

UNIVERSITY OF NAIROBI
FACULTY OF LAW.

**RESOLVING LAND CONFLICT TO ENSURE SUSTAINABLE
RESOURCE USE: A CASE STUDY OF LAIKIPIA NORTH.**

BY

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ADM NO: Z51/86856/2016


**This is submitted in partial fulfilment for the Degree of Master of Arts in Environmental
Law of the University of Nairobi.**

November, 2022

DECLARATION

Student Declaration

I, Hannifa Akoth Kut do hereby declare that this is my original work, and that it has not been submitted for an award of Degree at University of Nairobi or any other institution of higher learning.

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DEDICATION

I dedicate this to my mum, Benter Jacob; my sister Ivy Raph, who has been there through it all, and being my beacon of hope; and finally, to my brother Houston, as a reminder that there is hope and you can achieve what you set your mind to.

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ABBREVIATIONS AND ACRONYMS.

ADR – Alternative Dispute Resolution

ASAL – Arid and Semi-Arid Lands

COK – Constitution of Kenya

CLA – Community Land Act

EMCA – Environmental Management and Coordination Act.

FGD – Focus Group Discussion

KII – Key Informant Interviews.

NEAP – National Environmental Action Plan.

NEMA – National Environment Management Authority.

NLC – National Land Commission.

NLP – National Land Policy.

TDRM – Traditional Dispute Resolution Mechanism.

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ABSTRACT

Land is a conflict-ridden environmental resource whereas land issues have remained contentious in Kenya. These given land conflicts have the potential of affecting sustainable resource use. This research therefore focused on the complexity within the land conflict issue in Laikipia North, and looked into the legislations present governing land and resolution mechanisms employed to deal with conflicts, and whether the solution lies in the available tools for land and environmental management, in order to ensure that the available land resources are not subjected to unsustainable access and use. In the center of this study is the place of law in addressing the contested Laikipia North Land Conflicts. These tensions in most cases arise due to competing demand for available resources. In this instance being pasture access especially when the openly accessible areas have been degraded. Degradation brought about by climate change and poor land use and management methods. Having defined tenure and ownership rights helps in proper land management practices, but with the contested ownerships, the demand for land resources then leads to invasion on privately owned and registered communal lands with claim on land from a historical injustice grievance perspective. This is further compounded by other factors such as political incitements, all in the name of fighting for right to resource access and land ownership. The conflict resolution mechanisms employed are Alternative Dispute Resolution Mechanisms and Traditional Dispute resolution mechanisms in most cases, with some cases being taken to courts. The study used a descriptive approach and was qualitative in nature. The data was collected through KIIs and FGDs. Informants were identified through strategic sampling and snow balling sampling. With an analysis on the data collected and literature reviewed, it shows that law is at the backbone of resolving the whole issue if put to good practice to ensure proper land governance and therefore enhancing sustainability.

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1. CHAPTER ONE: INTRODUCTION.

1.1 BACKGROUND OF THE STUDY.

Land governance and the associated conflicts continue to be a topic that is greatly focused on in the law and development discourse. Land in itself is an environmental natural resource, as it is an actual or potential source of wealth that occurs in natural state¹. Natural resource management is critical, yet due to complexity of issues, it is frequently referred to as a wicked problem². It is mostly connected with power balance and social dynamics in natural resource management, the framework in which extensionists' work, with a particular emphasis on their role in aiding positive transformation or conflicts resolution³. Land is a very crucial resource to secure livelihoods⁴.

As land resources are finite within a jurisdiction, competition does not lack between stakeholders on issues pertaining to access and use of the resources⁵. When there is credible land governance, fair access to land and having secure tenure can contribute to improvement in social, economic and environmental conditions⁶. Good land governance should ensure sustainability⁷. However, in Africa, land governance is characterized by insecure land and natural resources rights and tenure, unequal distribution of land, the duality of property systems, legal pluralism and land conflicts⁸.

Conflict affects the environment by causing direct damage, altering production and environmentally appropriate resource management⁹. Because corrupt public officials and private interests collaborate to flout limits on land use, water and minerals exploitation, and forest destruction, poor governance leads to environmental deterioration.¹⁰ Conversely, having inappropriate resource and environmental practices increase vulnerability and the risk of conflict. This further worsens conservation and management of available resources, which should be used

¹ United Nations Environmental Programme, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment*(UNEP 2009)

² J. Bond, 'Extension Agents and Conflict Narratives: A case of Laikipia County Kenya[2016]Journal of Education and Extension

³ Ibid

⁴ IGAD, *Land Governance in the IGAD Region: Assessment of Land Governance Framework Training and Research Land Governance Institutions*. Swiss agency for Development and Cooperation.

⁵ David Palmer and others 'Towards Improved Land Governance.'[2009]Land Tenure Working Paper 11. FAO

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Douglas Smith, 'The Connection Between Environment Conflict and Security' (Planet Experts April 2018)

¹⁰ Ibid

in a respectful manner to be sustained for the benefit of the future generation. Inappropriate natural resource governance thus results in constraints¹¹ on the environment. Wide spread depletion leads to resource scarcity causing severity and further degenerating into conflict¹². Conflict on the other hand also often produces significant environmental degradation¹³ because the focus is usually on the conflict rather than the environment, and on indiscriminate use for satisfaction. Land is one of the conflict-ridden resources due to its importance and a sensitive issue in Africa¹⁴ in addition to being prone to the environmental effects.

Over the years, land has been a contested resource in sub-Saharan Africa; Land is the primary source of subsistence and material prosperity for many people, and it is invariably culturally significant to Kenyans¹⁵. It is an asset that cannot be traded in the market just like other goods or assets¹⁶. It is never just a commodity or a means of subsistence, but has many other roles it plays included into it being a source of sustenance within the family or community, as a production capital asset and also being a way of cultural identification¹⁷. The State, down to people on the ground either as Individuals or communities and the private sector put the land into use for different reasons and often seek to gain from it, in some instances, to the disadvantage of others¹⁸. Because of these competing interests, land is at high rate propagating conflicts in sub-Saharan Africa, where getting access to land traditionally had been characterised as relatively egalitarian¹⁹. Land, being an important resource, members of the society should have equitable access to it, while also ensuring that it is utilized in a sustainable manner as it is a finite resource²⁰.

¹¹ N.A Bedasa & J.W Hussein (2018) Challenges in Managing Land-Related Conflicts in East Hararghe Zone of Oromia Regional State Ethiopia Society & Natural Resources, 31:3, 351-366, DOI: 10.1080/08941920.2017.1400626

¹² Jacob Mutava, 'Resolving Land Related Conflict In Kenya: The Role Of, AU Framework And Guidelines On Land Policy' (Masters, UON 2016).

¹³ Muigua Kariuki, 'Managing Natural Resource Conflicts in Kenya through Negotiation and Mediation' (Feb 2016, KMCO).

¹⁴ Christian Lund and others, 'Land rights and Land Conflicts in Africa; A Review of Issues and Experience' (Danish Institute For International Studies, Copenhagen)

¹⁵ Kenya Land Policy 2009 Sp3.

¹⁶ Ibid

¹⁷ Ibid

¹⁸ John W Bruce & Sally Holt, 'Land and conflict prevention' (Initiative of Quiet Diplomacy, University of Essex UK 2011)

¹⁹ Takashi Yamano and Klaus Deininger, 'Land Conflicts In Kenya: Causes, Impacts, and Resolutions' (Foundation for Advanced Studies on International Development / National Graduate Institute for Policy Studies 2005).

²⁰ Ibid

Land conflict are manifested in different ways which include political, social, economic, religious and territorial conflicts²¹. These conflicts are mostly due to lack of agreements on the uses of water, pasture, land and forests which are all environment's resources²².

According to the Constitution of Kenya 2010, land in Kenya belongs to the people of Kenya collectively as a nation, community or as individuals²³. In Kenya, people strive to own land because it offers security for basic survival in instances where there is absence of other forms of wealth nor availability of welfare systems²⁴. The land tenure rules distinguish how one is to gain access to rights to control, to use, and to transfer land, inclusive of the responsibilities and restraints²⁵. Having a secure tenure is essential in causing reduction in land disputes and conflict²⁶ because lack of clarity on tenures can lead to conflict.

Historians established all through until almost the end of 19th century, that African lands were managed, held and used by community members communally as commons²⁷. The commons are identified as land owned together exclusively and for use by specific communities, lineages or families²⁸. The land was therefore owned by different clans based on the community members' agreement and arrangement.²⁹ The communal ownership and use of land as commons arrangements changed during the colonial period whereby the colonialists relocated the radical title to the commons from local communities to imperial sovereign³⁰. It was then followed by a change in the administration systems of land and tenure systems by a different regime based on the exigencies of colonial rule³¹, causing a change in the initial land access rights. Once the Treaty of Berlin was signed, Kenya got assigned to Great Britain which then declared the country as being

²¹ James Kipngeno Rono, 'Evaluation of The Impacts of Environmental Conflict on Socio-Economic Development in Kuresoi Sub County Kenya'(Masters, UON 2017)

²² Ibid

²³ The Constitution of Kenya 2010.

²⁴ Patricia Kameri-Mbote and Kithure Kindiki, 'Trouble In Eden: How And Why Unresolved Land Issues Landed 'Peaceful Kenya' In Trouble In 2008' (2008) 35 Forum for Development Studies.

²⁵ UNHABITAT, *Land Tenure and Climate Variability* (UNON 2019)

²⁶ Ibid

²⁷ Okoth Ogendo, 'Land Reform and Agrarian Change in Southern Africa' [2002]24

²⁸ Ibid

²⁹ F.Kariuki & Kariuki Muigua Towards Environmental Justice in Kenya [2015]. [online] Available at: <http://www.kmco.co.ke/attachments/article/140/Towards%20Environmental%20in%20Kenya-January%202015.pdf>

³⁰ Ibid

³¹ Ibid

under the British Empire, and the King's territories³², having power to administer the land in the territory in how they thought fit, legally interpreting the treaty with an assumption that there were no natives within, and if present, their rights were impertinent to their plans of expanding its empire³³. The colonial government systemized the private formal property rights for the white settlers through the English law of dual system ownership being applied to areas inhabited by the foreigners, whereas customary law was applied in the native reserves³⁴. As the colonial era was coming to an end, the government implemented a policy of customary land tenure being converted to individual privately-owned lands, as individual property or as group property.

Upon independence, the laws on ownership of land in Kenya were used by successive governments. This has greatly contributed and steered the issue on land disputes in Kenya³⁵. At independence, the opportunity to correct the land injustices carried out on the indigenous population by colonialists³⁶ was not done. Instead of solving the land issues, the colonial reforms on land ownership persisted. The individualisation of land facilitated the disparagement of the indigenous tenure arrangements and insured insecurities that previous tenure arrangements cushioned against.

Much of the colonial 'Crown Land' ended up being taken as government land while the reserves were converted to trust lands. That is, land owned in trust by authorities, who ended up being Commissioners rather than traditional institutions. There was also the establishment of Settlement Fund Trustee which was to put in place for acquisition of settler farms and then distribution to Kenyans who had no land³⁷. This in turn led to loss of land and more misunderstanding since people who had held land customarily either did not have the required capital or did not want to pay for land that belonged to them, in the end losing the land to Kenyans who could purchase. Historical events and land tenure have had an impact on the socioeconomic dynamics of the poor

³² C. Odote, 'The Legal and Policy Framework Regulating Community Land In Kenya, An Appraisal' FES. <http://land.igad.int/index.php/documents-1/countries/kenya/rural-development-3/811-legal-and-policy-framework-regulating-community-land-in-kenya-2013/file>

³³ Ibid

³⁴ Okoth Ogendo, 'Land Reform and Agrarian Change in Southern Africa' [2002]24

³⁵ Ibid

³⁶ Ibid

³⁷ Peter Vein. Kenya-history-of-land-conflicts.pdf (2011)

in the modern-day Kenya, and have set precedence for land reform today. Adam³⁸ observes that Kenya's government has taken a long time to establish a well-structured framework for land reform and land tenure systems after independence. Little has been done to improve Kenya's land management and use institutions since independence. Different forms of disputes have arisen as a result of land tenure reform, the most significant are those over ownership and boundaries.

Owning land and distribution have also been a source ethnic aggravations and suspicions in different regions within the country, when elections³⁹ are around the corner. It is believed that much of the constant rifts and displacements that have been present prior and post elections mostly are as a result of unresolved land grievances with political influence, therefore being intense in the 'immigrant' regions. All the elections that have been there from the onset of multi-party-ism re-introduction in Kenya have been affiliated with conflict and displacement of people, save for the 2002 elections⁴⁰. In 1991, much of the violence was in areas which initially had been part of the 'white highlands', land taken away from the communities who had communally owned the parcels of land and then occupied by the colonialists for white settler farming⁴¹. In 1997 and 2008, violence again occurred around locations where "immigrant" groups had settled⁴². The Waki Commission evidence demonstrated that violence that occurred after the 2007 was as a result of the long standing land grievances and distribution since independence⁴³.

Areas with very high percentage of trust lands like Kajiado, Laikipia and Kwale⁴⁴, among others have been prone to violence over the past years. In the case of Laikipia, the relationship of communities found in Laikipia at the moment is not stable and greatly influenced by politics that have alignments based on different ethnic groups, having followed their elected leaders who are of different ethnicities making political intolerance high, with Laikipia being mapped as a potential

³⁸ A. Leach, 'Land Reforms and Socio Economic Change in Kenya' (1998) East African journal of peace and human rights.

³⁹ Patricia Kameri-Mbote and Kithure Kindiki, 'Trouble In Eden: How And Why Unresolved Land Issues Landed 'Peaceful Kenya' In Trouble In 2008' (2008) 35 Forum for Development Studies.

⁴⁰ Kituku, 'Building a culture of peace in Kenya: Baseline Report on Conflict Mapping and Profiles of 47 counties in Kenya' (CRECO,2012)

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

⁴⁴ W Kituku, 'Building a culture of peace in Kenya: baseline report on conflict mapping and profiles of 47 counties In Kenya' CRECO 2012.

conflict hotspot in 2012 before the 2013 elections⁴⁵. The conflicts mostly increase around election periods in order to drive people back to their native places of origin⁴⁶.

The issue of land conflict is also still prevalent due to the contradictory ownership of land. Land ownership and distribution in Laikipia has been a constant cause of conflict, especially between the pastoralists and the ranchers and also small holder farmers⁴⁷. Grazing land has decreased and with the ranches, the pastoral land is now limited and the mobility that was enjoyed is restricted. This is because the commercial ranches have set boundaries and are fenced preventing access to water and pasture within the ranches. When in need of pasture, there have been cases of trespass for access. Changing Climatic conditions and competition for land and resources have to encroachment of the given ranches. The drought in Laikipia has been blamed for the rift between land owners and pastoralists as pastoral communities seek pasture for their cattle. The changing climatic conditions have led to aridity leaving pastoralists with little or no pastures for their herd, forcing them to invade other private lands⁴⁸. The conflicts in Northern Kenya has also been made more violent, and complex by the proliferation of small arms and light weapons, which are used during these conflicts. Disputes over access to land and resources also often take on a political dimension as local political leaders' side with one or other group that are part of a land dispute in order to get voter support to help secure their election or re-election⁴⁹. Sometimes, they additionally propel the conflict. A central point to conflict in Laikipia and Kenya generally is the position of elites, often politicians, in manipulating power dynamics and creating communicative strategies and discourses which serve their own interests⁵⁰. The politicians are heavily involved not only in the arming but also purposively marginalising their own constituents in order to maintain their dominating power within the political and business arenas⁵¹.

⁴⁵ Ibid

⁴⁶ Willis Okumu, *Trans-local Peace Building among Pastoral Communities in Kenya- Case of Laikipia Peace Caravan* (Culture and Environment In Africa Series 2013)

⁴⁷ Elizabeth Maina, 'The Sustainable Management Of Resource Based Conflicts In Africa: A Case Of Laikipia County In Kenya' (Masters, UON 2019)

⁴⁸ The Conservation, 'Behind the conflict in Laikipia that is costing lives, Hitting Tourism' *the Star* (2017)

⁴⁹ <https://land.igad.int/index.php/documents-1/countries/kenya/conflict-3/533-climate-change-and-conflict-lessons-from-community-conservancies-in-northern-kenya/file>

⁵⁰ J Bond, 'Conflict and communication: the case of Laikipia County, Kenya ' (2014) 34 *Journal of Rural Studies*

⁵¹ Ibid

These challenges and conflicts have however not been ignored and steps have been taken towards ensuring good governance for sustainable use of the resources. The National Land Policy (2009) was developed to give guidance in how to ensure there is sustainable, equitable and efficient use of land. Land administration, land access, land use planning, reparation of historical injustices, environmental degradation, disputes, unplanned development of informal urban settlements, obsolete legal framework, institutional framework and information management are all addressed in depth⁵². The Constitution (2010) too recognized the different tenures inclusive of community land. Laws related to land have been enacted to govern land and ensure there are stipulated ways of dealing with the issue. Such include Land Act, Community Land Act, Land Registration Act and Land and Environmental Court Act. Ways to deal with the land related conflicts have also been presented and in line with Article 60 of the Constitution, ADR mechanism and traditional resolution mechanisms are encouraged.

While Kenyan authorities and others had made many attempts to resolve the conflict that arise in Laikipia North, local grassroots movements and peacebuilding groups have also come up to address the conflict as they are more locally rooted⁵³. To resolve the conflict, their priority is to help the pastoral communities secure their lands, and also in the adaptation to climate change. Their efforts in resolving conflicts are however often overshadowed by the more widely known conservation trusts, many established on the vast grassland-and-forest ranches created by white colonists⁵⁴. Frustrating the process to land access, and therefore propagating conflict. In addition to the same, while elders from the conflicting parties often have had high regard on reaching a consensus and peace settlement, the fighting tend to be done by younger men, including hardliners who were prepared instead to violently disrupt that effort⁵⁵.

⁵² Ibid

⁵³ J Moore, 'Kenya: As Drought Deepens Land Conflicts, Peacebuilders Respond Climate change is fueling violence among herding communities; a grassroots movement is creating solutions.' *The Olive Branch*, ISIP (2022) <https://www.usip.org/blog/2022/09/kenya-drought-deepens-land-conflicts-peacebuilders-respond>

⁵⁴ Ibid

⁵⁵ Ibid

1.2 STATEMENT OF THE RESEARCH PROBLEM.

Land is undoubtedly the most important natural resource in Africa⁵⁶. It is important because humans not only live on it but it is also their source of livelihood⁵⁷. As an environmental resource, we should be respectful of it, as environment is our heritage and we should be determined to sustain it for the benefit of the future generations, as per the constitution.

Nonetheless, land is also a conflict-ridden resource causing disputes and conflicts⁵⁸. The exploitation of natural resources and environmental stresses have become significant drivers of violence with climate change being one of the stresses. Laikipia County has experienced land conflicts with some cases pastoralists forcefully moving their livestock onto ranches or conservancies.⁵⁹They claim to do so due to the climatic conditions which have brought about a dry spell. Drought is a recurrent phenomenon in the northern region of Kenya, yet on the other hand, locals say the changing climate has increased frequency and there are more extreme dry seasons, increasing and fostering the battle for scarce resources⁶⁰. Cattle herders who have traversed northern Kenya with herd for years do not see a reason to stop letting their animals graze on land that was once communally owned before being divided and subdivided in the 1980s and 1990s⁶¹. The changing seasonal rain patterns have subjected most of the areas to prolonged and recurrent drought episodes affecting the sustainability of vegetation growth⁶². There is then an induced forced migration and the competition that is created over access to natural resources among the pastoral communities leading to political instability and conflict with the neighbouring communities, farmers and ranchers⁶³. These, coupled with an outstanding rift on land ownership

⁵⁶ Abiodun Alao, 'Natural resource and Conflict in Africa: The Tragedy of Endowment' (2007) University of Rochester Press.

⁵⁷ UNHABITAT *Land Tenure and Climate Variability* (UNON 2019)

⁵⁸ Christian Lund and others, 'Land rights and Land Conflicts in Africa; A Review of Issues and Experience' (Danish Institute For International Studies, Copenhagen)

⁵⁹ 'The Conservation,' Behind the Conflict in Laikipia That's Costing Lives, Hitting Tourism' *The Star* (Feb 2017).

⁶⁰ <https://reliefweb.int/report/kenya/kenyan-herders-flout-trespassing-law-conflict-over-grazing-heats>

⁶¹ Ibid

⁶² Vanessa Mutunga, 'Natural Resource Management As A Conflict Management Strategy in Kenya: A Case of Laikipia County' (UoN 2018)

⁶³ Ibid.

narrows down to land conflict arising due to need to use and access the land resources, as pastoralists move their herd to restricted areas with pasture as theirs are depleted.

To resolve such cases, there have been legal attempts and use of alternative dispute resolution mechanisms. Since most pastoral lands were and are communally managed, it becomes difficult to resolve a resource-based conflict through statute laws alone since traditional approaches have been applied in land and resource management. The government has also used deployment and force, to resolve the conflicts. This has proved futile, as it has worked only as a temporary solution. During conflict, there is high likelihood of indiscriminate use of available resources. In Laikipia North, it is not clear if the resources, during conflict, in addition to being a primary source of conflict, are used in a sustainable way.

Therefore, it is important to appraise the complexity within the land conflict issue in Laikipia North and find out whether the solution lies in the available legislative tools for land and environmental management, in order to ensure that the available land resources are not subjected to unsustainable access and use.

1.3 RESEARCH QUESTIONS

Main research question: What is the effect of conflict on the environment, and are the resolution mechanisms and available legislative frameworks adequate in resolving land conflicts to ensure sustainable resource use, using Laikipia North as a case study?

The specific research questions of the study were as follows:

1. What are the dynamics of the land conflict in Laikipia North in Kenya?
2. In what ways do the conflicts affect resource use and sustainability?
3. Which existing legislative frameworks are applicable in handling the Laikipia North land conflicts?
4. To what extent are the existing dispute resolution mechanism effective in resolving the Laikipia North land conflict?

1.4 RESEARCH OBJECTIVES

Main Objective: The main objective of the study was to look into the nexus between conflict and environment, and it sought to find out whether the available conflict resolution mechanisms and legislative frameworks are adequate in resolving the land conflict to ensure sustainable resource use, using Laikipia North as a case study.

Specific objectives included;

1. To analyze the dynamics of land conflicts in Laikipia North.
2. To assess the effects of the conflicts on the resource use and sustainability.
3. To find out if the available legislative framework are applicable in handling the Laikipia North land conflicts.
4. To assess the effectiveness of the existing dispute resolution mechanisms and their limitations in resolving the Laikipia North land conflict.

1.5 JUSTIFICATION FOR THE STUDY

Land and conflict are closely linked, as land is a highly desired resource by communities and individuals. Land conflict, just as it is a natural resource can have detrimental effects on the environment, especially if prolonged. Looking into the dynamics behind the land conflict arising and having a solution can lead to proper use and management of available resources, avoiding degradation and resource conflict. The research will also add to the knowledge pool that will come in handy for future researchers and scholars in the given subject.

1.6 ANALYTICAL FRAMEWORKS.

1.6.1 THEORETICAL FRAMEWORK.

The theory employed in this study is Resource Scarcity Theory by Thomas Homer-Dixon.

1.6.1.1 RESOURCE SCARCITY THEORY

The resource scarce theory was developed by Thomas Homer-Dixon⁶⁴. According to Homer-Dixon when renewable resources reduce because of whatever causes, aggravation emerges and it subsequently forms complaints in contradiction of the state policies, it deteriorates the nation, public community gets a chance to instigate an uprising. Nevertheless, the belief that environmental changes as well as subsequent resource shortage positively influence violent war has been contested by the belief that war truly correspond with times of resource profusion⁶⁵.

Homer Dixon never claims that population pressure or environmental degradation are the only causes of violent conflict; instead, he highlights the strong interaction between demographic/environmental, social and political elements in the emergence of violent conflict⁶⁶. According to the hypothesis, higher resource scarcity has societal consequences that raise the possibility of internal violent conflict⁶⁷. Acknowledging that objective deprivation rarely producing strong grievances, he relies on relative deprivation. Individuals and groups are able to experience relative deprivation when they see a gap between the situation they believe they deserve

⁶⁴ Homer Dixon, Thomas, 'Environmental Scarcities and Violent Conflict: Evidence from Cases.' [1994] International Security 19 No.1

⁶⁵ Rachel Berger, 'Conflict Over Natural Resources Among Pastoralists in Northern Kenya' (2003)JID Vol5

⁶⁶ Nils Petter Gleditsch and Henrik Urdal, 'Eco violence? Links between Population Growth, Environmental Scarcity and Violent Conflict in Thomas Homer-Dixon's Work' (2002) Vol 56 Journal of International Affairs.

⁶⁷ Ibid

and the situation that they actually are in⁶⁸. Homer Dixon and Blitt⁶⁹ further state that the relative deprivation work on the assumption of supposed additional factors. The aggrieved being able to participate in some collective violent action and political structure must fail them causing grievance.

The theory of resource scarcity is evident in the study area in that conflict between parties has usually remained associated with rivalry over limited resources and invariably famine due to its contribution on resource exhaustion⁷⁰. This hypothesis is based on the reason that reasons for struggle are worldwide in nature. This given nature being a land resource that is limited to a given populace, and wanted by another direly. Competition for scarce resources, accounts for greater part of Kenya conflict⁷¹, and in our case, even though there has been a fight on land over grazing land possession, the historical grievances make land ownership align itself towards relative deprivation which can be a source of violent conflict. Scarcity due to deprivation, and environmental degradation in this instance can be seen to bring about conflict just like in resource scarcity theory. The opinions align with the non-deterministic connection between resource handiness and battles and, so, the intricacy of pastoral wars.

The resource scarcity theory helps in steering the research towards motives that propagate resource conflict, showing that the conflict cannot be limited to population increase and environmental degradation only but is also inclusive of social and political factors. Therefore, looking at the additional factors can help solve the problem, and therefore ensure that the conflicts are resolved, and therefore ensuring sustainable natural resource management.

⁶⁸ Ibid

⁶⁹ Nils Petter Gleditsch and Henrik Urdal, 'Eco violence? Links between Population Growth, Environmental Scarcity and Violent Conflict in Thomas Homer-Dixon's Work' (2002) Vol 56 Journal of International Affairs.

⁷⁰ Ian Micheni, 'Complexities of Natural Resources Conflict In Kenya: A Case Study of Laikipia Conflict' (Masters, UON 2018).

⁷¹ Ibid

1.6.2 CONCEPTUAL FRAMEWORK.

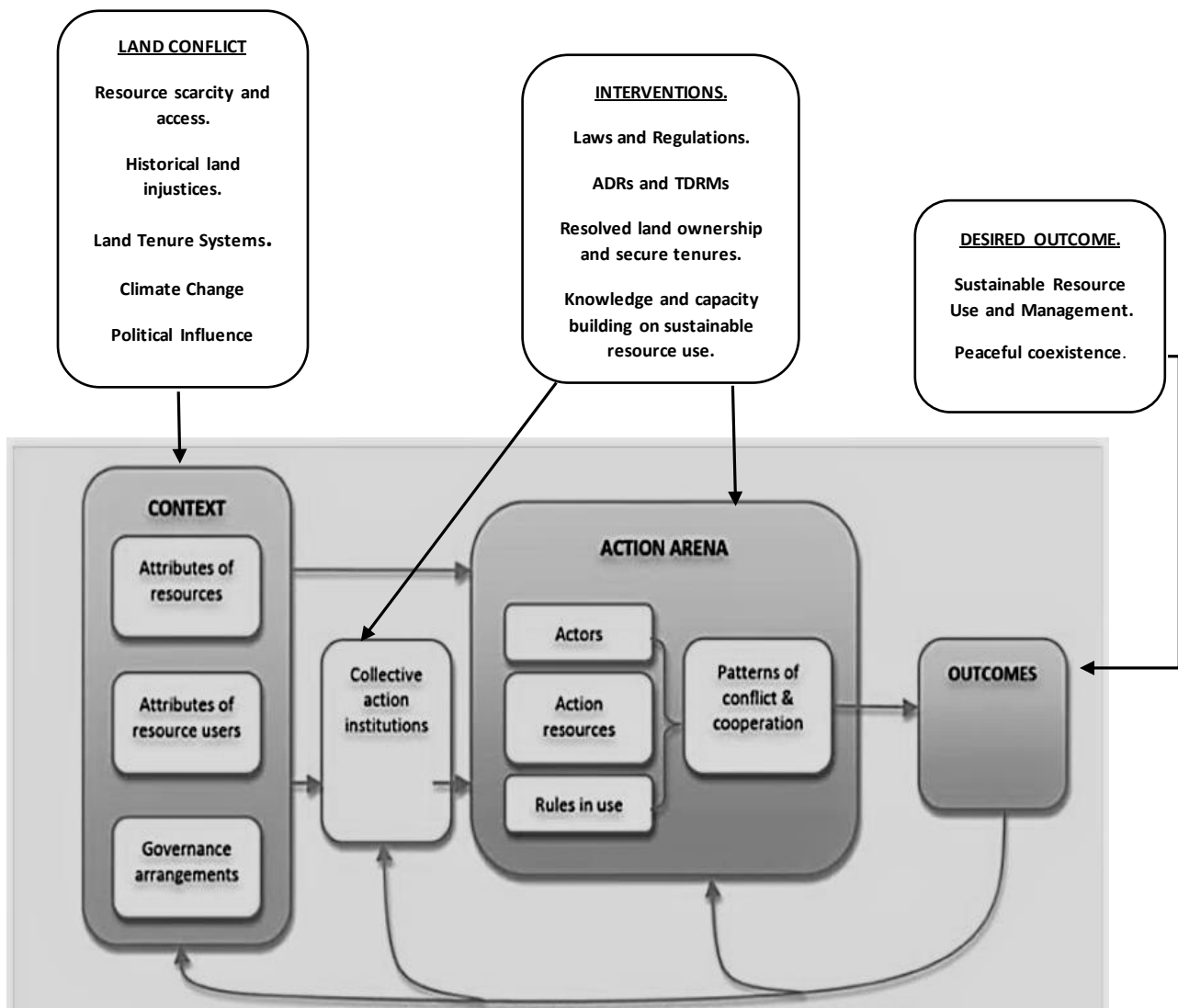


Figure 1 Conceptual framework on resource conflict, collective action, and social-ecological resilience.⁷²

⁷² Adapted from Ostrom (2005) and Di Gregorio et al. (2008).

2. CHAPTER TWO: LITERATURE REVIEW

2.1 INTRODUCTION.

This chapter covers literature review on land conflicts, the relationship between land conflict and the environment, and the legal instruments and methods that are in place to solve the conflicts. The focus was based on the objectives of the research.

2.2 DYNAMICS OF LAND CONFLICTS.

Land conflicts happens when there is competing claims to land, in most instances being on large tracks of land, by groups, that have brad and deeply set competitive interests than those who take part in most land disputes¹. It can also be characterised as a situation in which at least two groups have competing interests in land property rights, such as the right to manage and utilize land, produce revenue, deny others to access the land, transfer it and be able to get compensation for it².

Eschborn observed that conflicts on land occur in various ways. There are conflicts ranging from boundary conflicts that may arise between neighbouring parties, inheritance conflicts arising in families, and disagreements in what a given land should be used for.³ As opposed to the single parties conflicts, some have several parties, who move as groups and invade settlements. While the previous are easy to tackle, these are complicated and cause difficulty in solving. The one that are most complex are ones that involve corruption in the land administrative structure and captured by state⁴.

The underlying causes of land conflict include reduction in available land for use, insecurity of tenure and grievances on land that have been in existence between groups⁵. Conflicts over land

¹John W. Bruce & Sally Holt, 'Land and conflict prevention' (2011).

² Babette Wehrmann, 'A practical guide to dealing with land conflicts'(Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, 2008)

³ Ibid

⁴ Ibid

⁵ Bruce (n1)

are prompted by diverse complexities and are seen in numerous ways, with the values, opposing interests, and desires entrenched on land⁶ being cause of land related rifts.

Increased demand for land and resources found on land have tremendously increased, while land itself cannot be increased because of its nature as a fixed asset⁷. Most of the African population depend on land for farming and pasture for their livestock as source of livelihood, with many still living in rural settings⁸. A high population found in rural Africa are dependent on land and therefore dependent on natural resources for sustenance⁹. Unfortunately, the continents' worst conflicts take place in these areas¹⁰. With the increasing population, there is more demand on resources on land for sustenance. This makes land to become scarcer as a resource, and because of this, it has become a major source of conflict and contestation¹¹. Homer Dixon distinguishes three forms of scarcity of resources, including those that are caused by demand, supply induced through depletion and resource degradation, and structural scarcity which is through distribution of resources¹². Like in the case of the Horn of Africa, as Mutio states, the region mainly experiences two types of resource conflict; Wars caused limited resources and wars of resource abundance¹³. The common one being related to control of rights to access and use land and water, of which, the important right is how different interests are managed¹⁴. It has been observed that in most resource conflict cases, conflicts arise either over resource ownership, access, or based on decisions made in relation to management, or, and conflict over revenue distribution on benefits and burdens¹⁵.

⁶ Nigusie Angessa Bedasa & Jeylan Wolyie Hussein (2018) Challenges in Managing Land-Related Conflicts in East Hararghe Zone of Oromia Regional State, Ethiopia, *Society & Natural Resources*, 31:3, 351-366, DOI: 10.1080/08941920.2017.1400626

⁷ Ibid

⁸ C. Lund, and others 'Land Rights And Land Conflicts In Africa: A Review Of Issues And Experiences' (Danish Institute For International Studies)

⁹ Patricia Kameri-Mbote and Kithure Kindiki, 'Trouble In Eden: How And Why Unresolved Land Issues Landed 'Peaceful Kenya' In Trouble In 2008' (2008) 35 *Forum for Development Studies*.

¹⁰ Ibid

¹¹ Ibid.

¹² Liyayi Magotsi, 'An Assessment of the Conflict Management Approach by State and Non State Actors in Kenya.' (Masters, UON 2009).

¹³ Manuel Mutio, 'The Causes and Responses to Conflict in the Horn of Africa.' (Masters, UON 2010).

¹⁴ Ibid.

¹⁵ Elizabeth Maina, 'The Sustainable Management Of Resource Based Conflicts In Africa: A Case Of Laikipia County In Kenya' (Masters, UON 2019)

Land conflicts are also on the rise because of the land tenure systems that are present and identified within the society. These have deep roots in history, with the land tenure's transition from precolonial, to colonial to post-colonial¹⁶. In the precolonial period, land was held communally, during the colonial period, there was the introduction of private tenure systems, while postcolonial error saw the adoption of colonial error tenure system. The transfer of ownership to local elites from colonialists was anticipated to be important in changing the land legacy¹⁷. On the contrary, this only led to a continuation of policies, laws and administrative systems used by the colonialists¹⁸. The centrality of land makes issues of land tenure very competitive¹⁹.

Land reforms are considered as an essential tool to reorganize the institutional guidelines of land tenure structures and for eliminating obstacles to development²⁰. They are critical for ensuring redistribution of property rights are done in an efficient manner. As found in literature reviewed, land reforms to some extent seem to be what also leads to the conflicts. The inequitable land distribution process and slow land reform programs have fostered tensions on land leading to conflict confrontations²¹. For instance, landless people in Kenya as a result of colonialism were not settled by the government after independence and the individualistic focused land reform, with the adopted policy of buying and selling to those who could afford²². This served as the genesis of land inequality and disputes²³. To a great extent, this issue presently is redirected to being historical injustices, as Barasa reported in the Daily Nation dated 22nd May 2013 that past injustices over land are the major causes of disputes and ethnic tensions in Kenya²⁴. With the willing buyer and seller scheme, Ogot came to a conclusion that greater than half the settler lands ownership changed through sale to influential Africans, bringing about a new policy characterized by class rather than

¹⁶ William Kalande, *Kenyan Land Disputes in the Context of Social Conflict Theories* (2008)

¹⁷ National Land Policy 2009.

¹⁸ Ibid

¹⁹ Celestine Musembi and Patricia Kameri-Mbote, 'Mobility, Marginality and Tenure transformation in Kenya; Exploration of Community Property Rights in Law and Practice' (2013) Vol 17, *Nomadic Peoples*.

²⁰ Jacob Mutava, 'Resolving Land Related Conflict In Kenya: The Role Of, AU Framework And Guidelines On Land Policy.' (Masters, UON2016)

²¹ Ibid

²² Dick Safari, 'The Role and Efficacy of the Land Adjudication Committee as an Alternative Land Dispute Resolution Mechanism in Narok County' (Masters, UON 2013).

²³ Ibid

²⁴ Daily Nation. May 22, 2013.

race in Kenya²⁵. The Maasai community for instance are seen to still continue to lay claim for land, and were seen demanding the reinstatement of their land in 2004 stating it as being ancestral with the expiry of the Anglo-Maasai treaty²⁶.

Recently Kenya has been subjected to several intense incidents of conflicts revolving around natural resources mainly land ownership, access and control²⁷. Most land disagreements in Kenya can be linked to conflicting claims over inheritance, boundaries and rights²⁸. The problems coupled with inadequate land distribution process and slow land reform programmes, tensions on land leading to conflict confrontations²⁹ is on the rise. With the increasing population, an increased scarcity and rise in land values³⁰, the land disagreements are also getting more and more intense. Diverse interests from, rights, to ownership and power relations, constitute a complicated set of tension sources³¹.

Whereas illegitimate allocation of land can give basis for grievance, promising to have land with legitimate rights can make individuals to fight³². Drives to have control over natural resources, like land, or complaints brought about by disproportionate wealth sharing or destruction of the environmental can lead to violence³³. According to research conducted by Robst, Polachek and Chang on the causes of conflicts in the modern society, they indicated that conflicts are closely related to the nation's political system and economic conditions³⁴.

²⁵ Ibid

²⁶ Patricia Kameri-Mbote and Kithure Kindiki, 'Trouble In Eden: How And Why Unresolved Land Issues Landed 'Peaceful Kenya' In Trouble In 2008' (2008) 35 Forum for Development Studies.

²⁷ Liyayi Magotsi, 'An Assessment of the Conflict Management Approach by State and Non State Actors in Kenya.' (Masters, UON 2009).

²⁸ Jacob Mutava, 'Resolving Land Related Conflict In Kenya: The Role Of, AU Framework And Guidelines On Land Policy.' (Masters, UON 2016).

²⁹ ibid

³⁰ ibid

³¹ Ibid

³² Kathleen Klaus and Matthew I Mitchell, 'Land Grievances and the Mobilization of Electoral Violence' (2015) 52 Journal of Peace Research.

³³ United Nations Environmental Programme, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment*(UNEP 2009)

³⁴ Ian Micheni, 'Complexities of Natural Resources Conflict In Kenya: A Case Study of Laikipia Conflict' (Masters, UON 2018).

Land disputes have also been on various occasions propagated by politics, since multiparty took root in Kenya³⁵. Land has been used as reward in order to maintain political backing³⁶. People in power impose ideologies that trigger violence in conflict prone communities³⁷, with attachments to inequality, ethnicity or religious divisions, political repression and injustices. Violence is used forcefully to acquire lands during elections or as a way to see into it that the elected leader will promote and protect the land rights of followers³⁸.

On the other hand, just as seen on diverse literature, Safari argues in his study that causes of land disputes in Narok, which was his area of study, just like other parts of Kenya is not limited to political influence but because of new system of land individualization³⁹. This aligns to Kristine Eck's observation on the conflicts in West Africa, where she stated in her research work that not having certainty in tenure inclusive of tribal alignments causes a volatile environment that risks and leads to communal violence⁴⁰. Land and Ethnic alignments has always had sensitivity in Kenya, be it over farming, livestock rearing or even sheer cattle rustling⁴¹.

2.2.1 LAND CONFLICT IN LAIKIPIA COUNTY.

After independence in most African states, the period of neo-colonialism set in where a few African elites took charge or redistribution schemes that rewarded communities and individuals unfairly. In Kenyan context and particularly the Laikipia region, most of the Kenyans who were lucky were resettled in the west, but majority of the locals were settled in small holdings or remained landless.⁴² The land in Laikipia has been under historical grievances due to the fact that the local communities that lost land to the colonialists were not compensated. Instead, most of the

³⁵ Dick Safari, 'The Role and Efficacy of the Land Adjudication Committee as an Alternative Land Dispute Resolution Mechanism in Narok County' (Masters, UON 2013).

³⁶ Judi W Wakhungu, Chris Huggins, Prisca Kamungi, Joan Kariuki, Herman Musahara, Johnstone Summit Oketch & Koen Vlassenroot, 'Land Conflicts and Livelihoods in the Great Lakes Region.' (ACTS, Nairobi) Eco policy 14.

³⁷ Ibid

³⁸ Kathleen Klaus and Matthew I Mitchell, 'Land Grievances and the Mobilization of Electoral Violence' (2015) 52 Journal of Peace Research.

³⁹ Ibid

⁴⁰ Kristine Eck, 'The Law of the Land' (2014) 51 Journal of Peace Research.

⁴¹ Nicholas Okapu, 'The Factors Influencing Sustainability of Peace in Resource-Based Tribal Conflicts in Laikipia North District' (Masters, UON 2013).

⁴² George Kabugi, 'Peace making and Conflict Management: Complexities of Laikipia County' (Horn Institute, 2018)

lands were set up for conservancies and ranches that are owned by foreigners and some influential political leaders⁴³.

The northern side of Laikipia was occupied by groups that collectively owned freehold land titles and often created group ranches. Most of the British settlers retained their private ranches in Kenya even after independence under a 99-year lease for⁴⁴ the foreigners. Some of the private ranches were originally conservancies for the wildlife, while for others the community set up the conservancies. Consistently the Maasai community has aired their grievances and need for compensation or return of their land. In addition to being that Kenyan political elections are a factor that plays in the emergence of conflicts in Laikipia whereby some politicians fuel the unresolved land-based grievances⁴⁵. The relationship of communities found in Laikipia at the moment is not stable and greatly influenced by politics that have alignments based on different ethnic groups, having followed their elected leaders who are of different ethnicities making political intolerance high, with Laikipia being mapped as a potential conflict hotspot in 2012 before the 2013 elections⁴⁶. The conflicts mostly increase around election periods in order to drive people back to their native places of origin.

The implementation and sorting out of land related issues, boundaries, ranches and conservancies may be hindered by several conflicting legislation that govern land ownership, and due to lack of political will because majority of beneficiaries are still in power.⁴⁷ According to Mkutu there is little focus on the needs of nomadic pastoralists' way of life, in the implementation of laws that ensure secure tenure of land and ownership, even in Laikipia. In many ASALs, livestock owners are dependent on movement of herd to put into use of extensive pasture resources⁴⁸. Pastoralists have aligned themselves towards communal grazing rights, which the law does not protect, and they have been subjected to loss of access to water and pasture with the privatization of land. This has increased the challenges of access to minute resources and of competing interests for these

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Okapu (n41)

⁴⁶ Ibid

⁴⁷ Kabugi (n42)

⁴⁸ Ibid

resources⁴⁹. The move from traditional focus of communal property and common tenure system, to designated property rights brings out how definition of rights to property may be unfair towards certain groups⁵⁰. In several countries, the natives are at risk of being misplaced due to either lack of recognition of their land rights, or having their rights weakened through the recognition of other ownerships that can/have led to their lands being made private.⁵¹ In this instance, with regard to rights, the different perceptions of property rights, makes it more complex, especially which pastoralists regard as shifting and negotiable rather than fixed and exclusive⁵².

Reportedly, most of the conflicts involving the invasion of ranches have been conducted during the dry months of the year, between January and April. During extended periods of drought, Laikipia Maasai and Samburu herders drove their herd into the private ranches to graze, given that since the first Maasai 1901 treaty, the 99years leasehold years were now over and that the lands should revert back to communal holdings. These instances have led to some researchers concluding that the inadequate pasture among the pastoralists might be a factor pushing them to engage in land invasions. Having group ranches has restricted the mobility, an important aspect of sustainable livestock production in ASALs. Group ranches have also faced criticism with the introduction of territorial fixity that previously was existent, driving communities to long-running boundary disputes, some violent⁵³. Gaining access to water in the pastoral areas is governed by traditional rights of use in which water resources are owned have rights to use which override individual and clan ownership rights⁵⁴. The forced land resource use and access due to degraded and depleted ones has therefore been used to spearhead conflict for claim on land in the region. There have also been cases of Human-Wildlife conflict within Laikipia, especially with the presence of conservancies that border community especially community ranches. In these

⁴⁹ Nicholas Okapu, 'The Factors Influencing Sustainability of Peace in Resource-Based Tribal Conflicts in Laikipia North District' (Masters, UON 2013).

⁵⁰ Ibid

⁵¹ United Nations Environmental Programme, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment*(UNEP 2009)

⁵² T Hagmann T & E Ludi , 'Pastoralist Conflict Resolution in the Horn of Africa' in Understanding Environment, Conflict and Co-operation, (United Nations Environmental Program, 2004)

⁵³ Celestine Musembi and Patricia Kameri-Mbote, 'Mobility, Marginality and Tenure transformation in Kenya; Exploration of Community Property Rights in Law and Practice' (2013) Vol 17, Nomadic Peoples.

⁵⁴ Butler K.C, Gates S, and *African Range Wars: Climate, Conflict and Property Rights*. (2012)

community ranches, especially during drought, the elephants have to compete with community members and their livestock for pasture and water. Due to their roaming nature, elephants leave their private ranches and conservancies, break fences and stray in small holder farms to eat and damage food crops, and stray to farms and sometimes cause human injury and death⁵⁵. This causes conflicts between ranchers, farmers and conservation authorities.

2.3 CONFLICT EFFECT ON RESOURCE USE AND SUSTAINABILITY.

Having peaceful and secure environment are important for sustainable environmental management⁵⁶. On the other hand, environmental resources are very important for ensuring there is peace and security⁵⁷. The environment is rarely considered a major issue in war torn civilizations during times of strife⁵⁸, yet armed conflicts and in some instances forced migration increase problems in the setting ecological environmental destruction⁵⁹. Just like every other resource, land is at risk of, or already experiencing effects caused by conflict⁶⁰. Where there is land conflict, people fail to cultivate and take good care of land as their focus is on the disruption, resulting in drought and famine⁶¹. The environment has always been a silent casualty of conflict. Direct impacts being as a result of physical destruction or release of pollutants into the environment while institutional impacts being due to disruption of normal functioning and the focus being on the issues arising rather than positive environmental practices⁶².

Climate change has also been long mentioned as a cause of land conflict, especially in pastoral areas, due to resource scarcity. The study by Brown and Crawford on security implications of

⁵⁵ Mwangi JW, Kamau PN and Ouna TO, "Local Perceptions of Droughts and Conflicts in Laikipia West Sub-County, Kenya" (2020) 09 Local Perceptions of Droughts and Conflicts in Laikipia West Sub-County

⁵⁶ Patricia Kameri-Mbote, *Environment and Conflict Linkages in The Great Lakes Region*, International Environmental Law Research Centre Working Paper (2005-6) <http://www.ielrc.org/content/w0506.pdf>

⁵⁷ Ibid

⁵⁸ K Conca and J Wallace, "Environment and Peacebuilding in War-Torn Societies: Lessons from the UN Environment Programme's Experience with Post Conflict Assessment." [2009] *Global Governance* 15

⁵⁹ Ibid 54

⁶⁰ UNHABITAT, *Land Tenure and Climate Variability* (UNON 2019)

⁶¹ Julia Sungu Atwoli, 'Assessing Governance And Land Issues As Emergent Dimensions Of Insurgencies In East African Region' (Masters, UON 2013)

⁶² United Nations Environmental Programme, *From Conflict to peacebuilding: The Role of Natural Resources and the Environment*(UNEP 2009)

Climate Change in West Africa, concluded that only in worst situations did Climate change seem to be a threat to stability⁶³.

Resource scarcity stands out to being a serious cause of fight over land, in this instance showing that climate change cannot be a source of conflict as a stand-alone. The resources availability and unavailability are affected by the property tenures set, that then shapes pastoral violence. The lack of abundance of resources is said to cause decrease in survival essentials⁶⁴. Due to this, people move to other areas with the possibility of causing a rift with the inhabitants they find, or they opt to fight for the limited resources⁶⁵. Undefined tenure and access arrangements can also lead to environmental degradation⁶⁶ due to indiscriminate use and encroachment of lands offsetting the ecological balance. In Africa, in areas prone to natural resource conflict, secure land tenure is central to sustainable land usage⁶⁷.

The destruction of the environment can also bring about conflict over the resource, and reduce its security⁶⁸ as people strive to accrue benefits from the next available resource just as in the land issues. This makes the available resource scarce as dependency increases leading to conflict.

Despite the fact that there is a lot of focus on how degradation and access to environmental resources propagate conflict, Martijn Bijlsma sees one reason to have environmental issues included in peacebuilding is due to the environment being collateral damage, having antipersonnel mines and having the environment targeted as part of strategy⁶⁹ during civil conflict. There is a burden on the ecosystem caused by violent conflicts occurring in environments that had already been exposed to challenges of poor management and degradation⁷⁰. With regard to social issues,

⁶³ Jane Waikenda, 'The Concept of Environmental Induced Conflict' (Masters, UON2012).

⁶⁴ Kristine Eck, 'The Law of the Land' (2014) 51 Journal of Peace Research.

⁶⁵ Ibid

⁶⁶ UNCCD, 'Global Land Outlook: Land Tenure and Rights for Improved Land Management and Sustainable Development' (UNCCD 2017)

⁶⁷ J.G Mutunga, "NATURAL RESOURCES AND SECURITY IN LAIKIPIA COUNTY, KENYA" (thesis2021)

⁶⁸ Douglas Smith, 'The Connection Between Environment Conflict and Security' (Planet Experts April 2018)

⁶⁹ K.Conca, and J.Wallace.2012. Environment and peacebuilding in war-torn societies: Lessons from the UN Environment Programme's experience with post-conflict Assessment. In *Assessing and Restoring Natural Resources in Post-Conflict Peacebuilding*, ed. D. Jensen and S. Lonergan. London: Earthscan.

⁷⁰ Ibid 66

having to use child soldiers or the young in conflict situations also has an impact, although indirect on the environment⁷¹. They do not get a chance to go to school, and with lack of appropriate education compounded with trauma, they are denied, as future leaders the know-how on environmental matters hence potential of unsustainable environmental management. The division of labour along gender lines, as well as women subjection and marginalization, is another issue associated to conflict that has impact on environmental management⁷².

2.4 LEGAL FRAMEWORKS AND INSTITUTIONS ON LAND AND ENVIRONMENTAL RESOURCE USE.

Unresolved land rights problem can result in build-up of competition, inequity, confrontation, grievances, resentment and animosity⁷³. Proper land administration and management is therefore very necessary⁷⁴ in order to prevent and manage conflict over land. In line with this, there are frameworks, policies and laws that govern natural resources, within which there are provisions for management of natural resources conflict, in this case land.

2.4.1 THE CONSTITUTION (2010).

The Constitution of Kenya's preamble, which is meant to be a declaration in place to mean that the duty to conserve and sustainably manage the environment does not only lie on the State but also on every individual person⁷⁵. The Constitution of Kenya 2010 outlines the obligations of the State in relation to the environment which includes the duty to ensure exploitation is done in a sustainable manner, there is proper utilisation of the natural resources, proper management and conservation of the environment⁷⁶. In relation to obligations set, the Constitution seeks people to work together with State organs and each other to ensure there is ecological sustainable environmental use, protection and conservation.⁷⁷ The COK's Preamble brings out the need to be

⁷¹ Ibid 54

⁷² Patricia Kameri-Mbote, *Environment and Conflict Linkages in The Great Lakes Region*, International Environmental Law Research Centre Working Paper (2005-6)

⁷³ John Unruh, 'Land Rights and Peace Building: Challenges and Responses for the Peaceful Community' (2010) Vol 15, No 2 International Journal of Peace Studies

⁷⁴ Jacob Mutava, 'Resolving Land Related Conflict In Kenya: The Role Of, Au Framework And Guidelines On Land Policy.' (Masters, University of Nairobi 2016).

⁷⁵ The Constitution of Kenya 2010.

⁷⁶ The Constitution of Kenya, 2010

⁷⁷ Ibid

respectful of the environment, as the heritage of the people, expressing also that it should be sustained for the benefit of future generations⁷⁸.

The Kenyan Constitution also safeguards and provides one with right to own property in Kenya. In that line of thought, there is likely to be societal conflict between individuals on ownership of land. It provides that "Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable" and states the principles to be adhered to for this to manifest. The goals are being in a position in which the land rights are secure; having equitable access to land; management of land resources being sustainable; transparency and cost effective administration of land; and having gender inclusivity in law, customs, and practice in relation to land and property in land, while also having communities being able and being encouraged to settle land disputes through recognized local community initiatives consistent with the constitution. The Constitution of Kenya also has principles governing land policy and guidance on the legal and institutional framework governing land.

The 2010 Constitution brought a reform in the judicial system to ensure there is proper and efficient dispute resolution mechanisms. It stipulates that judicial power emanates from and must be exercised for the benefit of Kenyans. It offers principles on the exercise of authority that includes the demand for equal treatment, a focus on substantive justice, the avoidance delay and the use of alternative and traditional conflict resolution processes⁷⁹. It has established a specialized court, the Environment and Land Court to hear and resolve disputes connected to "environment and the use and occupation of, and title to land." Article 162 the Constitution requires parliament to establish a court of the status of a high court with the responsibility of hearing and deciding disputes concerning the environment, use of and occupation of land, and title to land. This provision seeks to equate the environment and land court with the High court.

Despite the incorporation of land law into the Kenyan constitution 2010, there is sufficient evidence to believe that land related conflicts will continue in Kenya until historical injustices are addressed⁸⁰. The imbalance of rights in land law issues is connected and interlinked with historical issues and ethnic politics which stand out as reason for most of the trouble⁸¹. Other than

⁷⁸ Ibid

⁷⁹ Patricia Kameri-Mbote, *Kenya Land Governance Assessment Report*, (2016)

⁸⁰ P.O Onyango, "Balancing of Rights in Land Law: A Key Challenge in Kenya" (2014) 2 *Sociology and anthropology*

⁸¹ Ibid

expressions to more provisions, the constitution does not delve much into legal land issues, and as Mutio observes, constitution is another source of conflict as its structure envisages a diffusion of authority among different centres of decision making⁸². The mere existence of a constitution also does not imply that such a constitution adheres to the tenets of constitutionalism.

2.4.2 NATIONAL LAND POLICY (2009)

The Sessional Land Policy paper was developed to provide an overall framework for use and to define the key measures required to address the looming issues related to land⁸³. It also focuses on issues highlighted in the constitution, such as compulsory acquisition and control of development as well as tenure. It notes that tenure security is important for all Kenyans in an inclusive manner from marginalized groups, different socio-economic groups and even women.⁸⁴

The policy paper designates land in Kenya as being either Public, Community or Private. It also acknowledges customary land rights. In addition, it also apprehends and seeks to protect the private land rights, providing for rights from different categories of holding land rights⁸⁵. The sessional paper recognizes that certain issues related to land, such as historical injustices, land rights of minority communities (such as hunter-gatherers, forest-dwellers and pastoralists) and vulnerable groups, require special intervention in order to enable the use and access of the land and resources within⁸⁶.

On historical land injustices, which dates back to the colonial land administration, the land policy document recommends the government to establish mechanisms and appropriate legal and administrative framework to have focus on historical land injustices, document the issues, determine what is at stake and come up with ways to resolve the injustices⁸⁷.

One of the National Land Policy principles in relation to the constitution is to recommend the use of local community initiatives consistent with the constitution to settle land disputes within the community. In this scenario, it is encouraged that the communities should try resolve the matter

⁸² Manuel Mutio, 'The Causes and Responses to Conflict in the Horn of Africa.' (Masters, UON 2010).

⁸³ Kenya Land Policy 2009.

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Ibid

before taking it to court. This in itself is the encouragement of use of Traditional Dispute Resolution (TDR) mechanisms.

When looking into sustainable resource use, in order to enhance optimal productivity, efficient, equity and sustainable land use, there are various provisions on what is to be taken up to foster sustainability. Since climate change and adverse weather conditions have been seen to lead to degradation of environmental resources, the government under the NLP is to among others, spearhead conservation of the environment, which is the people's heritage, shares determination have it used sustainably for future generations to also commence on programs that deal with disaster management to enlighten the communities on best land use practices that are inclusive of disaster preparedness and mitigation, climate crisis issues and adaptations. The NLP also seeks to encourage integrated ecosystem management approaches for biodiversity conservation through land use management. These are important aspects in ensuring destruction of the habitats are controlled and managed.

2.4.3 THE LAND ACT, 2012.

The Land Act of 2012 came into action to give effect to the provisions of Article 68 of the Constitution as well as to amend land laws. Its goal is to ensure there is sustainable administration of land and its resources as well as for related purposes⁸⁸. The Act empowers the National Land Commission or the Cabinet Secretary to make rules to ensure the Act is properly implemented.

The National Land Commission's role is to deal with land administration and it is to execute the allocation of land exclusively. Having a single entity with the mandate to deal with land administration of land prevents and limits overlapping of tasks and as a consequence lacking accountability and transparency⁸⁹. Issues pertaining to land issues are to be dealt with by the National Land Commission. As such, historical land injustices being a contentious issue and one of the primary causes of land conflict, the Land Laws Amendment Act stipulates ways in which to follow in order to pose the claim.

⁸⁸ Land Act 2012.

⁸⁹ Betty Atieno, 'Assessing The Effectiveness Of The National Land Commission In Addressing Irregular And Illegal Allocation Of Land In Kenya' (Masters, UON 2016).

Based on the claims of historical injustices, the Land Act stipulates that a historical land claim may only be taken as one, registered and processed by the commission if it can be verified. The act resulted in the displacement of the claimant or other forms of historical injustices that cannot be addressed by an ordinary court system⁹⁰. An alleged historical injustices shall be sanctioned if it is aligned to among other reasons, occupation by colonialists and struggle for independence.

The Land Act also provides for allocation of land, and under Article 12(6), it delves into how to allocate land that the leasehold has expired of a non-citizen. This is important as the issues arising have been due to the long violence that have come up due to ending leases from pre-colonial to post-colonial periods since the leasehold periods under the constitution were changed from 999years to 99years. On the contrary, vesting land rights through the law doesn't resolve land-related conflicts or historical injustice because the law is in place to protect what was unfairly and illegally taken away⁹¹ from the natives of the area.

In its guiding values and principles, the Land Act is in place to ensure that there is sustainable and productive management of land resources. With this provision, it is therefore of essence to ensure that the contested lands are used in sustainable manner and not lose productivity, with whichever owner. The commission is also given mandate to make rules and regulations for land based natural resources sustainable conservation, within which may contain steps to ensure the entry, utilization and co- management of forests, water and other resources by those with customary rights to these resources; as well as have processes for stakeholders' place in the management and utilization of land- based natural resources.

2.4.4 THE COMMUNITY LAND ACT 2016.

The origins of the CLA lie in the Constitution with its declaration that all land in Kenya is either public land, private land or community land⁹². Much of the Act puts its focus on how the communities can govern the community lands under formal Community Title. It comes in handy

⁹⁰ Ibid

⁹¹ Ibid

⁹² Lizzy A Willy, 'The Community Land Act in Kenya Challenges and Opportunities for Communities.' 2018. VOL 7. Issue 1. MDPI

in this research since the land conflict arising are mainly based on the fact that the contested land is communal.

The Community Land Act states that the land held by the community should ensure that there is proper environment and natural resource management. The CLA provides for formation of Community Land Management Committee mandated to coordinate and ensure proper running of the communal land. It also states that land held by and under the community should be registered, and also goes forth to give instances and ways in which private land may be converted to community land, which may come in handy in the instances where claims require conversion. The Act in Sec 38 gives consideration to pastoralists and states that land in pastoral communities shall be made available for the grazing of their livestock according to set guidelines. The non-community pastoralist can also be granted access upon negotiation. When it comes to conflicts, the use alternative dispute resolution mechanisms is encouraged for a registered community and this includes the use of TDRMs to settle disputes. However, in the instances where efforts put on dispute resolution fail, a party may institute judicial proceedings. Those who are found in offenses under the Community Land Act are to be fined or face jail term.

According to Wakhungu, in many African countries, there have been attempts to have customary systems owners of land to be integrated into the 'modern' system. On the contrary, these have failed, because of high financial and transaction costs with benefits are not clear. Due to this, most countries have several and often overlapping customary and modern land tenure systems⁹³. Often, this brings about a legal uncertain situation⁹⁴.

Under the CLA, each registered community is to follow the set relevant laws, policies and standards present and applicable on natural resources for the purpose of management and conservation of resources on community land⁹⁵. This is present to influence resource use, and ensure sustainability as per the laws. The communities shall have measures to take care of critical ecosystems and habitats; have incentives to invest in conservation programs that are income generating as individuals or communities; have rules governing access to, utilization of and co-management of forests, water and other resources by communities who have customary rights to

⁹³ Judi W Wakhungu and others, 'Land Conflicts and Livelihoods in the Great Lakes Region.'(ACTS, Nairobi) Eco policy 14.

⁹⁴ Ibid

⁹⁵ CLA (20, 1)

these resources; and procedures for involving communities and other stakeholders in the management and utilization of land-based resources. A registered community shall also take the necessary steps to conserve resources on community land.

2.4.5 THE LAND AND ENVIRONMENT COURT ACT, 2011.

The Environment and Land Court Act 24, was enacted to bring into effect to Article 162(2) (b) of the constitution⁹⁶ which was to establish a superior court that focuses on environmental disputes and land issues and to make provision for its jurisdiction functions and powers and for connected purposes.

Section 20 of the Act states that nothing in the Act shall be interpreted as preventing the court from adopting and implementing, on its own motion or with the agreement of or at the request of the parties, any other appropriate means of Alternative Dispute Resolution (ADR) including negotiation, arbitration, conciliation, mediation and traditional dispute resolution mechanisms in accordance with article 159(2) (c) of the Constitution. The court is also required to state proceedings where Alternative Dispute Resolution (ADR) mechanism is a condition prerequisite to any proceedings before the court until the condition is fulfilled⁹⁷.

In Kenya, there has been loss of faith in the nation's court to give prompt resolution to their grievances⁹⁸. This has led to resorting to use of ADR mechanism for conflict resolution.

2.4.6 THE TRESPASS ACT (CAP 294)

Section 3 subsection 1 of the Trespass Act (Cap 294) states that any person who accesses, is or remains on or erects a structure, uses or grazes stock or permits stock onto private land without being allowed by the occupier is guilty of an offense⁹⁹. In subsection 2, where one is charged with an offense in subsection (1), the burden of proving that he had reasonable excuse lies upon him¹⁰⁰.

⁹⁶ The Constitution of Kenya 2010.

⁹⁷ Environment and Land Court Act 2011.

⁹⁸ J.A Atemi, 'The Influence Of Utilization Of Alternative Dispute Resolution Mechanisms By Leaders On Sustainable Conflict Resolution In Bungoma County, Kenya' (Masters, UON 2014)

⁹⁹ Trespass Act (Cap 294)

¹⁰⁰ Ibid

Section 9 of the act further states that the occupier or police officer may arrest without warrant in cases of trespass.

2.4.7 THE NATIONAL LAND COMMISSION (INVESTIGATION OF HISTORICAL LAND INJUSTICES) REGULATIONS, 2017.

These regulations present are to be used in reference to the historical land injustices that took place in the period between the 15th June 1985 and 27th August 2010¹⁰¹. The investigation into the injustices are to be looked into by the National Land Commission as its own initiative, or upon complaint by an interested party.

2.4.8 THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT, 1999.

The entitlement to have access to a clean and healthy environment is a right for every person in Kenya, whereas the people also have a duty to safeguard and enhance it¹⁰². This right is inclusive of the access by any person in Kenya to the various public elements of the environment for recreational, educational, health, spiritual and cultural purposes.

Furthermore, EMCA provides for the NEAP Committee formation which is mandated with development of a NEAP which recommend methods that seek to ensure awareness creation nationally on the importance of using the environment and natural resources in a sustainable manner through environmental education, for national development; while also operationalizing important strategies in management of the resources. The NEAP also helps in identification and recommendation of policy and laws to be implemented in prevention, controlling or mitigation of impacts on the environment.

In relation to conservation of biological environmental resources insitu, EMCA, under NEMA, is to give measures that are important in ensuring there is conservation of biological resources in situ, working in collaboration with other relevant stakeholders. EMCA also provides for the establishment of National Environment Restoration fund which as supplemental insurance for the mitigation of environmental degradation where the perpetrator is unknown or where exceptional circumstances necessitates the Authority intervening in the control or mitigation of environmental degradation¹⁰³.

¹⁰¹ The National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017.

¹⁰² Environment Management and Coordination Act, 1999.

¹⁰³ Ibid

2.4.9 NATIONAL LAND COMMISSION ACT (2012)

This is an Act of Parliament that gives additional provision on how the National Land Commission is supposed to operate, how to appoint commissioners and their qualifications and further gives effect to the objects and principles¹⁰⁴ of county government in the management of land and its administration.

While it looks into resolving different land issues; registration, ownership and even research on issues related to land and use of natural resources, the NLC Act also recommends and encourages the use of TDRMs in land conflicts.

The National Land Commission (Amendment) Bill (2022) came in place to continue admitting, registering and processing historical land injustices, since the Act had limited the same to be possible only within the five years from the commencement of the Act. The bill further gives in-depth description on historical land injustices complaints and recommended appropriate redress.

2.4.10 PLACE OF LAW IN RESOLVING LAND BASED CONFLICTS.

Dealing with ownership and tenure systems have the potential of enabling well managed and organized use of pasture, even on communally owned land. This will prevent indiscriminate use of grazing land preventing degraded lands and trespass with claim to more land. The claims mainly posed by the conflicting communities has been on ancestral land historical injustices fuelled by access to and use of resources when the ones they had access to have been degraded.

The Land Act has provided ways in which land can be converted from to a different category in line with the Act or any other written law¹⁰⁵. This shows that if well presented, they are able to get the land converted back to communally owned land.

It further provides for the possibility of allocation of land upon expiry of leaseholds of non-citizens. Here is where the problem comes in, the leases were claimed to come to an end after 99years. On the other hand, by the end of the given 99years, most of the settlers in the area are not necessarily foreigners, but citizens of Kenya with a right to own land and property as per The Constitution 2010.

¹⁰⁴ National Land Commission Act, 2012

¹⁰⁵ Land Act 2012.

Ruto delved into the treaties that rendered the Maasai landless, and from her work, unless the Maasai lay claim through the aboriginal title, they cannot get the lands back. In order to sustain an aboriginal title case, the Maasai will have to prove that before their lands were expropriated, they lived according to a set of laws and customs, especially those governing tenure and use of land¹⁰⁶. Otherwise, the treaties entered into with the colonial administration, as per the Vienna Convention on Law of treaties cannot be imposed against Kenya because it was an international treaty, and one as such between a tribe within a given state and the state itself cannot be valid as a treaty¹⁰⁷. In addition, Kenya did not inherit any treaty by not entering into transference agreement. In the case in which a community is able to state an aboriginal case and reclaim the land, the right processes on land acquisition can therefore be followed as per the land laws and therefore put a rest to the contestation.

Other than the historical injustices claim, the present laws are quite clear on issues pertaining to land, trespass and inclusive of conflict resolution means that can be put to practise. The laws even put emphasis on ensuring the land and environmental resources are used and managed in sustainable manner. Noting that, the people not only have a right to clean and healthy environment, but also responsibilities to the environment.

2.5 EXISTING RESOLUTIONS MECHANISMS USED IN LAND CONFLICT.

The existing resolution mechanisms in land conflicts employed in the country is litigation, Alternative Dispute Mechanism and Traditional Dispute Mechanism. With the promulgation of 2010 constitution, legislatures created an opening to put to use ADR and TDRMs. In line with the Kenya Land policy, in consistence with the constitution, before an issue is taken to court, the local community should make legitimate effort in resolving the matter¹⁰⁸. Alternative Dispute Resolution Mechanism involves Negotiation, Mediation, Arbitration and Conciliation, while Traditional Dispute Mechanism involves the use of elders and integration of the ADR mechanisms. Negotiation is whereby parties meeting to identify and discuss the issues at hand so as to arrive at

¹⁰⁶ Rose Ruto, 'The treaties that rendered the Maasai landless' (Masters, UON 2005)

¹⁰⁷ Ibid

¹⁰⁸ Ibid

an acceptable solution by both without the involvement of a third party, whereas mediation is a voluntary collaborative process where conflicting individuals, with the help of an independent third party, reach a consensus. The main quality of these methods is their ability to reorient the parties towards each other, by assisting them to have a new and shared opinion in their association. Arbitration and Conciliation too have been seen to be used rather than going to courts. Whereas in arbitration a neutral (known as an arbitrator) assists in determination of the dispute and gives a final and binding award, Conciliation is similar to mediation except from the fact that a third party intervenes to bring the conflicting parties together. If the parties are unable to come to a mutually agreement, the conciliator gives a recommendation that is binding on the parties unless rejected by one of them. A conciliator lacks the authority to impose a settlement¹⁰⁹. A number of international legal instruments recognize conciliation as a means of resolving conflicts over natural resource¹¹⁰.

These instruments are and have been important in managing land conflicts. In majority of African nations and also in Kenya in particular, the primary native conflict resolution institution is the use of council of elders¹¹¹. Conflict resolution involving council of elders is well respected in local levels and also well recognized by the state. They are regarded as trustworthy and knowledgeable in community affairs¹¹². The Land Dispute Tribunals Acts of 1990 which recognized the council of elders as the primary resolution of solving conflicts involving land matters was adopted in a bid to change the traditional conflict resolution mechanisms into modern conflict management strategies¹¹³. Adopting from Charles Chukwura's definition, Traditional mechanisms of conflict management and resolution mechanisms are taken to be those methods that were in practise for a long period of time and that have been absorbed by the society, rather than being the product of adoption from an external source¹¹⁴. Traditional leaders are an important element African society's cultural history, and they receive their power and authority from the society's local traditional

¹⁰⁹ Kariuki Muigua, 'Environmental Conflict Management in the Kenya Context- Enhancing the Use of Alternative Dispute Resolution Mechanisms' (Nairobi Club, 27th March 2009)

¹¹⁰ Ibid

¹¹¹ The Inter-Ethnic Management of Conflict in the Horn of Africa.

¹¹² Ibid

¹¹³ Ibid

¹¹⁴ Charles Chukwurah Mezie-Okoye, 'Traditional Mechanisms for Resolving Aguleri-Umuleri Land Conflicts' [2018] Peace Review.'

structures. These individuals have a vital role in establishing community peace, cohesiveness and harmony, as well as preventing and resolving problems¹¹⁵. Informal or rather traditional dispute resolution mainly looks to council of elders and important people in the community to help bring about peaceful coexistence. As seen from Njenga's work, the main approach to management of land conflict in Narok County are customary local dispute resolution and use of government legal institutions particularly local authorities and the court system¹¹⁶. The communities in Narok County feel that use of customary methods feed on their values and give an appropriate avenue for redress for local grievances and land disputes¹¹⁷.

As Atemi noted in his research, when parties settle cases, there is control that is presented over the outcome of the case since there is negotiation for terms of the settlement¹¹⁸. From his perspective, In Bungoma County, land disputes featured prominently in cases handled by elders through mediation because huge chunks of land had not been registered and lacked title deeds. Mediation took centre stage because residents were also frustrated with court litigation process¹¹⁹. In Narok land conflicts, those resolving conflicts act more like mediators or conciliators who steer a discussion between the parties¹²⁰. When resolving property disputes, village elders utilize arbitration when the blame or answer is obvious, but mediate when a solution requires dialogue or both parties have made¹²¹. Local socio-cultural and political institutions can also be used in dispute processing as a framework. Kinship organizations, neighbourhood or village councils, age-sets or generation-sets, religious groups, ethnic and caste associations, work-related groups, and the locals all provide formal or informal platforms for members to negotiate¹²².

¹¹⁵ M Mugambi Kithambi, 'the Role of Alternative Dispute Resolution Mechanisms on Prevention of Conflict: A Case Study of Isiolo County' (Masters, UON 2017).

¹¹⁶ Joyce Mukubi Njenga, 'Effectiveness of Legal and Non legal Processes in Managing Land Conflict;A Case Study of Narok County, 1992- 2012' (Masters, UON 2012)

¹¹⁷ Ibid

¹¹⁸ Ibid

¹¹⁹ Ibid

¹²⁰ Joyce Mukubi Njenga, 'Effectiveness of Legal and Non legal Processes in Managing Land Conflict;A Case Study of Narok County, 1992- 2012' (Masters, UON 2012)

¹²¹ Ibid

¹²² Nicholas Okapu, 'The Factors Influencing Sustainability of Peace in Resource-Based Tribal Conflicts in Laikipia North District' (Masters, UON 2013).

In Binshu Raj's research on resources conflicts and resolution in Nepal, there was use of both formal and informal ways of conflict resolution. According to his study, most of the resource conflicts are resolved through informal practices, because the negotiators are trusted, there is an ease of reaching a settlement, helps in maintaining of social harmony and is quite affordable¹²³. This further tallies with Chukwura's work which further states that the use of traditional mechanisms of conflict management is more affordable, with acceptable outcome and has confidentiality¹²⁴. The informal sense of mediation makes it flexible, expeditious and speedier, it fosters relationships and is cost-effective. Both parties involvement in reaching an agreement makes it acceptable and durable. Mediation also has the ability to address the underlying causes of conflicts preventing reoccurrence. However, in situations in which the process is not legally binding, one can go back on his word bringing about a conflict¹²⁵.

The dispute resolution mechanisms do not seem effective in resolving the conflicts¹²⁶. It has been noted that when there are competing jurisdictions and customary and modern systems coexist with mixed identity inhabitant groups, the conflicting sources of legal authority lead to disagreements on which source of law with prevail¹²⁷. To further emphasize this, Safari states that in multi ethnic societies, clash of cultures renders the combination of formal and informal dispute resolution mechanisms untenable¹²⁸.

Land issue is treated with sentimentality and sensitivity which leads to the explosive violent conflicts¹²⁹. Due to this, decisions at courts cannot amicably solve land-related problems¹³⁰ since court seeks to settle cases rather than resolving the conflict. Settlement of conflict and disputes

¹²³ Ibid

¹²⁴ Charles Chukwurah Mezie-Okoye, 'Traditional Mechanisms for Resolving Aguleri-Umuleri Land Conflicts' [2018] Peace Review.'

¹²⁵ Ibid

¹²⁶ Eugene Wanende, 'Assessing The Role Of Traditional Justice Systems In Resolution Of Environmental Conflicts In Kenya' (Masters, UON 2013).

¹²⁷ Kristine Eck, 'The Law of the Land' (2014) 51 Journal of Peace Research.

¹²⁸ Dick Safari, 'The Role and Efficacy of the Land Adjudication Committee as an Alternative Land Dispute Resolution Mechanism in Narok County' (Masters, University of Nairobi 2013).

¹²⁹ Muigua, Kariuki. "Managing Natural Resource Conflicts in Kenya through Negotiation and Mediation." (KMCO, 2016).

¹³⁰ Ibid

causes one of the parties to be left aggrieved leaving potential for violence and fatality. Even more, decisions are likely to be aligned towards national legal norms applied in an inflexible manner, with all-or-nothing outcomes. In these instances, the contestants usually have very limited control over the decisions made. As such, most cases that cannot be solved through customary local dispute resolution are the ones that are referred to local authorities or law courts¹³¹. The resolution of land conflicts in a law Court mostly involves native title determinations in order to identify genuine landowners¹³².

Where there are conflicts, in Kenya, courts do little to help in terms of achieving lasting peace especially when the conflicts are localised, that is communal or clan based, because of the nature of the settlement and the outcome. Due to this, these conflicts are likely to reoccur¹³³. The court systems, like in the case of Kenya, cannot also be afforded by many Kenyans in addition to being clogged with land disputes and conflicts cases¹³⁴, causing delays and inefficiency.

Even though ADR and TDRMs are on the preferential scale, Mutava indicated in his research, weakening of customary institutions to balance land differences has impacted on the land associated to conflicts¹³⁵. This given approach has weakened overtime following marginalization of local institutions and coming up of formal state agencies, which the communities has known little about and trust¹³⁶. The elders' authority has been eroded, particularly in dealing with the youth who have discovered a wide range of power centers, undermining traditional conflict prevention and resolution procedures¹³⁷. As a result, conventional authority has been supplanted by new structures that are not in line with communities' reality. These new arrangements include the government that is not based on the community and does not make its decisions based on social

¹³¹ Joyce Mukubi Njenga, 'Effectiveness of Legal and Non legal Processes in Managing Land Conflict; A Case Study of Narok County, 1992- 2012' (Masters, UON 2012)

¹³² Ibid

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ Jacob Mutava, 'Resolving Land Related Conflict In Kenya: The Role Of, AU Framework And Guidelines On Land Policy.' (Masters, UON 2016).

¹³⁶ Nicholas Okapu, 'The Factors Influencing Sustainability of Peace in Resource-Based Tribal Conflicts in Laikipia North District' (Masters, UON 2013).

¹³⁷ Ibid

relationships. Thus, making the society to be marred with inequality and injustice and increased polarization between the rich and the poor, making it harder to resolve conflicts¹³⁸. Traditional institutions in management of the land conflicts also stopped being considered important due to the sprouting of individualism as well as privatization of resources communally owned¹³⁹.

Until recently in Kenya, Alternative Dispute Resolution mechanisms were not accorded the importance required, leading to erosion of such traditional institutions. Furthermore, the credibility of informal mechanisms has/is eroded due to political interference and verdicts biased in favour of those with power¹⁴⁰. While accepting that negotiation and mediation may not give comprehensive solutions to the problem, they can none the less be utilized in conjunction with other conflict resolution techniques to solve Kenya's natural resource conflicts¹⁴¹. The continent's current land regimes are incapable of resolving land conflicts. Despite the existence of institutional dispute resolution processes dating back to colonization and post-independence, land disputes still continue to abound in the country¹⁴². The present legal changes such as consolidation of diverse land registration systems and setting up of the Environment and Law court may be tainted by political interests and the protection of the dominant class' interests.

2.6 GAPS IDENTIFIED

The available literature mainly focuses on how the environmental changes leads to conflict. There is limited literature and information on resource use implications, and the sustainable management of the resources especially during the conflict period. Most of the information available too is from other regions, if any on effects on the environment, with little touching on Kenya at large, and Laikipia in the least. There is a lot of focus mainly on the conflict itself and hardly touches on

¹³⁸ Ibid

¹³⁹ Limo Kipng'ok, 'Factors Contributing To Conflict Among The Pastoral Communities: The Case Of Baringo South Sub - County, Baringo County, Kenya' (Masters, UON 2017)

¹⁴⁰ Ibid

¹⁴¹ Muigua, Kariuki. "Managing Natural Resource Conflicts in Kenya through Negotiation and Mediation." (KMCO 2016).

¹⁴² Maureen Maina, 'Land Disputes Resolution in Kenya: A Comparison of the Environment and Land Court and the Land Disputes Tribunal' (Masters, UoN 2015).

sustainable resource use in the face of conflict, or the state the environment is left post conflict in Laikipia North area.

Whereas the legislative frameworks and laws are in place, the literature available does not clearly bring out why the given laws in place are not able to fully help solve the conflict in Laikipia North. There is some disconnect of interactions between the laws and regulations, and their implementation.

This research is therefore sought to bridge the gap in literature by getting to the root cause of dynamics of the conflict and why the available laws and mechanisms used have not been able to bring an end to the conflicts. In addition, the research also looks into the issue of resource use in Laikipia North, especially during conflict. This will reflect on whether there is focus on the available resources as a source and cause of conflict or if there is consideration and sustainable resource use within the area, during conflict.

3. CHAPTER THREE: METHODOLOGY

3.1 STUDY AREA

The respondents for this study came from Laikipia County, Laikipia North Sub County, as well as the county headquarters in Nanyuki. Laikipia County is located on the Equator in Kenya's former Rift Valley province. It is located in the North-Western slopes of Mt. Kenya and covers around 9,462 square kilometres with a population of 399,227. To the North it shares boundaries with Samburu County, Isiolo County is to the North East, Meru and Nyeri counties to the south, Nyandarua to the Southeast and to the West Baringo County.

It comprises of three administrative sub-counties namely Laikipia East, Laikipia North, and Laikipia West (the sub county units are geographically equivalent to the constituencies). The sub county headquarters are at Nanyuki, Doldol, Rumuruti and Nyahururu respectively. The population comprises of Kikuyu, Maasai, Kalenjin, Pokot, Samburu, Meru, Borana, Somali, and Turkana and includes non-Kenyan wealthy land owners¹. It covers an area of 9,462km² and is ranked as the 15th largest county in the country by land size².

Due to the favourable south western climatic conditions, the part of the county has the greatest potential for forestry and mixed agriculture. As a result of these circumstances, some localities, particularly around Marmanet, have become the most densely populated. The county's eastern and northern parts of the county are suitable for grazing, while the plateau in the county's middle and northern parts of the county is suitable for ranching³.

The county is endowed with several natural resources. These include pasture rangeland, forest, wildlife, undulating landscapes and rivers among others. The high and medium potential land constitutes 20.5 per cent of the total county's land area while the remaining 79.5 per cent is low potential hence unsuitable for crop farming⁴.

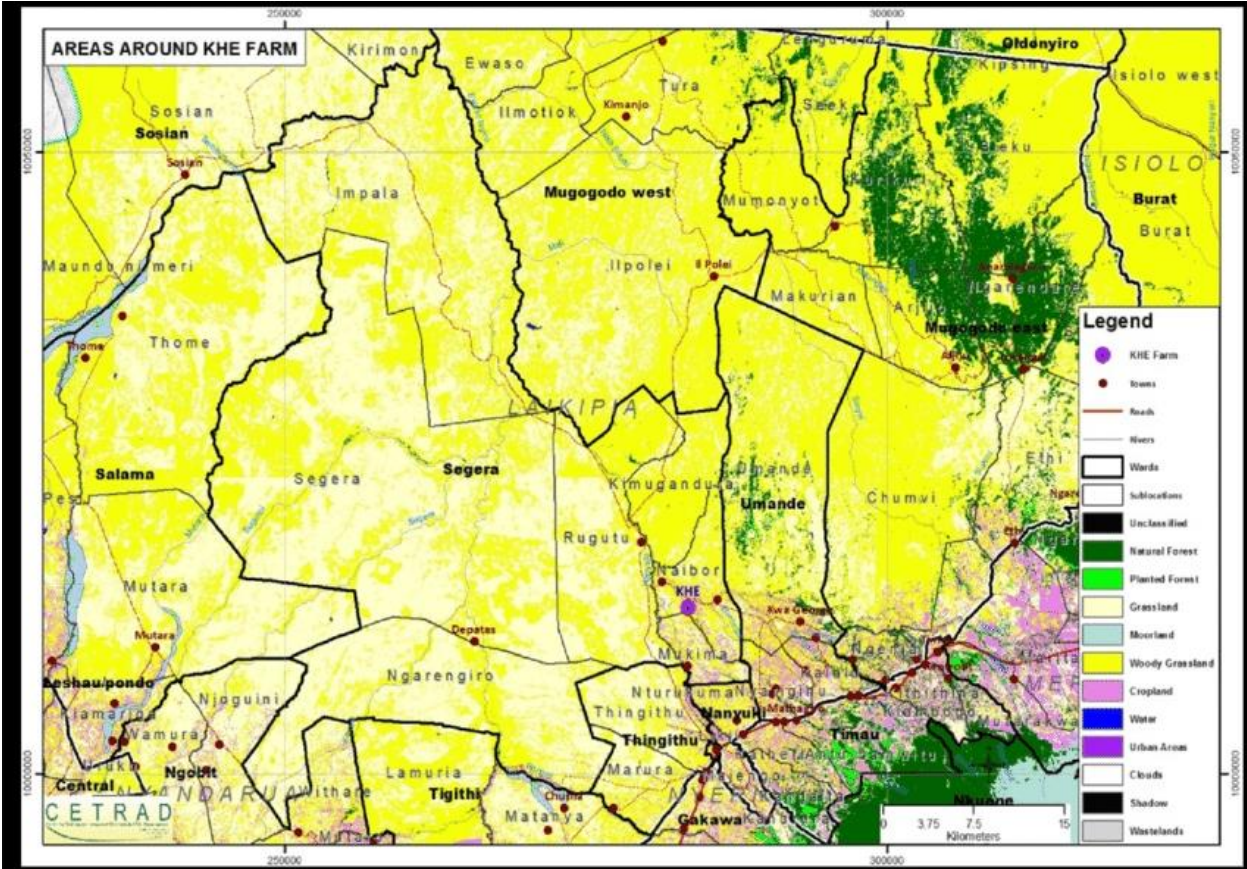
¹Kituku, Building a culture of peace in Kenya: Baseline report on Conflict Mapping and Profiles of 47 counties in Kenya, CRECO (2012).

² County Government of Laikipia, *First County Development Integrated Development Plan 2013-2017*, (Laikipia, 2013)

³ Ibid

⁴ Ibid

Laikipia County has a diverse animal population that is widely scattered in semiarid terrain stretching to the wildlife corridors of Samburu, Meru and Mt. Kenya. The majority of the wildlife is found on large-scale private ranches, which account for over half of the county’s total area. Others can be found on Maasai owned group ranches, in the gazetted forests of Mukogodo, Rumuruti and Marmanet and the other uninhabited tracts of land in the county. Despite the fact that land is a valuable natural resource, there has been much tension between the farming and pastoralist populations.



⁵Figure 2 Laikipia North

⁵ https://www.researchgate.net/figure/Map-of-the-study-area-Laikipia-North-sub-county_fig2_321911672

3.2 RESEARCH DESIGN

The research design adopted was qualitative research approach that made use of both primary and secondary sources of information obtained. The qualitative approach was used because the study was of a social system and therefore it was of great importance to let the people in the area being studied have the chance to express themselves. The primary purpose of using qualitative research design was to give a voice to the people, and therefore determine the factors and relationships that have resulted to the conflict in the area, and also get to know the means used to resolve conflicts. This research used multiple sources of information including Key Informant Interviews with a blend of open and closed ended interview schedules, and Focused Group Discussions.

This research approach recognizes that anybody is capable of adding knowledge. The chosen research design enabled the respondents to narrate their perceptions and these were analyzed into facts after triangulating the primary data with the secondary data to answer the research problem.

3.3 DATA NEEDS, TYPES AND SOURCES

The data used in this study were two types, the primary data, and the secondary data. The data was in qualitative form.

The primary data was obtained upon visit to Nanyuki, Doldol and Musul and with first-hand information collected, whereas the secondary data was obtained from already documented materials including books and research articles on the same.

Research Objectives	Data needs.	Data source.	Data collection method.
1. To assess the dynamics of land conflicts in Laikipia.	<ul style="list-style-type: none"> • Causes of Conflict • How the Conflict starts • The Ones most involved in the Conflict. • Politics, Corruption and Land Conflict. 	The data was both primary, from key informants and focused group discussions, and secondary data from written texts and researches on the same.	The data was collected through one on one interviews with key informants, focused group discussions and literature review.

	<ul style="list-style-type: none"> • Possibility of the conflicts coming to an end. 		
2. To assess the effects of the conflicts on the resource use and sustainability.	<ul style="list-style-type: none"> • How resources are put to use within the region on day to day basis. • The effect on resources available during the conflict phase and post conflict. 	The data was both primary, from key informants and focused group discussions, secondary data from written texts and researches on the same and observation.	The data was collected through one on one interviews with key informants, focused group discussions and literature review.
3. To evaluate the implications of the existing legislative framework and find out necessary reforms to effectively resolve the conflicts.	<ul style="list-style-type: none"> • Knowledge of Laws related to land use and Land Rights. • Thoughts on whether the land rights are secure. • Land Ownership and Conflict related issues. 	The data was both primary, from key informants and focused group discussions, secondary data from written texts and researches on the same and observation.	The data was collected through one on one interviews with key informants, focused group discussions, literature review and observation.
4. To assess the effectiveness of the existing mechanisms for resolving	<ul style="list-style-type: none"> • Belief in the legal system. • Methods used to resolve conflict. 	The data was both primary, from key informants and focused group discussions, and	The data was collected through one on one interviews with key informants,

the Laikipia-land conflict.	<ul style="list-style-type: none"> • Place of administration and land conflicts. • Possibility of the conflict coming to an end, and recommendations. 	secondary data from written texts and researches on the same.	focused group discussions and literature review.
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Table 1 Data Needs, Types and Sources

3.4 SAMPLING

In this study, there were 18 key informants interviewed and 2 focus groups. The sample selection, for key informant interviews was purposive in that there was strategic selection of specific actors for interviews, who would prove reliable in this study as key informants. Snowball sampling process was also used that led to identification of more to interview as key informants, and also assisted in identification of areas to clearly focus on for focused group discussions.

The key informants included government officials working at the lands office, registrar’s office, surveyor’s office, and Doldol sub chief. There were also representatives from non-governmental organizations and professionals working in the environmental field who took part in the study, in addition to community elders, and representatives conversant with matters arising. The age bracket of the KII ranged from youthful to elderly. The focused group discussions were two, in different parts of Laikipia North. These were informed by the responses given during KIIs on areas which were prone to land conflicts. The two FGDs were done in consideration of the different gender representation and therefore one consisted of men while the other was for women. The differentiation of gender was further informed by reluctance of women to respond to KIIs especially where men were also in place to be interviewed, for gender inclusion and to get insights into different perspectives. In both the FGDs, representation cut across middle to those elderly in age. The male FGD had 8 representatives, while the female one had 7 representatives. These consisted of community members from the Doldol- Mukogodo Location and Musul Group Ranch.

3.5 DATA COLLECTION

PRIMARY DATA

1. Key informant interviews

For Key Informant Interviews, interview schedules were used as a guide. There were both open ended interview questions, and structured interview schedule. There were 18 respondents, and the data collected was descriptive in nature. Their age groups cut across from youthful to elderly.

There were six respondents from government and administrative offices; the lands office, land registrar's office, surveyor and the sub location, three from Civil Society Organizations, four specialists on land use planning and research, and five community members and elders.

The number of key informants selected for the study was limited because several of the land and environment related offices selected were adamant to give responses and kept on recommending others. Females were also not forthcoming in talking about land issues.

2. Focused group Discussions

Focused group discussions were done after the KII had taken place. There were two FGDs and an already developed interview guide which was used during the discussions. The male FGD had 8 representatives, ranging from middle age to elderly, while the female one had 7 representatives. Discussions were done around the outlined topics, and it was descriptive in nature. These FGDs took place in Laikipia North, Doldol-Mukogodo location and Musul ranch.

3. Observations

During the interactions, interviews and focused group discussions, there were observations made by the researcher in relation to the study.

SECONDARY DATA.

Secondary sources with information related to the study were included through literature review of research theses, newspaper posts, journals and internet sources.

3.6 DATA ANALYSIS

After data collection, the data was organized into dominant themes. The analysis was done through Content and Thematic Analysis. This is because the research was of qualitative nature.

Thematic analysis involves getting the data collected into major subjects or topics relevant to the research in order to break it down and get the information required. Content analysis is whereby the intensity by which certain words have been used are examined and it systematically describes the content of written or spoken material⁶.

The use of the methods therefore involved identification of specific information in the data retrieved and assessed if it is in line with the stated objectives the researcher had beforehand. Analysis for KIIs was done and the data was then presented systematically according to research questions. There were direct quotations too from interviews that were used to show how the conclusions were reached.

3.7 ETHICAL CONSIDERATION.

Research ought to be carried out in an ethical manner⁷. A researcher should respect moral principles, the values, norms and the culture of research subjects⁸. The ethical considerations were upheld by the researcher. These included maintaining confidentiality of the respondents, seeking informed consent and ensuring participation in the study was voluntary, without coercion. When presenting the study findings, the researcher stuck to the principle of anonymity and did not refer to the respondents using their names.

3.8 LIMITATIONS.

Resources for undertaking the research, coupled with the risk of facing insecurity were some of the challenges faced in conducting this research. Several approached respondents did not want to take part in the research, and in some instances, women shied away from giving responses. There were instances of language barrier, and the researcher had to have a translator for some cases. The researcher was also not able to gain access to youth for an FGD.

⁶ Kombo & Tromp, Proposal and Thesis Writing: An Introduction (Pauline's Publications Africa, 2006).

⁷ Olive M Mugenda and Abel G Mugenda 'Research Methods: Quantitative and Qualitative Approaches (Act Press, 1999) 97

⁸ Ibid

4. CHAPTER FOUR: RESULTS, ANALYSIS AND DISCUSSIONS.

4.1 DYNAMICS OF LAND CONFLICTS IN LAIKIPIA NORTH.

The way land is put to use in Laikipia North has brought out issues that have led to conflicts in the region. Laikipia North is mainly occupied by ranches, private and communal. The pastoralists and private ranchers use the lands in different ways and manage them in diverse ways too. Conflicts then arise from the differentiated land uses when there is fight for access to resources in different parcels of land. Being that the given land has different owners with tenure arrangements, accessing resources on given lands are therefore restricted. From informants' perspective, the conflicts start when there is trespass into lands either privately owned, communally owned or conservatives in order to access resources present. That is, mainly pasture and water, and in some isolated cases sand for mining.

Quoting a respondent spoken to, *“The conflicts start when there is forced access into parcels of land not owned by the people involved, to rip benefits from the given land. This is then countered by conflict when the aggrieved party tries to send them away from their land. It is seen mainly happening between pastoralists and private ranch owners.”*

Other respondents echoed the same sentiments as said by the respondent and some included that the invasions were not only to private ranches, but there were cases when it was vice versa. There are also cases in which other pastoral communities would invade communal pastoral ranches. As one informed *“Some of the conflicts experienced do not come from the people who have settled in the northern area because we have worked out how to utilize properly the available resources. In instances where we need some more, we have agreements in place and negotiated access in place even with private ranchers. The problem now comes in when other pastoralists from bordering counties come and drive their herd in the private lands and even in our reserved grazing areas. The conflicts then start as they do not negotiate and all they want is pasture and water access.”* An informant further included that there are sand harvesting conflicts in North Laikipia whereby it is done through trespass and without permission. In addition, the land issue as a cause of conflict was further interwoven with land ownership issues and tenure. *“Erosion of traditional land ownership regimes have brought about this conflicts. Most of the pastoral communities used to*

own land communally and they would graze extensively. With the present designated ownership as either private, public or communal has brought about restrictions of access to given parcels of land. During the dry seasons, the pastoralists cannot resist the lands that have pasture despite the restricted access bringing about rifts which progress to conflict”, remarked an informant.

The issue of historical land injustices also came up. The researcher was informed that the Laikipia land was originally Maasai land and that they should have owned it post-independence. Being that the land is owned by ‘settler’ communities and locals. It becomes a source of conflict especially during dry seasons when desperation for resources is at the peak. From the information received during data collection, there are instances where this is propagated by political incitements on ownership and expired leases. This aims to get back ancestral land to pastoralists seeing as leases are/were taken to have expired. Quoting an informant, *“The Laikipia land belonged to the Maasai and there were treaties signed that moved them from Laikipia. They had expected to get the land back after independence and that was not the case. It has not happened to date. There are white settlers around who have large pieces of private land in addition to those who bought land after independence. Being that the community is depended on pastoral land, and there are limitations in accessing private properties, and right to pass through some of this places, there have been a lot of issues arising. The Maa community now want their ancestral land back. With the changing laws and policies which are believed to be able to look into and solve the past issue, the community is likely not going to stop until they get what they want. That is why the conflicts are present.”* In addition, another respondent said, *“Most of the time, there is a lot of focus on land ownership from before colonial period, to the colonial and post-colonial era. The Maasai were moved from Laikipia and post-independence, their land was not returned to them. The people to understand the ownership problem have confusing information and therefore there is a lot of influence and incitement in place that leads to violence. This in most cases is done by influential people in the community and politicians to get mileage, as the people sort to increase grazing lands.”*

The prolonged dry seasons have also led to conflict in Laikipia North. The changing climatic conditions leading to drought has caused desperation leading to invasion into lands. As said in almost every cause of conflict, the conflicts are prevalent during dry seasons. On the other hand, a key informant included, *“However much the issue of drought can be a reason for conflict, in relation to pasture access and based on the different tenures and land use, how the lands are*

maintained and used should be put into consideration. The pastoral communities may, and can lay claim on land and pasture but how they manage the lands raise eyebrows. The dry spells have been recurrent. How is it that the organized communal ranches and private ranches have pasture during the dry seasons that further lead to the conflict? The pastoralists that are not well organized graze indiscriminately and have very large heads that exhaust and overgraze affecting even the environment itself.” He then added that distributing and allocating additional well conserved and maintained land to them, within a period of time ends up desolate as the other.

From the two focused group discussions that were held, the men stated to be in communally owned land ranch with only one laying claim to private ownership of land. The communal ranch is run in an organized manner. For the women’s FGD, they were part of community owned ranch, and owners by association through their husbands. This question was posed for discussion in order to see the type of ownership applied in this areas, and if it would lead to being source of conflict.

Both FGDs provided that the conflicts over land resources occur mainly during dry seasons and the reason being for access of pasture and water in well managed and maintained lands from exhausted lands. The maintained parcels of land in most cases are the ones that have stated rightful ownership, like the clear communal ranches, conservancies and private ranches. These invasions are in some cases not from within the county by other pastoral communities, while some are from within. For pasture access rights, there are usually negotiations, between pastoralists and private ranchers, and sometimes the breach of agreement is what brings about conflict, sometimes, imported conflict. These resource access invasions are then also strengthened by the issue of contradictory ownership of land with claim to historical injustices.

On his research in Laikipia North, Graham delved into the politics of conservation in the area. The reasons for the environmental challenges currently facing Ol Tome (a group ranch in North Laikipia) are complex, and are often the subject of disagreement between group ranch members and their ranching neighbours¹. Though many Maasai view the degradation of their rangelands as a result of climate change, invasive plant species, and population pressures, some neighbours of the group ranches view the area’s environmental challenges as the strict result of poor land

¹ Graham Fox, ‘Images, Uncertainties, and Success Stories: The Politics of Conservation in Laikipia North, Kenya’(McGill University 2018)

management, weak leadership, or the ‘tragedy of the commons’². It is worth noting from his research, that as seen from the KIIs and FGDs, there are pasture issues but have been dealt with negotiated access between different ranches. On the contrary, there are instances in which he witnesses cases of trespass. As he reported, a junior elder from Ol Tome Group Ranch, pointed to Graham across asking him if he could see a herd of grazing cows over Orghissi’s fence line. A tiny herd of cows grazed along the border of the private wildlife reserve not far beyond the boundary where the group ranch gave way to greener, glossier grasslands. Graham assumed the cows belonged to the ranch, since Orghissi keeps herds of breeding cattle to qualify for agricultural tax exemptions. The cows in question, according to the junior elder, belonged to an elder from Ol Tome Group Ranch, who had hired one of Orghissi’s security guards to sneak them past the fence for a few hours of grazing. Though watching the small illegal act unfold was amusing for Rogei, he pointed out that the elder who owned the cows was placing Ol Tome’s relationship with Orghissi at risk. One of the reasons Orghissi maintained grazing agreements with Ol Tome Group Ranch was precisely to deter their neighbours from violating the ranch’s fence line in the given manner.³ On political incitement he pointed out Samuel Lempurkel, who, as political tensions in the county tightened as the 2017 elections approached, built his reputation on the promise to vacate Europeans from Laikipia, and was blamed for instigating numerous small conflicts throughout the county⁴, and in an absence of support from the county’s pastoral population, was now utilizing his networks in neighbouring counties to realize this goal. Echoing the same sentiments, a report by relief web and international crisis group stated that, grievances over inequitable land ownership tend to increase during election years, especially when candidates influence herders to graze on private ranches’, conservancies’ and farmers’ land in order to have favour with the herders, even though this practice propagates local tensions⁵.

Just as Mwenda noted in his research too, the emergence of current conflicts being experienced in Laikipia County did not emerge spontaneously but rather they are a result of aggravation of multiple factors. These factors range from historical grievances, unfair tenure arrangements,

² Ibid

³ Ibid.

⁴ Ibid.

⁵ <https://reliefweb.int/report/kenya/drought-violence-and-politics-inside-laikipias-cattle-war>

political incitements, to droughts⁶. The spate of violence seen by the group ranch owners and the small land holders being victims at the hands of nomadic pastoralists during the dry months⁷. The heavily armed pastoralists from Samburu, Baringo and Isiolo counties have invaded their lands with thousands of livestock, chased them out of their homes, and made it impossible for them to return. Based on the nomadic behaviour of these pastoral communities that have been streaming into Laikipia County with their livestock, it is evident that harsh climatic conditions have been influencing such attacks. However, to some extent the use of violence that has led to destruction of property and loss of innocent lives shows there might be hidden motives behind the invasions⁸.

DISCUSSION.

In her research, Roselyn stated that the factors that contributed to conflict involving pastoralists comprised of socio-economic and political marginalisation, inadequate land tenure policies, insecurity, cattle rustling, proliferation of small arms and light weapons, weakened traditional governance in pastoral areas, vulnerability to climatic variability, and competition with wildlife⁹, some of the reasons highlighted by the interviewees and discussants during this research.

Land has become a scarcer resource, and due to its scarcity has become a major source of conflict and contestation¹⁰, of which from the data collected, this can be confirmed. There are actual conflicts on land, with the need to access resources on the given parcels of land. The high need for access of resources that leads to land conflict on pasture issues are more prominent during long dry spells. The droughts reduce the amount of pastures available leading to need to venture far and wide in search of pasture. Climate Change is seen to lead to resource scarcity, but just as stated, it cannot stand alone when it comes to land conflict, as land use and ownership issues are seen to

⁶ Ian M Micheni, 'Complexities Of Natural Resources Conflict In Kenya: A Case Study Of Laikipia Conflict' (Masters, UON 2018)

⁷ Ibid

⁸ Ibid

⁹ R Okech, "Wildlife-Community Conflicts in Conservation Areas in Kenya" (2011) 10 African Journal on Conflict Resolution

¹⁰ Nigusie Angessa Bedasa & Jeylan Wolyie Hussein (2018) Challenges in Managing Land-Related Conflicts in East Hararghe Zone of Oromia Regional State, Ethiopia, *Society & Natural Resources*, 31:3, 351-366, DOI: 10.1080/08941920.2017.1400626

stand out. Any analysis of climate change and conflict needs to account for property rights protection, and the bias in these property rights¹¹.

The land tenure systems identified by respondents and present in the region are mainly communal and private. Most rifts are based on the different tenure systems, where fights arise when there is invasion of privately owned lands for resources on the lands. Communally, resources access were more or less open access and common tenure, while with distinctive ownership that saw the restrictions imposed, designated rights seem to be biased against particular groups¹², in this instance the pastoralists who some are not necessarily from Laikipia, but cross borders for land resources. According to Roselyn's research's finding, Laikipia was taken to be the main area where pastoralists from other counties came to graze, and this was a key factor that led to conflicts in Laikipia, particularly coupled with the inability of the elders to manage this immigration¹³. As per traditional communal rights, which most of this groups still use, use rights in some situations traditionally override ownership rights¹⁴.

Historical injustices is another driving force in the land conflict. The local population, especially the pastoral Maasai community lay claim on the land to be ancestral land that was taken from them, and not regained post-independence. The Maasai community leaders have demanded that of 1.5 million acres of what they consider to be their ancestral lands be returned to them¹⁵. During the extended drought of 2004-2005, Laikipia Maasai and Samburu herders moved onto commercial ranches to gain access to grazing. However, given that the date marked 100years since the first Maasai treaty, some asserted that the 99years leasehold period had expired and that the lands should revert to the Maasai¹⁶. The strong drive to get the land back, fuelled at times by political utterances have actually led to an uproar on land, with an aim to send away settlers, the whites especially and those who bought large tracks of land post-independence. In Laikipia there

¹¹ Butler K. & Gates S(2012) African range wars: Climate, conflict, and property rights, *Journal of Peace Research* 49(1) 23–34, Sage Publishers.

¹² Ibid

¹³ R Okech, "Wildlife-Community Conflicts in Conservation Areas in Kenya" (2011) 10 *African Journal on Conflict Resolution*

¹⁴ Ibid

¹⁵ Michelle D'Arcy & Marina Nistotskaya, Intensified local grievances, enduring national control: the politics of land in the 2017 Kenyan elections, [2019] *Journal of Eastern African Studies*

¹⁶ John Galaty, 'Reasserting the commons Pastoral Contestations of Private and State Lands in East Africa' (2016) Vol 10 No 2 *International Journal of the Commons*.

have been instances of politicians inadvertently pushing communities to invade foreign-owned ranches, demonstrating the potential for action against major foreign owners to act as a pressure valve for the tensions that have arisen¹⁷. In addition to the above, as articulated by Joyce Mwangi and others, droughts are natural, but conflicts in Laikipia West Sub-County are the product of the social and political changes that have occurred in the larger Laikipia landscape from the onset of the 20th century¹⁸.

4.2 EFFECTIVENESS OF THE EXISTING MECHANISMS FOR RESOLVING THE LAIKIPIA LAND CONFLICTS.

When conflicts arise, there are measures taken in order to bring about peace and calm. In order to know how effective, the measures taken are, the informants were probed on the mechanisms used, what causes delays in resolution and if at all they are effective.

The mechanisms used in Laikipia North to resolve conflict are prominently traditional and alternative dispute resolution mechanisms. There are instances where the cases are taken to court or there is the use of police officers to stop the conflicts once they start and get out of hand.

The court system was taken as an option mainly preferred and approached by the elites in the society. *“The courts are okay, but the processes take so long in some instances. At times the issue taken to court never comes to completion and becomes complex as time goes on. In addition, for one to access the court, one has to go to Nanyuki or Nyahururu making accessibility a problem.”* The researcher was informed. Another one added, *“There is a lot of corruption in some of these cases. The judgement might favour one depending on certain variables, and therefore not making it fair at all. Most of all, most and some of the local and pastoral community are not aware of the processes involved and might be reluctant to adhere to the judgement passed if not in their favour.”*

During the interviews, the issues of costs was yet another reason why the people involved shy away from using courts. It was rather expensive. In addition, being that some cases had been taken

¹⁷ Ibid

¹⁸ Mwangi JW, Kamau PN and Ouna TO, “Local Perceptions of Droughts and Conflicts in Laikipia West Sub-County, Kenya” (2020) 09 Local Perceptions of Droughts and Conflicts in Laikipia West Sub-County

to court and were still in court, or received questionable judgements, there was and there still is reluctance to seek litigation for land conflicts.

In addition to the same, in Bond's research, she stated as a response to her interviews, "*In Laikipia North there are multiple land conflicts being contested through the court system and one respondent representing a civil society group working with residents to resolve these conflicts stated that a contributing factor to the conflict is the involvement of leaders who intentionally provide misleading or incorrect information to their communities in order to promote conflict and maintain their own interests in the region.*"¹⁹

The method used to resolve the conflicts mainly appeared to be the use of traditional and alternative conflict resolution. The traditional method involves having council of elders and community leaders, in most cases the county commissioners or chiefs and sub chiefs are present. They then hold a Baraza and the accused and accusers are brought in and there is a dialogue around what brought about the conflict and judgement is passed based on it. In several instances, the given community usually has predetermined fines in which the offenders have to pay. From an interview, the respondent said, "*When we have conflicts related to trespass and pasture wars, we have barazas whereby the aggrieved and the offenders are all brought and there is a discussion around what happened. The council of elders or community elders are present, nyumba kumi leaders or representatives and an administrative officer like the chief. A discussion is held around what happened and judgement is passed. Most people respect traditional informal set up and what is passed is what is adhered to. There are even private white ranchers who have gotten integrated in the society who abide by this.*" Just like the traditional barazas, the Laikipia North inhabitants also use the negotiation and arbitration methods when there is conflict over resources available in the area. They may involve the administrative offices, and leaders in the community to come to a consensus. The Community Based Organizations that have initiatives working in the areas have also in some instances come in to help resolve these conflicts. The use of traditional and alternative dispute resolution mechanisms has however been met by several limitations and made them not quite effective. From the informants, there are issues that cannot be resolved permanently by TDRMs according to them. Like the issue of the acclaimed ancestral historical land problem cannot be dealt with using the TDRMs and ADR. There is a lot that has to be looked into that is

¹⁹ J Bond, 'Conflict and communication: the case of Laikipia County, Kenya' (2014) 34 Journal of Rural Studies

beyond what negotiation can do. In addition, just as there are those who do not believe in court, there are the settlers and elite in society who do not believe in TDRM processes. The case of having conflict from bordering counties not within the organized set up also has promoted ineffectiveness.

Quoting an informant, *“As long as the complaint on land ownership is still present, anything done will be for that time. It will reoccur.”* This was said with the belief that no matter what is done, with the complaints on land ownership and the different rights embedded, any method used cannot bring about a lasting solution.

From the FGDs held, the response was quite unanimous on the methods used to resolve conflicts in the areas in relation to land issues. There was the use of chiefs and council of elders to come to a conclusion and agree on the way forward. *“We mainly depend on council of elders when there is conflict over land boundary or trespass. Since we have committees and nyumba kumi leaders, most of these conflicts are handled in an organized manner. One is fined when he or they are on the wrong. The traditional and community elders are respected, and therefore people follow their lead.”*

The traditional and alternative dispute resolution was mainly focused on. The administrative office representatives mentioned to be involved in these barazas were mainly the chiefs and assistant chiefs. Elders were used since they were seen as part of the community, and their say was given respect. Apart from the use of the alternative dispute resolution system, there were cases in which the police were involved and in some instances people taken to court and charged for invasion.

On effectiveness, it was noted that for issues involving already set boundaries, the methods used were quite effective despite of reoccurrence. Quoting, *“The negotiations and mediations in times of conflict pertaining to land are quite effective to an extent. The registered group ranches have clear boundaries and so do the private ranches. The issues of trespass can be dealt with since we are organized and therefore negotiate access in extreme cases. So when there is invasion, it is something that has to be looked into, and can be solved by community heads, even with their neighbours since they are part of the community.”* On the other hand, without clarity of demarcations and claims to land through historical injustices, the methods used to resolve the conflicts may not stand until the ownership issue is resolved.

For conflict resolution, there are the informal ways which include the use of traditional systems and alternative dispute resolution mechanisms, while formal includes going to the court.

Mutunga declares in her research that, a good number of the respondents expressed a strong opinion that alternative dispute resolution (ADR) mechanisms and other informal resolution redress methods that have been in use in Laikipia County to address pastoral conflicts have yielded promising results²⁰. She noted that the traditional institutions and systems of solving conflicts were functioning with relative effectiveness and impunity. Historically it was the elders that would negotiate peace agreements and grazing rights between communities. The elders however complained that religion, education, Peace Committees, the government, unscrupulous businessmen and politicians played a role in the collapse of the traditional systems of justice²¹.

Before colonialism, the African communities, Kenya inclusive had their way of resolving conflicts. When there was conflict, there were negotiations on the matters arising. In some cases, elders were brought in as third parties to assist in conflict resolution²². Traditional conflict resolution mechanisms in Kenya, have been very efficient in especially among the pastoralists over natural resource-based conflicts²³. Presently, there are many institutions involved in conflict management and security in Laikipia²⁴. The traditional governance institutions are the council of elders who negotiate with outside groups as well as mediating and providing sanctions within their communities²⁵.

Despite the presence of courts for conflict resolution, most do not believe in judicial proceedings from the above, and as from the literature, the way some of the cases are handled also lack fairness, transparency and accountability²⁶making people to shy away from the courts.

²⁰ Vanessa Mutunga, 'Natural Resource Management As A Conflict Management Strategy in Kenya: A Case of Laikipia County' (UoN 2018)

²¹ Ibid

²² Eugene Wanende 'Assessment Of The Role Of Traditional Justice System In Resolution Of Environmental Conflicts In Kenya' (UoN 2013)

²³ Ibid

²⁴ J Bond, 'A Holistic Approach to Natural Resource Conflict: The Case of Laikipia County, Kenya' (2014) 34 Journal of Rural Studies

²⁵ Ibid

²⁶ Ibid

The time taken in resolving some of these cases taken to the courts take a lot of time therefore making it costly and time consuming. In Laikipia there is only one court that deals with land cases, and the Land and Environment court that was to be built in Nanyuki is yet to materialize²⁷.

In addition to the TDRMs and use of courts, there has been the use of force by the state to stop the conflicts. This has also been coupled by the government's standard response to the problem of the proliferation of small arms and light weapons through the launch of coercive disarmament operations²⁸. Police were also seen to be ineffective, either due to a lack of resources or corruption, and even sometimes perceived to be part of the insecurity and law-breaking problem²⁹ therefore not being better placed to resolve the given conflicts.

DISCUSSION.

Just as the COK 2010 encourages the settlement of land disputes by communities through locally recognized ways consistent with the constitution, the use of ADRs and TDRMs have been put to use. As seen from the data collected, the most prominent way of resolution is through alternative means especially the traditional institution involving council of elders, and court cases. Most information was aligned towards seeking solutions from traditional means of conflict resolution because of costs involved and time frame. Traditional mechanisms used for management of conflict is taken up because of its affordability, confidentiality and the outcome from it is in most instances more acceptable³⁰. In this scenario the point respondents claiming traditional ways are being sought out especially due to respect to elders. The issue of traditional informal system having greatly weakened, with the informal mechanisms deteriorating especially because of political interferences and final decisions being reached with biases in favour of those with power³¹ did not come out during the assessment but has been noted on literature reviewed. The traditional and community dispute resolution approach has been seen to be the main source of reaction to conflict

²⁷ <https://www.kenyanews.go.ke/judiciary-to-put-up-land-court-in-laikipia/&hl=en-KE>

²⁸ <https://land.igad.int/index.php/documents-1/countries/kenya/conflict-3/533-climate-change-and-conflict-lessons-from-community-conservancies-in-northern-kenya/file> (2009)

²⁹ Ibid

³⁰ Charles Chukwurah Mezie-Okoye (2018) Traditional Mechanisms for Resolving Aguleri–Umuleri Land Conflicts, *Peace Review*, 30:4, 547-553, DOI:10.1080/10402659.2018.1553552

³¹ Bishnu Raj Upreti, *Resource Conflicts and Conflict Resolution in Nepal: Mountain Research and Development*, Vol. 24, No. 1 (Feb., 2004), pp. 60-66. International Mountain Society

especially at the grassroots level, indicating that there is still strength in use of TDRM. From this, the main reason for failure of alternative means solving the conflict entirely, is being that there are other underlying issues on property ownership issues which act as stumbling blocks in conflict resolution.

When looking at the use of force, the operations have been relatively ineffective, especially due to the resistance involved, and the assumptions the community has on the police force. This also reflects on the governance and administration issues. Being that Laikipia North is relatively marginalized, administration and governance structures are not well developed, and therefore, when conflict arises, there are cases of deployment, which would have been dealt with prior to the uproar of violence.

For effectively resolve the conflicts that arise, the available means, from the formal to the informal should look into the underlying causes of the conflicts, to be able to resolve them in an amicable way. The processes present are engrained in the society, but from the responses given and literature reviewed, there are governance and administrative structures that should be set up to back up the mechanisms employed.

4.3 IMPLICATIONS OF THE EXISTING LEGISLATIVE FRAMEWORK AND NECESSARY REFORMS.

The Informants and discussants were asked about laws related to land ownership, whether the rights are protected and regulations for conflict resolution. It was observed that while the informants could state whether the rights in land are protected or not, stating and expounding on legal frameworks used in land resource management, distribution and access was a problem. The researcher also got information on the implications of the legislative frameworks on land conflict agenda.

Several informants mentioned The Constitution of Kenya stating that it provides for ownership of land be it privately or even communally. There was also the issue of lease on land for 99years meaning the law of Kenya was present to allow those whose land had been taken like the Maasai's 1902 and 1904 treaties, to get the parcels of land back. On the Constitutional perspective, a Key Informant stated, "*The Constitution allows people to own land in the country. The land belongs to the people of Kenya. Inclusion of the communally lands therefore gives room for traditional and*

formal organization in land ownership which is a positive thing. However, the constitution does not provide nor give directive on how to get back lands lost due to colonialism. This in turn in itself propagates conflict.” Another one added, *“The fact that leaseholds are 99 years is a positive thing since leases acquired during colonial times have then expired. Meaning the law is good. On the contrary, seeing as the stipulated procedures are yet to be set, this has become an item preyed on by local politicians bringing about conflict.”*

The Land Act was also mentioned as being very important, with the Community Land Act. Further probe on the land laws issue proved futile as they were aware of the availability of the laws but knew less on what they entailed. A respondent however noted, *“The Community Land Act is present and is important even in conflict issues since it provides for formation of committees that are tasked with handling conflicts related to communal land.”*

For resolving the land conflicts, the informants noted The Constitution as being important. It clearly provides people with a chance to seek justice when they feel like their rights are infringed. It also encourages ADRs which have been put to practice in numerous occasions. The informants were also aware of the rights attached to land, but whether the rights are protected, there was variations. It was noted that with different lines of thought, the conflicting parties thought they had a right to access the resources on land or restrict access. Whereas the land owners tried to limit access which led to conflict on invasion, the invaders claimed to have open access rights and therefore infringed the other's tenure rights.

On legal land issues, the discussants identified rights to land ownership and use, and emphasized on how negotiations were made in order to have access to other parcels of land. They further concluded that the rights were not protected as such, unless it was through owners protecting their own rights. Based on discussions held, some of them seem to have heard of The Community Land Act, but in depth discussion, there seemed to be a serious knowledge gap. The roll out in of The Community Land Act seems to have taken root to some extent as some talk of having registered lands initially group ranches, while some have no idea on the difference that has happened as long as they are in communally owned lands.

The FGDs on use of courts, concluded that the courts were not a source of refuge to them. They said the timeframe taken in some instances prove to be long and cumbersome, with proceedings they did not understand, and also believed there was corruption.

On the effectivity of legal tools used to manage land conflicts, discussions brought out that there is a lot of corruption in these processes and from the researcher's observation, the legal instruments are not well understood. They did not recommend a change in the land laws but rather stated that there should be exposure on the same in order to know the best way to manoeuvre when it comes to land issues, especially ownership that is quite contested.

The most serious problems with the implementation of the Community Land Act of 2016 are a lack of community understanding of the procedure and the lack of support from the county and national governments to assist communities in this process³². The majority of indigenous peoples' land is designated as community land, which means it should be recognized, safeguarded, properly registered under the new Community Land Act. Despite the fact that the Act went into effect in 2016, the vast majority of indigenous groups and local governments are still unaware of the new legislation and how to apply for land registration³³. Caroline³⁴ also reported after interviewing several parties, offenders and offended. From her feedback, it was clear that the Trespass Law was not effective. The invaders preferred the loss from fine paid under the law that loss accrued from cattle loss. Quoting one of her respondents, she said that the invaders were 'just okay with pleading guilty to illegal grazing charges and then they just moved on without any care or concern.'

DISCUSSION.

On knowledge of rights attached to land ownership in Laikipia North, the higher populace claimed to know, stating access of the land or use of the land at hand. The main rights attached to land ownership in the data was centred on access and use. Whether the rights to given land owned are protected, there was an indication that if at all they were protected, the conflicts arising would not be present and land trespasses and invasions would be at a minimum. The ones who subscribe to open access right on property though still pushed for pastoral access and use rights on properties even not owned by them.

On the other hand, the ones who believed that the rights of land ownership were protected stated that the fact that there were court cases and resolutions, meant that to some extent there is

³² <https://www.iwgia.org/en/kenya/3387-kenya-community-land-act.html>

³³ Ibid.

³⁴ <https://reliefweb.int/report/kenya/kenyan-herders-flout-trespassing-law-conflict-over-grazing-heats>

ownership rights protected and that is why the aggrieved can state when things don't go as expected. To a good extent, some actually know and operate based on land rights, especially in the earlier stated issue in which there are times in which the communal ranchers and private owners enter into agreements to allow then access and use of the private pasture lands during dry areas, and conflicts arise when imposing pastoral communities join in, or herders increase the number of heads allowed. Otherwise, there would be invasions without any agreements, the negotiated access rights. The ones aware of legal instruments stated them from The Constitution 2010, Community Land Act, Land Registration Act and Land Act. On the contrary, it is was quite clear that the laws are known by many just as they are but not necessarily in depth and how to apply them. This tallies with Oula's conclusion in his research when he stated how the awareness of the Act remained very low among the pastoral populations, who were supposed to be the main beneficiaries³⁵.

The National Land Commission has a mandate to look into historical injustices. During the research, the NLC Act was not brought up. However, the county government of Laikipia, since 2018 has been working in partnership with the NLC to streamline land issues in Laikipia³⁶. Through the period of time, they have identified different public lands acquired irregularly and has seen the mapping of community land and resources, and looked into ensuring there is efficiency in resolving the different land related issues. By March 2022, the county had achieved issuance of title deeds to community-owned lands for 40,000 acres³⁷ and digitization of land registry accompanied by revoking of over 700 title deeds belonging to public land. This shows that, the laws and institutions present, can be used to resolve the land ownership issue.

4.4 EFFECT OF CONFLICT ON RESOURCE USE AND SUSTAINABILITY.

Environmental conflicts at the present time has impacts on the access and use of, in addition, management of natural resources. Therefore, it was important to look into how the land conflict in Laikipia North has affected the available resources that are at their disposal.

³⁵ B.O Muok and others, "The Politics of Forest Governance in a Changing Climate: Political Reforms, Conflict and Socio-Environmental Changes in Laikipia, Kenya, Forest Policy and Economics" (2021) 132 Science Direct

³⁶ County Government of Laikipia ICT, "Laikipia, NLC in Strategy to Streamline Land Issues" (County Government of Laikipia July 23, 2021) <<https://www.laikipia.go.ke/1265/laikipia-nlc-in-strategy-streamline-land-issues/>> accessed October 2022

³⁷ County Government of Laikipia , "Resolving Land Issues in Laikipia" (County Government of Laikipia March 25, 2022) <<https://laikipia.go.ke/1422/resolving-land-issues-in-laikipia/>> accessed October 2022

Over time there has been change in the way resources have been put to use in the Laikipia North region. *“There have been fluctuations on the climatic conditions for a while now, and there are seasons when there are extended phases of dry seasons. Because of this, us who live in communally owned ranches, we have derived a way in which we use the available pasture, in order to have reserves for the time when there is no rain, and allow the other area for the grass to grow,”* the researcher was informed, and further told, *“It however gets hard and complicated maintaining this trend and ensuring that pastures available will be used in the right way when conflict erupts. For starters, the given reserves for use when the need arises are encroached, and grazed on indiscriminately without permission, causing the clearing of the vegetation. This, has an all-round effect as the areas where were to be rejuvenated are now either grazed on and not left to grow affecting the whole cycle.”*

Quoting another respondent, *“When the land conflict erupts, in most instances it is usually about access to pasture and water, especially during the dry seasons. When this happens, there is trespass and very large herds are driven into people’s lands. While during the time there is focus on not being hurt, and managing the conflict, the overgrazing effect is not put into consideration. While it is quite clear it disrupts the cycle of sustainable resource use, leaving the maintained lands bare after overgrazing in dry seasons, exposes the land to soil erosion which in turn can lead to degradation and more aridity. Whereas at the moment, it is not quite notable, that is the direction in which consistent conflicts will cause on the land resource. Just as it already is, the conflict will get worse with further depleting resources.”* This was further echoed by a respondent who said, *“However much there is the far cry of having access to large tracks of land in order to access pasture due to historical injustices, redistribution of this land have seen the pieces of land being subjected to indiscriminate use and grazing, making them worse from when they had other owners. Once the lands are not as productive as they were, they are left bare and desolate as the pastoralists move in search of other pastures. They focus on causing rifts and gaining access to other well maintained lands rather than ensuring their parcels are put to good use, and are productive for the next season. There is more focus on trespass, access, conflict and conquer while promoting negligence on land that would otherwise be put to productive use.”*

The FGDs echoed the same sentiments. Their discussions rounded up on the fact that it was quite clear that continuous land conflicts will leave the community in a desolate position, as there will

be no time for the resources to rejuvenate. *“The indiscriminate use of reserves has had a toll on us especially in the communal ranches, as there are months that the negotiated access with neighbouring ranches are no longer enough, yet desperation makes us over exploit their available resources, which can affect the recovery state. We focus more on safety, rather than on the environment during the time of conflict, and therefore leaving it to the mercies of exploiters. We focus on having our livestock alive because they are our source of livelihood, and when the need arises for more pasture and water, we will see where to get more of that next.”*

The researcher observed that the discussions around effect of conflict on environment were mainly focused towards what environmental degradation has done to propagate conflict. There was little opinion on what conflict does on the environment. Institutions dealing with environmental resources and conservation had little focus on the conflict issues and what repercussions they would have on the environment, except if the conflict was directly caused by a given resource for example sand harvesting. Whereas a respondent said that sand as an environmental resource conflict was brought about by harvesting in lands without permission, the impact of indiscriminate mining was not mentioned. On the other hand, sand harvesting affects the floodplains and dry riverbeds³⁸. These given areas are sources of essential ecosystem services inclusive of soil erosion control, water supply, dry season grazing pastures, wildlife habitat and cultural significance. In the long run, these services will be jeopardized. Erosion caused along the paths used has increased. This can be attributed to the areas being the passage for heavy lorries ferrying sand, and are evidenced by deep gullies frequently changing paths on the ranch, and the occurrence of conflicts are already some of the already felt repercussions from sand mining³⁹, which with a conflict prone environment are likely to be worsen and be ignored.

Conflict often produce significant environmental degradation and depletion⁴⁰. Being that Laikipia North has ASAL characteristics, it has high potential of degradation of available resources due to unsustainable use, through the overgrazing, overstocking and poor resource use and management.

³⁸ <https://pastoralismjournal.springeropen.com/articles/10.1186/s13570-016-0063-z>

³⁹ *ibid*

⁴⁰ Kariuki Muigua, 'Environmental Conflict Management in the Kenya Context - Enhancing the Use of Alternative Dispute Resolution Mechanisms' (Nairobi Club, 27th March 2009)

The semi-settled adaptation by pastoralist, escalates overgrazing and leads to denudation of vegetation and increased soil erosion⁴¹.

In line with what the discussants and informants said on focusing on the gravity of the matter at the given time, it is not easy to focus on protecting the environment when there are other urgent issues arising because of the conflict⁴². Due to this, environmental damage from increased resource use may cause severity⁴³.

DISCUSSION.

Natural resources that are managed sustainably, transparently, and on the basis of the rule of law can be the engine for sustainable development as well as a platform for peace and justice⁴⁴. From literature reviewed, conflict often produces significant environmental degradation. This is either noticed after the conflict, with overexploited pastures and dry bare lands. Although from the interviews and discussions, the direct relation of land degradation and conflict has not been brought out clearly. Most focus is on how the environmental changes have actually promoted conflict.

On the other contrary, there is clear indication of unsustainable resource use and access. This is in the instances where stocks have been grazed on reserved lands, and in most cases, beyond the capacity required, leading to overgrazing. The given trend has also led to effect on the next cycle, since what was to be put into use in another season now has to be exploited for survival basis. This does not give enough time for replenishment.

In addition, being that sand harvesting is supposed to be done in a specific sustainable manner, there is risk of unsustainable resource use and harvest especially due to institutional paralysis during conflict in war torn areas. There is a high likelihood of having overharvesting, and in unsustainable manner, which in turn leads to environmental degradation. The officers involved may also not be in a position to war torn areas further worsening the situation.

⁴¹ MENR Land degradation.

⁴² Ibid (Muigua)

⁴³ Resource Plan, *Land Degradation Assessment In Kenya*, (MENR,2016)

⁴⁴ K Muigua, "Securing Our Destiny through Effective Management of the Environment" (2020) 4 Journal of Conflicts Management and Sustainable Development

5. CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS.

5.1 SUMMARY OF FINDINGS.

The objective of the study was to get to the root causes of conflict in Laikipia North, in view of available resolution mechanism and legal frameworks, to ensure sustainable resource use. In line with this, the various questions, attuned to the research questions were directed to different key informants, FGDs and some findings were on secondary data sources.

From the study, with focus on land as an environmental resource, it was quite clear that it is a source of conflict. Kenya has had land issues, dating from colonial period, to post-colonial period, to date. With the historical land complexities not solved, the same has been a recurrent finding when the research was done. The ownership of land, dictates the rights allocated to land. With rights vested on land, the use of the resources on it are determined and limited based on the right to the given land. This has been seen as a great ordeal since land resource scarcity, has led to desire and prompt the need and use of more land. Land being a source of conflict therefore puts it at a risk of degradation as focus is on gaining access to resource rather than impact on the environment.

Drought and Climate Change have been taken to back up the reason for the conflict as the pastoralists seek pasture and water for their herds. Contrary to the opinion, drought had been experienced even in the earlier days, and the types of conflicts that were experienced were more on cattle rustling than on resource access issue. This shows that the land conflict in Laikipia County is an issue that now has several drivers like drought and climate change to fuel the mandate. The fact that drought and climate change is recurrent, the communities could and should have found ways to adapt to the changes, but seeing that their grazing areas get degraded while the properly maintained lands have pasture, it shows a case of mismanagement of the available resource.

From the data collected and literature reviewed, there is an indication that ownership of land and clear tenure rights can help in proper management of land resources as in most cases, the nomadic pastoralists were the ones who ran out of pasture. In addition, the invasions were not only on private lands, but in some cases they occurred on community lands. The lands that have clear ownership are organized in such a manner that use is organized, that can cater for needs even during dry seasons. Kanyuuru supports this in support to the pastoral communities through stating

that their ability to manage the environment has rested in the capacity of their organized customary institutions to make and uphold rules and sanction breach of those rules⁴⁵. The other cases, in which there is claim to access pasture without rights, shows that areas open to grazing indiscriminately are used up, and when coupled by any alterations, degradation occurs and they cannot be depended on anymore. Quoting an informant, “*The people want the land, but when they are given, they don’t maintain it as it was, and in no time it becomes degraded.*”

The different land and law reforms greatly changed the way land resources can and could be accessed, especially by pastoral communities. Prior to the change in tenure systems, during drought access to water was successfully traditionally negotiated. The modernist ways of working led to change of all this through the clear demarcation and designation of property rights. The study was however not blind to the fact that there are cases of negotiated access, which work in some cases, but in some the given limits are breached. Most of the trespass cases were also based on social relations.

Politics in Kenya have always been at the core of everything determined. Politicians have preyed on loopholes in the region over the years to get electoral positions time and time again, with the promise of having the native’s land back. Utterances from some of the interviewees, focused group discussions and secondary sources had a reflection of the same, politicians invoking the memory of nationalist era agitation⁴⁶.

During the research, it came out clearly that land conflict resolution is more of an alternative and traditional resolution oriented situation. On the other hand, in recent times, that has not been able to solve the matter fully. This can be attributed to the long-time eroding of traditional institutions and due to the complexity of the land issue itself. When the matter at hand interlocks in different administrative system, it becomes hard to solve the issue since they fall in alternate jurisdictions. Like in the case of historical injustices, claims are recurrent, with the need to access more land for pastoral use. This is an issue that has to be taken up, to amend the situation, or it will be used as an excuse in case of land resource conflict. The communities also seem to be aware of the

⁴⁵ Caroline Kanyuuru, ‘Dynamics Of Institutional Arrangements And Their Adaptation To Socio-Economic And Ecological Challenges In Pastoral Areas Of Northern Kenya’ (Doctorate, UON 2015)

⁴⁶ Michelle D’Arcy & Marina Nistotskaya, Intensified local grievances, enduring national control: the politics of land in the 2017 Kenyan elections, [2019] Journal of Eastern African Studies

legislations present but are unaware of what they entail. The laws however, if put to practice can help solve the conflict as there are provisions on the same.

However, when it came to the sustainable use of available resources during conflict, much focus was on land a source of conflict, and implication on the same during conflict was more or less not considered by many. During conflict, with little consideration put on environmental resources, puts them at a risk of degradation as there is focus is on gaining access to resource rather than impact on the environment.

5.2 CONCLUSION.

The land conflict in Laikipia North is a multi-dimensional conflict. It mainly starts as a means to gain access to land resources, in short resource use conflict. It is compounded by other factors such as tenure and different land use arrangements, claims to historical injustices and even climate change. There are many reasons propagating resource scarcity and making there be land claims in order to have access to more land and resources. The presence and adoption of the land tenure system hurts the pastoralist way of life, but so does the non-controlled pastoral way of life hurt the environment putting into consideration the changing climatic conditions and stock population.

Conflict in most instances produce significant environmental degradation and depletion. The Laikipia North area has been prone to conflict time and time again, with direct claims in mainly on ownership of land/historical injustices with desperation to pasture access, in addition to changes in the environment and climate change. What is not fully focused on is the effect the conflicts have on the environment, which are brought about by indiscriminate use of the accessed resources. When they get overexploited, the lands are left desolate, and come the next season, they are not in the best shape to support the inhabitants of the area. The uncontrolled use, as a trend, can have extreme effects on the resources in the long run. However much that has not been put into full consideration by the conflicting parties, this may play a big role in degraded lands that cannot fully support them, which is actually fuelling the conflict. The linkages between conflict and nature are not unidirectional but go both ways, with nature and natural resources playing a role in conflict⁴⁷.

Once there is proper and well stipulated ownership on land, the community laying claims will have to govern and manage the land as per the community land act, which stipulates the different

⁴⁷ IUCN (2021). Conflict and conservation. Nature in a Globalised World Report No.1. Gland, Switzerland: IUCN.

ways. Contrary to many believes, communal land ownership does and will not necessarily hurt the environment, and private ownership is not necessarily the way to utilize resources in the environment. When proper land adjudication has been done, the limitless land that was once seen, will have its limits, and therefore adaptive ways will have to be employed to ensure sustainable use of the given available resource. This will prevent conflict that has potential of causing environmental damage, while also making it possible to easily deal with land issues in a legal manner.

However, laws and regulations related to land administration and management have not been well put into use, they are the key to solving the land conflict issue. The ADR, TDRMs and courts are important tools in land conflict resolution and they have been put into practice according to the study taken but adherence to processes stipulated in the Acts and Regulations on land can be used to solve the ownership problem at hand and govern use and therefore ensure sustainable management of land. Peace and security are critical for sustainable environmental management⁴⁸. Peace and security are also dependent on environmental resources. Increased demands on and for environmental resources such as land in our case, can foster frustration and mobilisation if not properly managed. Environmental resources that are well-managed can have a positive effect. It is therefore important to ensure there is peace and conflicts get resolved in Laikipia North, in order to promote sustainable management and use of the resources available. As it is, one of the most significant advantages of settling environmental conflicts is that it indicates that the challenged use or access to natural resources is evaluated on a scale of sustainability⁴⁹.

5.3 RECOMMENDATION.

With the root cause of conflict being aligned towards land access and ownership, the claims by the communities in Laikipia that they are victims of historical land injustices should be investigated. Solving this issue will be a step towards ensuring that in the event there is dispute or conflict in relation to land in the area, it will not be used as an excuse. This will also prevent politicians from

⁴⁸ Patricia Kameri-Mbote, *Environment and Conflict Linkages in The Great Lakes Region*, International Environmental Law Research Centre Working Paper (2005-6)

⁴⁹ Kariuki Muigua, 'Environmental Conflict Management in the Kenya Context- Enhancing the Use of Alternative Dispute Resolution Mechanisms' (Nairobi Club, 27th March 2009)

preying on the locals to cause conflict with it as the reason why. With distinct tenure security, conflicts will be resolved and equitable exploitation of resources will be guaranteed as this will come with responsibility.

There should be recognition and strengthening the role of traditional institutions in governance and management of natural resources, and in managing conflicts and resolving disputes over natural resources. In this connection, county legislation should make traditional institutions an integral part of the institutional apparatus for natural resource management at the county level. Such recognition should also address enforcement of decisions of traditional institutions and prohibit forum shopping by stipulating that where traditional institutions have authority no other institution shall take up a matter except on reference from a traditional institution. The land and environment court should also be set up seeing as the region is resource conflict prone area. This will come in handy in dealing with court cases that cannot be solved through TDRM and ADR.

Being that the conflict sometimes came as a result of invasion from neighbouring counties, facilitation of cross-county land and resource use plans and agreements should be looked into. These can come in handy in managing mobility and avoiding conflicts over access to natural resources. Neighbouring counties should negotiate and agree on cross-county access to key resources, taking into account the imperatives of seasonal mobility.

Strengthening the capacity of local population on how to ensure sustainable natural resource management while also enlightening them on land tenure and the security. Introduction of best practices to address the environmental situation, such as climate vulnerability can go a long way to ensure the trespass issue is limited. Enlightenment can help prevent reoccurrence of conflict, while also ensuring that available land is used in sustainable manner.

There is need for additional extensive research on the effect of conflict on the environment, and the available ways to ensure and manage resource use and environmental conservation during and post conflict.

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APPENDIX.

KEY INFORMANT INTERVIEW GUIDE

UNIVERSITY OF NAIROBI.

AN ASSESSMENT OF LAND CONFLICTS IN LAIKIPIA COUNTY, KENYA.

KII DISCUSSION GUIDE.

This questionnaire seeks to assess the complexity within Laikipia conflicts and help provide possible lasting solutions into how to ensure that there is equitable access and use of resources by pastoral communities in Laikipia county without conflict and get ways in which there will be a lasting solution to these conflicts that come from the community and lie within the legal spectrum.

SECTION A: Please complete the following by ticking the appropriate box or writing a comment:

1. Name.....

2. Gender:
Male Female

SECTION B: Dynamics of land conflicts in Laikipia.

3. I am informed that there have been conflicts over land in Laikipia.
 - a) In your view, what have been the main causes of these conflicts?
 - b) From your point of view, how do these conflicts start?
 - c) Who are mostly involved in the Conflicts? Who are the most affected as a result of these conflicts?
 - d) In your opinion, are these conflicts likely to subside?
4. The Administration is blamed for meddling in land administration and management resulting in land conflicts in some parts of Laikipia County. To what extent is this statement true? (Probe for role in the flare up of the conflicts and/or in resolving the conflicts)
5. Does corruption play any role in the occurrence and spread of conflicts over land and natural resources in this area? (Probe for details on any identified role)

6. In your opinion, are there times you would say that land conflicts here have been fuelled by political utterances? Explain. [Probe further and ask some of the language used to refer to immigrants, land acquisition, media framing of the land conflict dimension etc.]

7. Have you or any of your colleagues witnessed any confrontation or disagreements over land in this place?

8. in which settlement, would you say there are more land conflicts and why?

9. Is there a particular ethnic group that own most of the land in this settlement? A) Yes B) No

Which ethnic group?

In your opinion, why is this so?

10. How does the nature of land ownership (Private versus Communal) contribute to the tensions and conflicts in the area?

SECTION C: Effectiveness of Existing Mechanisms for Conflict resolution.

11. What factors lead to delays in resolving land conflicts?

12. What mechanisms are used to resolve the conflicts when they occur?

13. In your opinion, do you think the mechanisms used are effective in ensuring there's a lasting solution to the land conflicts? Yes/No

Please explain based on your reaction above.

14. In your experience, what role has been played by the following in dealing with land cases?

a) County staff (b) Lands Office staff (c) Planning staff (d) Ward Reps (e) Chiefs

SECTION D: Implications of existing legislative frameworks on the conflicts.

15. Do you know the rights attached to land ownership?

16. In relation to land ownership rights, are the given rights protected in this region?

Yes/No

Expound.

17. Are you aware of present laws and regulations that can be used to resolve conflicts?

Yes/No.

If yes, which ones are they?

18. How effective are the legal tools used to manage land conflicts in Laikipia?

A. Very effective

B. Effective

C. Poorly effective

D. Not effective

SECTION E: Necessary legislative and institutional reforms.

19. Do you believe in the court system for land conflicts resolution?

Yes/No

If, No, in your opinion, what should be done to make it more effective?

.....
.....

20. A. In your opinion, is there need to amend the laws for effective resolution of land conflict?

YES

NO

b. If your answer in (a) above is YES, what amendments would you like to see made?

SECTION F: Recommendations.

21. What recommendations would you make that could help bring about a lasting, peaceful co-existence?

THE END

FGD GUIDE

UNIVERSITY OF NAIROBI.

**AN ASSESSMENT OF LAND CONFLICTS IN LAIKIPIA COUNTY, KENYA.
FOCUSED GROUP DISCUSSION GUIDE.**

This focused group discussion seeks to assess the complexity within Laikipia conflicts and help provide possible lasting solutions into how to ensure that there is equitable access to resources by pastoral communities in Laikipia county without conflict and get ways in which there will be a lasting solution to these conflicts that comes from the community and lies within the legal spectrum. Date:

Gender:

Age group:

Names of Respondents:

1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

SECTION A: Dynamics of land conflicts in Laikipia.

1. How many of you own land within Laikipia?
What is the nature of ownership? (Individual, communal, with or without title deed)
2. Has there been conflict in your area over land issues?
3. If yes, what was the cause of the given conflict?
4. How often do these conflicts occur?
5. In your opinion, why has the land conflict issue become more sporadic in Laikipia County?

SECTION B: Effectiveness of Existing Mechanisms for Conflict resolution.

6. How was the last conflict resolved if at all? (Probe for actors, processes, time, cost and perceptions on its utility)
7. What other mechanisms have been used in the past to resolve the conflicts when they occur?

8. In your opinion, how effective are the existing mechanisms for ensuring there's a lasting solution to the land conflicts

SECTION C: Implications of existing legislative frameworks on the conflicts.

9. Do you know the rights attached to land ownership in Laikipia?

10. In relation to land ownership rights, do you think the given rights are protected? (Probe for reasons?)

11. Comment on the efforts to implement the law relating to community land. Has it been rolled out in Laikipia?

12. Are you aware of present laws and regulations that can be used to resolve conflicts?
If you do, which ones do you know?

13. Would you say the legal tools used to manage land conflicts in Laikipia are effective?

SECTION D: Necessary legislative and institutional reforms.

14. Do you believe in the court system for land conflicts resolution?

Yes/No

If, No, in your opinion, what should be done to make it more effective?

15. A. In your opinion, is there need to amend the laws for land sale, acquisition and distribution in relation to Laikipia land conflict?

YES /NO

b. If your answer in (a) above is YES, which law would you like to be included or removed?

SECTION F: Recommendations.

16. What would you recommend that could help bring about a lasting, peaceful co-existence?