

**THE ROLE AND EFFICACY OF THE LAND ADJUDICATION COMMITTEE AS AN
ALTERNATIVE LAND DISPUTE RESOLUTION MECHANISM IN NAROK COUNTY**

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**A project submitted in partial fulfillment of the requirements for the award of a degree of
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DECLARATION

This project is my original work and has not been presented for examination in any other University.

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Signature

Date

This project has been submitted for examination with my approval as University supervisor
Dr. Fred Jonyo

Signature.....

Date

DEDICATION

I dedicate this study to the Creator of land and all other things in the universe, family and friends who have always been there for me during the most challenging moments of my life. To my father Mr. George Basil Wright Monday who the Lord called over a decade ago, “while you were around you always encouraged me to pursue further studies”.

My loving mother, Mary Auma Monday, who has been very supportive and a daily source of inspiration. To my sisters Filly, Elizabeth and my brother Samuel Ochola who have always had faith and confidence in me, without you I would not have had the strength and capacity to reach such levels of personal achievement.

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ABBREVIATIONS AND ACRONYMS

AO	Adjudication Officer
ADR	Alternative Dispute Resolution
ADRM	Alternative Dispute Resolution Mechanism
ADRS	Alternative Dispute resolution System
CDR	Customary Dispute Resolution Mechanism
DC	District Commissioner
DO	District Officer
JDR	Judicial Dispute Resolution Mechanism
LAA	Land Adjudication Act
LACs	Land Adjudication Committee

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ABSTRACT

Land disputes, in most areas in Kenya is considerable because of population growth and the land policies of the colonial government that introduced the individualization of land that was previously communally owned. As individualization of land continues, so does the rise in land related disputes. In many third world countries, especially in Africa, these land conflicts are resolved through formal, informal and alternative justice institutions. Formal institutions are those that are established by legislation while informal institutions are those local institutions that are recognized by the local communities but are not supported by legislation. Alternative justice systems means alternative from the judicial court system. Alternative Dispute Resolution Mechanism (ADRM) combines both formal and informal system of dispute resolution.

The main objective of the study is to examine the role and efficacy of the Land Adjudication Committee as an Alternative Dispute Resolution Mechanism. The study is based on a case study of Narok County. A combination of qualitative and quantitative methods including interviews, house hold surveys and secondary data were used to collect and analyze data on the nature of land disputes and how these disputes are resolved. For the purpose of this study the conflict transformation model of Kumar Rupensinghe (1994) and the Alternative Dispute Resolution (ADR) Framework by Ramirez (2002) was employed.

The most prominent element in this study is that the Land Adjudication Committee as an alternative dispute resolution system has been effective in handling land disputes in Narok County. The study concludes by recommending that the Land Adjudication Committee should be empowered so that they will have the capacity to adapt to the needs and preferences of the modern society and thus administer justice efficiently. It also suggests the enhancement of the LAC as an ADRM, by bestowing it with the power of execution being an organ hearing land disputes at first instance rather than splitting this power to other organs. It also recommended that sensitization and training of the local Land Committee should be conducted on the significance of the alternative dispute resolution systems in addressing land disputes in Narok County.

CHAPTER ONE

INTRODUCTION

1.0 Background of the Study

Land is an indispensable natural resource and a basic economic asset to humanity, a source of livelihood, power and wealth, whose demand is continuously increasing (Appiah, 2003). It provides the physical substratum upon which all human activities are undertaken, where life begins and where it ends. In agrarian societies land is a source of socio-economic and political interaction. Close to three thirds of the world's poor population live in rural areas where they depend on land and its associated natural resources for their livelihood (International Land Coalition, 2010). As society embraces market production, increasing population growth and rapid urbanization, the economic value of land has equally increased. Consequently competition over land has been frequent (Appiah, 2003).

It is evident that land as a natural resource that has continued to appreciate over time making it a scarce commodity, disputes and conflict over it are bound to occur. This brings forth the debate on the relationship between land and conflict. (Kanyinga, 1998) points out that land and politics have maintained a close interdependent relationship. This could be understood and observed in third world countries where conflict and disputes over land are highly politicized. Land has been the source of conflict as a result of political regimes using it as a form of reward to loyalties and punishment to political opponents. For instance, in Kenya, the Ndung'u Report of 2004 revealed that former Presidents Kenyatta and Moi, as well as cabinet ministers, former high ranking civil servants and other influential people have been among the major beneficiaries of illegal allocations of public land. (Kalende, 2008) asserts that land dispossession by colonialists and later by Kenyan elites, created the two classes; the large land owners and the landless hence continued conflict over the historical injustice. Corruption, bribery, fraud, nepotism, favoritism and clientelism – in land administration and state land management is also a widespread problem, and leads to a high number of land conflicts all over the world.

The question of land in Kenya, especially as it relates to its distribution, division, transfer and generally to its administration and management still remains highly contentious (Ojienda, 2007).

Land disputes are constituted by assertion of conflicting claims on land ownership, land use rights, land laws, or a combination of them. In Kenya, land disputes have led to violent confrontation leading to loss of lives and property. For instance, during the week of October 15th 1993 violence erupted in Narok District. Maasai morans, or warriors attacked immigrant Kikuyu settlers and massacred at least 17 of them in the first 3 days of the conflict. Some leaders took advantage of the new politics of ethnicity to unflinchingly defend their perceived interests in land. It was claimed that the Kikuyu's had acquired land by dubious means, cheating the illiterate Maasai out of their ancestral property (Dietz, 1997). To mitigate the negative consequences that follow land disputes, formal means of court systems or the customary mechanism that involves mediation, arbitration and negotiation or a combination of both have been adopted in land dispute resolution.

Alternative dispute resolution mechanisms' successes in resolving disputes have made the mechanisms' to be formally recognized by various countries' constitutions (USAID Rwanda 2008; Policy Brief 2009; Appiah, 2009). The mechanism has been hailed for its role in dispute resolution and dispensing justice cheaply, being accessible, transparent and for discharging its functions expeditiously. This is unlike the Judicial dispute resolution system which is expensive and not easily accessible. The National Land Policy (2004) has acknowledged the role of the alternative mechanisms in resolving land conflict provided they do not go against the provision of the constitution (Constitution of Kenya, 2010).

Narok County constitutes one of the districts that have adopted the alternative dispute resolution system such as the Land Adjudication Committee among others for the purposes of resolving land related disputes and conflicts. This is intended to compliment formal court processes and recognizing the fact that alternative mechanisms are important in resolving disputes hence the need to formally incorporate them.

1.1 Statement of the Research Problem

Land disputes and conflicts in third world countries could be traced to colonial rule which introduced a land tenure system that emphasized on individual ownership against the prevailing customary land tenure system (Fonmanu, Ting and Williamson, 2003). Post colonial era has

therefore witnessed the clash between the western land tenure system and the customary tenure system. This inconsistency has contributed to heightened tension, disputes and conflict as parties attempt to address challenges related to land.

Kenya has had more than 23,000 land related disputes that still awaits adjudication for settlement underscoring the high number of unresolved land disputes around the country (Syagga, 2011). In order to resolve these disputes and conflicts, the country has acknowledged that other than the court process, alternative means can play a key role in resolving land related disputes and conflicts. Alternative means of resolving land conflicts outside the court process in Kenya have seen the adoption of informal mechanisms of the traditional African way of resolving conflicts and state's statutory organs in conflict resolution. Among others, the Land Adjudication Committee in Kenya is an organ that plays a role in resolving land related disputes using modern and customary laws.

With modernization came the individualization of land ownership which has led to land disputes and as such it is necessary to scrutinize whether these LAC as alternative resolution mechanisms are effective in addressing land disputes and conflicts. It has to be pointed out though that the alternative means, especially customary laws, do not necessarily seek justice, only but rather puts emphasis on reconciliation and forgiveness as a way of restoring relations between the conflicting parties. This study seeks to examine the effectiveness of the Land Adjudication Committee in resolving land disputes in Narok County.

The guiding questions for the study are; what are the emergent factors causing land disputes and conflict in Narok County? How effective is the alternative land dispute resolution mechanism as practiced by the Land Adjudication Committee in solving land disputes in Narok County? How can the capacity of the Land Adjudication Committee be enhanced?

1.2 Objectives of the Study

The main objective of the study is; to examine the efficacy of the alternative dispute resolution system in Narok County.

The specific objectives are to:

- i. To explain the causes of land disputes in Narok County.
- ii. To examine the efficacy of the Land Adjudication Committee as an Alternative dispute resolution mechanism.
- iii. To suggest ways of enhancing the capacity of the Land Adjudication Committee.

1.3. Justification for the Study

Land adjudication in Kenya dates back to the colonial period when the process was formulated to transform land in trust land areas from customary land tenure to the statutory freehold tenure. Because of this reason, there has been a changing land use system in pastoral communities that has come along with land disputes and conflicts, consequently, there is therefore the need to find effective ways of resolving and mitigating land disputes by setting up Land Adjudication Committees that can effectively deal with the disputes caused by the individualization of land in a pastoral community. Available literature have mostly looked at the land question in relation to conflicts not giving specific attention on causes of land disputes and their resolution using alternative means of dispute resolution (Kanyinga 1998; Henrysson and Joireman, 2009).

A lot of previous studies have concentrated on individualization of land and its effects. However, this study filled the knowledge gap on the disputes occurring due to individualization of land in a predominantly pastoral community and how the Land Adjudication Committee has been effective in resolving these disputes. Findings from this project will provide policy makers with empirical data on efficiency of the Land Adjudication Committee which is an alternative dispute resolution mechanism, for formulation of appropriate public policy on land disputes resolution. Moreover the research may serve as an input for similar in-depth research in the country.

1.4. Scope and Limitations

The study focused on alternative land dispute resolution mechanisms as administered by the Land Adjudication Committee of Narok County. This is after the realization that there are several alternative land dispute resolution mechanisms within the District. Further, the study examined the Land Adjudication Committee of Narok County from the year 1968 to 2012. This is the year Land Adjudication Act (Cap 284) was enacted to the period when the National Land Commission Act, 2012 was enacted to give effect to the objects and principles of devolved government in land management and administration. This Act spelt a raft of measures on land use and management based on how land conflict should be dealt with.

The study faced the following challenges; tracing of parties to past land disputes occasioned by the fact that some had moved or changed land ownership, language barrier, and financial resources. Some of the targeted disputants refused to be interviewed for the fear that they might be scorned by the other parties to the dispute or might bring about heated debates. The proceedings at these tribunals were conducted in local language and Kiswahili. This made it hard to translate and record the proceedings in English. Household interviews were granted in Kiswahili through an interpreter. These translations were time consuming and also had an impact on the quality of response received limited time did not allow the interpreter to interpret most of the information written in Kiswahili. The researcher could not directly communicate with some disputants in some occasions since some could not express themselves in English or Kiswahili hence the limited number of interviews with the respondents.

Nevertheless with said shortcomings, the researcher hired a research assistant who was conversant with area to aid in identification of selected respondents and who also understood the Maasai dialect for purposes of interpretation. The researcher created a good rapport with the respondents, field assistants and conduct persons. The researcher assured the respondents that their names will not be revealed and therefore they should not worry about being scorned by the villagers. The researcher also made a schedule for research activity and sourced enough fund for the project before hand.

1.5. Definitions of Concepts

Land Adjudication

Land Adjudication has been defined as the process through which existing rights in a particular piece of land are finally and authoritatively ascertained.

Land Disputes / Land conflicts

Households and individual disagreement or the clash of interest over land ownership, boundary demarcation, land transactions and any other kind of disagreement between parties related to land. While dispute is a short term disagreement that can easily be resolved, conflict is long term and deep rooted disagreement that is complex to resolve (Burton, 1990).

Wehrmann (2005) defines land conflicts as “a social fact” in which at least two parties are involved. The roots of which are different interests over property rights on land, the right to use land, to manage land, to exclude others from land, to transfer it and to have the right to compensation. In this study conflict and dispute are used interchangeably.

Land Adjudication Committee

Land Adjudication Committee is a body established under the Land Adjudication Act (Cap) 284 laws of Kenya which incorporates customary laws and legal laws outside the conventional court system involving mechanisms such as negotiation, mediation and arbitration to handle land disputes.

Alternative Dispute Resolution

Alternative Dispute Resolution means alternative both to litigation in the courts as well as to customary conflict resolution. ADR has been defined as a “term generally used to refer to informal dispute resolution process in which parties meet with a third party who helps them to resolve their disputes in a way that is less formal and more consensual than is done in the courts (Sprangler, 2003).

1.6 Literature Review

The literature review was thematically covered in three sections; the first section reviews selected literature on the causes of land dispute. The second section reviews the role and efficacy alternative resolution mechanisms, and the third section looks into the residents preference and suggestions for the improvement of the alternative land dispute resolution mechanisms.

1.6.1 The causes of land disputes

In his thesis (Unruh, 2008) interrogated the connection between post war formal laws on land and the informal customary rule in land administration in post war Sierra Leone in the state reconstruction. Unruh found a clash between the modern contemporary laws on land with that of customary laws as actualised by landowning lineage ties. In post war Sierra Leone, access to land was widely determined by formal laws, informal rule of law system and through family lineage. It is within these three rights of access that provided clash on right of access to land. Notably, while new land owner would claim right of access and owning land through modern means of land transaction, lineage members of families would also claim right of ownership and access based on customary laws. In this case strangers found it hard to lay claim on land bought through contemporary land transaction system established in post war period.

Prevalence of different land tenure system that has seen continued practises of traditional and modern land tenure system offered the country both constrains and opportunity upon which a policy on land in Sierra Leone would be developed incorporating both systems. While the Unruh study delved, on the clash between customary rule and post war contemporary laws on land in that country as a cause for conflicts, this study focuses on the individualization of land as the main cause of emerging land disputes in Narok County and the role played by the Land Adjudication Committee that incorporates both customary and contemporary laws in land dispute resolution mechanism.

In rural Zimbabwe, village headmen using customary laws capitalise on their mandate in conflict resolution to expand sphere of influence by expanding their territory through their rulings and adjudications that ensure gaining new territory to oversee (Anderson, 1999). In this arrangement of village headmen conflict resolution, central government play minimal role as observer, thus

ruling made are legitimised with state endorsement of headmen verdicts. Anderson combined primary and secondary means of data collection, a method that, gives the reader a life situation on how land disputes are fuelled in rural Zimbabwe.

Land conflicts can be as result of political power struggle between clans and family lineage, and not necessary caused by economic motives, boundary dispute and land transaction as observed in rural Zimbabwe (Anderson, 1999). Anderson contends that, land in rural communities in Zimbabwe not only connotes economic well-being but has other social and political meanings. In the selected study area, although it was established land was increasingly becoming scarce, it did not correspondingly increase in its economic value. Land conflict therefore was not as a result of its economic value arisen from scarcity, but from political power play involved at village level.

However, in my study it is argued that the main cause of land disputes in the study area is not only due to political power play but also due to the new system of land individualization. This study also delves to examine the most preferred dispute resolution system in the study area. The study further sought to analyze how effective the alternative dispute resolution mechanism through the LAC has managed to resolve disputes over land.

In analyzing Kenya's land policy and its administration Syagga argues, that post independence government did not reverse the dispossession of land as the colonial government had done. Landless people as a result of colonialism were not settled by the subsequent government with the adopted policy of willing seller (departing Europeans) and willing buyer (African with means to buy land). Landless from central Kenya found their way in Rift Valley courtesy of land buying companies which were heavily assisted by the state. This marked the genesis of land inequality and disputes which has persisted and even worsened over time. Syagga, contends lack of an appropriate land policy have exacerbated the land question in Kenya. Disputes over land have equally been occasioned by politically instigated violence especially since the introduction of multi-party politics in Kenya. (Syagga, 2011).

To address challenges in land question, Syagga notes some of the provisions in Land Policy that calls for institutions to deal with land disputes. Alternative land disputes resolution mechanisms

as provided in the policy is lauded as one of the bold step in land reform in the country. Syagga analyses the genealogy of land disputes and notes the land policy as a solution to perennial land challenges. Syagga's study argued that lack of appropriate land policy and politics were main causes of land disputes. Unlike the aforementioned research, this study viewed the individualization of land as one of the main cause of land dispute. Besides, the study further went on to examine how the resultant disputes can be effectively resolved.

In his study, Kalende, (2008) observes that recurrent of violent conflict during successive electioneering periods in Kenya is a clear demonstration of relationship between land and politics. Land has been the source of conflict as a result of political regimes using it as a form of reward to loyalties and punishment to political opponents. Kalende asserts that land dispossession by colonialists and later by Kenyan elites, created the two classes; the large land owners and the landless hence continued conflict over the historical injustice. The existing capitalist system on land administration is a cause for conflict in Kenya. The paper discusses causes for land disputes in general in the entire country and Kalende's argument is that the existing form of land administration is the main cause of land disputes. He does not examine the system of land individualization as a cause of land disputes. On the other hand this study was more specific and analysed emerging causes of land disputes in Narok County and available mechanism used in dispute resolutions.

In their study, (Wakhungu et al, 2008) have identified four broad varieties of violent conflicts in Kenya namely; pastoralists' conflicts, gang related violence in urban centres, clashes related to elections, and, - violence over access to protected areas. They contended that there is un-equal relationship between customary and statutory land tenure system in Kenya. The state has been blamed for recurrence of violent conflict having failed to institute changes in land tenure system to address the underlying root causes for violence. The land tenure system introduced by the colonial government was never changed with the country attaining its independence instead there was the perpetuation of policies that encouraged land dispossession such as,- illegal land ownership and land degradation. This study argued that changes in the land tenure through implementation of the Land Policy is the appropriate intervention mechanism that could cure Kenya of land related conflicts, not until is implemented to the later, land problem will never

end. However, in this particular study land tenure and land disputes was only be part of the larger study, the main aim of the study was to examine the role and efficacy of the Land Adjudication Committee in solving land disputes in Narok County.

In his book, land tenure in pre-colonial Kenya and post independence Kenya, (Ochieng,1990) addressed the level of equality in that the land distribution and communalism in land tenure varied from community to community and although tendencies individual land tenure were discernable in certain ethnic groups in Kenya. The community guaranteed ownership of basic sizes of land to every productive member of the society. This arrangement manifested in the equality of living standards within a community and the uniformity or near uniformity of the economic and political activities undertaken by the members of a community.

The argument here is that within these communities and societies, such structures and factors that buttress a communal land tenure system are still alive and they inherently ensure equity in the access to and utilization of land by the members of that community. His study shows how in Kenya semblance of this form of land tenure and distribution paradigm still subsists amongst the nomadic communities that occupy most of the arid and semi arid areas of the country. The author does not explore the changing circumstances of the communities and that the more the population grows, the more land is limited and therefore the community cannot guarantee ownership of land to every productive member of the society.

In another study, (Duraiappah et al. 2000) argued that with heightened level of modernisation, the Maasai community unwittingly gave possession of their land in productive areas for commercial farming and ranching activities. Land tenure system in Kenya enabled individuals to purchase pastoralists land in Narok district at the expense of ignorance of pastoral community on value of land. Individualization of former communal pastoral land posed a threat to the remaining grazing land which has led to land degradation and this has resulted in competition for pasture and grazing land. Lack of the understanding of new institution on land tenure, land use and land exchange has exposed the community for exploitation. Exploitation and the means to undo the existing arrangement on land issue pose a threat to peaceful coexistence and is a cause for persistence disputes in the district. While the study analysed Narok land use and causes for

conflict, it only offered suggestion on conflict resolution using both formal and informal mechanism, this study delved much on how effective this land disputes and conflicts have been resolved by the Land Adjudication Committee.

In the Politics of land rights and squatting in coastal Kenya, (kanyinga, 1998) criticizes the proponents of the individualization of land titles in Africa. They have hinged their position primarily on the argument that it would encourage land holders to access credit, invest more of their resources, including labor and time in the land and raise the level of agricultural productivity whilst limiting the damaging consequences or the “tragedy of the commons”. This study shares a similar thought arguing that individualization of land is indeed a major factor causing land disputes in an area that was predominantly communally owned. In contrast, this study concentrates with examining the Land Adjudication Committee which has been used in settling disputes that arise from individualization of land.

1.6.2 Efficacy of the Alternative Land Dispute Resolution Mechanism

In multi ethnic societies, clash of culture renders the combination of formal and informal dispute resolution mechanism untenable. (Gendron, 2009) examined the role of alternative dispute resolution in Russian Federation in her North Caucasus which has persistently experienced violent conflicts. In selected study sites, there is cultural difference in manner in which justice is dispensed among different ethnic groups compounding administration of justice. State administration system of dispensing justice does not match with traditional customary justice system which is widely practised by local ethnic groups of Chechnya and Ingushetia communities. While formal justice system as spelt out in Russia constitution is there to protect an individual and prosecute an individual, informal justice mechanism is concerned with achieving justice for group; sometime at the expense of the individual’s rights and freedom hence conflict in manner of dispensing justice between the two.

However, since the informal system seen to be ubiquitously practised, the author advocates for incorporating the customary means in dispute resolution to work hand in hand with the formal system. This, Gendron argues will enable the locals to feel appreciated of their culture and would

play a pivotal role in disputes and conflict resolution which is widespread across the Caucasus. While (Gendron, 2009) is calling for the acknowledgement of alternative dispute resolution mechanism in the justice system solving disputes and conflicts, this paper examines an alternative system that is already acknowledged by the formal laws of our land. Further this study relates factors that cause land disputes and the effectiveness of a local dispute resolution mechanism in handling the disputes.

Customary land administrators can minimise and resolve conflicts and disputes where customary land systems sought to incorporate western land administration system. Disputes on land revolving around; right to land administration, ownership and land boundaries to be resolved by either customary land system or western systems. (Fonmanu et al., 2003) discussed dispute resolution mechanism as practised in Fiji customary lands. Lack of appropriate institutional infrastructure to address customary land disputes has significantly affected land reform program in Fiji. The tension created by land disputes and conflict is said to hinder land market, affects initiative for meaningful infrastructure development for the nation. To mitigate on disputes on land as a result customary system and formal land tenure system, (Fonmanu et al., 2003) proposes the establishment of institutional structures that formally and legally acknowledges these tensions as an effective framework.

Fonmanu's paper discusses alternative land dispute by examining the relationship between informal land tenure system as practiced in customary lands and the emerging formal land system whose relation was conflictual. Unlike Fonmanu this study examined causes of land disputes and the effectiveness of an alternative land dispute mechanism which has been incorporated in formal system while making use of traditional means of resolving conflicts. Fonmanu's paper does not explore the importance and functions of the Land adjudication committee and which provides for equitable distribution of land through Adjudication and ascertainment of rights and interests of land in Kenya.

Similar to Fiji's case, (Ochen, 2009) made a comparative study on formal and the traditional alternative dispute resolution mechanisms in Northern Uganda, on land claims and land allocations for internally displaced persons in post conflict period. Disputes on land in the

selected study area were as a result of the return of individuals, households to former land after a long period of absence from the said land due to internal conflict. Upon returning, most of these returnees found their land either occupied by others or multiple claims on same land by different parties hence, dispute ensued. Such dispute was feared could escalate into violent confrontation in a society still recovering from a protracted conflict. It was found that informal African traditional justice system and the formal justice system are still applied in resolving land disputes among returnees of the internally displaced persons in Northern Uganda district. While the African customary laws ensures community well being by emphasizing reconciliation in resolving land dispute, the formal court system has ensured claim to land is awarded to the rightful owner of the land depending on evidence adduced in court.

The author recommends that there is need for a legal framework to recognise the alternative dispute resolution mechanism since it is still widespread in use to compliment the formal judicial system which in most cases not accessible to majority of the population. The study borrowed Ochen theoretical framework in examining Narok's alternative dispute resolution mechanism in form of a local Land Adjudication Committee. Unlike (Ochen, 2009), the study examined a Land Committee that has a legal backing (Land Adjudication Act Cap 284).

In Rwanda, it was established that land related disputes revolve around inheritance, boundary, land transactions and absentee landlords The (USAID report, 2008). To address this local institutions hierarchically arranged were identified in resolving land disputes. These institutions start from family Councils which resolve disputes at a family level, there are community leaders for ten households, village executive committee, cell executive committee (local government level) and a mediation committee as the last step before the formal courts. These institutions resolve land disputes using customary laws while at the same time they observe that they do not break any of Rwanda's laws. Mediation committee is the highest institution before the conventional court system is anchored by law and therefore is a formal institution reserved for resolving land disputes. *Abunzias* is referred is similar to Kenya's Land Tribunals at district level. Its statutory mandate is dispute resolution through mediation as provided by the country constitution and an organic law on mediation committee. Like any other disputes resolution,

parties have the right to appeal at a higher institution of the hierarchy up to the formal court system.

The USAID (2008) report acknowledged the success of these institutions is pegged on the fact that individuals involved are committed to a fair process, community support and demand for community based disputes resolution. However, it was found that these institutions faced constraints with regard to technical expertise, knowledge and skill to resolve land disputes in consistent with the countries laws. Rwanda's case shares some similarity with this study in the assessment of local institutions in resolving land disputes although Rwanda's case was in a post conflict setting. This study focused on a land disputes resolution in an area that has experienced relative peace and on an ADR institution recognised by law.

1.6.3 Residents preference on the Land Dispute Resolution Mechanisms and Suggestions for Its Improvement

Examining the link between the formal and traditional system in dispute resolution there is a complimentary role the two can play in resolving land disputes in a country under reconstruction after a period of conflict. In Southern Afghanistan a Governor who sought to incorporate the traditional system of conflict resolutions due to perpetual ineffectiveness of the emerging state institutions to comprehensively deal with disputes. A Commission on Conflict Mediation was set up comprising six respected tribal leaders to use customary laws in resolving land related disputes. With the inception of the commission, many local residents referred their land disputes to the commission due to the fact that filing a case was free of charge. Absence of related expenses by parties to a dispute made the commission a preferred option since incidences of corruption were equally minimised. The main challenge to the commission was funding and how to link it with the formal judicial system (UK Liaison Report Office, 2009).

While the report was on a reconstructing state of Afghanistan, it was clear that many local residents preferred an alternative dispute resolution system different from the conventional courts system. However, this study was carried out in a stable state of Kenya that has a

functioning judicial system that has made provision for alternative dispute resolution such as the land adjudication Committee.

With a successful self determination claim and attaining of self rule, the government of East Timor was faced with a myriad of challenges to resolving land disputes (Fitzpatrick, 2008). In 2000, UN assisted the country to establish a legally constituted institution known as Land and Property Directorate to mediate on land and property related disputes. Citizens preferred the alternative means of land dispute resolution to the conventional court system. (Fitzpatrick, 2008) argues there is need for a system that would bridge the traditional customary mechanism and the court system. Owing to multiple of ethnic groups, there could be inconsistency in manner diverse ethnic groups resolve disputes, hence a challenge.

The study reviewed shares similarity with this study in examining a statutory body in resolving disputes out of court process in a post conflict era. Both studies reveal that citizens prefer the alternative means of land dispute resolution to the judicial court system. However, the distinguishing factor was that this study was carried out in an area which had attained independence many years ago but still facing occurrences of land disputes. Unlike in Timor, this study went further to find out the most preferred dispute resolution mechanisms.

According to the study made in east Timor concerning “custom & conflict: the uses and limitations of traditional systems,” the research found out that the respondent in the research area expected the formal judicial system to take priority of the informal customary holding and alternative dispute resolution mechanism. In a marked contrast this research analyzes the Land Adjudication Committee of Narok County and the extent of or place it has. Besides, unlike the aforementioned research, the main cause of land dispute in Narok County is also examined.

A research was conducted by (Henrysson, Sandra and Joireman, 2009), targeting women based on the fact that, women in Kenya and in Africa in general, have less social capital than men and therefore prone to land dispute. It was established that women in Kisii District do not enjoy land rights as men, due to culture. Inheritance disputes was therefore most common form of land disputes women encountered occasioned by death of a man who can be a husband in

monogamous and polygamous marriage, father, brother or even a son. Despite legal provision for women (widow or daughter) to inherit lands there were cases of the inability of women to inherit land.

Dispute resolution mechanism in the study area comprised both formal and the informal traditional mechanisms. Traditional local leaders and provincial administration seem to have played a much bigger role than the court system in land dispute resolution although they had no legal backing. Most women sought the intervention of local leaders and the local members of the provincial administration, to arbitrate land dispute because it was much cheap than the court system considered reserve of high income groups. This study provided some insights on how most women felt more comfortable with their cases handled by the provincial administration which is an alternative from the conventional courts. While this study examined a district that is still under adjudication and did not focus on women only but all kind of citizens in Narok County who have had land disputes to generate findings.

1.6.4 Conclusion

Literature has demonstrated that there are a myriad of causes and factors that causes land dispute and land conflicts across third world countries in the studies reviewed. The reviewed literature has also shed light on the application of the customary, judicial and the mixture of the two in form of various institutions in land disputes. Causes of land dispute can vary depending on the prevailing circumstances which therefore calls for specificity in the manner in which land disputes are resolved. The above studies have established the relationship between land tenure and violent conflict in the world and Kenya in particular. However there appears to be very minimal literature that account for emergence of land disputes in an area where a community is undergoing transformation as it is in Narok County inhabited predominantly by a pastoral community embracing new form of land use. This particular study has dealt with two dimensions of causes of land disputes and their resolution mechanisms in Narok County.

While most of the literature were in a violent post conflict era, this study was carried out in a community which is fast experiencing a new form of land use, for instance, the individualization of pastoral land and thereby causing dispute and conflict over land. With complexity of land

dispute in Kenya there is the need for multifaceted approach in resolving conflict. ADRM have mostly been used in areas that have experienced conflict in the era of community reconciliation and peaceful co-existence. Literature reviewed demonstrated that citizens preferred the local alternative dispute resolution mechanism because it was cheaper, faster, fairer, more accessible and understandable compared to the judicial court system of resolving disputes. As an extension of this interesting works, my study has thoroughly analyzed the Land Adjudication Committee of the regional County of Narok and made suggestions for its improvement. This is another contribution of the widening pull of literature on the efficacy and the acknowledgement on the role of the alternative dispute resolution mechanisms can fill the gap left by the formal judicial system and informal customary system in resolving disputes. In short as it has been observed from the literature review, little effort has been made to study the Alternative Dispute Resolution Mechanisms even though having an effective ADRM plays a paramount role in land tenure security.

1.7 Theoretical framework

Theory is a construct which assists us in selecting and interpreting facts, in this sense, theory is intensely practical. Consequently, the study of conflict resolution efforts in Narok County would have been of little practical utility unless this was contextualized within a broader theoretical framework which would assist us in determining the strengths and weaknesses of these resolution mechanisms and allow us to draw conclusions which would have a wider applicability.

Mechanisms for resolution of land disputes are diverse and do not adhere strictly to one form. Despite the various dispute resolution mechanisms, there have been numerous unresolved land disputes. Thus the need for an alternative dispute resolution system to curb the growing number of land disputes. The study employed Kumar, Rupesinghe's (1994) conflict transformation theory and the model by (Ramirez, 2002) of Alternative Dispute Resolution (ADR) in analyzing the resolution mechanism as practiced by the Land Adjudication Committee. The two theories complement each other.

1.7.1 The Alternative Dispute Resolution (ADR) Framework

The Alternative Dispute Resolution (ADR) Framework views land conflicts to involve several and different stakeholders, disciplines and hierarchies which constitute a complex and dynamic interrelationship. With regard to the above, it is believed that effective land conflict management can only be achieved if all the different stakeholders, hierarchies, disciplines, actors and interests in the conflict are taken into consideration. Any measure or action that does look at all the issues as a whole will only yield temporary results which cannot stand the test of time (Ramirez, 2002).

This theory provides a framework for understanding the concept of conflict management with emphasis on land disputes. Alternative Dispute Resolution (ADR) model advocates for alternative resolution mechanisms in comparison to the already established legal systems in a country. The model does not advocate for the total removal of the legal systems though, instead it offers people other options on what other resolution mechanisms to go for in search of justice. The assumption in this theory is that the dispute resolution institutional system has to work from an ADR framework if the rise in land disputes is to be controlled.

The model premises that:

- (a) Conflict is a normal process in society and is inevitable, thus the goal is not to avoid conflict, but to focus on the skills that can help people express their differences and solve their problems and meet their needs.
- (b) Successful conflict management requires the participation of all legitimate parties or stakeholders in a dispute (Pendzich et al., 1994 as quoted in Ramirez, 2012).

The theory recognizes the presence or absence of conflict- mediating mechanisms and institutions are central factors influencing whether a conflict passes through the threshold into violence. (Hendrickson 1997 as quoted by Ramirez, 2002) emphasizes that ADR is about reconciling traditional and modern law. For customary mechanisms of dispute resolution to remain effective, the diversity of customary land tenure arrangements need to be recognized. ADR identifies position and interest as main focuses, where the latter is assumed to be made up

of needs, desires and concerns and concerns that drive people, where a position is something a party has decided on.

The support for locally based solution is explained by several factors. First local rules still prevail in practice; second, customary authorities retain their legitimacy through settling conflicts; thirdly, state intervention tends to introduce new rules that are not seen as legitimate by local stakeholders; and lastly new players becoming involved in their own principles and interests that cannot be controlled (FAO, 2001 as quoted in Ramirez, 2002).

1.7.2 The Conflict Transformation Model

The conflict transformation model was also employed. Several reasons may be advanced to justify the utility of such a model in the study of conflict and conflict resolution mechanisms. This model lays its stress on internal conflicts and as such, was more appropriate in this case study (Narok County) where such internal land disputes is prone.

Secondly, because of the multidimensional nature of land conflicts plaguing much of Narok County, Rupesinghe emphasizes the need for an understanding of non-linear peace building processes because of the complexity of many existing and emerging conflicts; a multi-sectoral approach to conflict transformation is needed. The multi sectoral approach of the theory makes it more holistic and flexible for its application to numerous types of disputes (Hayward et al, 2001). This multi- sectoral approach is a far more holistic approach to conflict transformation and as such, allows it to be more flexible in application than most conventional models which tend to be more rigid resulting in a gap between theory and reality.

Thirdly, the theory requires that a number of actors are involved in the transformation of disputes so that all constituents to a conflict are brought on board to instil ownership in the process. It is on this account that the theory becomes more relevant to the study acknowledging different actors to land disputes. The multi- sectoral approach also necessitates the number of actors involved in the peaceful transformation of a conflict need to be increased to reflect all

constituencies of broader society. This fact was crucial to the success of the resolution of land disputes in Narok County. (Rupesinghe, 1994)

Several factors account for this; firstly, all stakeholders of the community have a stake in resolution and the resolution process needs to be 'owned' by them if it is to succeed. Secondly, it is these stakeholders who would be playing a key role in post- conflict reconstruction. This is an important point if one considers the contention that the peaceful resolution of disputes is not meaningful transformation. Meaningful transformation also includes sustainable structural and attitudinal changes within broader society and the emergence of new institutions to address outstanding issues. The involvement of non-state actors is also vital in situations of internal conflicts where the state cannot play the role of non-partisan broker because the state may often be a party to the conflict. Finally, the inclusion of other actors such as the community in resolving their cases, also reflect a broader theoretical point that the dominant Conventional Court System is under threat; that ultimately issues of land conflict resolution revolve around people as opposed to the Courts.

The conflict transformation model has several component parts of which relate to the Land Adjudication Committee dispute resolution process. These components to conflict transformation model which were applicable to the study's dispute resolution mechanism are; understanding root cause, ownership of the peace process, identifying all the actors and facilitators, setting realistic timetable, sustaining the effort, evaluating success and failure, strategic constituencies, role of both outside and inside peacemakers (Hayward et al, 2001). However, as with human nature, conflict development is also solely linear and not necessarily multi-dimensional as theorized by Rupesinge.

It is abundantly clear from recent experiences that there is need for a thorough understanding of the root causes of a given dispute. It stands to reason that any successful intervention is premised on the knowledge of how and why the conflict started in the first place. Addressing the sources which generated the conflict would then form the basis of the resolution to the conflict (Rupesinghe, 1994).

History plays a cardinal role in the resolution of conflict. Most dispute resolution mechanisms include, as one of the first steps, a need for the parties to first appreciate the magnitude of the issue. This is a clear manifestation that no one can claim to resolve a conflict without acknowledging the genesis and history of the dispute. The understanding of the genesis of a dispute provides the third party with sufficient information, which can be utilized for several purposes. First, it offers an opportunity to envision both sides of the dispute; history shows how the antagonistic parties view the conflict. Thirdly, it will underscore the level of commitment that the parties have to the resolution or management of conflict. Without attention to history, any conflict resolution process is bound to fail (Tidwell, 1998).

According to (Rupesinghe, 1994), the sustainability of the peace process is also dependent upon the "empowerment of local actors so that they become the primary architects, owners and long term stakeholders in the peace process". The conventional court system of justice is not applicable in many internal land conflicts plaguing the world today. Even when 'successful' such imposed settlements do merely serve to postpone the conflict as there is little internal support and the root causes of the conflict are not addressed.

The truism of this statement is clearly borne out in the Narok situation where the court of law have made certain orders to evict some individuals from particular parcels but the Orders have not been welcomed well by the residents and have given rise to conflicts in some instances. The resolution process must be owned by all parties and more importantly, by the community in general and as such they have vested interests in its maintenance.

The theory stresses the importance of indentifying all actors (big and small) and bringing them to the negotiating table. Failure to do this could result in the alienation of key stakeholders and role players from the peace process. In the case of Narok, the committee involved in land disputes resolution consists of members representing all the sections of the community. This inclusive process means that the outcome of the negotiations would be more credible amongst the Narok community generally and that such an inclusive process also increases the number of stakeholders who would then serve to sustain that agreement.

The model also emphasizes the importance of setting a realistic timetable, from the identification of root causes and significant actors for the success of the peace process. On the other hand, a timetable which results in protracted conflict resolution over a considerable period of time may result in the momentum for dispute resolution being lost. Both options are equally dangerous.

In Narok, the land committee sets realistic timetables so as to be able to handle land disputes within a reasonable time frame. “a comprehensive approach to peace requires all adequate investment of financial resources, patience and a sustainable commitment from sponsors” (Rupesinghe, 1994).

It is also noted that traditional” diplomacy and outside nongovernmental peacemakers have important roles to play in mediating the mitigation or resolution of violent internal conflict.” In Narok the elders and other community leaders are also used in the process of resolving land disputes. The model emphasizes the role of the local peacemakers who are influential “members of local communities with a firsthand knowledge of conflict”. The role of these local peacekeepers take on added advantage as was displayed in the case of Narok. As was previously mentioned, Narok County had such local expertise and these were utilized. (Rupesinghe, 1994).

Utilizing the Conflict Transformation theoretical framework it is abundantly clear why the resolution of land disputes in Narok County by the Land Adjudication Committee has been much more successful. Initially the frustration and lack of legitimate ways of channeling grievances led to the increase of land disputes.

1.8 Hypotheses for the Study

- i. The higher the individualization of land, the higher the land disputes.
- ii. Alternative land dispute resolution mechanism through the Land Adjudication Committee has been effective in resolving land disputes.
- iii. The operations of the Land Adjudication Committee can be improved by enhancing its capacity

1.9 Methodology

This section describes the study site and the selection procedures, explains the study design which was adopted by the researcher, identifies primary and secondary sources of data, and provides sampling techniques, sample size, data collection method and analysis techniques.

1.9.1 Study site

Narok County is in the South Western part of the Republic of Kenya and lies in the southern part of formerly Rift Valley province. Narok was randomly selected from a list of pastoralists' communities in Kenya. This is based on the fact that there is increasingly change of land use in pastoral areas brought about by policies introduced by the government. Narok County borders the Republic of Tanzania to the south, Nakuru County to the North and Kajiado County to the East, the County occupies an area of over 17,128 km² and is divided into eight administrative divisions of; Central, Loita, Mara, Mau, Mulet, Olorurto, Ololulunga and Osupuko (Ministry of Internal Security and Provincial Administration 2011).

Main economic activities range from agricultural activities involving growing of wheat, barley, maize to rearing of sheep, goats and cattle and tourism in the Mara. With changing ways of life, commercial farming has tremendously picked pace with nomadic way of life changing. This has contributed to continuous increase in value of land. According to the 2009 Kenya housing and population census report Narok county population is approximately 365,750 people (Kenya Housing and Population Census, 2009).

1.9.2 Sources of Data

The study made use of both primary and secondary data. Primary data was obtained from interviews with individuals and households in three sub locations in Narok County who have had land disputes and sought the intervention of a local Land Adjudication Committee. Land Adjudication Committee members who were involved in hearing and determination of disputes were also interviewed. Consultations and group discussions with land officers, key informants and the community members were also done. Secondary data for the study was sourced from journal articles, policy papers, government and non-governmental annual reports on land dispute, books, internet sources, commissioned reports on lands, draft policy papers and gazette notices,

existing literature from government statutes, policy documents and legislative laws of Kenya. The primary data helped to fill the gaps and clarify information from secondary data. Relevant data was also extracted from the Ministry of Lands department dealing with land adjudication and dispute resolution in Narok County.

1.9.3 Sampling Techniques

Data was collected in the three sub locations namely, Sintakarra, Niaregi-enkare and Kipise. The three districts were selected because: firstly, these areas still have active Land Adjudication Committees (LACs), as land adjudication is not yet complete in these areas; secondly, demarcation of land was taking place in these areas. A list of 150 land disputes cases that the Land committee has handled during demarcation of land was the study's sampling frame where probability and non probability sampling technique was used to select the cases. The researcher purposively selected the cases considered most significant to the study's objectives. The cases selected were those that involved disputants who could be easily traced. Those that fell under the three sub-locations mentioned above and those cases whose proceedings could be easily traced. Cases at different periods were also considered while availability of willing respondents also determined case selection.

From the identified cases, the researcher proceeded to interview in-depth respondents who had been involved with land disputes irrespective of the resolution outcome. The respondents interviewed were representative of the three sub locations mentioned above. Equally the researcher purposively selected 15 officials of the Committee for interview which is almost 50% of the Committee's composition. With the aid of a local person with these sub locations, a landmark was identified in each location to mark as a starting point in household sampling. From the landmark as the starting point, a household was randomly selected. In a selected household, a respondent was purposively selected based on his/her knowledge or involvement in land disputes.

1.9.4 Data collection techniques

A combination of quantitative and qualitative research methods was adapted in the data collection method. The combination of the quantitative and qualitative approach combines the rigor and precision of experimental designs. The quantitative techniques enabled the quantification in numerical terms and the qualitative extract meaning and understanding of the phenomenon being studied. The qualitative analysis was the most applicable in this research. The qualitative approach relied on data gathering techniques which were participant observation, interviews and document analysis. A structured checklist was used for data collection from the Land committee's case hearings. These hearings were organized in collaboration with the local administrators, thus the study took advantage of this instead of arranging other meetings.

1.9.5 Data Analysis techniques

Field research and analysis of available literature on causes of land disputes and conflict resolution mechanisms gave insight about the existing practices and concepts of processes in conflict resolution. Simple quantitative data was presented in tables, bar charts and graphs for analysis. On the other hand qualitative data reflecting the opinion of various respondents was thematically coded and analyzed for interpretation. Quantitative analysis was done to clarify some aspects of the study and look at the relationships and patterns of behavior. This helped to explain the efficacy of this particular justice system. Both primary and secondary data was presented thematically with a view to answering the study questions. Individuals, households and land adjudication committee members were the units of analysis for the study. Based on the research findings, conclusions were drawn and recommendations proposed.

CHAPTER TWO

2.0 CAUSES OF LAND DISPUTES AND ITS RESOLUTION MECHANISMS IN NAROK COUNTY

2.1 Introduction

This chapter discusses the causes of land disputes and the mechanisms used in resolving these conflicts. The study is determined in identifying causes of land disputes and the mechanisms of settling those disputes in Narok County. Effective dispute resolution mechanisms can only be arrived at after a critical deliberation on the attendant causes of disputes. Disputes are unavoidable instances of human life especially since after the introduction of individual property rights. The relationship between land and conflict is extraordinarily complex. Land is tied to a complex network of issues ranging from power relationships to economics and from symbolic attachments to systemic inequities. Addressing land issues effectively demands a broad, integrated and inter-disciplinary approach (USAID Report, 2004).

History plays a cardinal role in the resolution of conflict. Most dispute resolution mechanisms include, as one of the first steps, a need for the parties to first appreciate the magnitude of the issue. This is a clear manifestation that no one can claim to resolve a conflict without acknowledging the genesis and history of the dispute. The understanding of the genesis of a dispute provides the third party with sufficient information, which can be utilized for several purposes. First, it offers an opportunity to envision both sides of the dispute; history shows how the antagonistic parties view the conflict. Thirdly, it will underscore the level of commitment that the parties have to the resolution or management of conflict. Without attention to history, any conflict resolution process is bound to fail (Tidwell, 1998). It stands to reason that any successful intervention is premised on the knowledge of how and why the conflict started in the first place. Addressing the sources which generated the conflict would then form the basis of the resolution to the conflict (Rupesinghe, 1994).

2.2 Nature of Land Conflicts in Narok County

Land conflicts occur in many forms. There are conflicts between single parties (as for instance boundary conflicts between neighbours), inheritance conflicts between siblings and disputes over the use of a given piece of land. (Kasaija, 1997) suggests that the core issues in relation to conflict and land are security of tenure, access to land and equitable distribution of land. These core issues are not objectively given, universal or independent from one another. However, the causes of conflict are diverse but introduction of new land use that are not popularly accepted, boundary disputes over cultivation and grazing into the neighbors' land are the most common in the study area.

In the pre- colonial period, land in Narok was vested in the community, clans and families. The heads were responsible for the lands on behalf of all kins. The major activities that were practiced by the people were subsistence agriculture and pastoralism. Pastoralists never claimed ownership of land though they had a greater attachment to the land due to their nomadic nature in search for pasture and water for their animals. On the contrary agriculturalists fought among themselves though the number of disputes was few (Rutaitika, 2008).

Conflicts were resolved through non-statutory means. The elders, clan heads, and village leaders acted as mediators responsible for resolving land disputes. These mediators made decisions and whenever rights were conferred to one to use, the person was reminded of the fact that land belonged to the community and everyone had access to it (Makaramba, 1996).

All land was declared 'crown land' and were vested in the British Empire during the colonial period. The concept of right of occupancy was introduced by this decree whereby ownership of land had to be proven by documentary evidence. Whenever there were disputes between the indigenous and the settlers, the government was always in favour of the settlers because they had documentary evidence to prove their cases. Customary titles were not recognized. Land disputes during this colonial period were normally resolved through the formal court of law where the land ordinances were applied.

After independence in 1963, the government of Kenya inherited the colonial laws. Disputes relating to conflicting title holding and customary rights were on the increase particularly in urban areas. Laws were enacted to make provision for the establishment of the courts vested with jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land.

2.3 Types of land disputes

2.3.1 Individualization of land

Individualization of land is a relatively new phenomenon among the agro-pastoralists community in Narok County. This new system has not only bred conflicts within the community but is also responsible for the escalating conflicts in Narok community. This is also reinforced by the fact that most of the residents in this County being Maasai's were generally nomadic pastoralists. The question of land ownership is seen as an impediment to nomads and a capitalist lifestyle in a community which is essentially socialist. There is a conflict between conservation and private or commercial use of land in Narok County.

The complexity of the conflicts is heightened by the presence of regional and local boundaries that have affected nomadic pastoralism through creation of adjudication units, which split communities and individuals that once lived together. This is true for Narok County whose land is in the process of being demarcated/ individualized. These boundaries have interfered with seasonal movements (nomadism). Unequal distribution and irregularities during distribution of common or collective land and overlapping claims lead to numerous land disputes in Narok County.

As individualization of land in Narok County took place, people experienced different illicit practices in regard to actions such as the manipulation of the system resulting in the exclusion of some groups/individuals and preference of other groups/individuals. This lobbyism, clientelism and corruption during the individualization process contributed to the rise of disputes among members of the community and low faith in the system (Baatar 2007, Bokeria 2006).

2.3.2 Diminishing Grazing Land and Resources

Inter-family conflicts often arise over ownership of water points, particularly during drought periods when wells and springs dry up. Families whose well have dried up seek water from active wells belonging to other people. However, the clans with active wells may deny 'outsiders' access to the water point, thereby generating disputes. In Narok County, conflicts often occur within and between families, within and between clans. The internal conflicts are centered on family disputes, clan rivalries over scarce pasture resources. Natural population growth results in an increase in the demand of land thereby causing conflict due to scarcity.

Land disputes in Narok County were also attributed to the struggle to access the limited land available. Land scarcity was driving people into a state of jealously protecting the little land they had and reacting to the slightest provocation by trying to protect their land. The residents of Narok County were generally nomadic pastoralists but with changing ways of life, Commercial farming has tremendously picked pace with the nomadic way of life changing. This has contributed to continuous increase in value of land, scarcity of land, leading to competition which in some instances has led to disputes over land. It is therefore important to deal with land conflicts in a constructive manner, instead of ignoring them or simply trying to stop them. Land tenure system in Kenya enabled individuals to purchase pastoralists land in Narok district at the expense of ignorance of pastoral community on value of land. Individualization of former communal pastoral land posed a threat to the remaining grazing land which has led to land degradation and this has resulted in competition for pasture and grazing land (Duraiappah et al, 2000).

2.3.3 Inheritance as a cause of land Disputes

How to share and or manage the deceased property normally generated disputes since there are no written wills. Inheritance disputes especially those related to land rights of widows and orphaned children, arising from the family (paternal uncles or clan heads) are witnessed in Narok County. Land disputes may also arise due to inherited lands which are controlled by a person's sister or brother and other family member. Common type of clash also involves land that is operated by on family member, but used by other relatives (Uch Utey etal, 2011).

2.4 Land dispute resolution mechanisms

The mechanisms of settling land disputes vary as the history, tenure system and culture of dispute settlement of state varies. Even though rural land dispute resolution mechanisms varies across different jurisdictions, for the purpose of this study all the mechanisms can be categorized into two general and comprehensive classes i.e formal and informal dispute resolution mechanisms. Formal way of dispute resolution has a lot to do with the Judicial Dispute Resolution Mechanisms (JDR). The informal way of dispute resolution in its pervasive sense includes the so called the Customary Dispute Resolution Mechanism and the Alternative Dispute Resolution Mechanism. The point of distinction between the two is not only the principal actors or directors of the dispute but also on the hosting institution of the dispute.

The judicial organ which is meant to entertain every little dispute has served its usual role, as far as land disputes are concerned. The number of cases that the judicial organ disposes is flooded out with land issues (H. Mamo, 2011). Studies have shown that the judicial organ has been subject to criticism for a long period of time largely on the practical implications of its decision and its inefficiency. Practically courts often than not commit a deliberate mistake to the extent of miscarriage of justice (USAID Program Brief, 2009). It is also argued that the Judicial Dispute Resolution Mechanism is not as participatory as the Alternative Dispute Resolution Mechanisms. Most judicial courts are located in places where infrastructure are advanced and far from rural areas. The inaccessibility of courts to the rural poor dwellers exposes them to unbearable costs, particularly expenses of lawyers and transportation costs (Sovannarith et al, 2001).

The Customary Dispute Resolution Mechanism which is sometimes referred to as the indigenous or traditional justice system can be generally described as a form of arbitration with a conciliatory character built into it. The arbitrators are customary elders and the main objective is to maintain harmony, cohesiveness and unity in the community. Customary Dispute Resolution Mechanisms use local actors and community based judicial and legal decision-making mechanisms to manage and resolve conflicts within or between communities. Local arbitration typically incorporates consensus building based on open

discussions to exchange information and clarify issues. The end result is, ideally, a sense of unity, shared involvement and responsibility, and dialogue among groups otherwise in conflict. The customary mechanisms also deal with spiritual implications, emotions and non verbal communication through practices such as purification, pacification or making reparations. The customary guidance means no loss of face and the process is built on principles of equity, on shared responsibility and involvement on a dialogue between parties to the conflict (Hoffman, 2003).

Equally important to the Judicial and Customary way of dispute resolution mechanisms, are the Alternative Dispute Resolution Mechanisms often known as ADR. Alternative Dispute Resolution Systems (ADRS), or Alternative Dispute Resolution Mechanisms, as they are sometimes referred to, are currently extremely popular justice system reform programs in Narok County. Their effectiveness and cost has an impact on the relative preference of actors among the range of available conflict resolution mechanisms.

2.5 General Characteristics of ADR Methods/ approaches of ADRS

This section illustrates in particular the operations of the Alternative dispute resolution mechanisms in solving land related disputes. ADR has been defined as a “term generally used to refer to informal dispute resolution process in which parties meet with a professional third party who helps them to resolve their disputes in a way that is less formal and more consensual than is done in the courts (Sprangler, 2003). The term “alternative” is used basically because ADR is seen to be an extra legal supplement to state sponsored dispute resolution. Thus customary ADR is justifiably considered as a form of ADR on the basis of the kinds of procedures they use and kind of settlement they seek, which are based on values different from those applied in the state courts” (ibid).

Consensual approaches are also known as Alternative Dispute Resolution (ADR) as they are an alternative both to litigation in the courts as well as to customary conflict resolution. Even arbitration is considered to be an alternative dispute resolution. In practice, consensual approaches are often mixed ones and include elements of the different approaches. In a

number of countries, state officials at the land administration are involved in the informal settlement of disputes over land using anything from facilitation to mediation.

ADR focuses on four methods of dispute processing: negotiation, mediation, arbitration, and adjudication. Mediation can be carried out by professional mediators or by land experts who have received a special training in mediation, such as land officers in special departments dealing with land conflicts. The exact nature of the conflict determines whether a higher degree of professionalism in moderation or more detailed insight into land issues is needed. (Wehrmann, 2008).

ADRS are primarily seen as a method for relieving the crisis of overburdened state courts facing impossible backlog of unresolved cases. The goals of ADR have been described among others as relieving court congestion, reducing undue costs and delays, enhancing community involvement in the dispute resolution process. More positively they are also advocated as offering a cheaper faster and more accessible form of justice for ordinary citizens, particularly the rural and urban poor who do not have access to state justice.

2.6 The Origin and Processes of Conflict Resolution of the Land Adjudication Committee

The Kenyan Constitution provides that “In exercising judicial authority, the courts and tribunals shall [among other things] be guided by the principle that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted.” The Constitution also establishes a National Land Commission that is tasked, among other things, with encouraging the application of traditional dispute resolution mechanisms in land conflict.

In addition the parliament of Kenya creates several land Acts (including the Land Adjudication Act Cap. 284). Each Act empowers certain people to conduct investigations on land complaints made by a member of the public and also has the powers necessary for conciliation, mediation, negotiation and adjudication. In particular, the Land Adjudication Act was enacted to provide for the ascertainment and recording of rights and interests in

Trust land and for the purposes incidental thereto. Basically, an important function of this act was to assist in the individualization of land that was held in common (Trust Land).

The basis for land Adjudication in Kenya is the Land Adjudication Act chapter 284 of the laws of Kenya. The process is initiated once the minister of lands has given a declaration that a trust land area be adjudicated. The minister then appoints an adjudication officer who then declares an adjudication section and in consultation with the District Commissioner of the area appoints Land Adjudication Committee (LAC) for the section. The members of the committee normally consist of individuals within the locality. Significantly the members are nominated by members of the public resident in the location at public meetings or *barazas* convened by administration officials, particularly by the chief of the area. The function of the committee is to consider and adjudicate in accordance with customary law (Land Adjudication Act, 1968).

Under the section 6(1) of the Land Adjudication Act 1968, the committee should not consist of less than ten members and not more than twenty five. This means that the number of committee members may vary in size. The adjudication officer with the help of the committee, formulate the adjudication register, which contains the record of rights and interests to the land in the adjudication section. Anybody having a claim to the land to be adjudicated or anybody who feels that his rights have not been taken into consideration is required to lodge a complaint to the Land Adjudication Committee.

Moreover, the committee can act on behalf of absent members or those under a disability, and generally assist in the adjudication process." The adjudication committee therefore acts in an advisory role, deciding questions for example where there are conflicting claims. . It also advises the adjudication officer where the latter has sought its guidance. Some members normally accompany the recording, demarcation and survey officers when recording the rights and boundaries over a parcel of land. Each committee has an executive officer whose role is that of a secretary, recording the decisions of the committee.

The land committee addresses land disputes between families, clans or groups of persons. All the conflicting parties are allowed to present their version of the dispute. Circumstantial evidence is

also sought and committee members use their wisdom guided by customary law to deliver a ruling. Such decisions are normally arrived at by consensus. If one party is unsatisfied with the verdict, they are encouraged to lodge an appeal in the arbitration board of elders then to the Land Adjudication Officer. Any contention on the completeness or correctness of the adjudication register is referred to the Minister of Lands. The Minister makes the final decision on the appeals, but, with orders from the High Court, the minister's decision may be challenged. (The Land Adjudication Act, 1968)

2.7 Land Adjudication Committee as an alternative dispute resolution mechanism in Narok County

The indigenous people of Narok have a special relation to their land. For them, land is more than an economic or productive asset it is a symbol of prestige. Land being such a complex issue for them, disputes about it has to be settled in a more comprehensive manner. The alternative dispute resolution mechanism through the LAC has been actively involved in resolving the land dispute, rather than the formal judicial system through the law courts. Indigenous conflict management and resolution aim to resolve conflicts locally, replacing legal dispute resolution and thereby reducing reliance on external structures (Endalew, 2006).

The LAC use traditional community based judicial and legal decision-making mechanisms to manage and resolve conflicts within or between residents. Local arbitration typically incorporates consensus building based on open discussions to exchange information and clarify issues. It is both a third party decision and there is a strong focus on the re-establishment of harmony as in consensual approaches to conflict resolution. Community members involved in the conflict participate in the dispute resolution process therefore conflicting parties are more likely to accept guidance from these mediators than from other sources.

The LAC in Narok County forms a dominant component of the alternative mechanisms of conflict resolution. The LAC has authority that makes it effective in resolving land conflicts and maintaining peaceful relationships in the community. The Committee function as a court with broad and flexible powers to interpret evidence, impose judgments, and manage the process of reconciliation. The land committee leads the process and channels discussion of the problem

were parties typically do not address each other, eliminating direct confrontation. Interruptions are not allowed while parties state their case. Statements are followed by open deliberation which may integrate listening to and cross-examining witnesses, the free expression of grievances, caucusing with both groups, reliance on circumstantial evidence, visiting dispute scenes, seeking opinions and views of neighbors, reviewing past cases, holding private consultations, and considering solutions.

The committee uses their wisdom and position to find an acceptable solution. Decisions may be based on consensus within the members of the committee and may be rendered on the spot. Resolution may involve compensation or deprivation of land, and, if necessary, the arrangement of restitution. Local arbitration typically incorporates consensus building based on open discussions to exchange information and clarify issues. Conflicting parties are more likely to accept guidance from these arbitrators than from other sources because an elder's decision does not entail any loss of face and is backed by social pressure. The end result is, ideally, a sense of unity, shared involvement and responsibility, and dialogue among groups in conflict (Endalew, 2006).

2.8 Suggestions for Improving of the Land Adjudication Committee of Narok County

Alternative land dispute resolution methods are preventive and deterrent measures of conflicts both within and without the community. This has been reinforced by cultural beliefs, norms that further make the mechanisms binding and adhered to. Where the formal courts fail or is unable to solve conflicts involving individuals or groups, logic demands that the people seek alternative means to meet these challenges. Alternative conflict resolution mechanisms are resorted to by the residents of Narok County. Alternative mechanisms aim to resolve conflicts without resorting to conventional judicial systems

A remarkable feature of land adjudication in Narok County is its committee system. Its uniqueness lies in the fact that it is wholly composed of lay members of the public who are responsible for resolving disputes that arise during the adjudication process. The provincial arbitration boards which hear appeals from the adjudication committees are also made up of lay members. Nevertheless, the members tend to be well versed in customary law. This is

particularly important because they have to identify the customary rights and interests held by individuals. Since these rights and interests have generally not been documented, and can only be determined by oral means individuals claiming such rights have to prove their claims to ownership by calling witnesses who were present when those rights were acquired and who are aware of their validity. By cross examining the witnesses, the adjudication committees are able to ascertain the rightful ownership of the land and those with interests in it.

Despite the sustained local, state and regional efforts to resolve conflicts in Narok district and across the borders, there has been no success in reducing the tally of these conflicts in successive years. The inability of these efforts to contain and resolve the conflicts infers a failure to identify a conflict-resolution framework that would satisfy the traditional (though changing) socio-political and cultural dynamics of the parties in conflict.

The committees in Narok County are poorly educated and often semi-literate. Even the recording officer is not a trained lawyer and to expect the members of the team to distinguish sophisticated legal concepts would be expecting a lot. Consequently, an adjudication register presented for registration under the Registered Land Act 1963 is, at times, seriously inaccurate. Clearly, the situation cries out for an official who is a trained lawyer to assist the recording officers and the Adjudication committee in making these correlations. However, this view is criticized on the ground that this would slow down the process of adjudication and increase the cost at the same time. While this may be true, it is respectfully submitted that it is better to slow down the process and add the extra expense of having trained lawyers to ensure the adequate protection of the rights of individuals, since; in any event, this is the ultimate aim of land adjudication.

There are other serious problems which face the committees in Narok County. Tribalism is one of them. Since most of the adjudication areas cover is dominated by one tribe, naturally most, if not all the committee members, will be members of one particular tribe. The problem arises where a landowner within the adjudication area belongs to another tribe. It has been the case that the interests of these are not recorded or are given to someone else. The Lawrance Mission reported that this had been a serious problem in Narok County. There, some Kikuyu had exercised rights of ownership over land. However, despite this, ownership of the land was

adjudicated in favour of members of the Maasai, the dominant tribe in the area. Others found part of their farms adjudicated in favour of Maasai. This resulted in many having to buy their farms back from those who were allocated the same land. It is most unfortunate that land adjudication would come to this and it highlights the danger of appointing committee members who all come from one tribe.

Corruption has been an endemic problem. Some individuals had acquired bigger portions of land as a result of bribing the recording and survey officers. The committee members are not paid for their work. The Lawrance Mission considered that paying the members, even a small allowance, would considerably increase the cost of adjudication; instead they recommended that committee members should continue to work unpaid. The rationale for this view is based on the fact that people pay a small count in fees to have their land adjudicated and registered. The Government bears the bulk of the cost of land adjudication and, therefore, the adjudication committees should not expect a salary. This shows that land adjudication has been undertaken very cheaply by the Government, and its success partly lies in the fact that landowners pay very little to have their titles registered, hence their enthusiasm for the scheme. However, the absence of remuneration for the committees means that they will always be susceptible to bribes under the guise of hospitality. It also creates a lack of motivation among the committees when undertaking the work.

2.9 Conclusion

This chapter has given a highlight of the causes of land conflicts. The above discussions clearly reveal that conflicts are an integral part of human interaction; therefore we must learn to manage and deal with them in a way that will prevent escalation of land disputes. The alternative methods usually referred to as ADR are based on consensus building and apply methods of conciliation, mediation and many more. These methods usually serve as a bridge between the formal and customary methods. The Land Adjudication Committee is a form of Alternative Dispute Resolution Mechanism. This is because it shares some common features and advantages with ADR and some of the ideas and processes of ADR have its origin in the customary system.

ADR systems aim at eliminating the weaknesses in the formal system whilst at the same time incorporating the strengths of the customary system. The greatest advantage is that “ADR is an alternative” it is not a replacement to the conventional courts or the customary justice system (Odamety, 2007) it remains an alternative because it works most of the time but it cannot work all the time (Boege, 2006).

The Land Adjudication Committee’s can be praised for having been responsible for the rapid spread of registration and individualization of land in Narok at comparatively low cost. The committees have the important task of ascertaining the customary rights and interests affecting the land and correlating them with the interests recognized by the Registered Land Act 1963. The committees are therefore responsible for converting land from a system that had been based on customary law into a system based on English law.

CHAPTER THREE

3.0 INTERPRETATION AND ANALYSIS AND DISCUSSION OF FINDINGS

3.1 Introduction

Given the high occurrence or prevalence of land disputes, it becomes imperative to explore disputes resolution avenues. This chapter aims at analyzing the findings of land disputes, the reasons why the residents of Narok County prefer the Alternative Dispute Resolution Mechanism and suggest ways for enhancing the capacity of the Land Adjudication Committee.

It is based on the data collected by the researcher from the field regarding causes of land disputes and resolution mechanisms. The literature reviewed and the information obtained from the field survey was also analyzed. The analysis of data collected and available literature on causes of land disputes and conflict resolution mechanisms helped in identifying the research problems. This chapter examines the Land Adjudication Committee in Narok County and focuses on the efficacy of the mechanisms in solving land disputes. It also evaluates the weaknesses of the Land Adjudication Committee which has been used in handling of land disputes in Narok County and offers suggestions for its improvement.

Simple quantitative data was presented in tables, bar charts and graphs for analysis. On the other hand qualitative data reflecting the opinion of various respondents was thematically coded and analyzed for interpretation. This helped to explain the causes of land disputes and efficiency of the alternative dispute resolution mechanism. Both primary and secondary data was presented thematically with a view to answering the study questions.

3.1.1 Outline of Study Findings and Analysis

The study findings (questionnaires and discussion materials) collected were analyzed and classified under three themes as outlined. Causes of land disputes, Efficacy and weaknesses of Land Adjudication Committees and suggestions for improving the alternative justice system.

3.1.2 Demographic information

From the total number of respondents interviewed 97.2% were male while only 2.8% were female. This revealed that in Narok County which is highly dominated by the Maasai community, most women did not own land and were not allowed to make or determine decisions regarding land. In most issues dealing with land in Narok County, women are usually sidelined and do not actively participate in land matters. Furthermore, very few women own land in this county and therefore are not really concerned with it.

Most of the respondents interviewed were between the age brackets of 51-60 years. 30.6% of the respondents were between 51-60 years; 22.2% of the respondents were between the ages of 18-30 years followed by 19.4% of the respondents who lie between 41-50 years; 13.9% of the respondents fell between the age of 31-40 years; 11.1% of the respondents were between the age of 61-70 years while there was only 1 person above 71 years who formed the remaining 2.8% of the respondents. The above statistics indicate that land issues in Narok County are mostly dealt with by the elderly generation in the community. This is attributed to the traditional culture of the Maasai community which is the predominant community in Narok County. In this community, the elders play a pivotal role in dispute resolution. It can also be concluded that a majority of the cases involve the older generation implying that most of them have taken long to resolve.

The researcher sought to find out the education level of the respondents in the area under study as part of the requirements of the research. Hardly any of the members of the tribunals had gone beyond secondary school education. From the study, it was deduced that 50% of the respondents had gone through informal education as is common for pastoralist communities. 47.2% point seven percent of the respondents had attained primary education while only one respondent had attained tertiary education coming to 2.8% of the total respondents interviewed. As mentioned above, the communities under study are majorly pastoralist's thus formal education become difficult to attain while they are on the move most of the time looking for grazing land. This affects the workings of the units in that some members of the committee are unable to perform their duties well for lack of skill and expertise. Incorporating the legal laws and the customary

laws requires someone with proper education so as to handle the land disputes in a skilled manner.

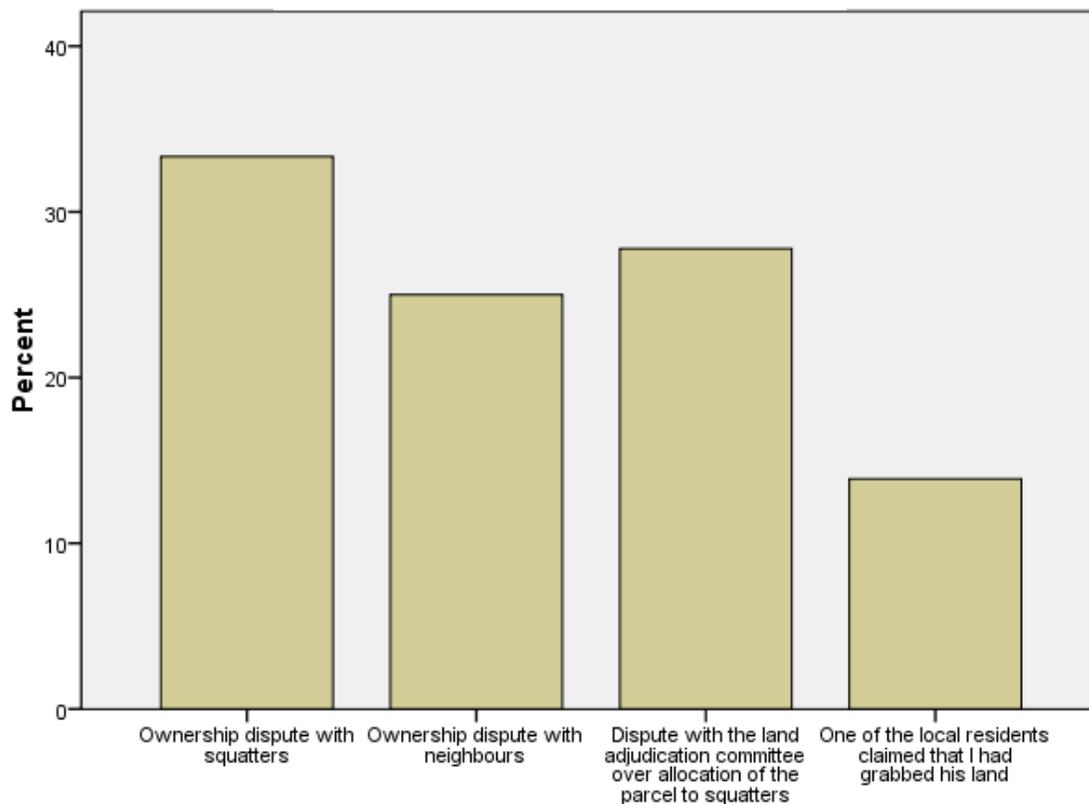
3.2 Nature of Land Conflicts/Disputes in Narok County

Land was a communal property in Narok which was administered by elders for the benefit of the whole community but in the recent period, land has been adjudicated and continues to be demarcated and given to individuals as private property. All the respondents interviewed had been involved in land disputes but some had not been personally involved but were aware of land disputes in which their close relations were or had been involved. It was imminent for the researcher to inquire the nature of the dispute and the parties involved. The researcher found out that 86.1% of the disputes involved ownership of land between neighbours while 13.9% claimed that grabbing of land was a cause of disputes.

The findings from the field study and secondary data revealed that disputes occur between; Individual and individual and Individuals and committee members over the allocation of parcels. This reflects the high incidence of land cases in the County and may be attributed to several factors including population growth, new land tenure systems etc which together results in excessive pressure on land and other purposes.

The types of land disputes observed in Narok County, although not representative for all districts, is presented in Figure 3.1, because of its instructive nature. The study found the following:

Figure 3.1 Causes of land disputes



Source: Research Data, 2012

3.2.1 Individualization of land

The major land conflicts in Narok County is related to the individualization of land, land ownership claims, boundary encroachment, trespass and conflicts between the residents and the land adjudication committee among others. Disputes occurring due to by claims on land ownership from disputants having their land demarcated; disputes with the land adjudication committee over allocation/ demarcation of land were found to be common. From the response of the key respondents most conflicts occur as a result of the demarcation of land. This has resulted in double allocations to different people and more especially squatter allocations. These conflicts occur due to improper allocations by the committee members. The record shows higher number of disputes was of the nature of allocation. This is shown in figure 1 above.

The researcher found out that the disputes involved ownership of land. In this case 33.3% of respondents interviewed alluded to having had an ownership disputes with squatters over the allocation of land, 25% cited ownership disputes with neighbors. 27.8% pointed out that they had an ownership dispute that involved the allocation of their parcels by the Land Adjudication Committee while 13.9% cited disputes over grazing land. With the onset of adjudication, land was demarcated to the people rendering it private property. Individualization of land was found to be the source of most land related disputes and has served to dispossess a large number of the residents in Narok County, from farm, forest lands and pastoral grazing land in most cases without prior consultation or adequate compensation. The survey was able to establish the prevalence of land disputes in the areas undergoing demarcation/ individualization of land. Across the three regions in Narok County, the incidence of occurrence of land disputes reported by the survey respondents increased during demarcation.

3.2.2 Diminishing Grazing Land and Resources

Of the respondents interviewed, 25% cited ownership disputes with neighbors while 13.9% claimed that residents had been involved in encroaching on their grazing land. 27.8% cited disputes over the allocation of land by the committee to squatters. Competition over the rapidly diminishing pasture and grazing resource as a result of individualization of land, encroaching state lands (game parks) and farmlands are perhaps conspicuous causes of land disputes in Narok district and beyond.

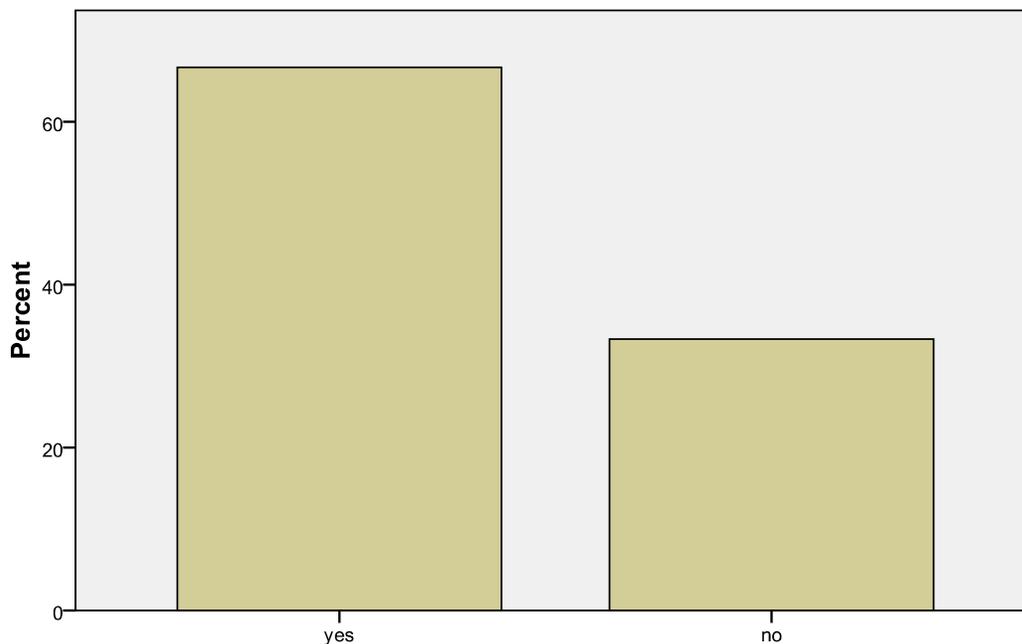
The response reveals that there is a state of inequality in resource endowments. The exclusionary land right has an effect on the space economy and way in which the residents of Narok manage their land. In the simplest terms, it has created pressure on land, leading to constraints on the ability to keep and graze livestock. The community keeps large number of cattle and the shrinking resource base can no longer support the large herds. The encroachment of crop farming and sedentary life in Narok has further worsened the situation. Narok County is increasingly becoming private property causing people to try to accumulate as much land as possible. This need and greed equally leads to land conflicts as indicated in the findings.

3.2.3 Disputes Emerging from Land Inheritance

The study revealed that inheritance is another prominent cause of domestic conflict in the community. 65% of the respondents interviewed cited that they inherited land from their father while 35% did not inherit from their father's but got their land from other sources. Some residents claimed that their property was unevenly distributed. In isolated cases, some residents refused to hand over part or all of his property to his children thus causing domestic conflicts. Inheritance disputes also arose after the death of the head of the family.

How to share and or manage the deceased property normally generated disputes since there are no written wills. Inheritance disputes especially those related to land rights of widows and orphaned children, arising from the family (paternal uncles or clan heads) were witnessed. Thus a high percent of respondents expressed fears on tenure security due to fears of disinheritance. This was followed by threats of eviction or being chased by relatives and possible sale by relatives. Figure 3.2 below shows the number of residents who have inherited land from their fathers.

Figure 3.2: Land Inheritance from the Father



Source: Research Data, 2012

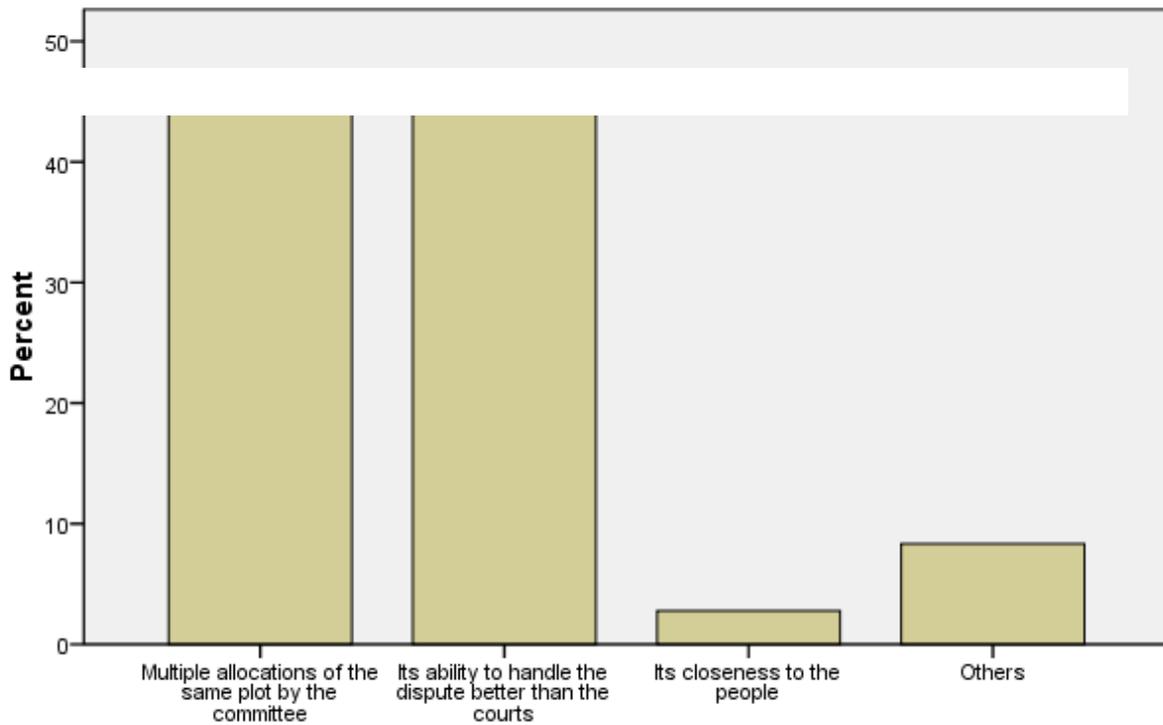
3.4 Respondent's Preference for the Justice System

The study also sought to find out what was the preferred dispute resolution mechanism based on the type of dispute and the parties or disputants involved. The reasoning behind the choice of particular institution, as a way of understanding the changing trends in dispute resolution seeking behavior of respondents in the study area was investigated. It was found that there were several factors which determined the choice of the LAC. 44.4% of the respondents pointed out that the land adjudication committee was responsible for the allocations of parcels to the individuals stating that it was better placed in resolving the disputes than the courts. Of the respondents interviewed 44.4% preferred the alternative land dispute resolution mechanism based on its ability to handle dispute better than the courts as compared to the modern judicial system. The study found that most land disputes went to the LAC, with other cases seeping through to courts on appeal.

Three percent of the respondents were of the view that the LAC consists of personnel who are capable of understanding the nature of their disputes having lived in the area for many years and were therefore deemed closer to the people. The remaining eight point two percent of the respondents had other reasons to account for their reporting to the LAC about land disputes e.g. duration taken in resolving the disputes among other reasons. The formal courts were also considered by the respondents to be very expensive and not easy to reach. The analysis showed that people prefer the modes of negotiation and mediation as practiced by the LAC which is an alternative dispute resolution mechanism.

Figure 3.3 below gives the reasons why respondents referred their cases to the land committee and explains choice of dispute resolution fora.

Figure 3.3: Reasons for Reference of the Dispute to the Land Adjudication Committee



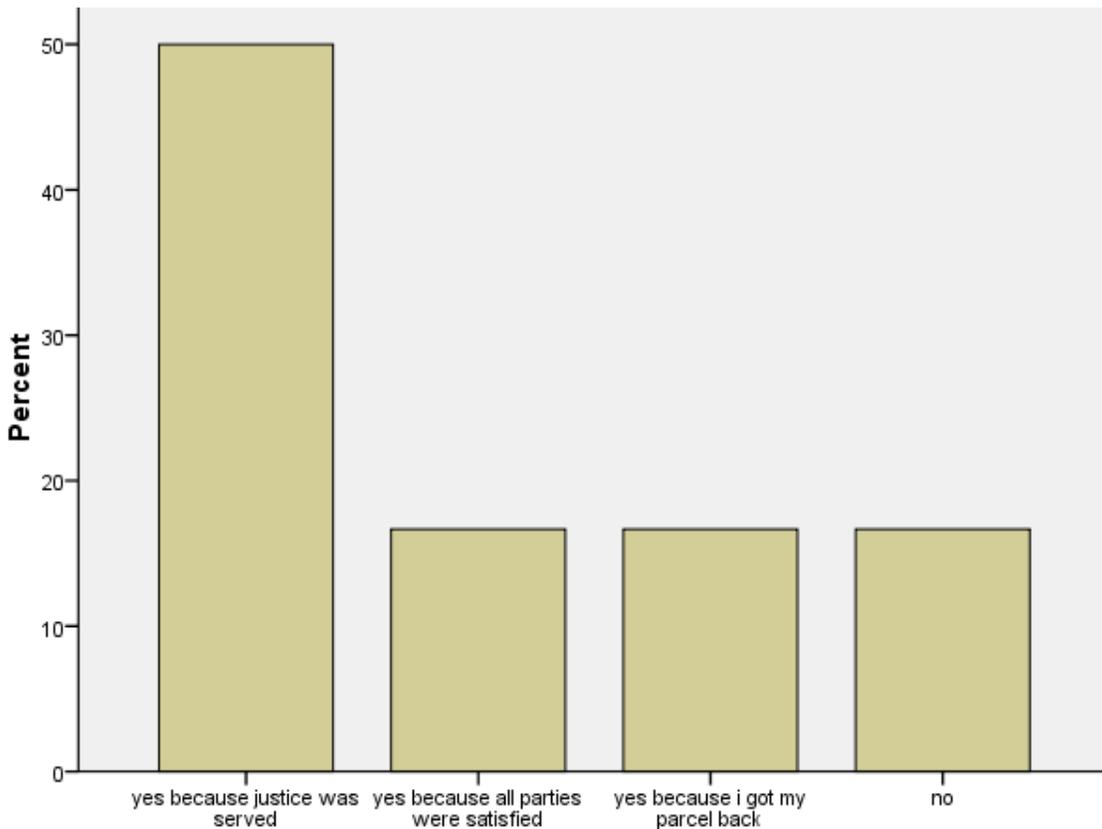
Source: Research Data, 2012

The responses from the respondents were of varied opinions on their preferences for land dispute resolution mechanism. Some were of the view that it is necessary to have an alternative dispute resolution mechanism outside the court for various reasons; that ADRM can expedite justice and are easily reachable. They claimed that there is no way the formal courts can clear the numerous land cases. According to them, the aim of the ADR is not to punish but to negotiate, mediate and find an amicable solution without the need of punishing anyone. The formal courts do not demand adequate respect of many people who feel dissatisfied with their decisions.

This section aimed at finding out the acceptability, sustainability and suitability of this resolution unit within this county. Posing the question on what the respondents thought of land dispute mechanisms, 50.9 % of the respondents interviewed showed their satisfaction with the LAC because justice was served. 16.7% of the respondents interviewed cited disputing parties satisfaction with the process; 16.7% felt they were satisfied because they got back their parcels of land while 16.7% of the respondents disagreed.

The researcher also sought to find out how effective the LAC was in resolving the disputes by inquiring the nature of the settlement and whether they had been settled. It is noteworthy that an overwhelming majority of 80.6% of the respondents was satisfied with the settlement where they claimed that the settlement was effective while 19.4% argued that the disputes were yet to be resolved thus rendering the process ineffective. Figure 3.4 below shows satisfaction with the process.

Figure 3.4: Satisfaction with the LAC process



Source: Research Data, 2012

In addition to the above, 69.4% of the respondents still felt they could support the LAC due to its accessibility while another 30.6% felt they could not. On the costs incurred in the process of resolving disputes, 55.6% felt the LAC was cheaper hence they would support it while 44.4% felt it was not therefore they would not support it. On its ability to resolve disputes amicably, 80.6% of the respondents interviewed pointed out that they would support the LAC while another 19.4% felt it did not hence they would not support it.

Table 3.1 Support for the land adjudication committee due to its accessibility

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	25	69.4	69.4	69.4
	No	11	30.6	30.6	100.0
	Total	36	100.0	100.0	

Table 3.2 Support for the land adjudication committee due to its low cost

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	20	55.6	55.6	55.6
	No	16	44.4	44.4	100.0
	Total	36	100.0	100.0	

Table 3.3 Support for the land adjudication committee due to its ability to resolve disputes amicably

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	29	80.6	80.6	80.6
	No	7	19.4	19.4	100.0
	Total	36	100.0	100.0	

Source: Research Data, 2012

3.5 Operational efficacy of the Land Adjudication Committee

To better understand and answer the questions of efficacy of the LAC, the study looked at the number of cases handled by the LAC over a period of 2 months within the sampled areas, the average time taken to resolve disputes, time taken to conclude and decision making time.

Closeness to the people: From the field survey, 91.6% of the respondents interviewed cited its closeness to the people as an affirmable reason for them to present their cases to the LAC. The fact is that the formal institutions are not trusted among the villagers on the contrary, they are generally perceived as costly, time consuming and biased towards the rich. The ADR system is regarded as community owned as it is backed and based on customary law, norms and culture. It was observed that unlike the formal court system, the residents trust customary institutions of conflict management since they understand and appreciate the mechanisms and framework under which it operates.

Familiarity of how a particular institution operates or works was the major determinant of choice of dispute resolution. The system is regarded as accessible, objective and community owned as it is backed and based on customary law, norms and culture. The rule of natural justice is observed and nobody is condemned unheard. The residents who had appeared before the committee commented that that the Land adjudication Committee is aware of the problems in the area because they are near the people around and where the problem is. The LACs also go to the ground for inspection before they make their decision.

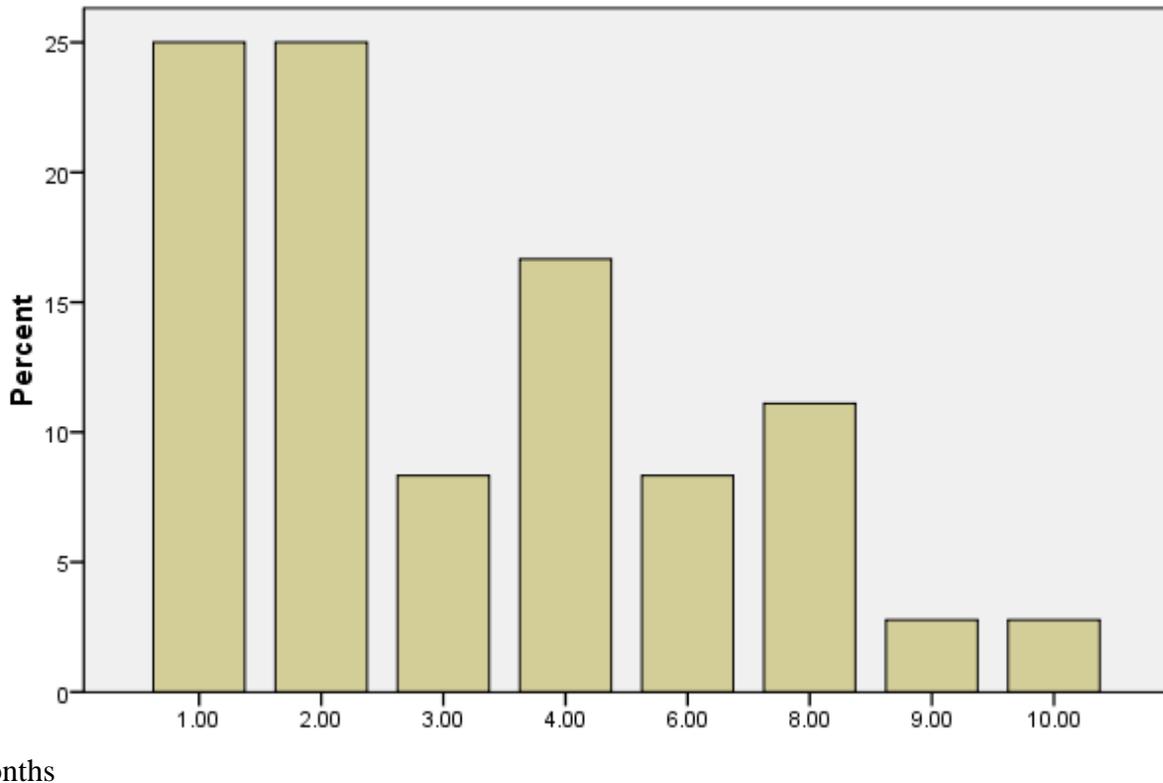
Participation: during the survey none of the units had been contacted or alerted prior to the study. This helped to gauge the level of commitment and participation of committee members to their duties. At least 60% per cent of the committee members were present. Further talks with the chairman of the committee revealed that the turnout was usually good though at times the attendance was poor due to poor weather conditions causing impassible roads.

Duration taken in resolving the dispute: ADR has been lauded as less time consuming as the courts. It was therefore important for the researcher to find out the time consumed from the respondents the duration taken in resolving the disputes in Narok County. The LAC was

examined to get the total number of disputes resolved in that year. The researcher found out that a minimum of one month and a maximum of ten months was the time taken for the disputes to be resolved. The average time taken per case was three and half months. 25% of the disputes reported took 1 month to be resolved while another 25% took two months to be resolved. 12.1% of the respondents reported that the disputes took eight months; 16.7% of the respondents reported that the disputes took about four months to be resolved while another 8.4% reported that the cases took three and six months, while 5% of the respondents interviewed pointed that the time taken for a land dispute to be resolved by the LAC was nine and ten months.

Duration and cost are ranked among the considerations for making choice of dispute resolution institutions. The research revealed that the land Committee was able to handle land disputes expeditiously. This is due to their effective procedures applied in the hearing of disputes. Regarding the speed of dispute resolution, there was a relatively high resolution rate. The above figures show that the LCC handles and disposes off more disputes within a short period. The high number of disputes that that were dismissed may be due to non appearance of the parties within the stipulated period. This suggests that the disposal of a dispute depends on the mechanism used as well as the type of conflict that is lodged. The findings reveal that the tribunals take a shorter time in disposing of disputes. This was attributed to the fact that the committee uses their wisdom and position to find an acceptable solution as fast as possible. Decisions may be based on consensus within the members of the committee and may be rendered on the spot. Resolution may involve compensation or deprivation of land, and, if necessary, the arrangement of restitution.

Figure 3.5: Duration of time taken in resolving disputes



Source: Research Data, 2012

Figure 3.5 above shows the duration of time taken by the Land Committee to resolve the land disputes in Narok County it depicts the various periods that were used to solve disputes at the LCC. The study reveals that a considerable high number of fresh applications are received every year. This reflects the short time it has taken to settle cases. It is seen that the LAC disposes of cases quickly and in a short time.

Cost of Resolving Disputes: The study was able to establish that cases heard by the Land Committee were determined much faster and at a lower cost. The minimum amount of money spent in resolving the disputes by complainants was cited to be Kshs. 150 while the maximum was about Kshs. 35, 000 with the average coming to around Kshs. 6,500. Most of the respondents had spent about kshs1, 000 in catering for transportation, airtime, fees and other expenses during the resolution of the disputes. This shows that the filing of a case at the LAC is not expensive and is affordable by the disputants. On the other hand, the high costs are one

reason why many land disputes never reach the courts; most villagers simply lack the resources to pay for an official complaint. Many of the respondents interviewed revealed that the fee was affordable.

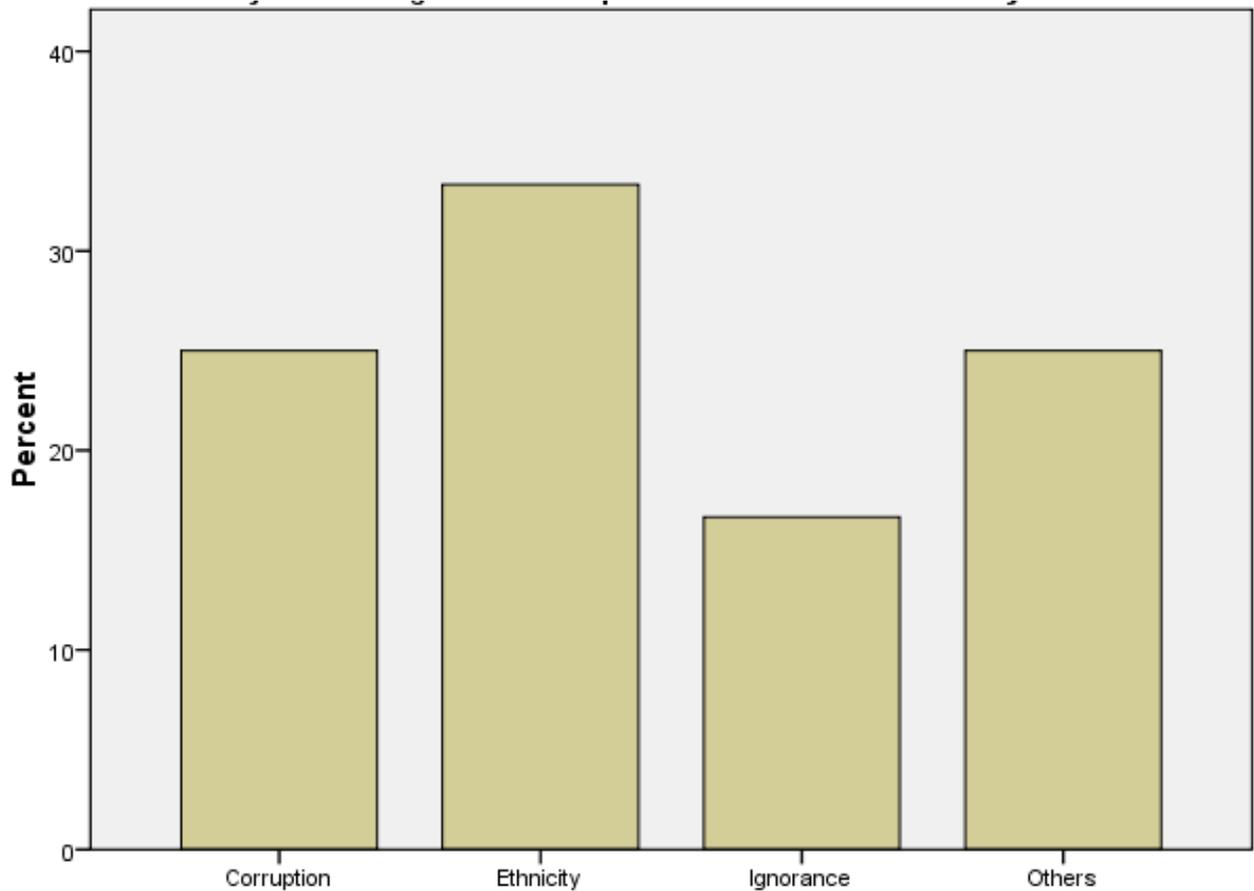
Flexible/ convenient: The respondents also preferred the alternative dispute resolution mechanism since it is devoid of bureaucratic hitches that have marred modern court system. It was evident that the committees met at the most convenient venues where the residents could easily reach them. This made it cheaper for the residents to reach the committee. In case of a dispute, elders can easily convene anywhere in the villages and solve the problem. It is a quick and effective way of administering justice. Distance from location of the dispute which determines ease of reach was important while availability of a dispute resolution institution was important. Most of the time the LACs depended on public barazas to communicate about their intended meetings. The rest of the time public notices were put in public places. These means are cheaper for the committee and easily accessible by the public.

3.6 Weaknesses of the Alternative Dispute Resolution Methods

Despite the sustained efforts of the LAC to resolve conflicts in Narok County, there has been little success in reducing the tally of these conflicts in successive years. The inability of these efforts to contain and resolve the conflicts infers a weakness in the dispute resolution unit.

The researcher sought to find out the major stumbling blocks in the resolution of disputes faced by LAC in Narok County. In this case the respondents were supposed to mention them where 33.3% cited ethnicity 25% cited corruption; another 25% cited other challenges such gender inequality, while 16.7% mentioned ignorance on the part of the population as a major challenge towards dispute resolution. According to interviews, the absence of tribunals would not be gravely felt if the LAC courts were equipped and in a position to dispense justice. Lack of proper and efficient enforcement instruments and mechanisms has reduced the relevance of alternative methods of dispute administration as indicated in figure 3.6 below.

Figure 3.6: Major Stumbling Block in Dispute Resolution in Narok County



Source: Research Data, 2012

Despite the existence of an elaborate Land Adjudication Committee, the following factors still continue to hinder the process of dispute resolution.

Gender imbalance: The Alternative dispute resolution has been criticized for being non-compliant with international standards of equity, basic ideas of democracy and universal human rights. In addition, ADR systems, all are not equal, with women, young people and strangers being generally disadvantaged. In most cases women have not been enjoined in the proceedings and the ensuing rituals. From the study it was found that the LAC was male dominated with 97.2% of the total respondents being male while only one 2.8% female. It was established that there is no clause in the governing laws that provides for gender proportion expected in the units. Therefore most of the committee's in these areas are not gender sensitive.

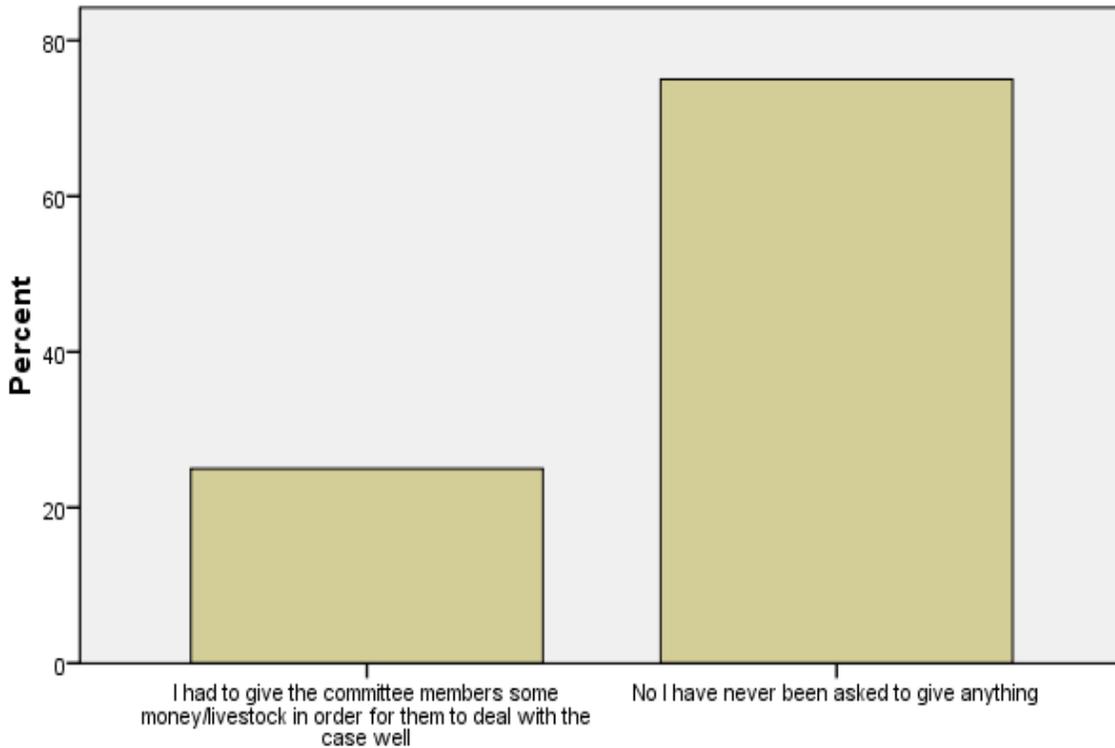
The respondents regarded the alternative system of arbitration as gender insensitive since women are culturally not allowed to contribute in the proceedings. This practice has denied women their rights to assembly, speech and natural justice. The women interviewed commented that they did not think they would get justice as the tribunals were dominated by men. They also reckoned that the men in the tribunal did not believe in women inheriting property and were opposed and unfair decision-making.

Biasness: from the field survey, 41.7% of the respondents interviewed argued that there was a general lack of accountability in the LAC in Narok County. They claimed that the whole system is prone to bias and favoritism. Some families thought that the LAC was not accountable to the people and therefore justice might not be administered fairly while 58.3% of the respondents thought otherwise; that there was accountability in the LAC in Narok County and hence the main reason why people prefer to take their cases to the LAC's. On the other hand, they were criticized and blamed for being biased and taking sides especially in cases dealing with women. Nevertheless, the credibility of such informal mechanisms is eroding due to political interference and verdicts biased in favor of those with power (Khadka 1997; Kaplan 1995).

Corruption: From the field study it was revealed that the major impediments to dispute resolution in Kenya as was investigated indicated that 61.1% of the respondents mentioned corruption, 22.3% mentioned ethnicity, 8.3% thought ignorance was the major impediment while another 8.3% alluded to the lack of title deeds as the main impediment towards dispute resolution in Kenya. The respondents were asked if they had been requested to give a token by any individual in the committee in order to speed up the process of resolving their disputes 25% of the respondents pointed out that they had to give the committee members some money or livestock in order for them to deal with the cases well and effectively, while 75% denied any such case. It is argued that the LAC is corrupt and should be discarded. Such kind of thinking has greatly diminished the credibility and relevance of alternative conflict resolution mechanisms. However, most of the respondents regarded the alternative method of solving disputes as incorruptible unlike the modern judicial system that is synonymous with corruption. The Land adjudication committee member appointed consists of not less than 10 members. The number

was set high to daunt disputants from attempting to bribe the members in order to get a decision in their favour. This reduces the possibility of corruption.

Figure 3.7: Have you ever been requested to give a token in order to fast track the case?



Source: Research Data, 2012

When the residents we interviewed on issues of ethnicity 86.1% of the respondents agreed that ethnicity was also a challenge while 13.9% disagreed. The role and efficacy of the alternative dispute resolution mechanism has been greatly eroded, marginalized, and diminished by modern civilization and development thinking. The system is regarded as anarchic, barbaric and outdated mode of arbitration. The emergence and institutionalization of modern courts system has greatly marginalized traditional conflict management system in the community. More and more people are turning to the modern court system. Diminishing role and efficacy of alternative mechanism of conflict management amongst the people is one of the main weaknesses of the system. Allegations that the customary court is ethnic have made people shy away from seeking justice

in these indigenous bodies. Customary law is said to belong to the old generation and not the learned people.

3.7 Suggestions for Improving the Capacity of the Land Adjudication Committee

The researcher sought to find out how the Land Adjudication Committee can be improved. 60% of the respondents were of the view that the Committee members needed to be trained, 35% were of the view that the Committee members needed to be remunerated, while 5% claimed that the members of the Committee should be well representative of the various villages in the area. Tribunal members had not had any form of training on either land issues pertaining to the workings of the tribunal prior to joining the units. The only kind of training received by the Committee members once in a while was surrounding issues related to their duties and not on other important land issues. Sometimes the committee members overstepped their mandate and were not conversant with the Acts. One would expect the composition of the committees to include at least one or more individuals with legal training. Alternatively, one would expect the adjudication officer to be a qualified lawyer. There is, however, no such requirement in the Land Adjudication Act 1968. The adjudication officer is an administrative official with little formal legal training. The bulk of adjudication committees are composed of lay members, many of them illiterate or semi-literate. The absence of persons with some legal training has meant that committees have been unable to properly equate the customary rights or interests in land with their correlated interests in English law, and recognized by the Registered Land Act 1963.

The committee members were aware that they were supposed to be paid a sitting allowance for every meeting but majority said they never got it. The adjudication committees should also be remunerated for their efforts, thereby preventing the temptation to submit to corruption. Although the Government has saved huge costs by not paying the committees, it has meant that the problem of corruption is now becoming acute. Committees are also prone to take less of an interest in the adjudication process.

3.8 Conclusion

Several factors arise as the predisposing reasons for land conflicts including illegal settlement, land grabbing, squatting, new land use policies, privatization of land, ownership claims, and allotment of parcels of land belonging to individuals to others by the Land Adjudication Committee in a bid to settle squatters, invasion by individuals from other ethnic groups among others.

It is also evident that many governments in the world have tried to embrace both formal and informal systems in resolving land conflicts due to the multiplicity of cultures that are present thus requiring a localized and more liberal approach to resolve conflicts without escalating the use of violence. The chapter reveals that, the Land Adjudication committee has been effective in handling land disputes in Narok district.

The Alternative Dispute Resolution is process-oriented, which guarantees more sustainable results than formal court systems. It is also very inclusive and allows participation. From the foregoing, it is evident that the major reasons that have made people to refer their disputes to the Land Committee are cultural responsibility of the committee among others.

CHAPTER FOUR

4.0 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

4.1 Introduction

The ongoing land disputes in Narok county indicates that there is an urgent need for researchers to understand the root causes of the disputes in order to be able to determine when and how to intervene to achieve a successful resolution. Kenya is currently investing in the improvement of the judiciary, one of the objectives being the development of a transparent and effective land dispute resolution system. Experience however shows that more is needed to avoid land conflicts and ways of mitigating and resolving such conflicts.

In this chapter, the findings are summarized; possibilities for improvements and a number of recommendations for managing land conflicts and alternative resolution are provided. The importance of securing land rights, ensuring the full implementation of existing land laws and the sensitization and empowerment of local communities to claim the rights to which they are entitled must be emphasized. Possible mechanisms include training of law enforcers, building legal literacy at community level or assisting communities to pursue their land rights through Alternative Dispute Resolution Mechanism.

The main objective of the research was; to identify the preferred and efficient dispute resolution system in an area facing land disputes. Three sub-objectives were set from the main objective to: (i) identify the causes of land disputes and how they are resolved/ managed. (ii) Examine the efficacy of the Land Adjudication Committee as an Alternative dispute resolution mechanism. (iii) Suggest ways of enhancing the capacity of the Land Adjudication Committee.

4.1.1 Types of land disputes exist and how they are resolved/ managed

The research has given reason to conclude that both individual land ownership and access to land are today the most frequent source of disputes in Narok District. Other causes include the rising value of land, the increasing competition over it, combined with a series of influencing factors such as of democratic institutions, secured land rights, corruption, patronage systems have all given rise to a number of violent and non violent land conflicts in Narok County.

It was found that there were a number of limited options for resolution of land disputes that were caused due to individualization of land in the study area. The high court on appeal dealt with various land disputes. However, the Land Adjudication Committee was the main tribunal mandated to hear and determine disputes arising from complaints due to demarcation of land.

4.1.2 The efficacy of the Land Adjudication Committee as an Alternative dispute resolution mechanism.

The study was able to establish the efficiency of the Alternative dispute resolution mechanism based on the type of dispute and the parties or disputants involved. It was found that there were several factors which determined the choice of the justice institution. The study found that most land disputes went to the LAC, with other cases seeping through to courts on appeal. Most residents pointed out that the land adjudication committee was responsible for the allocations of parcels to the individuals stating that it was better placed in resolving the disputes than the courts. The respondents preferred the alternative land dispute resolution mechanism based on its efficacy as compared to the modern judicial system. Ineffectiveness of land dispute resolution by the courts, lack of community knowledge in legal and policy matters, high levels of corruption and unclear rules of the judicial court system have given rise to an arbitrary system of dispute resolution. In addition, the absence of an independent, uncorrupted judicial system has meant that effective legal remedies for victims of land disputes are unattainable.

4.1.3 Suggestions for enhancing the capacity of the Land Adjudication Committee

The community made various suggestions regarding enhancing the efficacy of the Alternative mechanisms of conflict resolution. The respondents urged the government to encourage the alternative conflict resolution mechanisms by linking it to the modern judicial system. Modern institutions like the judiciary should help enforce the rulings and verdicts of the alternative courts instead of contradicting their decisions. Alternative dispute resolution mechanism should work hand in hand and a legal framework be established to give more powers of enforcement to the alternative conflict resolution structures. To improve the government's understanding and appreciation of alternative methods of conflict management, workshops, seminars and meetings

between community elders and the government officials (judiciary) should be held. This will ease the existing suspicion between the two institutions.

The community should be sensitized widely on the Alternative dispute resolution mechanisms. The respondents also suggested incorporation of customary law into the formal education system so as to inculcate the societal norms and laws into the minds of future generation. The initiation of a radical education programme to sensitize the public on the important aspects of ADR is essential.

Women should also be empowered and encouraged to actively participate in the land committee proceedings, as they are the majority of the victims of conflicts. Cultural norms and practices that hinder or prohibit participation of women in conflict management activities and public discourses should be discarded. The inclusion of women in the committee will play a major role in removing the fear that face women having land disputes as they approach the committee in the hearing and determination of cases involving them. It will further lead to the eradication of discrimination based on gender.

The decision made by the Land Committee may be appealed to the Arbitration board, then objection stage, an appeal to the minister and eventually to the courts. This in gives room to pursue parallel channels, or trying again and again with other institutions after a case has been lost, as long as there is a chance to win it. Experience shows that such parallelism leads to wastefully high spending on legal battles. In my view the appeal should only be allowed up to the Arbitration Board stage and should not be allowed to proceed further so as to avoid repetition and waste of time. In addition it is the Land Adjudication Committee and the Land Arbitration board which consists of community elders who are in a good position to understand the situation on the ground and customs of the people they represent.

The law should be applied uniformly by the alternative dispute resolution mechanism so as to make arbitration easy and standardized. It can be emphatically concluded that alternative dispute mechanisms can provide a solid framework for building a community's conflict resolution system. In addition, the various fines and punishment imposed by the alternative courts should be

synchronized so as to come up with a set of consistent and uniform punishments and compensation scheme.

The LAC can be enhanced by simply recognizing and integrating the principles of equity and inclusiveness as enshrined in the constitution as this would greatly improve the ADR system. For instance, civil societies and other interest groups should also be involved in the monitoring of land adjudication committees in their proceedings.

As observed in the study, the extremely judicial court system together with high levels of corruption has given rise to an arbitrary system of dispute resolution. In addition, the ADR has also been riddled with allegations of corruption. It has been claimed that some members of the committee have been receiving bribes to make biased decisions thus affecting impartiality. Among the suggestions made by the respondents to avoid corruption is by punishing errand members and paying committee members well to prevent corruption.

The land committee members in charge of handling land disputes should be selected from various villages so as to reflect true representation. The decisions of the Land Adjudication Committee's should not be based on any ethnic alignments. The conflict transformation theory notes that it is crucial to indentify in the design of resolution process appropriate facilitators who have the background knowledge, analytical and mediation skills to make a positive contribution to the design process (Rupasinghe (1994).

4.2 Conclusion and Recommendations

Traditionally community elders arbitrate matters of peace and justice within pastoral societies. This study confirms that such customary arrangements are indeed existent and should be revitalized. The government should strengthen these alternative mechanisms of dispute resolution instead of concentration more on the Judicial/ formal court system.

Alternative dispute resolution mechanisms aim to resolve conflicts locally, preceding or replacing external dispute resolution and thereby reducing reliance on formal court structures. Alternative mediation helps the community keep control over the outcome of the dispute.

Implementing this approach does not require sophisticated structures or expensive campaigns; it provides a low-cost, empowering means of resolving conflicts within a relatively short timeframe.

Alternative Dispute Resolution Mechanism will speed up the administration of justice since in most of these districts under study, formal courts are located far away - in district headquarters. For instance, in Narok district it is financially prohibitive to travel from Kipise to Narok town, approximately 300 km away, to attend court proceedings. Strengthening and institutionalizing ADRM could easily bridge the problem of inaccessible formal court systems.

Among the pastoralist's communities, elders have traditional jurisdiction in facilitation, arbitration, and monitoring outcomes. Local conflict mediators typically possess moral status, seniority, neutrality and respect of the community. They are acceptable to all parties and demonstrate capable leadership capacity. Resolutions are generally accepted and respected by all concerned parties. Advice is only accepted when both parties agree to it. Both parties must feel that their concerns were properly addressed. The government through the police, courts and provincial administration should assist land committee in enforcing their resolutions and verdicts.

In the studied community, traditional conflict mitigation efforts have been weakened by age or gender bias. Women have been completely excluded from conflict management processes. For instance among the Maasai communities, women act as reference resource people but not to challenge or influence decisions adopted by men. Youth and more are also left out in such customary sittings yet they are the main perpetrators and victims of conflicts. Gender and age bias must thus be streamlined in all indigenous peace building endeavors.

In order to dispel fears that customary law is an archaic, barbaric outfit and a competitor of modern formal courts, governments, international and local agencies should promote local dispute resolution mechanisms to ensure that local actors participate in conflict management by partnering with the local institutions. The communities felt that the government and development organizations should Acknowledge and appreciate the relevance, role and credibility of

alternative conflict resolution mechanisms. These actors could do this by organizing meetings with traditional institutions and securing their input into planning and policy processes.

Empowering the existing ADR structures for peace and conflict resolution, and use those structures in dealing with ongoing conflicts. A strategy for identifying conflict arbitrators and peacemakers within each community should be developed while validating and empowering existing conflict arbitrators, and creating opportunities for their interaction with the community.

Pastoralists' conflicts over the control, use and access of pasture, grazing land and water resources have existed since the history of these communities. Nevertheless, these conflicts were largely contained by the existence of strong indigenous natural resource governing mechanisms. The community should be free to determine their own land use methods instead of adopting measures that disregard people's livelihoods as dictated by the new system of privatization of land use introduced by the government.

The best attributes of alternative conflict resolution methods should be analyzed and disseminated to a larger constituent of peace activists and the general public. This will provide a consistent and objective mechanism of pastoralists' customary law in the country. Learning could take place through exchange visits and inter-community meetings.

There should be conducted workshops and sponsor forums to develop comprehensive customary strategies for conflict mitigation initiatives in the region and to focus on processes of empowering local groups in managing conflict. Training of elders and ADR court personnel in basic modern judicial system, democratic governance and rule of law, with the particular goal of reinforcing the traditional authority of the elders over their communities, as well as linking these ADR institutions to local governments. This positive development is to be encouraged, scaled up and replicated, even where conflict is not the core business of the partners concerned, since all development interventions from education to water, food security and sanitation projects should be conflict sensitive.

The role of outside peacemakers should also be emphasized. (Rupesinghe, 1994) notes that traditional” diplomacy and outside nongovernmental peacemakers have important roles to play in mediating the mitigation or resolution of violent internal conflict.” Rupesinghe emphasizes the role of the local peacemakers who are influential “members of local communities with a firsthand knowledge of conflict”. The role of these local peacekeepers takes on added advantage and should be encouraged in Narok County. As was previously mentioned, Narok County had such local expertise and these if utilized would assist us in determining the strengths and weaknesses of these resolution mechanisms systems and allow us to draw conclusions which would have a wider applicability.

At minimum, the study found out that there exists vast untapped potential in revitalizing alternative mechanisms of resolving land disputes amongst the pastoralists in the Narok County through strengthening alternative conflict resolution mechanisms, enhancing local people’s potential and rediscovering elders’ wisdom, knowledge and other resources.

REFERENCES

Akiwumi Report (1999), **Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya**, Government Printer, Nairobi, Kenya

Allan C. Tidwell (1998) in *Conflict Resolved: A Critical Assessment of Conflict Resolution* **Conducts an Examination of Relevant Theories for Examining Conflict**

Anderson, Jens (1999), “The Politics of Land Scarcity: Land Disputes in Save Communal Area, Zimbabwe” **Journal of Southern African Studies**, Vol. 25, No. 4

Appiah, Ati (2009), **The Role of Customary Land Secretariats in Land Disputes Resolution in Ghana: Case Study Gbawe Customary Secretariat**. Masters’ Thesis Unpublished Munich University of Technology

Baatar, B. (2007), Land Conflicts related to Land Privatisation in Mongolia. **Case Study of Urban and Peri- areas. Unpublished Master’s Thesis at the Centre of Land Management and Land Tenure**, Technische Universität München

Balamir, M. (2002) Legality and Legitimacy of Tenure in Turkey. In. Payne, G. (ed.): Land, Rights and Innovations. **Improving Tenure Security for the Urban Poor**

Boege, V. (2006), traditional approaches to conflict transformation –potentials and limits. **Berghof handbook for conflict transformation**, Berlin, Berghof research Centre for constructive conflict management

Bokeria, R. (2006) Ongoing Process of Privatisation in Georgia. **Transnational Crime and Corruption Center**, Caucasus Office. Tbilisi

Brazilian Ministry of Agrarian Development:(2001) Power Point Presentation on Land Grabbing. **Changing Politics in Kenya** M.A Thesis Unpublished Roskilde University

Deininger, K.(2003), **Land Policies for Growth and Poverty Reduction**. A World Bank Policy Research Report. Washington. Denmark

Duraiapah K.A, Ikiara G, Manundu M, Nyagina R and Sigane (2000), **Land Tenure, Land Use, Environmental Degradation and Conflict Resolution: a PASIR Analysis for the Narok District Kenya**. Working Paper No. 33 International Institute for Environment and Development, London and Institute for Environmental Studies Amsterdam

Fitzpatrick, Daniel (2008), “Mediating Land Conflict in East Timor”, USAID, **Making Land Work**, Volume Two Case Studies

Fonmanu K, Ting L and Williamson (2003), “Dispute Resolution for Customary Lands: Some Lessons From Fiji” **Survey Review** Vol. 37, No. 290

Gar-on Yeh, A (2005), **The Dual Land Market and Urban Development in China**. In: Ding, Chengri/Song, Yan (eds.): **Emerging Land & Housing Markets in China**. Cambridge.

Gendron Rennee, (2009), **Alternative Dispute Resolution in the North Caucasus” Caucasian Review of International Affairs**, Vol. 3(4)

Hayward et al... (2001), **Journeys through Conflict: Narratives and Lessons** Rowman and Littlefield Publisher

Henrysson, Sandra and Joireman (2009), **Property Rights and Adjudication in Kisii, Kenya**

Hoffman, B. (2003), **Guidelines and methodologies for conflict management**. A process initiated by world Bank and International council on mining and metals to pioneer new approaches in support of sustainable development in the extractive industries sector

Humanitarian Policy Group (2008), **Crisis in Kenya: Land Displacement and Search for “Durable Solution** Policy Brief 31

Kalende William, (2008), Kenyan Land Disputes in the Context of Social Conflict Theories.
Event: FIG Commission 7 Annual Meeting 2008 and Open Symposium on Environment and Land Administration "Big Works for the Defence of the Territory

Kanyinga, Karuti (1998), **Struggles of Access to Land. The” Squatter Question in Coastal Kenya (DR Working Paper No. 98**

Kenya Land Alliance (2004), **The National Land Policy in Kenya: Addressing Historical Injustice** Issues Paper No. 2/2004, Nairobi

Kenya, Republic of (2004), **Report of the commission of inquiry into the irregular/ illegal allocation of public land.** Nairobi Government Printer

Kenya, Republic of (1970), **The land Adjudication Act**, Chapter 284. Nairobi Government Printer

Landes, J (2000), **Unpublished Master’s Thesis at the Faculty of Agriculture and Horticulture** Technische Universität

Liaison Office (2009), *Between the Jirga and the Judge: An alternative Dispute Resolution in Southern Afghanistan. The TLO, Program Brief 01/ March.* National Science Foundation

Makaramba, V. R (1996), *Legal Method Part Two*, Faculty of Law, The Open University of Tanzania, Dar-es-salam

Mamo H (2009), **Land Dispute Settlement in a Plural Institutional Setting.** The case Arssi Oromo of Kokossa District Southern Ethiopia

- Ochen, Okot Alfred (2009), **Comparative Analysis of the Traditional Alternative Dispute Resolution Process in Land Claims and Allocations for the Indigenous Displaced Returnees in Amaru District, Northern Uganda**. M.A Thesis Royal Roads University
- Odamey, C (2007), The regulation of land disputes: promoting the option of alternative Dispute resolution Mechanisms; the case of Ghana. **Master's Thesis** Munchen centre of land management and land tenure, Technische Universitat
- Ortega, R.: Tierra (1996) **natural recourses in the Costal Atlantic of Nicaragua**. Unpublished document of the World Bank
- Ramirez, R. (2002), “**Land conflict Management, a conceptual map.**” Journal of land reform, land settlement and cooperatives 2 (6)
- USAID (2009), **Reducing corruption in the Judiciary office Democracy and Governance** Program Brief
- Republic of Kenya (2004), **Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land** (Ndung'u Report)
- Rupesinghe, Kumar (1994), **Conflict Transformation** (New York: St Martin's Press)
- Rutaitika, D. (2008), Land Dispute Resolution in Tanzania; The Efficacy of the Presidential Land disputes settlements committee of 2008, case study of Kinondoni municipality. **Msc Thesis** School of real estate studies, Ardhi university, Dar-es-salaam, Tanzania
- Sprangler, B. (2003), “Alternative Dispute resolution (ADR). **Beyond intractability**”
- Sovannath so et al (2001), **Social Assessment of land in Cambodia**

Syagga Paul (2011), **Expert Analysis: Land Policy and Dispute Resolution Mechanisms**
Africa Women and Child Feature Services Nairobi Office

Uch Utey et al (2011), **Social Assessment of Land in Cambodia** Cambodia Development
Research Institute, Phnom Penh

United Nations Human Settlements Programme (UN-HABITAT), Office of the High
Commissioner for Human Rights (OHCHR) (2005), **Indigenous Peoples' Right
to Adequate Housing**. A Global Overview

Unruh Jon (2005), Land Policy Reform, Customary Rule of Law and the Peace Process in Sierra
Leone, **African Journal of Legal Studies** Vol. 2

USAID Rwanda, (2008), **An Assessment of Local Resolution of Land Disputes in Two Pilot
Areas: Kabushinge and Nyamanguli Cells in Rwanda**. USAID Rwanda

Wakhungu, Nyakuri and Higgins (2008), **Land Tenure and Violent Conflict in Kenya: In the
Context of Local, National and Regional Legal and Policy Framework**.
Conference Proceeding Report African Centre for Technology Studies Consultative

Wehrmann, B. (2006), cadastre in itself won't solve the problem: the role of institutional change
and psychological motivations in land conflicts. Cases from Africa. **Promoting
land administration and good Governance**. Accra Ghana

Wehrmann, B. (2005), **Urban and peri-urban land conflicts in developing countries, case
study of accra and phnom penh**; research Reports on urban and Regional
Geography, Marburg, univ., Diss. Berlin

Wehrmann, B. (2008), Land conflicts: **A practical guide to dealing with land disputes**,
Eschborn GTZ

World Bank: Kabul (2005) **Urban Land in Crisis, A Policy Note.** Washington

Appendices 1

Interview schedule with the households

Date of interview

Name of the division

Part One

Demographic Information

- 1) Gender of the respondent Male () Female ()

- 2) Age of the respondent (i) 18 -30 years () (ii) 30-40 years ()
(iii) 40-50 years () (iv) 50-60 years () (v) 60-70 years ()

- 3) Highest level of education attained (i) Primary school () (ii) secondary school
() (iii) middle level college () (iv) university ()

Part Two

Causes of disputes

- 4) For how long have stayed in this area? _____

- 5) Do you own land here or you are just a squatter?

6) How did you acquire land?

If **YES** in (6) above was it equally distributed or properly demarcated?

7) How much acreage do you own?

Is there a clearly demarcated boundary?

8) Have you ever had a land dispute?

9) What was the land dispute about? And with what party

10) Are people free to buy or sell land in this county?

11) Are people free to determine how to use their land in this county?_____

Efficacy of the Land Adjudication Committee

12) What are the reasons that made you refer your land dispute to the local land Adjudication Committee?

13) How effective was the Land Adjudication Committee in handling your case? _____

14) How long did the case take to reach a conclusion?

15) How was the dispute resolved?

16) How much did it cost you in monetary terms and or other means?

17) Have you ever been requested to give a bribe in order to resolve or fast track the case/dispute? If yes what was it and who requested it?

18) What were the major challenges in the process of resolving the land dispute?

19) What do you think are the short comings of the alternative dispute resolution mechanisms? List at least three.

20) Do you feel satisfied with the process? Why?

21) What is the major impediment in trying to resolve the conflicts in this country?

22) Do you support the Land Adjudication Committee? Why? Give at least three reasons:

23) How can alternative dispute resolution mechanisms be improved?

Appendix 2

Interview schedule for the land Adjudication Committee members

Date of interview

Name of the division

Part One

Demographic Information

- 1) Gender of the respondent Male () Female ()

- 2) Age of the respondent (i) 18 -30 years () (ii) 30-40 years ()
(iii) 40-50 years () (iv) 50-60 years () (v) 60-70 years ()

- 3) Highest level of education attained (i) Primary school () (ii) secondary school
() (iii) middle level college () (iv) university ()

Part Two

Composition and the function of the Land Adjudication Committee

- 4) What is your position held? For how long have served the Committee?

- 5) What are the selection criteria for one to serve in the Committee?

6) Are there formal rules followed in resolving land disputes?

7) How do you reconcile the customary laws and the formal laws?

8) What are the processes and costs involved in registering a dispute at the Committee?_____

9) How long does a case take to come to a conclusion?

10) Is there recourse for the Committee's decision for the warring parties?

11) How many cases does a Committee handle in a month?

12) How many cases in the last one year has the Committee successfully concluded and after how long?

13. What are the main causes of land dispute in this County?