land Tenure Reform." In J. Heyer et al., eds., *Agricultural Development in Kenya. An Economic Perspective*. OUP, Nairobi, 1976

title has not been easy. The reality is that most public and private credit agencies are reluctant to extend credit to small farmers except under very exhaustive scrutiny.

The second explanation emanates from recognition that subsequent attendant laws emerged that were inimical to the very objectives they were set to promote²⁴. As early as 1967, the government introduced the Land Control Act to enable the government keep an eye on land transactions. This legislation established the Land Control Boards to give consent to any transactions affecting 'agricultural land'. The Land Control Act had two important objectives. One was to ensure that land owners do not sub-divide their land into small uneconomical units as this would defeat the objective of promoting agriculture by ensuring that farmers maintained economical pieces of land. Secondly, the law also intended to enable the government prevent landowners from selling their land and in the process becoming landless. The land control legislation on agricultural land is an anomaly in a free enterprise environment where the principle of 'willing seller- willing buyer' operates. Moreover, the requirement that individuals wishing to sell their land must get approval from land boards masks the relationship between land tenure and agricultural productivity. Government intervention in the land market has made it extremely difficult for individuals to dispose off land when they wish to even when they are not using it economically. Land Control Boards prevent transactions on the overriding consideration of preventing landlessness²⁵. There is need to review this legislation in order to develop an effective land market in Kenya. Further, the Magistrates Jurisdiction

²⁴ Leach, A 'Land Reform and Socio-Economic Change In Kenya' in Wanjala, S. (Ed). *Essays on Land Law: The Reform Debate in Kenya*. Faculty of Law, University Of Nairobi, 2000. Pp 23

²⁵ Hinga, S. N. and J. Heyer (19766). 'The development of large farms' in Hinga, J et al (eds). *Agricultural development in Kenya: An economic assessment*. Oxford University Press.

Amendment Act that requires rural land disputes to be taken to elders tends to serve 'social' and not economic interests. The use of agricultural land as collateral is also a victim of the Kenyan legal system following a judicial circular to all provincial heads preventing the sale of the so-called 'family land' by public auction. Consequently, banks and other lending institutions are discouraged from accepting land as a security against loans, bringing into question the need for individualised land tenure.

The third explanation focuses on a previously overlooked phenomenon of land speculation. Putting land under the possession of individuals bestows on the owner the right to make decisions on the proper use of the land. The assumption here is that individuals are rational and will exploit land gains to benefit the whole society. This is however not always the case. Some people acquire land not because they need it for agricultural purposes but because they want to hold it for speculation. The under-utilization of land held for speculation is an important factor that affects agricultural productivity. This problem was recognised by the government in its Sessional Paper No.1 of 1986, when it states that: "Two misuses of land must be prevented. The subdivision of small farms; and idle and under utilization of large holdings" the Land Control Act²⁶ have specific stipulations to prevent such conditions, these laws have not been effective in ensuring efficient land use in Kenya. Idle holding of land and other undesirable land practices have gone on unabated for the many years these laws have been in operation. Those vested with powers to make rules aimed at ensuring sound utilisation and

²⁶ Land Control Act (Cap 302) and the Agriculture Act (Cap 318) Republic of Kenya, 1986:89

management of land have rarely excised those powers effectively²⁷. There have been calls to establish a land use commission and to introduce land taxes to discourage under-utilisation of land. Whatever the merits of each of these, there is certainly need to look for legislative or other means of ensuring efficient use of the scarce land resource.

It has also been argued that communal holding of land in the customary tenure system is inimical to agricultural production. In fact, this was the basis of land individualization in the Sywnnerton Plan. The primary defects in the customary land holding system has been related to the communal holding of land in which 'ownership' resides in the tribe or the clan and that individual farm households only have user rights. The system is therefore incapable of providing security for land development since, among other things, title cannot be marketed or otherwise negotiated. The system also leads to overuse of land and is prone to disputes. However, MigotAdholla, based on empirical evidence from a number of African countries (Kenya, Ghana and Rwanda), argue that the communal rights land system does not constrain agricultural productivity²⁸. They note that 'the effects of indigenous tenure institutions, through their effects on land rights, do not appear to constrain agricultural productivity. It is likely that farmers feel sufficiently secure in their ability to continuously cultivate their land, regardless of rights

²⁷ Kibirwa K. (2000). 'The Efficacy of State Intervention in Curbing the Ills of Individualisation of Land Ownership In Kenya' in Wanjala, S. (Ed) *Essays on Land Law: The Reform Debate in Kenya*. Faculty of Law, University Of Nairobi. PP 20

²⁸ Migot-Adhola, S. H. (1994). 'Security of Tenure and Land Productivity in Kenya' in Bruce J and Migot-Adhola, S. (eds). *Searching for land security in Africa*. Kendall Hunt Publishing Company. Iowa

category³⁹. The authors argue further that perpetuation of the communal system is indicative of the fact that the system is after all not necessarily bad.

Theoretical review

Theoretical constructions such as institutionalism suggested by North, have energised the need for legal land review as a tool for increased efficiency in land use⁴⁰. In Kenya this will require specific measures such as repeal, amendment, revision and harmonisation of land laws. The introduction of legally enforceable incentives to stimulate efficient use of land and conservation should perhaps be considered. Enforcement of negative incentives such as taxes would increase efficiency in the utilisation of land in Kenya.

The theoretical argument for defining property rights and the use of law to govern land use depends on the costs and returns, both social and economic, the comparisons of the various property rights' regimes, and the law enforcement. It is evident that such definition is not optimal in Kenya. Such non-optimality is exemplified in various conflicts such as land clashes, refusal to oblige to set contractual obligations, land use conflicts, etc. Despite the legislative activity that has gone on in Kenya after independence, land tenure arrangements have not led to the reform of the key institutions that govern the management and use of land. The land market is highly distorted and land transactions have mainly tended to be handled by administrative provisions rather than by clear policy or law. The consequence has been land alienation, land disputes and

³⁹ Ibid 1994 p. 137.

⁴⁰ George P. (1992). 'Land tenure and soil conservation' in Juma, C. and J. B. Ojwang (eds) *In land we trust: Environment, private property and constitutional change*. Initiatives Publishers, Nairobi.

inefficient land use. Financial institutions that were expected to facilitate agricultural use of land by providing credit have been discouraged by legislation that makes selling of 'family land' difficult. The result is that the land tenure system in Kenya has not increased agricultural production despite its inclination towards individual ownership¹¹

Hypotheses of the Study

The study test the following hypotheses,

- i. The cases of land conflict in Narok county has been driven by ethnicity
- ii. There is high level effectiveness of legal process in managing land conflict in Narok county
- iii. There is significance effect of legal system in managing land conflict in Kenya.

Methodology

Data was mainly be derived from secondary and primary sources. The data collection tools for the secondary data that will be used will be in-depth information gathering, and document analysis. For the primary data direct observation and open ended interviews were used. This technique will mainly involve literature research. Data collected in this procedure will include quotations, opinions and specific knowledge and background information relating to the history of the conflicts and negotiations that have taken place. The research design used in this study will be descriptive survey method. This method is preferred because it allows for prudent comparison of the research

¹¹ Chikara P. (1996) 'Land Tenure and Soil Conservation' in Juma, C. and J. B. Ojwang' (Eds) *in Land We Trust Environment, Private Property and Constitutional Changes*. Initiatives Publishers, Nairobi, PP 40.

findings.³² The qualitative design chosen for this research is theory grounded, or natural inquiry. Grounded theory research unfolds and emerges empirically from the data and is more responsive to contextual values rather than researcher values³³.

The study will use an interview guide to collect the required data. An interview guide is a set of questions that the interviewer asks when interviewing.³⁴ It makes it possible to obtain data required to meet specific objectives of the study. The interviewees will be district magistrates courts, of first, second and third class and district commissioner in Narok, registrar of land in Narok

Data collected will be purely qualitative and it will be analyzed by means of content analysis.³⁵ Content analysis involves observation and detailed description of phenomena that comprise the object of study. This method is preferred because the information collected will be qualitative and therefore require analytical understanding. When human coders are used in content analysis, reliability translates to the amount of agreement or correspondence among two or more coders.³⁶ Reliability in content analysis will be ensured by analyzing the amount of agreement or correspondence among the key informants. The primary data will be supplemented by secondary data on cultural pluralism and politics. The secondary data will be collected from electronic journals, book, periodic reviews and articles.

³² D. R. Cooper and P. S. Schindler, *Research Methods* (7th ed. New York: Irwin/McGraw-Hill, 2000) p 112

³³ A. D Jankowski, *Research Projects* (6th ed London: Thomson Learning, 2002) p 87

³⁴ Mugenda, O. M., & Mugenda, A. (1., "Research Methods: Quantitative and qualitative approaches", (Nairobi: Acta Press Siegel, N. 2003), *Research methods for managers: A skill building approaches* (2nd ed.) (New York: Wiley Publishers, 2003). Pp. 71

³⁵ Holsti, O. R., "Content Analysis for the Social Sciences and Humanities", (MA: Addison-Wesley 1980) pp. 7

³⁶ Krippendorff, K. A., "The Content Analysis Guidebook", (CA: Sage Publications, 2002) pp. 56

The data will also be analyzed by making connections to existing, and integrating with relevant concepts and theoretical framework. Data will be analyzed interpretatively. This will be done by synthesizing, categorizing and organizing the data into patterns that produce the description of the phenomena or a narrative of the synthesis. It will proceed from the belief that all meaning is situational in the particular context or perspective.³⁷ As a result, there could be different meanings to the same phenomena because the meaning will depend on the context. Since it is a qualitative research the hypothesis will be generated after the data is collected. This will entail evaluating and analyzing the data to determine the adequacy of its information and its credibility, usefulness consistency and validation of the hypothesis. This will be the final step and will entail giving a vivid descriptive account of the situation under study. It will give an analytical view citing the significance and implications of the findings.³⁸

Chapter outline

The study is presented in the following five chapters:

Chapter 1: Introduction and Presentation of the Study.

Chapter 2: Conflict Management Processes for Land-related conflict

Chapter 3: Critical analysis of legal process in Kenya

Chapter 4: Data Analysis and Interpretation

Chapter 5: Summary of findings Conclusions and recommendations

³⁷ Cook, 2001, *Draft National Policy on Peace Building and Conflict Management*, National Steering Committee (NSC), Nairobi.

³⁸ P. Barrow, H Gichohi & M. Infield, 2001, *Rhetoric or Reality, a Review of Community Conservation Policy and Practice in East Africa*, Nairobi.

Chapter Two

Legal Process in Managing Land Conflict in Kenya

Introduction

Invariably the resolution of conflict requires communication between the conflicting parties and sometimes the intervention of third parties. There are many processes for dispute settlement, conflict resolution and conflict transformation, appropriate to particular stages of the conflict. Where conflict is systemic and relationships are oppressive, however, dispute resolution processes alone might do little to improve the overall situation. The conflict resolution literature identifies the following common processes to deal with conflict: „lumping it□, avoidance, coercion, negotiation, mediation, conciliation, arbitration and adjudication.¹

Generally interest-based processes are more time and cost efficient, provide more satisfaction to the disputing parties, are less destructive for the relationship of the parties than processes like adversarial litigation, and often result in more durable solutions to which disputants stay committed, therefore lessening the possibility of appeal, future conflict or dishonouring of the agreement.² Power- and rights-based processes both lead to results in which one side loses and the other side wins. This is not conducive to ongoing relationships and can lead to resistance, violence and revolt. Although rights-based dispute resolution feels fairer and less arbitrary than power-based processes, it still results in a zero-sum game in which one side wins and the other loses. Interest-based processes, on the other hand, can lead to win-win outcomes, in that they explore the real

¹ Condliffe, P, Conflict management: a practical guide, 2nd edn, LexisNexis Butterworths, Sydney.

² Ury, W, Brett, JM & Goldberg, SB 1993, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*, Program on Negotiation at Harvard Law School, Cambridge, Mass, 2002.

interests, goals and motivations of disputants and aim to develop a solution which satisfies those needs. Interest-based processes are also more efficient at maintaining a balance between content gains, process fairness and relationship improvement, all important needs for people who undergo a conflict resolution process.¹

Conflict prevention processes are designed to anticipate problems and create structures for dealing with them before they escalate into disputes². Examples include early-warning systems which collect and receive information regarding national minority issues from parties directly involved, the media and non-governmental organisations. These systems are being used to monitor regional and internal conflicts with a particular focus on preventing violence³. Small-scale non-Western societies often employ a range of means for handling interpersonal conflict and for managing contentious issues. Formal courts often play only a minor role in these processes if they are present at all. Most of these practices focus on some form of dialogue, from gossip to informal village meetings to highly ritualised ceremonial activities. Sometimes Western observers perceive this as a blurring of processes⁴.

Types of land disputes

Land disputes have different causes and can be grouped into different types in relation to the substantive issues and the people who are involved. These types are: land administration disputes, land tenure and ownership disputes and disputes over

¹ Clarke, K. 2001, *Mediating Dangerously: The Frontiers of Conflict Resolution*, Wiley/Jossey-Bass, San Francisco.

² Bosche, L. 2005, *Mediation: Principles, Process, Practice*, 2nd edn, LexisNexis Butterworths, Brisbane, N.S.W.

³ Jeong, H.W. 2000, *Peace and Conflict Studies: An Introduction*, Ashgate, Aldershot.

⁴ White, G.M. & Lindstrom, L. 1997, *Chiefs Today: Traditional Pacific Leadership and the Postcolonial State*, Stanford University Press, Stanford, Calif.

boundaries⁷. Land disputes can be located between customary owners, between customary owners and the government, or between customary owners and foreign or local investors. Land administration disputes generally take place between customary landowners and the government and may reflect a customary anxiety about the legitimacy of formal institutions; the transfer of land, which often produces no written records or other evidence recognised as such by the formal institutions; a lack of coordination between administrative bodies; and the expiration of statutory lease agreements⁸.

Commonly the status of customary land is itself being disputed between customary owners, government and foreign investors. After disputes have been adjudicated further disagreements can develop over the propriety of the decision of a court or other government body relating to customary land, or even the constitutionality of a court relating to customary land. Compulsory acquisition of land by the government to foster urban development, build roads or improve transportation, and for agricultural development or mining and logging projects often leads to fierce conflict with customary landowners, whether over the acquisition itself, or over the amount of compensation that needs to be paid, as well as the nature of the obligation to compensate. These disputes can go back to colonial times when many traditional lands were alienated by the colonial powers⁹.

Land tenure disputes can involve the use and the denial of use of communally owned land to individuals, rivalries over membership or influence in land owning groups

⁷ Forman, K.F., Ting, I. & Williamson, IP 2003, *Dispute Resolution for Customary Lands: Some Lessons from Fiji*, Survey Review, vol. 37, no. 289, pp. 177-89.

⁸ Boulle, I. 2000, *Mediation: Principles, Process, Practice*, 2nd edn, LexisNexis Butterworths, (Tatawood, N.S.W.)

⁹ Forman, K.F., Ting, I. & Williamson, IP 2003, *Dispute Resolution for Customary Lands: Some Lessons from Fiji*, Survey Review, vol. 37, no. 289, pp. 177-89.

(for example, disputes as to the matai with pule over customary land in Samoa) and the distribution of lease revenues for community owned land. In addition, customary tenure leases can clash with Western legal requirements and create further conflict. Disagreements can also arise over the use of village or town land by the community or kinship groups and also over customary inheritance laws. Other land tenure disputes arise when the principles of tenure, such as priority to older people over younger, senior to junior lines, or males over females, become incompatible. Such is the case when an older person is from a junior line, or when a female has worked more on the land and is older than her brother¹⁰.

Disputes over land boundaries include the definitions of boundaries, particularly where boundary markers were traditionally made by using stone heaps or signs on trees which can be easily shifted, as well as transitions from customary to Western areas or overlapping claims and conflicts. These arise when community members seek to fulfil their needs for more exclusive demarcation of their rights in land by fencing in properties on customary land. Often customary rules of tenure and boundaries were recorded solely by memory by people whose task it was to recall long and complex lineage and tenure arrangements. One increasing problem that is encountered in many PIF countries is the loss of customary knowledge pertaining to boundaries as the older community members pass away and younger people often show less interest in the old ways or migrate away from rural areas in search of employment.

¹⁰ Crocombe, RG 1988, *Land Courts*, in G Powles & M Pulea (eds), *Pacific Courts and Legal Systems*, University of the South Pacific ; Clayton Faculty of Law, Monash University, Suva, Fiji, p. 376.

In Vanuatu, customary owners are permitted to lease land to foreigners. Rural leases are usually for 75 years, and urban leases for 30 to 50 years. Customary owners are required to compensate the tenant for any improvements to the land at the end of the lease. Many customary owners are unable to pay the compensation and could lose their land permanently. The use of „strata title” to subdivide the leased plots has aggravated the situation even more. This has led to a flood of land disputes in recent years as more and more foreign developers have leased land to build beach side resorts and residential estates. It is estimated that more than 50% of the main island of Efate is leased out this way and disputes on Espiritu Santo have become increasingly common¹¹.

Disputes between customary landowners and private sector or foreign investors therefore will require some special consideration. Land-related conflict has also become increasingly common where population increases rapidly, through birth rates or migration, and land is scarce. An example of this is the migration of Malaitans to Guadalcanal in Solomon Islands which was a significant factor in the civil violence in that country¹². The island nation of Tuvalu is threatened by the loss of land due to the rise of sea levels caused by climate change¹³. Rising numbers in the population have made it impossible for the Tongan government to give every entitled member of the community access to their statutory land entitlement¹⁴. Land disputes also often occur where the land is used for resource extraction such as logging or mining. Corporate investors often treat

¹¹ Jewitt, A. 'Indigenous Land Grievances, Customary Land Disputes and Restorative Justice', *Journal of South Pacific Law*, vol. 8, 2004, pp 2.

¹² Sofield, PIR, 'Solomon Islands: Unity in Diversity', in D Rumley, VL Forbes & C Griffin (eds), *Australia's air of instability: The Political and Cultural Dynamics of Regional Security*, Springer, Dordrecht, The Netherlands, 2006 pp 323.

¹³ Barnett, J & Adger, WJ 2003, 'Climate Dangers and Atoll Countries', vol. 61, pp. 321-37.

¹⁴ Powles, G. *Tonga*, in MA Niomy & AH Angelo (eds), *South Pacific Islands legal systems*, University of Hawaii Press, Honolulu, 1993, pp 660 .

the land as a commodity and do not recognise the depth of its cultural and spiritual significance. Disputes arise not only over access to land or environmental degradation but also over the perceived inequality in distributing the royalties to the communities involved. Sometimes customary landowners or their descendants want to review the amount of compensation in later years as they feel that the land was given away too cheaply. The example of Bougainville shows that these disputes can lead to violence and a complete destabilisation of the country¹³.

'Formal' and 'Informal' vs. 'local' and 'Introduced' processes

Conflict management and dispute resolution processes can be classified by their formality and reliance upon substantive norms such as statutory law or custom. Informal processes that rely little on substantive norms, for example, can be thought of as normal everyday negotiations, while court proceedings in the Western adversarial court system sit at the other end of the scale and are both highly formal and reliant on substantive law.¹⁴ An examination of dispute resolution processes in the Pacific, however, shows that this differentiation is of little help in distinguishing methods that are practiced „on the ground. For example, the name land litigation in the Trobriand Islands assumes a „formal court process, but in reality the process does not follow formal written court rules in the Western sense. The disappearance and diminution of authority and customary ways of dispute resolution have also led to the establishment of new processes that attempt to

¹³ Clarke, W. 2006, *Discontents of Daily Life in the South Pacific*, in D Rumley, VI. Forbes & C. Griffin (eds), *Australia's arc of instability: the political and cultural dynamics of regional security*, Springer, Dordrecht, The Netherlands, pp. xx, 323 p.

¹⁴ Coodliffe, P. 2002, *Conflict Management: A Practical Guide*, 2nd edn, LexisNexis Butterworths, Sydney.

harness the strengths of both local and introduced systems. The Vanuatu Customary Land Tribunal is an example of this new breed of hybrid system.

It is difficult to find appropriate terms to discuss dispute resolution processes that have their roots in local culture and custom. The expression „traditional dispute resolution for example, can carry with it a connotation of static and unchanging practices that have difficulty adapting to modern problems such as foreign investment and increasing population pressures. To speak of local and introduced processes is equally problematic, since processes such as ordinary courts, originally introduced by European colonial powers, have undergone many changes and have adapted to their Pacific environment and to the people who use them. Many Local, Island or Magistrates Courts in the Pacific make their decisions based on customary law or at least take customary law into account during the decision-making process. Special land courts often employ more inquisitorial approaches to evidence than would be allowed in courts that follow the traditional adversarial system. At the same time local processes, such as determination or conciliation by the local chiefs or clan elders have undergone significant changes¹⁷.

Current Land Laws and Policies in Kenya

The declaration of a protectorate over much of what is now Kenya on 15 June 1895 – which marked the official beginning of British rule in Kenya – laid the foundations for the land problem that has been experienced in many parts of Kenya over the years. This was also the beginning of massive dispossession of indigenous Kenyans as the demand for land for the railway construction and European settlement took precedence. In 1897, the Commissioner for the Protectorate, using the 1894 Land

Farran, S & Paterson. D) 2004, *South Pacific Property Law*, Cavendish, London, Portland

Acquisition Act of India, which was extended to Kenya, appropriated all lands situated within one mile on either side of the Kenya-Uganda Railway for the construction of the railway. The Act was also used to compulsorily acquire land for other public purposes such as government buildings.¹⁸

Since that period when Kenya was under colonial rule, land issues have remained emotive, contentious and an obstacle to social cohesion and economic growth. The development blueprint¹⁹, notes that the country has not had a national land policy and this has given rise to weak land administration and management framework. An ineffective regulatory framework has been at the roots of many problems, including claims of historical land injustices among some communities, proliferation of unplanned urban settlements, bad land use practices and human-wildlife land use conflicts. Additional serious aspects of the land issue have been environmental degradation, uneconomic land subdivisions, unjust land distribution and other land related problems. One result of all this has been increased poverty among some communities²⁰.

While there were high expectations of the agricultural economy following independence, from the point of view of the African sector, there was very little change outside the high potential areas where agricultural production continued to support the economy. Fundamental inequalities between the African sector (marginalized areas) and

¹⁸ Okoth-Ogendo, H.W.O. *Tenants of the Crown: Evolution of agricultural law and institutions in Kenya*, Nairobi: African Centre for Technology Studies Press, 1991.

¹⁹ Ministry of Planning and National Development, *The National Economic and Social Council of Kenya (NEEC): Kenya Vision 2030*, GOK, 2008.

²⁰ Smitanga, P.M. 'Land Ownership and Uses in Kenya: Policy prescriptions from an inequality Perspective', Chapter 3 in *Society for International Development (SID), Readings on Inequality in Kenya: Sectoral dynamics and perspectives*, Nairobi: Society for International Development.

the former European sector (high potential areas) continued and in some cases probably widened. Policies, laws and practices adopted after independence saw a general re-entrenchment and persistence of colonial themes, policies and patterns of organization in all aspects of Kenya's economy, save only for inconsequential adjustments²¹

Every legal document from the national constitution to contract law details some aspect of land governance in Kenya. However, since the focus here is on agriculture, the review will be limited to the essential issues that govern land in agriculture. The formal governance of land can be categorised into three facets. These are direct effect governance systems, indirect governance laws, and enforcement organisations

The direct effect governance system comprises diverse sectoral laws governing exploitation and conservation of the natural resources incident on land. These laws are in operation in many sectors including agriculture, wildlife, livestock, forestry, water, wetlands and environment. Indirect effect laws are those laws that define property rights in land ownership. They deal with issues of land ownership and involve processes such as enacting of laws, revisions, land adjudication, consolidation, and registration. Enforcement refers to both the organisations emanating from the various legal institutions and the laws governing enforcement. This section provides an overview of these three categories of laws and organisations as stipulated in various land law documents in

²¹ Okoth-Ogendo, H.W.O.) *Tenants of the Crown: Evolution of agricultural law and institutions in Kenya*, Nairobi: African Centre for Technology Studies Press. 1991.

Kenya. The section however begins by examining the Kenyan constitution on matters relating to land²².

Conclusion

The tools of arbitration, mediation and conciliation as provided for in the different bodies of customary law also require further consolidation and consensus over areas of jurisdiction and legal value. The tools of arbitration, mediation and conciliation could represent a useful option for land, property and natural resource management, particularly if their inherent flexibility is adapted to the evolving challenges of a post conflict environment and until the gradual task of institution building is established.

It is furthermore expected that while more formalized structures will be in place in urban areas in the medium and long term, these tools could efficiently address the specific needs of rural realities for a much longer timeframe.

The necessity of an active and coordinated involvement of all stakeholders is strengthened by the consideration that: "given the historical precedents, dealing effectively with land issues has often been a pressing need in the immediate post conflict period. The ability to deal with the requirements quickly and effectively has often made a major contribution to post conflict recovery."

²² Syagga, P.M. 'Land Ownership and Uses in Kenya: Policy prescriptions from an inequality Perspective'. Chapter 8 in *Society for International Development (SID). Readings on Inequality in Kenya: Sectoral dynamics and perspectives*. Nairobi: Society for International Development, 2006.

Chapter Three

Managing Land Conflict in Kenya

Introduction

This chapter discusses the land issue in Kenya, Causes of land conflicts, Land institutions and critical role they play in conflict and peace building. This chapter will also discuss Dispute mediation mechanisms, the Role of African customary law, the traditional justice mechanisms and finally role of Council of elders in land conflict.

The management of natural resources is one of the most critical challenges facing developing countries today. The exploitation of high-value natural resources, including oil, gas, minerals and timber has often been cited as a key factor in triggering, escalating or sustaining violent conflicts around the globe¹. Furthermore, increasing competition and conflict for diminishing renewable resources, such as land and water, is on the rise. This is being further aggravated by environmental degradation, population growth and climate change. The mismanagement of natural resources is contributing to new conflicts and obstructing the peaceful resolution of existing ones.

There is a legal and institutional framework that is supposed to deal with land conflicts and either resolve or manage them. These institutions include the courts of law, tribunals under various Acts, The National Environmental Management Authority, Public Complaints Committee, Environmental Tribunal and other various informal community based resource governance bodies. Land conflict in Kenya is a common phenomena and

¹ Molen, P. V. D., Lemmen, C.: Land Administration In Post Conflict Areas. In: Molen, P. v. d., Lemmen, C. (ed.): *Proceedings of a Symposium held by FIG Commission 7 on 29 and 30 April 2004 at the European UN-Headquarters, Palais des Nations, Geneva, Switzerland on Land Administration in Post Conflict Areas*. Frederiksberg 2004, pp. 5-14

has created other land-related challenges, as it can damage or destroy property records and cadastres, undermine customary or statutory rights to land ownership and access, and further weaken judicial or traditional instruments for the management of land-related disputes. Violent conflicts can displace thousands of people in short periods of time, leaving their lands vulnerable to occupation by others. The return of refugees and internally-displaced persons to their lands in post-war periods generates new conflicts and pressures for compensation. In these circumstances, people's rights to specific plots of land as well as their rights as citizens to be allowed to own land at all can be challenged, for example on the basis that their ethnic group are "late comers" without traditional ownership rights.

Land Issue in Kenya: Historical Context

The Republic of Kenya has a total surface area of 59,195,800 ha, of which water surface forms 1,123,000 ha and land makes up 58,072,800 ha. of the total agricultural land (56,914,000 ha). The proportion that is classified as high and medium potential (suitable for arable agriculture) is 17.5 per cent. The rest (82.5 per cent) is suitable for extensive livestock production, wildlife and irrigated farming¹.

¹ Karuki, J. W.: *The Impacts of Land Conflicts on Women's Livelihoods. The Case of Nakuru District Kenya*. Unpublished Master's Thesis at the Centre of Land Management and Land Tenure Technische Universität München 2005.

Land usage categories in Kenya

Category	Area (Sq km)	Per cent of Total Land and Water area
Forest	7,084	1.2
Government Reserve	492	0.1
Townships	1,812	0.3
Alienated Land	33,397	5.7
Game Reserves	13,691	2.3
National Parks	3,149	0.5
Trust Land	457,449	78.5
Total area of water	11,230	1.9
Total Land and Water	582,646	100.0

Source: Adapted from *Vision 2030 Medium Term Plan (2008-2012)*

Land is the most important factor of production for the majority of Kenyans. It provides the foundation for many other activities such as agriculture, water, settlement, tourism, wildlife and forestry. It is crucial to the attainment of economic growth, poverty reduction and gender equity precisely because most people depend on land for their livelihood. Prior to colonial rule, land was owned communally. This was however changed by the colonial government which introduced land title deeds and therefore individual ownership of land. The colonial land policies were complex and costly. They were also discriminatory leading to marginalization, displacement and discontent¹.

¹ Molen, P. V. D., Lemmen, C. *Land Administration in Post Conflict Areas*. In: Molen, P. V. D., Lemmen, C. (ed.), *Proceedings of a Symposium held by FIG Commission 7 on 29 and 30 April 2004 at the European UN-Headquarters, Palais des Nations, Geneva, Switzerland on Land Administration in Post Conflict Areas*. Frederiksberg 2004, pp 5-14

Causes of land conflicts

The governments of many developing countries and countries in transition are currently investing in the improvement of their land administration, the primary objective being the development of a transparent and efficient land market. As a by-product of this, there is a goal of decreasing land conflicts through the implementation of a functioning land registration and/or cadastral system. Experience, however, shows that more is needed to avoid severe land conflicts than surveying, demarcation and land registration. The question therefore arises as to the deeper roots of land conflicts and how we can respond to them⁴.

There are numerous land-related factors that can increase the risk of violent conflict in conflict-prone or conflict-affected environments, which need to be taken into consideration when designing land policies or seeking to improve land governance. Land conflicts commonly become violent when linked to wider processes of political exclusion, social discrimination, economic marginalisation, and a perception that peaceful action is no longer a viable strategy for change. Land issues in these settings are often multifaceted and difficult to resolve, especially in the aftermath of violent conflict, and the conflict risks involved are often complex, requiring a deep understanding of the political economy of a given context⁵.

In most developing countries and transitional economies, many constitutive and regulatory institutions have significant functional deficits. Land rights are most often

⁴ Kariuki, J. W.: *The Impacts of Land Conflicts on Women's Livelihoods: The Case of Nakuru District, Kenya*. Unpublished Master's Thesis at the Centre of Land Management and Land Tenure, Technische Universität München 2005.

⁵ Leo, C. *Land and Class in Kenya*, Harare: Nehanda Publishers, 1989

characterized by fragmented or overlapping legislation or legal pluralism. This results in unclear property rights and consequently conflicts over land ownership⁶. Land administration authorities dealing with land registration, land information systems, land use planning and land development often lack trained staff, technical infrastructure and financial resources⁷. Furthermore, administrative services tend to be both over-centralised and underdeveloped, with responsibilities often not clearly assigned or overlapping one another, thus impeding co-operation and co-ordination. As a result, the little available and mostly incomplete or isolated data on land ownership and land use is gathered by a variety of non-cooperating institutions, making it difficult or even impossible to use properly. Endless procedures and low levels of implementation are the result. In addition, many land administration authorities are threatened by corruption. Therefore neither institutions constituting nor those regulating the land market make a substantial contribution to preventing land conflicts. Given their low salaries and an openness of the people working within these institutions to "motivation payments" they instead contribute to land conflicts⁸.

The colonial government declared Mau East part of the Mau forest the home of the Ogick (community of traditional honey gatherers, who survive mainly on wild fruits and roots, wild game hunting and traditional bee keeping) as a natural reserve. This was meant to create a buffer zone between the Maasai cattle and their residence to avoid their

⁶ Karuki, J. W.: *The Impacts of Land Conflicts on Women's Livelihoods: The Case of Nakuru District, Kenya*. Unpublished Master's Thesis at the Centre of Land Management and Land Tenure, Technische Universität München 2005.

⁷ Lanoe, D., Kaplan, M.: *Resolving Land-Use Conflicts Through Mediation: Challenges and Opportunities*. Lincoln Institute of Land Policy Working Paper Product Code WP99DI.1 Cambridge, MA 1999.

⁸ Narany; and V. Weitzner 'Transforming land-related conflict', North South Institute. (2006).

cattle getting into contact with the Maasai cattle. Later it was gazetted as a forest reserve. The forest policy, progressively and immensely displaced the Ogiek, further it replaced the natural forest with conifers that are to the Ogiek totally sterile and unproductive and useless for either bees or wild animals. Today, a whole community is landless and their livelihood completely undermined resulting into long standing land disputes around the Mau forest.

Not even a perfect, economically efficient land market can prevent land conflicts as land market forces alone do not lead to socially and ecologically optimal land use patterns. This is because they tend to disregard the negative effects of environmental degradation (conversion of forests and agricultural land into construction land) and the impact on the poor of being pushed out of the land market by so-called market evictions⁹. Therefore, in addition to secured property rights, additional requirements for an ecologically and socially sustainable land market are required, including: land management (land use planning, land use regulations, land consolidation, land readjustment and land banking), and ethical principles. Usually the institutions regulating the land market do not work properly, but even when they do, land conflicts still regularly occur.

Two main types of institutions can be distinguished: constitutive and regulatory institutions. Constitutive institutions are needed to enable an economically efficient land market to work, and include such fundamental elements as land rights, land registration and the rule of law. Regulatory institutions, on the other hand, provide the ingredients

⁹ Karuki, J. W.: The Impacts of Land Conflicts on Women's Livelihoods: The Case of Nakuru District, Kenya. Unpublished Master's Thesis at the Centre of Land Management and Land Tenure, Technische Universität München 2005.

necessary to make the land market socially sustainable and environmentally sound such as land management and ethical principles. Supportive and complementary institutions such as land valuation and financial mechanisms are no prerequisites for a sustainable land market, but facilitate land transfers and correspondingly can limit or even provoke land conflicts, as well¹⁰.

Grievances over land distribution have been a key source of conflict in Kenya. The local population groups lost their rights to traditional lands during colonisation when the British privatised land holdings, and the situation was further aggravated when Kenya's first post-colonial president, Jomo Kenyatta, pushed for the redistribution of land, with his ethnic group ostensibly benefiting disproportionately. Even more recently, the violence that ensued after the 2007 election was partly a result of continued discontent and frustration with decades of government land policy that favoured certain ethnic groups¹¹.

Legal security is furthermore limited by insufficient implementation of rule-of-law principles, while mechanisms for sustainable land development suffer from the fact that ethical principles are not broadly acknowledged. For all institutions, the lack of implementation is the crucial point. Unclear or non-existent implementation guidelines and contradictory legislation worsen the situation. Political will is also very irregular and unclear. Generally, it can be concluded that imperfect constitutive land market

¹⁰ Wasserman G. "The Independence Campaign: Kenyan and Europeans and the Land Issue" 1960-1962, *Journal of Commonwealth Political Studies*, 1973, Vol II No. 2, PP 12

¹¹ Baranyi and V. Weitzner 'Transforming Land-Related Conflict', North South Institute. (2006).

institutions promote land ownership conflicts, while poor regulatory institutions are responsible for land ownership as well as land use conflicts.

Land institutions and governance play a critical role in conflict and peacebuilding

A central argument of the paper is that an institutional approach is the only sustainable approach to systematically addressing land-related conflicts. This is not to overlook the important work done by other organisations, including NGOs, civil society, the private sector and professional groups, but simply to emphasize that strong, coordinated institutions can help ensure that land grievances are addressed, that land disputes are regulated when they arise, that land conflicts are avoided and that the post-conflict period can result in a durable peace¹².

For the purposes of this paper, institutions include the statutory, customary, religious and other informal organisations, rules or procedures regulating the access to, or control over, or transfer of land and related resources. Important institutions in a conflict context include: national and local government, the judiciary, land administration institutions (statutory, customary and religious), traditional and religious authorities, as well as the mechanisms for dispute resolution within society¹³.

These institutions may vary in legitimacy and require careful, critical assessment to develop an appropriate capacity-development strategy that takes into account their strengths as well as their potential shortcomings. Conflict will affect institutions

¹² Swynnerton, R. J. M. *A Plan To Intensify The Development of African Agriculture in Kenya*. Government Printer, Nairobi, Kenya. (1955).

¹³ Karuki, J. W.: *The Impacts of Land Conflicts on Women's Livelihoods: The Case of Nakuru District, Kenya*. Unpublished Master's Thesis at the Centre of Land Management and Land Tenure, Technische Universität München 2005.

differently depending on the country context. However, in general, experience suggests that traditional or customary institutions may be more resilient to the impact of conflict. This may be particularly true in a post-conflict environment when state structures have collapsed and people have few other alternative avenues for meeting their security, governance and livelihood needs. Where they exist, then, customary institutions may be the first point of reference for addressing land disputes. This is not to argue, however, that traditional institutions function effectively, accountably or equitably. Even in more stable, non-conflict environments, traditional institutions may require targeted support within a larger capacity-development strategy.

Dispute mediation mechanisms and land conflict in Kenya

Mediation this is the intervention in a conflict of an acceptable, impartial and neutral third party who has no decision-making authority¹⁴. The objective of the intervention is to assist the parties in voluntarily reaching an acceptable solution to their conflict. It is useful in highly-polarized conflicts where the parties have either been unable to initiate a productive dialogue, or where dialogue has taken them to a seemingly insurmountable impasse¹⁵.

Boundary disputes and family disputes; negotiation and mediation will have to be applied in land conflict and management. Disputes that may be open, visibly and loosely rooted like disputes resulting from abuse of existing laws or conflicting formal and

¹⁴ Lampe, D., Kaplan, M.: *Resolving Land-Use Conflicts Through Mediation: Challenges and Opportunities*. Lincoln Institute of Land Policy Working Paper. Product Code WP99D1.1, Cambridge, MA 1999.

¹⁵ Swynnerton, R. J. M. *A plan to intensify the Development of African Agriculture in Kenya*. Government Printer, Nairobi, Kenya (1955).

informal laws will best be resolved by focussed legal reforms that will emphasize among others ceilings on land ownership. For disputes that are heated, invisibly and deeply rooted like the disputes resulting from land grabbing by politically correct individuals and irregular allocations of land by past governments -nullification of title, resettlement of communities and land redistribution is the best way out¹⁶.

If issues related to access and ownership of land are not handled appropriately and comprehensively, a rise in land disputes and conflicts can undermine social stability, especially during the crucial stages of post-war reconciliation¹⁷. It is obvious that it is essential for governments and non-state actors to ease tensions and prevent new flashpoints from turning into the cause of renewed violence. Therefore, the effective resolution of land conflicts should be a central part of the overall strategy to consolidate peace and promote future development in states that have been affected by, or are prone to, violent conflict.⁴³ What is therefore required is a strong focus on establishing a secure land tenure framework and building up the capacity of land mediation structures that are able to resolve land disputes and conflicts in impartial and effective ways.

A historical analysis of conflict over resources in Kenya, and the role of the state, suggests that there are continuities, as well as changes, from the colonial period to the present. Land was alienated from customary systems, usually without compensation, for the use of white settlers, who relied on African labour. Africans were restricted to "native reserves" which formed the basis of ethnically-defined administrative units, which are the

¹⁶ Lampe, D., Kaplan, M.: *Resolving Land-Use Conflicts Through Mediation: Challenges and Opportunities. Lincoln Institute of Land Policy Working Paper*. Product Code WP99DL1. Cambridge, MA 1999.

¹⁷ Mahaphonh, N. et al.: *Study on Land Conflicts and Conflict Resolution in Lao PDR Land Policy Study No. 9 under Lao Land Titling Project II. Lao-German Land Policy Development Project*. Phnom Penh 2007.

precursors of today's districts and locations. By 1934, European settlers, who represented less than a quarter of one percent of the population at that time, controlled about a third of the arable land in the country.⁶ Every ethnic group in Kenya experienced land losses, though some communities lost more than others¹⁸. For example, in 1904 the Maasai were moved from their preferred grazing grounds in the central Rift Valley, to two 'reserves', and then in 1911 one of these reserves was again moved, against the wishes of the pastoralists. The Maasai lost more than half of their customary territory. The Kikuyu were another community hard hit by excisions of land, such as the 60,000 hectares converted to European coffee farms in Kiambu. This was exacerbated by the particular speed of commercialization of the Kikuyu economy, which soon led to the emergence of a wealthy landowning class, to the detriment of larger landpoor and landless classes¹⁹.

Customary land ownership in Kenya was not 'individual' (or 'communal') but rather involved a mixture of personal, familial and economic relationships. The British colonial regime attempted to codify customary land tenure systems, a process of simplification and misinterpretation which was often divisive at the local level. While customary rights remained unregistered, the colonial authorities established a system which allowed only for the registration of individual title. The 1954 'Swynnerton' Plan for the Reform of African Land Tenure became the fundamental blueprint for many of

¹⁸ Lampe, D., Kaplan, M.: *Resolving Land-Use Conflicts Through Mediation: Challenges and Opportunities*. Lincoln Institute of Land Policy Working Paper. Product Code WP99DL1. Cambridge, MA 1999.

¹⁹ Bruce Policy, *legal and institutional reform for land in post-conflict contexts*, paper produced for UN-HABITAT workshop on Land and Conflict, Nairobi (2009)

the land tenure reforms which have been implemented to date²⁰. A process of land adjudication, consolidation and registration, which has covered much of the arable land in the country, has resulted in heads-of-household being granted individual rights to land, often at the expense of the rights of female relatives and those with customary rights of use or tenancy. Collective forms of tenure, which would have more appropriately reflected the existing local tenure systems, were not supported by legislation and land could not be registered collectively. The effects of alienation of land from customary systems and the possible links to violent conflict are profound, and cannot be gauged purely by economic criteria²¹. For many Kenyans, the undermining of traditional land usages has "cut the heart out of their way of life."

More generally, within areas held under 'common property' tenure systems, adjudication of customary land, and group-ranch legislation in Maasai areas, led to the individualisation and sale of plots, often to 'incomers'. Significant numbers of smallholder farmers therefore moved into environmentally fragile drylands, particularly in Rift Valley Province. This has led to landuse conflicts, competition over water sources, and environmental degradation²². By 1989, immediately before the re-introduction of multi-partyism, 'incomers' comprised 35% of the Rift Valley population. Experts have estimated that some 95 percent of recent violence in the Rift Valley has occurred in areas where settlement schemes are located. The reality of migration, land acquisition and

²⁰ Shipton. "The Kenya land tenure reform: misunderstandings in the public creation of private property," in R.E. Downs and S.P. Reyna (eds.) *Land and Society in Contemporary Africa*, Hanover and London, University Press of New England. (1998).

²¹ Oucho J. 'Undercurrents of Post-Election Violence in Kenya', in K. Kanyinga And D. Okello (Eds.). *Tensions And Reversals In Democratic Transitions*. (2010). PP 45.

²² Oucho J. 'Undercurrents of Post-Election Violence in Kenya', in K. Kanyinga and D. Okello (Eds.). *Tensions and reversals in democratic transitions*. (2010). PP 12

historical displacement is highly complex. Unfortunately, overgeneralisations are common²³.

Some actors who favour the status quo continue to emphasise 'sanctity of title', ignoring corruption, political favouritism and other problematic aspects related to 'migration' and land acquisition. Conversely, other stakeholders only draw attention to the issue of ethnic patronage and irregular acquisition, forgetting that many migrants are invested all the money that they possessed to gain a title deed, as they were legally entitled to do, and ignoring the role of 'indigenous' local leaders who contributed to and benefited from the corrupt allocation of land. Indeed, many of those gaining political leverage from the land question are themselves owners of huge farms and ranches, acquired in dubious circumstances. In addition, there is a tendency to look only at the collective effects of 'migration' and forget that this collective impact is the result of rational economic choices made by individuals and households. 'History' is (re)constructed and reinterpreted, often in politically expedient ways, and "social memory" becomes liable to become stuck in a rut of cliché and stereotype²⁴.

The post-election violence that affected Kenya in the first months of 2008 took on different forms, and a number of different dynamics can be discerned. The timing of the violence with incidents occurring "within minutes" of the announcement of the election results — demonstrates the clear link to national-level politics, and in particular accusations of electoral fraud. In cases where politicians attempted to restrain the

²³ Mahaphonh, N. et al.: Study on Land Conflicts and Conflict Resolution in Lao PDR. Land Policy Study No. 9 under Lao Land Titling Project II. Lao-German Land Policy Development Project, Phnom Penh 2007.

²⁴ Wasserman G. "The Independence Campaign: Kenyan and Europeans and the Land Issue" 1960-1962, *Journal of Commonwealth Political Studies*, 1973, Vol II No. 2. (1973)

members of their ethnic community from committing violence, less conflict tended to occur. In cases where politicians and administrators failed to intervene or worse, encouraged violence, loss of life and destruction of property was particularly severe²⁹.

Whilst some of the violence appeared to be spontaneous, there are reports of prior organization and planning. Indeed, some 'migrants' had been threatened with eviction during the constitutional referendum campaign in 2005. The head of the National Security Intelligence Service (NSIS) reportedly warned mother security agencies in late 2007 that, "Indicators for potential violence included cutthroat competition for political offices, unfinished constitutional review business, the Majimbo debate and political zoning" The concept of majimbo, in particular, is of relevance to land as a territorial resource. Majimbo was not fully or officially defined by its proponents in the run-up to the elections, and was easily interpreted as a "get the land back issue" particularly affecting zones of high in-migration, such as the Rift Valley. A Government enquiry into the violence noted that, "there was an expectation of the eviction of non-Kalenjin people from South Rift long before the elections were held... they expected that, as a result of the enforcement of *majimbo*, other communities would have to leave the Rift Valley."

The Role of African Customary Law

Law performs the function of ensuring orderly conduct of affairs in society. It does this by requiring people to carry out certain tasks while restraining them from undertaking others. The first is to regulate social behaviour through explicit rules of conduct and the use of sanctions. The second is to provide society with an avenue for

²⁹ Oucho J. 'Undercurrents of Post-Election Violence in Kenya', in K. Kanyinga and D. Okello (Eds.), *Tensions and reversals in democratic transitions*. (2010). PP 32

settling disputes and resolving conflicts in an orderly manner. The third function is to direct planned and coordinated changes in society. Customary law has been a "de facto" recognition in Kenya and has been applied both in formal courts and traditional justice processes and in relation to interpersonal and community based conflicts. Under the Constitution, its application is however, restricted to matters of personal law and therefore its application in other matters relating to conflict does not have any legal recognition and enforcement²⁶.

Despite their contribution to conflict management, the local administration faces challenges to its successful delivery of services²⁷. In conflicts where the government is key actors either as an instigator of violence or as a partisan bystander, local communities view the local administration with fear, suspicion and hostility. Further because of government policy that requires administrators to be transferred frequently, there is no consistency in application of strategies that address conflict. Local communities have raised complaints regarding the policy that requires that administrators should not be residents or members of the said communities. The argument offered is that the administrators are unlikely to be sensitive to the needs of the communities. In the case where an administrator from a predominantly agricultural background is posted to an ASAL for example, she/he may be unable to appreciate the unique cultural and social economic context of the community leading to the implementation of projects that are inappropriate to the livelihood needs of the community.

²⁶ Republic of Kenya (ROK) (2010) *The Constitution of Kenya*, Nairobi: Government Printer.

²⁷ Swynnerton, R. J. M. *A Plan to Intensify the Development of African Agriculture in Kenya*, Government Printer, Nairobi, Kenya. (1955).

Traditional Justice Mechanisms

In Kenya, there is increasing reliance on informal conflict management mechanisms due, in part, to lack of faith in the judiciary and the sheer expense of court procedures not to mention the general inability to pay advocates' fees due to poverty²⁸. An example of the infusion of traditional mechanisms in modern conflict management is the system of elders under the Land Disputes Tribunals Act, 1990. Under this Act, there is a requirement that all disputes relating to land be referred to appointed elders at the local level, whose decisions, on matters of fact is final. Though the system has its own imperfections, stemming from weaknesses in the statute in question, it has served to ease the pressure on courts of law and to provide disputants with a cheap point of redress. Kenyan communities have varied traditional methods for conflict handling. The methods have complemented the government efforts in dealing with protracted violence in some parts of the country²⁹.

Council of elders

The primary indigenous conflict resolution institution is the council of elders. Institution of the elders is very much in use even today but somewhat weakened as the elders are unable to enforce the punishment meted out. Most traditional societies had a council of elders, which was the premier institution charged with the responsibility of managing and resolving conflicts. The institution of elders was greatly respected. Elders

²⁸ Migot-Adholla, S., and F. Place. "The Economic Effects of Land Registration on Smallholder Farms in Kenya: Evidence from Nyeri and Kakamega Districts," *Land Economics*, vol. 74, 1998 PP 360-373.

²⁹ Oucho J. 'Undercurrents of Post-Election Violence in Kenya', in K. Kanyinga and D. Okello (Eds.), *Tensions and Reversals In Democratic Transitions*. (2010), PP 45

were seen as trustworthy and knowledgeable people in the community affairs thus enabling them to make informed and rational decisions. Their age gave them accumulated experience and practical wisdom useful for making decisions which were not only for the parties to the conflict but also for the better good of the whole community. The council of elders used to sit and adjudicate disputes. The primary consideration was the need to maintain family harmony and peaceful co-existence in the society. As much as possible, the process encouraged reconciliation of the parties³⁰.

Pastoralists and other communities with scarce natural resources frequently discussed and reached an agreement on how to best utilize such resources. Narok county is characterized by constant movements of livestock along a its corridor with people moving in/from the neighbouring³¹. Before the movements begin, elders negotiate such movements and a general agreement is reached on access to water and pasture. These negotiations are intense during periods of drought. The visiting herders use pasture and water and move back to their original homes when the situation improves.

Different ethnic groups sometimes agreed to enter into alliances to protect each other from aggression by other groups. For this purpose, such ethnic groups would view themselves as members of one group and jointly repulse attacks from any group(s) that were not part of the alliance. This mechanism was, by design, deterrent since the result of such alliances was to send a clear message to potential aggressors that the tribe they intended to attack did not exist in isolation: it had allies who could come to its aid in time

³⁰ Pinckney, T., and P. Kumuyu. "Land tenure reform in East Africa: Good, Bad, or Unimportant?" *Journal of African Economies*, vol. 3, 1994 PP 1-28.

³¹ Republic of Kenya, "The Report of the Select Committee to investigate Ethnic Clashes in Western and Other Parts of Kenya, Government Printer, Nairobi, Kenya. (1992)

of need¹⁰. The other effect was to reduce the possibility of conflict between the tribes in question.

Conflicts were managed through a progressive process influenced by the social context of the society. Emphasis throughout the process was placed on understanding the motives of the parties. As the talking proceeded, openness to feedback or influence from the social surrounding was maintained. This led to the modification of perceptions and positions. The involvement of the whole community in the process of arriving at decisions was advantageous as it led to a more profound and shared understanding of the conflict. It also promoted a sense of belonging, which in turn, contributed to the restoration, maintenance, and building of relationships.

Conclusion

Like any other resultant effect of diversity of interpretation, land disputes are highly social. Land dispute is constituted by assertion of conflicting claims on land ownership, land use rights, land laws or a combination of them. Land disputes are a long standing issue in Kenya. They are not only the platform on which the Kenyan independence was fought and won but also the strain that has in the recent past threatened the Kenyan cultural and ethnic harmony and often brought the Kenyan economy to its knees.

¹⁰ Oduho J. 'Undercurrents of Post-Election Violence in Kenya', in K. Kanyinga And D. Okello (Eds.). *Tensions and Reversals in Democratic Transitions*. (2010). PP 27.

In a number of Kenyan regions, land ownership and land use rights are often in dispute resulting into land disputes. These land disputes have far reaching negative effects on the certainty of land markets, tenure and food security, economic production and reduction of poverty. Often, the land disputes lead to; civil strife, loss of lives, population displacement, destruction of property and international humanitarian crisis. A trace of the tenure-political evolution reveals failure of land order which was occasioned by colonialists and later the successive Kenyan governments¹³. To consolidate power, the colonialist took proprietary powers over land. Among others this led to suppression and subversion of indigenous land governance structures, institutions and laws and the emergence of the state and its agents as the dominant factor in land relations. This was bitterly contested by the natives leading to Kenya's independence. However, at independence the Kenyan elites confirmed and safeguarded the unpopular property rights, laws and administrative structures acquired during the colonial period thus prolonging the existing and breeding new land disputes. Land disputes are purely a type of social conflict given their causes, form and their net effects. The solution to Kenya's present problem will include: nullification of titles, resettlement of communities and land redistribution. These are complex issues and their successful resolution requires the understanding of the basic reasons and theories behind the Kenyan land disputes through a thorough look at the Kenya's land tenure evolution.

¹³ Wasserman G. "The Independence Campaign: Kenyan and Europeans and the Land Issue" 1960-1962, *Journal of Commonwealth Political Studies*, 1973, Vol II No. 2. (1973)

Chapter Four

Data Analysis and Interpretation

This chapter presents data analysis and interpretation of the study findings. The study used interview guide to collect primary data from residents of Narok County, elders in Narok County, government land administrators in Narok County, local chiefs in Narok. The areas visited included Mulot, Ololulunga, Nkareta, Noroosura, Transmara, Mau- Tipis, London (Narok Town), Majengo (Narok Town), Olmekeinyu (Mau Forest Area), and Sogoo.

Cases of land conflict in Narok County

The first objective of the study was to establish the cases of land conflict in Narok County. The major cases of land conflicts in are conflict due to double leasing / double sale of land, family land disputes, conflict over usage of public land, land dispute between clans and land dispute between ethnic communities. The causes of land conflicts are numerous, but their nature is systemic, implying that the issues and analyses need to be addressed in a governance context. This approach will ensure that policy decision-making considers the contribution of all stakeholders effecting and affected by the conflict. In a governance context, resolution begins by seeking to understand the underlying and interconnected elements of the conflict before assessing the appropriate road to resolution¹.

Conflict over usage of public land

The study established that conflict over usage of public land is a major land issue in Narok County. Conflict over usage of public land arises between individuals and the government between the landowner and the people who would have profited from this

¹ Lemayian, O., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Keyian, Kilgoris Constituency, 1 September 2012.

land if it were used for the purpose for which the government attempted to lease it.² In Narok, the government promoted group ranches for reasons such as to prevent encroachment into pastoral territories, to promote efficient use of rangelands, to stimulate investment in rangeland development, and to encourage pastoralists to market a larger percentage of their animals. Groups of Maasai men were registered as the legal owners of individual tracts of land ranging from 50 to 1,000 square kilometer. The government hoped that the result would be greater off take of animals and fewer livestock to counter the prevailing trend of overstocking.

Nonetheless, despite the heavy investment by the government, stocking rates, herd mobility, and marketing behavior did not change significantly and there was emergence of land disputes between the local communities and the government.³ The case of group ranches is complicated and often not well understood by the community. The causes of land conflicts were poor project implementation, reduction in the power of customary authorities without the development of an appropriate substitute, elimination of customary property rights without the development of appropriate substitutes, divergence between the boundaries of group ranches, customary land management units, and ecological units.⁴

The study established that during and after the development of the group ranches in Narok, many members of the Maasai community expressed a demand for individual title deeds. Individual titles were first granted for better-watered areas close to the urban

² Kurary, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Keyian, Kilgona Constituency, 1 September 2012.

³ Lemaron, K., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Keyian, Kilgona Constituency, 1 September 2012.

⁴ Lemayian, O., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Keyian, Kilgona Constituency, 1 September 2012.

center of Nairobi. As problems with the group ranches emerged, group ranches were subdivided and areas that had not previously been adjudicated into group ranches were individualized. The respondents said that dispute ensues when some members of the community block others from grazing in a public land⁵.

Conflict due to double leasing or double sale of land

The study established that double leasing or double sale of land is another land issue that leads to conflicts in Narok County. Majority of individuals or families who lease their land lack knowledge of the processes and the gravity of commitments made during lease.⁶ Boundary disputes often arise when the parties selling or leasing their documentation or when family members selling their land engage in corruption.

The study found out that some landowners in Narok County mortgage their land to receive loans. When such individuals fail to pay their loans, dispute ensues with the bank who gains possession of the land. The new owners of the collateral land enter into conflict with the original owners of the land. In another case families that previously leased their land to the government reneges on their arrangement with the government and ask for their land back.

Family land disputes

Family disputes in land problem in Narok County. The study established that family disputes come up when family land is sold by a family member without the consent of the entire family. This mistake extends from the family members and the

⁵ Lemaron, K., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Keyian, Kilgoris Constituency , 1 September 2012.

⁶ Maiera, B., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Keyian, Kilgoris Constituency, 1 September 2012.

buyer. Conflicts within families are related to disputes resulting from polygamy or divorce and dispute around inheritance and succession of family land.

There are families in Narok who have been rendered homeless after their house was demolished following a court order to evict them from the land.¹ Sometime brothers engage in a verbal confrontation over land which degenerated into a physical fight. The respondents gave an example of land dispute in which 3 people sustained injuries while 8 others were arrested by police on 19th October 2012 at Mwisho wa Lami in Narok County following a land dispute involving members of the same family. The leading cause of the mayhem was that the parents did not leave behind a will, therefore leading to the land division dispute. The calm within the family was restored upon deployment of officers to the disputed land to keep trouble makers in check.

Land dispute between clans and other ethnic communities

The study established that land conflicts in Narok County arise from boundary dispute between clans and other ethnic communities. Most of the boundary disputes between communities result from ownership of grazing and watering points. Boundary disputes are also caused by formation of new administrative units within the county.²

The study established that Ololulunga and Mulot are neighboring rural areas in Narok County that have previously experienced tensions due to boundary disputes involving

¹ Mejooli, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Shankoe, Kilgoris Constituency, 4 September 2012.

² Masigondc, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County Chief, Keyian, Kilgoris Constituency, 1 September 2012

Maasai and Kalenjin communities.⁹ Other boundary conflicts have been experienced in Mara region involving intergroup ranches namely: - Koiyaki group ranch and Siana Group Ranch. The Mara region (Oloderkesi) has also experience inter-clan dispute between Loita and Purku clans. Some land disputes between clans and other ethnic communities are caused by lack of education about how land procedures work and because rumors often exaggerate and amplify existing tensions. Confrontations between conflicting parties and skepticism against neighboring communities lead to weak social reintegration and a lack of reconciliation and mutual understanding in the event of land disputes within the county.¹⁰

Management of Land Conflict in Narok County

The study explored various approaches used in management of Land conflict in Narok County. The main approached to management of land conflict in Narok County are customary local dispute resolution and use of government legal institutions particularly local authorizes and the court system.¹¹ Majority of rural land disputes in Narok County are resolved using customary local dispute resolution processes that call on the wisdom of community leaders. Before state institutions are called upon communities attempt to resolve disputes at the village level. The village elder in Narok County employs decision-making processes in resolving land disputes, which are similar to

⁹ The chief of Ololulunga said that the boundary disputes emanate from historical disagreement between the Maasai and Kalenjin communities over the exact demarcations of boarder between Muloi and Ololunga.

¹⁰ Naengop, I., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Ololulung'a, Narok South Constituency, 8 September 2012.

¹¹ Niumama, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Ololulung'a, Narok South Constituency, 9 September 2012.

arbitration where disputants have no choice but to accept and obey the decision.¹² Disputants often play a more active role in the process and have input into solutions and agreements. Dispute resolvers therefore act more like mediators or conciliators who moderate a discussion between the parties. Village elder involved in resolution of land disputes use arbitration when the fault or answer is clear, but mediate when a solution requires negotiation or both parties have committed wrongs.¹³ A common feature in land resolution within Narok County is a reconciliation ceremony that signifies and seals the end of the dispute. The cases of land conflict that have been settled by the government or through court decisions often return to the customary local dispute resolution for the dispute to be finally resolved and for the relationships to be restored.

If custom has not resolved the dispute people can apply to go to the village land tribunal, which may be joint if more than one village is involved. The meeting of the tribunal is widely advertised and there can be multiple parties to the dispute.¹⁴ The principal chief and two other chiefs or elders of each village involved form the village land tribunal. Parties can object to the tribunal members if, for example, there are clear conflicts — although neutrality is not sought; indeed, tribunal members will have connections with the parties to the dispute. Presentation of each side's case proceeds

¹² Santamo, P., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Loita, Narok South Constituency, 15 September 2012.

¹³ Lemayan, P., Personal Interview on Effectiveness Of Legal And Non Legal Process In Managing Land Conflict In Narok County, Village Elder, Sogoo, Narok South Constituency, 18 September, 2012

¹⁴ Nataana, T., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Narok Town, Narok North Constituency, 23 September 2012.

without rules of evidence, and there is considerable freedom as to questioning and who can speak.¹⁴

The communities Narok County feel that customary arrangements reflect their values and provide a conventional and effective avenue for redress for local grievances and land disputes.¹⁵ Customary local dispute resolution is also preferred over legal institutions because of proximity to physical evidence of the disputed site, familiarity of village elders with land histories of disputants, village elders' personal knowledge about disputants' ability to pay fines or compensation and most families in Narok County are reluctant to take kin relations to court. Moreover, the communities in Narok County perceive formal legal services as expensive, inaccessible, slow and inconsistent in delivering justice in land conflicts.¹⁷ The study established that in some cases of land dispute in Narok County, the government officials often instruct disputants to return home and try to settle the case within the family or with traditional leaders.¹⁸

The second method used in management of land Conflict in Narok County is the use of government legal institutions particularly local authorities and the court system. Land related disputes that cannot be solved through customary local dispute resolution are referred to local authorities or law courts. The resolution of land conflicts in a law court involves native title determinations in order to identify genuine landowners.

¹⁵ Surum, P., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Keekonyokie, Narok East Constituency, 28 September 2012

¹⁶ Peresian, T., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Ololmasani, Emurua Dikirr Constituency, 29 September 2012.

¹⁷ Kingasunye, P., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Naikara, Narok West Constituency, 26 September 2012.

¹⁸ Terenua, K., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Narok Town, Narok North Constituency, 19 September 2012.

The effectiveness of legal process in managing land conflict in Narok County

The second objective of the study was to establish the effectiveness of legal process in managing land conflict in Narok County. The study established differences in legal process and non-legal in managing land conflict in Narok County. The non-legal processed mainly involves mediation by the most respected community members. Their traditional roles include the settlement of local land disputes and the authentication of land transactions¹⁹.

The study findings on the effectiveness of legal process in managing land conflict in Narok County revealed the following areas of concern: the ability of legal process to satisfying consensus and solutions of land conflicts; the ability of legal process to create sustainable solutions of land conflicts; the ability of legal process to raised awareness of different solutions to land disputes, including non-land solutions; the ability of legal process to create psychological or emotional alleviation of tensions created by land conflicts; the ability of legal process to build confidence; the ability of legal process to raised awareness about legal rights and conflict resolution procedures, institutions and mechanisms; the ability of legal process to raised awareness and knowledge as well as developed and applied skills in conflict prevention, management and reconciliation methods; the ability of legal process to increased efficiency, competence and accountability of other conflict management institutions; the ability of legal process to

¹⁹ Kingasunye, P., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Naikarra, Narok West Constituency, 26 September 2012.

improve social integration and interaction between different communities in land dispute; and the ability of legal process to foster interpersonal and intergroup understanding.^{20, 21}

The respondents were asked whether legal process build consensus between parties involved in land conflicts. The study findings revealed that legal process are not effective in building consensus between parties involved in land conflicts. The parties involved in legal processes do not have time to make peace with each other and end up considering each other as an enemy.²² The individuals or communities involved in land dispute are not able to find their own solutions. The respondents said that mediation is a better way of resolving land conflict because mediators provide a good environment for participants to build consensus.²¹

The study explored whether legal process has the ability to create sustainable solutions of land conflicts. The respondents stated that legal process allow for sustainable solutions regarding land conflicts. The study established that mediations efforts may fail because of durability of agreements because some parties to an agreement can change their mind at any time if the contracts are not legally binding. The study established that lack the ability raised awareness of different solutions to land disputes. The respondents stated that it is non-legal approaches such as mediation that lead to an increase in

²⁰ Sironka, P., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Siana, Narok West Constituency, 26 September 2012.

²¹ Naispanoi, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Mosiro, Narok East Constituency, 26 September 2012.

²² Tonker, O., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Ilkerin, Emurua Dikirr Constituency, 28 September 2012.

²³ Parneres, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Ololulung'a, Narok South Constituency, 9 September 2012.

knowledge about different solutions to land conflicts.²⁴ Capacity-building workshops lead to raised awareness about different types of solution for land disputes.

The study established that legal processes are lacking in creation of positive socio-emotional effects during solution of land disputes. The study found out that positive socio-emotional effects can be achieved through mediation. Mediation leads to alleviation of emotions.²⁵ Mediation beneficiaries feel significantly less angry after mediation. They have more courage to share their experiences and feelings during and after mediation.

The respondents said that legal process do not contribute to confidence building. The legal process does not make all the conflicting parties feel supported. Conflicting parties who loose in a legal battle do not feel more empowered to defend their rights. However, participants in mediation generally feel more able to defend their rights. This is balanced by the fact that beneficiaries of mediation experienced a higher increase of confidence.

The study established that legal process has the capacity to raised awareness about legal rights and conflict resolution procedures, institutions and mechanisms.²⁶ Participants of legal process understand their legal rights and the various mechanisms or bodies through which conflicts can be resolved. Similarly mediation participants in mediation are able to gain knowledge and skills through the workshops and feel more

²⁴ Oloishona, V., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Ololulung'a, Narok South Constituency, 8 September 2012.

²⁵ Naisiac, K., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Narok Town, Narok North Constituency, 23 September 2012.

²⁶ Nampazo, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Ololulung'a, Narok South Constituency, 8 September 2012.

capable of resolving conflicts by going to the right organizations or institutions.²⁷ The study finding revealed that legal processes are able legal process to increased efficiency, competence and accountability of other conflict management institutions. Through the legal process conflicting parties get to know about the different possibilities they have to claim their rights.

The study established that the legal process lack the ability to improve social integration and interaction between different communities in land dispute. The legal process does not foster interpersonal and intergroup understanding and fails to increases involvement of political activity in resolution of land conflicts.²⁸ On the contrary the respondents stated that participants in mediation develop and apply skills in conflict prevention, management and reconciliation. People who have been mediated support others and become drawn into the resolution of conflicts within their own community.

The resolution of land conflicts through mediation promotes understanding and consensus between the parties and facilitates social integration.²⁹ Mediation presents opportunities for individuals and different groups to meet and engage with each other. Therefore, mediation leads to the interaction and exchange entailing awareness about the other's experiences and challenges, thus fostering interpersonal and intergroup understanding.³⁰

²⁷ Sabore, P., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Ololulung'a, Narok South Constituency, 9 September 2012.

²⁸ Simel, O., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Loita, Narok South Constituency, 15 September 2012.

²⁹ Oloishona, V., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Ololulung'a, Narok South Constituency, 8 September 2012.

³⁰ Sankale, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Loita, Narok South Constituency, 15 September 2012.

The study established that land dispute resolution through use of local mechanisms is the most effective means of addressing land conflict in Narok. Whenever land related disputes arise, the wish of the disputing parties is a resolution mechanism that is fast, effective and efficient.³¹ Further, disputes are sometimes better resolved when the resolution mechanism is in touch with the situation on the locality of the dispute and have a clear and unbiased historical background of the situation on the ground. This is where the judicial system fails when it comes to resolving land cases/ disputes. To avoid the long and tedious judicial process in the country, it is advocated for the use of local land dispute resolution mechanisms. The use of the dispute resolution mechanisms is advocated for in both the policy document and in the constitutional provisions on land. The respondents stated that local mechanisms can be effective if they ensure reliable and trustworthy local mechanisms, ensure no favoritism and corruption, and include women in land dispute councils/boards, coordination with other institutions, and establishment of local special courts³²

Effect of legal system in managing land conflict in Kenya

The study established that the provisions in the Kenyan legal systems have not been successful in solving land issues in Narok County. Land conflicts in Narok are multifaceted and difficult to resolve by exclusive reliance on legal system. Land-related conflicts can frequently be traced back to historical grievances related to land

³¹ Sopiato, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Olposimoru, Narok North Constituency, 19 September 2012.

³² Sankei, S., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Lota, Narok South Constituency, 15 September, 2012.

distribution.¹³ Land conflict in Narok County generates new land-related challenges which undermine customary or statutory rights to land ownership and access, and further weaken judicial or traditional instruments for the management of land-related disputes.

The respondents said that there is a need for good land policy and land governance in Narok County to help sustain peace and ensure that long-lasting grievances are addressed.¹⁴ The government legislation does not promote effective use of the limited land resources in Narok as well as clarifying inheritance and land rights in order to reduce land disputes. The study findings revealed that Narok County lacks a good land policy which enhances environmental sustainability by creating incentives for sustainable land use and environmental management.¹⁵

The study findings indicated that the legal system does not play an effective role in solving land dispute within the county because it lacks appropriate provisions that can address land tenure in the county. The land tenure policy does not provide a framework that allows households or individuals reduced the use of land as collateral and the potential for violent conflict.

The land-policy development in Narok did not take the existing sensitivities and grievances into account, in order to better monitor the risks and likelihoods of violent

¹³ Legishon, M., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Sogoo, Narok South Constituency, 19 September 2012.

¹⁴ Murunga, L., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Shankoe, Kilgoms Constituency, Personal Interview, 4 September 2012.

¹⁵ Naisiac, K., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Narok Town, Narok North Constituency, 23 September 2012.

conflict.³⁶ Incorporating a conflict-sensitive approach to land policy has the potential not only to reduce the likelihood of the escalation of violent conflict, but also to increase the overall stability, food security and economic potential of the county. The respondents said that policymakers ignored the conflict dimension, and viewed land reform as a technical exercise hence the possibility of instability and land-related violence has increased significantly.³⁷

The respondents further attributed the failure in the legal system to address land conflicts in Narok to lack of provisions for conflict prevention and the restoration of peace in the event of disputes. The legal system does not play an active role in peace building by inspiring a higher degree of trust in regulatory systems among various interests competing for scarce land resources. The inefficiency in the legal system is also a product of low level of stakeholder and civil society participation and inadequate human and institutional capacity.³⁸

The study further established legal system can effectively address land conflict in Narok if it clearly provide for conflict between households, neighborhoods and neighboring communities over land rights and boundaries, conflict between traditional and non-traditional local organizations in land management and dispute resolution, inheritance-related conflict among family members, conflict between newcomer households and long standing residents, conflict arising from household mobility,

³⁶ Metietki, K., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Shankoe, Kilgona Constituency, Personal Interview, 4 September 2012.

³⁷ Namelok, L., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Melili, Narok North, 26 September 2012.

³⁸ Mbiraru, O., Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict In Narok County, Shankoe, Kilgona Constituency, 4 September 2012.

generational conflict over land use and appropriation of benefits, conflict between interest groups over appropriate land purposes, distribution of benefits from land development projects, and gender conflict over land access, land use and appropriation of benefits.

The respondents emphasized the importance of reducing conflicts over land in Narok County through the implementation of a functioning land registration system which need to be supported by additional preventive measures such as conflict resolution (including moderation, mediation and arbitration), land management (focusing primarily on clarifying land rights and security of tenure) and psychotherapeutic approaches (for example, trauma counseling).³⁹

The study findings are in tandem with the study finding by Empowering Society⁴⁰ who stated that the Kenyan society has been characterized by inequality between various classes and categories of people for a long time right from the colonial era. A majority of Kenyans have been expressing dissatisfaction with the current status of this principle. Empowering Society further stated that Kenyans they expect the following undertakings in the government policy in order to deal with land conflicts: curb land allocation malpractices, elimination of discrimination (ethnic & gender), resolution of historical injustices, improve tenure security, efficient utilization of marginal lands and affordable and efficient land transactions.

³⁹ Resson, P. Personal Interview on Effectiveness of Legal and Non Legal Process in Managing Land Conflict in Narok County Kapsasian, Emurua Dikirr Constituency, 29 September 2012

⁴⁰ Empowering Society (2011). Land Reforms in Kenya: Gains & Challenges One Year into Implementation: The Fourth Score Card Report on the Implementation of Land Reforms in Kenya. REVIEW PERIOD: 27th August 2010 – 26th August 2011

Chapter Five

Conclusions

Introduction

The study established that major cases of land conflicts in are conflict due to double leasing / double sale of land, family land disputes, conflict over usage of public land, land dispute between clans and land dispute between ethnic communities.

The study established that land conflict in Narok Count manifests in terms of double leasing / double sale of land, family land disputes, conflict over usage of public land, land dispute between clans and land dispute between ethnic communities. The conflict over usage of public land arises between individuals and the government between the landowner and the people who would have profited from this land if it were used for the purpose for which the government attempted to lease it. The study established that double leasing or double sale of land is another land issue that leads to conflicts in Narok County. Majority of individuals or families who lease their land lack knowledge of the processes and the gravity of commitments made during lease.

The family disputes result from polygamy or divorce and dispute around inheritance and succession of family land. Most of the boundary disputes between communities result from ownership of grazing and watering points. In regard to the effectiveness of legal process in managing land conflict in Narok County the study established that legal systems are not effective in solving land disputes in Narok County. Legal systems lack the capacity to build long lasting consensus between parties involved in land conflicts in Narok County. Unlike legal systems, the non- legal systems such as mediation allows for capacity-building workshops, sensitization and listening forum. The respondents said that majority of mediations are successful, and beneficiaries of

successful mediation are generally very satisfied with the agreed solutions. Most of the agreed solutions in mediation are implemented effectively without resumption of conflict or referral to other institutions. Unlike legal systems, the non-legal systems play a more active role in suggesting options/possible solutions to parties. The non-legal systems lead to significant a decrease of anger and increased feelings of relief because they develop courage to share experiences and feelings. This is an important psychological step to prevent violent expressions of emotions and reactions to certain land conflicts. The non-legal systems also contribute to confidence building and lead to an increased awareness about property rights and legal institutions and mechanisms. In addition, the non-legal approaches reinforce the legal approaches by increasing knowledge of legal matters.

Conclusion

The study concludes that there is lack of coordination between legal and traditional land acquisition, management and dispute resolution in Narok County. The study established that struggle exist between variety of authorities and dispute resolution mechanisms. Individuals involved in traditional mechanisms and individuals on the ground seem to prefer the tribunals, and, because of their knowledge, they involve elders. Many respondents interviewed expressed the need of legal systems to work more closely with traditional mechanisms and vice versa. The legal system is not effective because most of residents in Narok often do not secure documentation or follow correct procedures for land acquisition. Common mistakes include not involving relevant parties and writing the wrong measurement of land.

The study concludes that legal systems lack the capacity to build long lasting consensus between parties involved in land conflicts in Narok County. Unlike legal

systems, the non- legal systems such as mediation allows for capacity-building workshops, sensitization and listening forum. The respondents said that majority of mediations are successful, and beneficiaries of successful mediation are generally very satisfied with the agreed solutions. Most of the agreed solutions in mediation are implemented effectively without resumption of conflict or referral to other institutions. Unlike legal systems, the non- legal systems play a more active role in suggesting options/possible solutions to parties. The non- legal systems lead to significant a decrease of anger and increased feelings of relief because they develop courage to share experiences and feelings. This is an important psychological step to prevent violent expressions of emotions and reactions to certain land conflicts. The non- legal systems also contribute to confidence building and lead to an increased awareness about property rights and legal institutions and mechanisms. In addition, the non- legal approaches reinforce the legal approaches by increasing knowledge of legal matters.

The study concludes that mediation-based solutions to land disputes contribute to durable individual solutions. Mediation and CBWs have important social, emotional and institutional impacts, directly contributing to local conflict management capacity and a mediation culture. At an individual level, they prevent violent expressions of anger, build confidence and raise awareness about property rights, legal institutions and conflict resolution mechanisms. Mediation contributes to the sustainable resolution of land disputes. Not only are consensus-based solutions found for a significant proportion of conflicts, but those solutions are also implemented. Mediation has important influences in socio-emotional terms. Beneficiaries have a decrease of anger and feelings of relief after mediation, since they develop courage to share experiences and feelings with others. In

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this way, potential violent expressions of anger and frustration can be prevented, which is an important step towards sustainable conflict management. Also, mediation builds confidence building and increased awareness about property rights and legal institutions and conflict resolution mechanisms.

The study concludes that the resolution of land-related conflicts is key to promoting sustainable development and attaining peace and security in Narok County. Effective land reform can reduce conflicts and create stability and security in communities. However, land reform processes that are inadequately conceptualized and implemented can create land-related conflicts.

The study draws the following recommendations for policy intervention: Other than the provisions of the legal systems, the resolution of land disputes in the country require comprehensive strategy to address long-term land challenges. Alternative and durable institutional and policy solutions are needed to resolve the land issue in the country. Parallel to this, a realistic approach to the distribution of land titles needs to be developed, clearly defining ownership, while providing access to mechanisms for appeals and dispute resolution. As part of this process, judicial reforms and clarity about a number of legal issues are needed. These reforms are crucial in order to resolve the land issue in a durable manner. The distribution of land titles should take into account the different laws and backgrounds of the people concerned. This is particularly necessary if the dispute includes different communities.

To resolve the long-term land question, there is a need to develop and implement land conflict solutions beyond land, diversify the economy and create alternative

livelihoods in semi-arid areas such as Narok. The combination of land shortage and increasing population growth and density in Narok town necessitates the development of non-land-based solutions. This is a complex and sensitive task, considering the traditional, cultural and economic importance of land. A number of important factors would contribute to the development of a diverse economy and alternative livelihoods – inter alia the creation of new markets, the development of infrastructure for manufacturing, investment in urban development and fostering growth in foreign direct investment.

The government of Kenya should create and regularly update a database of all land dispute cases in the country. A database should contain details of and reasons for successes and failures, with data on beneficiaries. It should, among other things, facilitate follow-up on all cases, for the purpose of evaluation and to assist beneficiaries, should the need arise. Close monitoring is also important to ensure sustainability.

To ensure that the land reform process is carried out effectively, it is important that stakeholders in the land sector urgently develop a comprehensive implementation framework with clear timeliness, responsibilities and a clear monitoring and evaluation framework; the reform process be carried out through open dialogue and navigated through appropriate give-and-take options among stakeholders; and the Ministry of Lands should embrace a genuine participatory, inclusive and consultative approach to implementation process.

The study recommends resolution of land disputes through mediation because it has the potential to facilitate interpersonal and intergroup understanding and reconciliation. Moreover, further development of plans to integrate mediation at family

level to facilitate intra-family understanding and reconciliation could yield positive results by fostering dialogue between family members where there are land tensions.

Peaceful coexistence among residents of Narok County can be promoted by not focusing solely on legacy channels but also by means of mediation. Mediation process should promote dialogue between local communities; strengthen the relationships between various groups in communities through confidence building and developing skills in communication. Mediation should aim at improving the ability of community leaders and local administrative authorities to identify land disputes assess the situation and design appropriate responses before dispute situations develop into violent conflict

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