



**UNIVERSITY OF NAIROBI  
COLLEGE OF HUMANITIES & SOCIAL SCIENCES  
INSTITUTE OF DIPLOMACY & INTERNATIONAL STUDIES**

**ACCESS TO LAND JUSTICE IN EASTERN AFRICA:  
A CASE STUDY OF COMMUNAL LANDS RIGHTS IN NAIVASHA,  
KENYA**

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DEGREE OF MASTER OF ARTS IN INTERNATIONAL STUDIES**

**OCTOBER, 2016**

**DECLARATION**

I declare that this Masters project paper is my original work and that it hasn't been presented for the award of a degree in the University of Nairobi or any other tertiary for examination.

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## **DEDICATION**

To my wife, Fathiya Ali Hassan; and mother, Muslima Dugow Gedi

## **ACKNOWLEDGEMENTS**

I want to thank the Almighty Allah for the strength he gave me in pursuing this Masters programme. His love was so immense.

I really appreciate the assistance of my classmates for their mutual support in this endeavor.

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## LIST OF ABBREVIATIONS

DFID	UK Department for International Development
FAO	Food & Agriculture Organization
FDI	Foreign Direct Investment
GoK	Government of Kenya
IFAD	International Fund for Agricultural Development
IIED	International Institute for Environment & Development
IRIN	Integrated Regional Information Networks
Ken Gen	Kenya Electricity Generation Company
KHRC	Kenyan Human Rights Commission
KLC	Kenya Land Commission
NEMA	National Environment Management Authority
NGO	Non- Governmental Organizations
NLC	National Land Commission
SARD	Sustainable Agriculture & Rural Development Initiative
SSA	Sub-Saharan Africa
TTL	Tribal Trust Lands
UoN	University of Nairobi
USAID	United States Agency for International Development
WB	World Bank

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## ABSTRACT

*Debates on massive communal land acquisition have raged on, between its proponents and detractors. The proponents consider it as an opportunity to optimize land usage; create jobs; usher in needed foreign investment to improve the agricultural sector and the transfer technology in developing countries. The detractors conceptualize it as a threat to food security, smallholder farming, the environment and socio-economic stability in developing countries. Albeit this debate is still going on, available literature suggests that there are more risks than merits associated with this phenomenon. Some of them are the marginalization of rural farmers especially women, conflicts over land, displacement of local communities in affected regions, food insecurity, adverse environmental effects, and intensification as against poverty alleviation. This study is a critical investigation of communal land acquisitions and rights violations in Eastern Africa and Naivasha, Kenya; as well as an evaluation of the measures that are used by affected Naivasha community members in securing justice for communal land rights violations. The 2007/2008 food price crisis, as well as the subsequent oil crisis and conflicts in the Middle East led to ceaseless foreign interests in and massive acquisitions of communal land, in Eastern Africa for Agriculture. Naivasha, which is Kenya's center of floricultural activities, that play a major role in boosting Kenya's foreign exchange earnings, because of its lake and fertile land, has a large space in this debate. The town has had several experiences of massive land acquisitions for floriculture and governmental projects such as power plants and parks. In most of these acquisitions, communal land rights and interests were violated, and securing justice against such violations have not been easy for the concerned communities. Furthermore, this study argues that litigation and arbitration measures, as well as advocacy by concerned NGOs are some of the measures being used to secure justice for communal land rights and interests' violations, in Naivasha. That these measures have not been mostly effective because of court delays, poor compensations; illiteracy and limited financial capacity of the affected locals to hire lawyers. This study is based on First Possession Theory of Property. The study adopts a qualitative research methodology using primary and secondary data. Interview guides were used by the researcher to collect data from 60 respondents, divided into 4 target population groups. Primary & secondary data are analyzed using content analysis.*

## CHAPTER ONE: INTRODUCTION AND BACKGROUND TO THE STUDY

### 1.0 Introduction

Land is considered as one of the most valuable natural resources in Africa. This is because of several reasons. Firstly, access to land means access of mineral resources in some cases, which the continent has an abundant of. Secondly, most African lands are very fertile for a wide range of agricultural produces. Thirdly, most African countries are agrarian and primary-export-dependent.<sup>1</sup>

The term communal land refers to a rural territory that a local community possesses.<sup>2</sup> These lands are often referred to as ancestral lands.<sup>3</sup> Small scale commercial farming, subsistence farming and livestock keeping are the primary economic activities in communal lands. Sometimes, the government acquires communal lands or leases/sells them to investors for land optimization purposes. Such purposes often include: pursuance of large infrastructural projects; to encourage Foreign Direct Investment (FDI), ensure food security; to boost agribusiness and exports, job creation, economic growth; to reduce of poverty; and for source of government's revenue.<sup>4</sup>

While there are several reasons to justify governmental massive communal land acquisition, the processes of such acquisition have often led to the violation of communal land rights and interests. These manifest through transparency deficit in the implementation of agreements between the government and local communities, lack of far-reaching consultations with the locals, abrupt negotiations, displacement of thousands of indigenous peoples, abuse of

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<sup>1</sup> Adam Smith, "An Inquiry into the Nature and Causes of the Wealth of Nations", Strahan & Cadell, London, 1776

<sup>2</sup> V Aarts, "Unravelling the Land Grab: How to Protect the Livelihoods of the Poor?" Radbound University: Oxfam Novib, 2009.

<sup>3</sup> Ibid

<sup>4</sup> Ibid

human rights, abandonment of the locals' traditional ways of life, and environmental consequences of large-scale agriculture.<sup>5</sup>

In most circumstances, the government or foreign investors acquire communal land that is high in agricultural value. The process of by which the government or investors negotiate access to such land with the local communities remains unsatisfactory. Furthermore, negotiations are further conducted with elites in the communities resulting into an exploitation of the benefits. These problems associated with such land acquisition have led local communities into exploring ways to seek justice for their communal land rights and interests.

Chapter One contains the Introduction, Study Background; the Problem Statement & Study Objectives; Research Questions & Justification of Research; Literature Review & Theoretical Framework; as well as Study Methodology, Scope, Limitations, and Chapter Outline.

### **1.1 Background to the Study**

Kenya's economy is heavily dependent on agriculture, especially on tea, coffee and flowers.<sup>6</sup> This makes the government to embark on large scale investments in lands. Naivasha, a town in the Rift Valley, has a good road link to the airport and ideal agro-climatic conditions, favouring all year round production of flowers (the third foreign exchange earner in Kenya).<sup>7</sup> Lake Naivasha represents an available source of fresh water for irrigation farming. For these reasons, there have been massive communal land acquisitions by the government and flower investors in Naivasha, especially around the Lake. Naivasha's flower industry began in the 80s, growing rapidly in the 90s, with current dozens of large farms. The town accounts for 70 per cent of Kenya's flower exports and in 2014, with its flower farms earning a total of Ksh 28 billion for

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<sup>5</sup> L. Cotula & Vermeulen, "Deal or no Deal: The Outlook for Agricultural Land Investment in Africa," International Affairs, 1233-1247, 2009.

<sup>6</sup> US Library of Congress, "Kenya Country Profile", June 2007

<sup>7</sup> Kenya News, "Flower farming in Naivasha, Kenya", August 26, 2015.

Kenya, per year-about 10.7% of the country's overall foreign earnings.<sup>8</sup> These flower farms further employs about 30,000 people.<sup>9</sup>

While all land is owned by the Government of Kenya (GoK), Naivasha is considered Maasai's ancestral land.<sup>10</sup> This has made land acquisition by the government to come at a great cost. This is because, in such land acquisition by the government or investors, communal land rights have in some cases been violated. Interests of local communities have mostly been denied. This is deepened by the lack of access to justice for the local communities to secure their rights and interests. Naivasha law courts has been overwhelmed by land cases some of which are about communal land rights brought by the communities against the government or investors. Some of the ongoing cases at the court are Kedong Ranch Limited VS Maasai Community Leaders, and Kiambu Nyakinywa Land Buying Company VS Maasai Community Leaders.

However, the communities are finding it difficult to pay legal services and securing their interests. The 2015 announcement of an investment worth Sh 2.8 billion by Chinese firms in Naivasha flower farming will probably exacerbate the worries of the local communities.<sup>11</sup> Furthermore, 2 years ago, the government acquired 3,000 acres of land in the town for power generation purposes. The community members protested, claiming that the sale of the land was kept in secret; and that they were not consulted, were inadequately compensated and forcefully

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<sup>8</sup> Victor Odhiambo, "Water Use and Suggested Carbon Management around Lake Naivasha," Kenyatta University, Kenya.

<sup>9</sup> SARD Initiative, "Field trip to the Lake Naivasha area: conflicting claims to access to and use of natural resources," 22 October 2006

<sup>10</sup> Ibid

<sup>11</sup> Moraa Obiria, "Chinese firms to invest Sh2.8bn in Naivasha flower farming," Business Daily Africa, March 1 2015.

Accessed on 8 March 2016, from <http://www.businessdailyafrica.com/Corporate-News/Chinese-firms-Naivasha-flower-farming/-/539550/2639660/-/14vf879z/-/index.html>

evicted.<sup>12</sup> The town has experienced massive land grabbing activities, even by powerful politicians.

## 1.2 Problem Statement

Several studies have been carried out on communal land rights and interests in Eastern Africa by institutions such as World Bank<sup>13</sup> and Integrated Regional Information Networks (IRIN)<sup>14</sup>; and scholars such as Maasho<sup>15</sup>, Rice<sup>16</sup>, Cotula et al<sup>17</sup>, Arts<sup>18</sup>, Pearce<sup>19</sup>, Jason<sup>20</sup>, and Deininger and Derek<sup>21</sup>. They looked at the dynamics of communal land rights and interests, violations of these rights and interests, socio-economic implications of displacements of local communities when their lands have been massively acquired, as well as the challenges the local communities face in securing justice when their land rights have been violated.

In Kenya, there are studies on communal land rights with researchers such as Otieno providing a deep insight into the constitutionalisation of communal land rights in several policy documents.<sup>22</sup> There have also been studies on land grabbing for investment e.g. by Qatari in the Kenyan Coast to grow sugar, and for developments such as mining in Kilifi, or establishment of dams. However, though some of these studies point to litigation, most of them have not

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<sup>12</sup> Daily Nation, "Protestors Burn Four Houses in Naivasha in Society Land Row," 10 February, 2016. Accessed on 8 March 2016, from <http://allafrica.com/stories/201602100186.html>

<sup>13</sup> World Bank, "Zimbabwe: Land Subsector Study", Washington D.C. 1985

<sup>14</sup> IRIN, "Ethiopia: The Great Land Grab Debate," 2011. Accessed from <http://www.irinews.org/report/9229/ethiopia-great-land-grab-debate>

<sup>15</sup> Maasho, A., "Ethiopia Forcing Out Thousands in Land Grab", The Independent, 18 February 2014.

<sup>16</sup> X. Rice, "Ethiopia - Country of the Silver Sickle- Offers Land Dirt Cheap to Farming Giants," Guardian, 15 February, 2010.

<sup>17</sup> Lorenzo Cotula; Leonard Rebeca; Sonja Vermeulen; James Keeley, "Land grab or development opportunity? Agricultural investment and international land deals in Africa", London/Rome: FAO, IIED, IFAD, 2009.

<sup>18</sup> V. Aarts, "Unravelling the Land Grab: How to Protect the Livelihoods of the Poor?" Master Product for AMID 2009 CIDIN, Radboud University: Oxfam Novib, 2009.

<sup>19</sup> F. Pearce, "The land grabbers: The new fight over who owns the Earth," Boston: Beacon Press, 2012.

<sup>20</sup> Jason McLure, "Ethiopian Farms Lure Investor Funds as Workers Live in Poverty", Bloomberg, 30 Dec 2009

<sup>21</sup> Klaus Deininger & Derek Byerlee, "Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?" World Bank, 2010.

<sup>22</sup> Smith Otieno, "Community Land Rights In Kenya," 5/31/2013.

adequately interrogated other measures that are used in securing justice for communal land rights and interests' violations.

There are also several studies on Naivasha, Kenya in this narrative by institutions such as Sustainable Agriculture and Rural Development Initiative (SARD). Most of them are on the environmental implications of the use of communal riparian land around Lake Naivasha and farming around the lake by multinational floricultural firms. However, none of them adequately and thoroughly investigated communal land rights violations in Naivasha, Kenya or evaluates the measures used in securing justice for communal land rights and interests' violations in the town. Neither did they analyse these measures with a focus on the communities' access to them. None of them also examined communal land cases, brought to the Naivasha court laws, by local communities against the government or investors. This study contributes to the field of academia by championing debates on these gaps, in Naivasha.

### **1.3 Research Questions**

This study attempts to fill the established knowledge gaps by trying to answer the questions:

- 1). What are the trends of communal land acquisitions and rights violations in Eastern Africa?
- 2). What are the trends of communal land rights violations in Naivasha and what are the measures used to secure justice for such violations?
- 3). What is the effectiveness of these measures, in Naivasha and what challenges do they face?

### **1.4.0 The Objectives**

#### **1.4.1 Broad Objective**

To investigate and evaluate the measures that are used in securing justice for communal land rights and interests' violations in Naivasha, Kenya.

### **1.4.2 Specific Objectives**

- 1). To interrogate the trends of communal land acquisitions and rights violations in Eastern Africa.
- 2). To investigate the trends of communal land rights violations in Naivasha and the measures used to secure justice for such violations.
- 3). To evaluate the effectiveness of these measures in Naivasha and find out the challenges facing them.

### **1.5 Justification of Research**

To the academic field, this study intends to add knowledge or contribute to the debates of justice with respect to communal land rights violations in East Africa, using the case study of communal land in Naivasha, Kenya. This is done through filling the identified gaps in previous studies (see the Problem Statement of this study). It also intends to deepen understanding about the motivations of massive communal land acquisitions, dynamics of such and the intricacies of demanding justice on land rights and interests' violations, by the local communities.

Policy wise, the study intends to make recommendations on countering the challenges facing the measures to secure justice for communal land rights and interests violations. These recommendations would be made to the relevant government institutions in East African countries especially the Kenya's National Land Commission (NLC) and Ministry of Land, Housing & Urban Development (MLHUD).

It also intends to help the general populace to understand more about the narratives of communal land rights violations in Kenya, measures to secure justice for these violations and challenges that these measures face.

## **1.6.0 Literature Review**

In this section, several studies done by other researchers on communal land rights & interests are reviewed. Studies on the violations of these rights and interests, the socio-economic implications of displacements and challenges faced in securing justice by local communities when their land rights have been violated will also be reviewed. The aim of this section is to identify debates, from a considerable number of studies that have been carried out in this area.

### **1.6.1 Communal land rights and interests' violations**

There have been several studies on communal land rights. Most of these studies defined what communal land is, in the contexts of different countries, the rights of ownership dynamics by several communities, and the elements of massive land acquisitions.

In his study, Aarts argues that in much of Eastern Africa, land rights and protection of interests in communal land is weak as rural areas are not demarcated or lack land titles. Most people in rural areas benefit from land owned by the community and the state but are not enlightened or aware of the importance or requirements of legal protection of communal land.<sup>23</sup> He further argues that such situations present their vulnerability to massive land acquisitions by the government or investors since the land is held in trust by the government. Lack of legal protection of customary land becomes more complicated when the local people need to be compensated for grabbed or expropriated land.<sup>24</sup>

In a similar study conducted by Pearce, he argues that while massive land acquisitions are often done within the law, local communities are occasionally adequately debriefed of their entitlements, negotiating powers and rights during the consultation process between them and

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<sup>23</sup> Aarts, V., "Unravelling the Land Grab: How to Protect the Livelihoods of the Poor?" Product for AMID 2009 CIDIN, Radbound University: Oxfam Novib, 2009.

<sup>24</sup> Ibid



investors or governments.<sup>25</sup> In addition, a finding from case studies such as in Ethiopia is that rural communities are occasionally aware of their rights and even in reversed cases, they lack the capability to interact/negotiate with investors or to find ways to maximize their land usage.<sup>26 27 28</sup>

Cotula et al in their research also state that investors in Eastern Africa, oftentimes, obtain a governmental go ahead for their projects before even starting consultations and lack any contractual binding to implement promises made to the members of the local communities.<sup>29</sup> Similarly, Nhantumbo in his study observes that there is an immense knowledge lacuna between investors and rural populations with respect to the legal enforceability of promises made by investors, land acquisition process, as well as other issues.<sup>30</sup>

In a study by World Bank, the institution observes that there are weak communal land rights regimes in many Eastern African countries.<sup>31</sup> Often because of national policies, and complex processes for registration of communal land and the idea by communities that customary systems are adequate.<sup>32</sup> They further argue that “lower recognition of land rights increased a country’s attractiveness for land acquisition,” which has led foreign companies to seriously be in search of areas with contracted land recognition rights for investment.<sup>33</sup>

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<sup>25</sup> F. Pearce, "The land grabbers: The new fight over who owns the Earth," Boston: Beacon Press, 2012.

<sup>26</sup> IRIN, “Ethiopia: The Great Land Grab Debate,” 2011. Accessed from <http://www.irinews.org/report/9229/ethiopia-great-land-grab-debate>

<sup>27</sup> Cotula, Lorenzo; Sonja Vermeulen; Rebeca Leonard; James Keeley, "Land grab or development opportunity? Agricultural investment and international land deals in Africa", London/Rome: FAO, IIED, IFAD, 2009.

<sup>28</sup> Deininger, Klaus; Derek Byerlee, "Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?" The World Bank, 2010.

<sup>29</sup> Lorenzo Cotula; Leonard Rebeca; Sonja Vermeulen; James Keeley, "Land grab or development opportunity? Agricultural investment and international land deals in Africa", London/Rome: FAO, IIED, IFAD, 2009.

<sup>30</sup> Nhantumbo & Salomao, "Biofuels, land access and rural livelihoods in Mozambique", London: IIED, 2010

<sup>31</sup> Lorenzo Cotula; Leonard Rebeca; Sonja Vermeulen; James Keeley, "Land grab or development opportunity? Agricultural investment and international land deals in Africa", London/Rome: FAO, IIED, IFAD, 2009.

<sup>32</sup> Ibid

<sup>33</sup> Deininger Klaus and Byerlee Derek, "Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?" World Bank, 2010.

In another study done by World Bank in Zimbabwe, it was found out that the theme communal land refers to certain communal areas within the country and that they were formally called Tribal Trust Lands (TTL).<sup>34</sup> It was also found out that subsistence farming and livestock keeping are the major economic activity in communal lands. Some of these rural lands have large population densities, which lead to overgrazing by cattle & goats, and soil erosion. It was also found out that the farms in communal lands are conventionally unfenced with resident traditional African Chiefs.<sup>35</sup> Furthermore, since independence of the country, schools have been built & expanded, electrification has spread and roads tarred in communal lands.

In Ethiopia, in a study supervised by IRIN, it was found out that land is owned by the government and communal occupants are in possession of customary rights only. In addition, the government has always had the view that most communal lands are uncultivated or underused.<sup>36</sup> The organization further observe that for land optimization, the Ethiopian government has been leasing communal lands to foreign investors for the purposes of creation of employment opportunities, food security and poverty reduction, and an improvement of agricultural expertise.<sup>37</sup> This move has led to several communal land rights violations through forcefully evictions and limited communal choice of working on investors' large farms while receiving a poor pay. This has also led to deep environmental degradation.

According to Maasho's study, most villages in Ethiopia claim their land was illegally taken by the government and most of them were not informed of their land being given to foreign investors.<sup>38</sup> The Article 4 (5) of the Ethiopian Constitution clearly stated that: "Ethiopian

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<sup>34</sup> World Bank, "Zimbabwe: Land Subsector Study", World Bank: Washington D.C. 1985

<sup>35</sup> Ibid

<sup>36</sup> IRIN, "Ethiopia: The Great Land Grab Debate," 2011. Accessed from <http://www.irinews.org/report/9229/ethiopia-great-land-grab-debate>

<sup>37</sup> Ibid

<sup>38</sup> Maasho, A., "Ethiopia Forcing Out Thousands in Land Grab", The Independent, 18 February 2014.

pastoralists are entitled to land for grazing, cultivation and non-displacement.” However, these rights have been infringed. Rice explains the paradox that while massive communal land acquisitions in Ethiopia is to ensure food security, food produced on the farm is exported instead of feeding the locals, thereby leaving the local communities with a greater problem of food insecurity because they cannot access land or its resources.<sup>39</sup>

In Kenya, Otieno did a comprehensive study on communal land rights. He stated that Kenya’s Community Land Act in Section 2 recognises community land rights and obligations and has one of the objectives of promoting the participation by the community in the management of the resources attached to land.<sup>40</sup> The Act further mandates the National Land Commission to enact regulations that will secure minority communities’ land rights to individually or collectively access & use land and its resources. In a similar note, the Section 42 of the Community Land Bill upholds the rights of community land occupancy even before the Bill was passed.<sup>41</sup>

He further observes that communal forms of land ownership are in most cases guided by the customary law of the various communities holding such forms of land and these customary laws and practices vary from community to community. He furthermore delved into the historical development of community land rights in Kenya: “The system of land ownership in pre-colonial Kenya was largely communal and it was strictly guided by the customary law of the various communities. Land was owned and belonged to the whole community rather than individuals who only had access rights. The political authorities in the community exercised

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<sup>39</sup> X. Rice, "Ethiopia - Country of the Silver Sickle- Offers Land Dirt Cheap to Farming Giants," Guardian, February 15, 2010.

<sup>40</sup> Smith Otieno, "Community Land Rights In Kenya," 5/31/2013.

<sup>41</sup> Ibid

control rights over the land.”<sup>42</sup> The Constitution of Kenya 2010 provides in Article 63(1 and 2<sup>43</sup>) what shall consist of community land and the rights of minority ethnic communities to hold communal lands have also been guaranteed in the provision.

On consultation of local communities for intentions to acquire their lands for developmental projects, Deininger and Derek found out that Internally Displaced People (IDP) and pastoralists in Kenya were many times intentionally not included in negotiations, as investors or the government tried to overlook their land claims. This negligence in consultations further segregates previously overlooked communities and makes power inequities worse in local communities.<sup>44</sup>

Having reviewed literature under this sub-section, none of them has adequately and thoroughly investigated communal land rights and interests’ issues in Naivasha, Kenya. This study intends to cover this gap.

### **1.6.2 Socio-economic implications of communal land rights and interests’ violations**

Several studies have investigated the socio-economic implications of communal land rights and interests’ violations. Many of them have pointed implications such as massive displacement of local communities without sufficient compensations, in either land or money during massive investment in land. They argue that such displacements often result in loss of livelihoods, and sharp disconnection with cultural and ancestral linkages.

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<sup>42</sup> Ibid

<sup>43</sup> Community land consists of (1) land lawfully registered in the name of group representatives under the provisions of any law; (2) land lawfully given to a specific community by any process of law; (3) any other land declared to be communal land by an Act of Parliament; and (4) land that is (a) lawfully held, managed/used by specific communities as shrines, community forests, grazing areas (b) lands traditionally occupied by hunter-gatherer communities & ancestral lands or (c) lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62 (2).

<sup>44</sup> Deininger Klaus; Derek Byerlee, "Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?" World Bank, 2010.

In a research by the International Institute for Environment & Development (IIED), it was concluded that monetary compensations given to displaced community member in Ghana was inadequate to bring back livelihoods lost through dislocation.<sup>45</sup> In Gambella region of Ethiopia for instance, Cotula et al in their study, argue that massive land acquisitions for agriculture resulted in communal land rights violations, resettlement, and loss of livelihoods primarily in the case of pastoralists. Ruralists are most often compensated based on country-specific guidelines for loss of land, loss of future harvests on land and loss of accumulated improvements on the land.<sup>46</sup>

In similar light, albeit compensation frameworks shift significantly between countries and depend on the types of undertaken projects, a study by the IIED points out that compensation given to displaced local communities in Ethiopia was inadequate to bring back livelihoods lost through dislocation.<sup>47</sup> The organization further point out that displacements have also resulted in destruction of traditions, and labour exploitation and abuses when same locals are employed in larger agricultural investments owned by investors.

Additionally, in a study by Jason, he argued that when employed, villagers are often paid very little. In an investment by Karuturi Global in Ethiopia, workers were paid on average of below \$2 a day, through a wage of \$0.48 (8 birr) per day, and both of which are below the World Bank poverty limit of \$2 per day.<sup>48</sup> He further argued that there are wider concerns with the process of transposing locals to other places where land is less fertile. In such process, historical methods of farming, and existing social ties are often changed or lost.<sup>49</sup>

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<sup>45</sup> Lorenzo Cotula; Leonard Rebeca; Sonja Vermeulen; James Keeley, "Land grab or development opportunity? Agricultural investment and international land deals in Africa", London/Rome: FAO, IIED, IFAD, 2009.

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Jason McLure, "Ethiopian Farms Lure Investor Funds as Workers Live in Poverty", Bloomberg, 30 Dec 2009

<sup>49</sup> Ibid

In Naivasha, Kenya, SARD in their study observed that through governmental land acquisitions, there have been forceful evictions of local communities and an obstruction in the sources of their livelihoods. For instance, Maasai's traditional usage of the Naivasha Lake for their livestock has been restricted. They stated further, that there are also inadequate compensations for acquired communal lands, and labour exploitation.<sup>50</sup>

Several literatures have also examined the environmental consequences of such massive agricultural land investments and displacement of local communities. In Naivasha, Kenya, Odhiambo in his study noted that Lake Naivasha, around which has several floricultural multinational firms faces massive water abstraction, while intensive use of pesticides, which is flushed into the lake through run-off, puts the lake's biodiversity at risk.<sup>51</sup> Also is the destruction of its riparian areas.

Having reviewed relevant literature under this sub-section, it was found out that studies on the social economic implications of communal land rights and interests' violations in Naivasha are not extensive. This study intends to fill this gap.

### **1.6.3 Challenges in securing justice for communal land rights and interests violations**

There are few studies on the access to justice by the local communities when their land rights have been violated and interests not protected during massive land acquisition.

Cotula et al in their study found out that one of the biggest challenges of the local communities in seeking justice for their land rights violations remains illiteracy and the lack of financial capacity of hiring legal services that are rarely available in most regions of the sub-

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<sup>50</sup> SARD Initiative, "Field trip to the Lake Naivasha area: conflicting claims to access to and use of natural resources," 22 October 2006

<sup>51</sup> Victor Odhiambo, "Water Use and Suggested Carbon Management around Lake Naivasha," Kenyatta University, Kenya.

Saharan Africa.<sup>52</sup> Similarly, according to Deininger and Derek, investors often had gotten a go-ahead for their projects before commencing consultations, and lacked any contractual binding to implement promises made to villagers.<sup>53</sup> They further noted that most of these locals do not have the financial capacity of paying lawyers.<sup>54</sup> Also, despite the possibility of suing the investors, most foreign countries do not have jurisdiction over matters committed abroad.

Having reviewed literature under this subsection, many knowledge gaps were identified. Firstly, though the studies point to litigation as a measure used by communities to secure justice, most of them have not adequately interrogated other measures that are used in securing justice for communal land rights and interests' violations in East Africa. Secondly, on Naivasha, none of the studies evaluates the measures used in securing justice for communal land rights and interests' violations in the town, and bringing in the element of the communities' access to these measures. None of them also examined communal land cases, brought to the Naivasha court laws, by local communities against the government or investors. This study intends to fill these gaps.

### **1.7 Theoretical Framework**

This study uses the First Possession Theory of Property. This theory postulates that the ownership of a phenomenon is justified simply by someone seizing it before another person does.<sup>55</sup> This theory was developed by Graham Oppy. The theory differs from the labor theory of property where something may become property only by applying productive labor to it. First

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<sup>52</sup> Lorenzo Cotula; Leonard Rebeca; Sonja Vermeulen; James Keeley, "Land grab or development opportunity? Agricultural investment and international land deals in Africa", London/Rome: FAO, IIED, IFAD, 2009.

<sup>53</sup> Deininger Klaus; Byerlee Derek, "Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?" The World Bank, 2010.

<sup>54</sup> Ibid

<sup>55</sup> Graham Oppy, "Property," Routledge, 2005, p. 858.

Possession places more emphasis on possession and right over the property other than productivity.

This theory explains communal land rights – the very fact that communities have occupied several territories before the government and other interest groups. It further explains the ancestral linkages with communal lands. It justifies customary rights of communities with respect to their lands.

### **Relevance to this study**

Naivasha has been Maasai's ancestral land which they have been using for grazing and farming. So traditionally, they have a right over several communal lands in the town, in line with first ownership. The theory justifies consultations with the Naivasha local communities for public use of their communal land as well as commensurate compensations. The theory rejects forceful evictions from their land, and all manners of non-far-reaching and non-extensive consultations with them for governmental use of their land. The theory further justifies why they have to seek justice when their communal land rights and interests have been violated.

### **1.8 Hypotheses**

- 1). While several customary land rights of rural communities are recognized and protected in East African national constitutions, in practice these rights are being violated.
- 2). Litigation and arbitration are some of the measures being used to secure justice for communal land rights and interests' violations in Naivasha.
- 3). The litigation measure has not been effective because of court delays.

### **1.9.0 Methodology of Research**

This focuses mainly on the methodology to be used in this research. It includes the research design, location of the study, the sample size, target population, the sampling procedures, data



collection procedures, and the methods to be used in the analysis and presentation of data. The researcher used both empirical and secondary data.

### **1.9.1 Research Design**

This study used qualitative research design for data collection & analysis. The research strategy is a case study of communal land rights in Naivasha, Kenya. Naivasha was selected for this study because there are limited studies on communal land rights in the town unlike in other parts of Kenya. In addition, there are only few studies that have evaluated the measures used in securing justice for communal land rights and interests' violations in the town.

### **1.9.2 Data Collection**

#### **Primary data**

This was collected through structured interview guides. Field locations were in Nairobi (to access the personnel of relevant government agencies and NGOs) and Naivasha (the major location of this study).

#### **Study population and Sample**

The target population comprises of 4 groups, 60 respondents from all of them, and selected using purposive sampling.

First of the groups were the personnel of relevant departments of these government agencies –NLC and Ministry of Land, Housing and Urban Development and. Second group were the personnel relevant departments of these NGOs - Kenyan Human Rights Commission (KHRC); and Kenya Land Alliance (KLA). These organisations have been involved in communal land rights advocacy, in Naivasha.

The first and second groups were interviewed on issues of communal land rights and interests', violations of these rights and interests; and as well as the measures used to secure

justice for communal land rights and interests' violations, in Naivasha. The interviewees were selected using purposive sampling from these organisations. 4 interviewees each were interviewed in each of the organisations.

Third group was relevant officials at the Naivasha law courts and few other lawyers that have dealt with communal land rights violations cases. They were interviewed on the effectiveness of judicial processes used to secure justice for communal land rights and interests' violations, in Naivasha. 4 court officials and 4 lawyers we selected using purposive sampling.

The last group was some of the displaced community members that are victims of communal land rights and interests' violations, in Olkaria, Narasha, Naivasha; as well as Maasai community leaders. The former were displaced during the 2009 and 2013 fourth and fifth Olkaria geothermal power projects. Olkaria was chosen because of how recent their case was and for easy accessibility. The latter have been involved in several cases in the Naivasha court laws with several companies on their communal land rights. They were questioned on exactly what happened, implications on them and measures they have used to seek justice (and the effectiveness of the measures). Purposive sampling was used to select 36 interviewees.

### **Secondary data**

This was gotten through analysing literature in several academic journals, books, policy documents, newspapers, periodicals, magazines, academic papers, TV documentaries about the narratives of this research.

### **1.9.3 Data Analysis**

This research used content analysis. The qualitative data was analysed using content analysis to reduce a large portion of information to a more contrasted set of attributes composing a variable.

Content analysis was used to draw conclusions on the measures used to secure justice for communal land rights and interests' violations in Naivasha.

#### **1.9.4 Ethics**

Considerations such as professional practice through ensuring research instruments reliability, data validity, and research ethics were all adhered to by the researcher. This was through being objective and collecting data from interviewees that gave quality information. The study observed non-forceful respondent compliance confidentiality, and consent of the respondent. These have reflected through important lines in Appendixes I and II (the letter of introduction and consent form). Research approval was gotten from the University of Nairobi.

#### **1.10 Scope and Limitations of Study**

The scope of this study is communal land rights and interests in Naivasha. Major focus is on Olkaria, Narasha, Naivasha. This study did not cover land acquisitions in Naivasha by powerful individuals in Kenya. Major focus is on massive land acquisitions by the government and investors; and the question of justice seeking by the communities.

Furthermore, issues related to communal land rights and interests, massive land acquisitions by the government or investors for several national or land optimisation purposes are highly politically and socially sensitive. Therefore, the researcher experienced some difficulties, which were later addressed, in effectively gathering primary data, from the concerned government agencies and NGOs. This was through assuring the interviewees of strict confidentiality and not to use their names in the study. The local community members and court officials, for the fear of victimisation were reluctant in releasing certain information, until the researcher assured them of confidentiality through the consent form and not to use their names in the study.

## **1.11 Chapter Outline**

This study is organised into five chapters.

Chapter 1 has the Introduction; Background to the study; Problem Statement & research Objectives; Research Questions & Justification of Research; Literature Review & Theoretical Framework; as well as the Hypotheses, Methodology, Scope, Limitations, and Chapter Outline.

Chapter two is an overview of communal land acquisitions and rights violations in East Africa. It looks at the trends, socio-economic implications on the local community, and land rights violations.

Chapter three starts with an investigation of communal land acquisitions and rights violations in Naivasha. It further examines the trends and dynamics of communal land acquisitions, the social-economic implications on the local community. Thereafter, it investigates the measures used by the affected Naivasha communities in securing justice.

Chapter four starts with a brief evaluation of the measures used by affected communities in Eastern Africa to seek justice over communal land rights violations. It therefore concentrates on evaluating the effectiveness of measures used by affected Naivasha community members in securing justice for communal land rights violations; and further examines their challenges. It looks at why some of these measures have failed.

Chapter five has the Summary of findings, Conclusions and Recommendations.

## **CHAPTER TWO: COMMUNAL LAND ACQUISITIONS AND RIGHTS VIOLATIONS IN EASTERN AFRICA**

### **2.0 Introduction**

In many Eastern African countries such as Ethiopia, Kenya, South Sudan, Tanzania, Uganda etc., subsistence communal agriculture, on which a majority of Africa's rural poor still depend on, is being threatened by export-led agriculture, large-scale plantations, building of large-scale infrastructure and the production of not only food but also commodities. While the government in partnership with investors acquires communal lands in efforts to optimize land usage, for the aforementioned, it's often at the expense of communal land owners and rural poor in the region. There are several cases where local communities were forcefully evicted, denied information about deals, prevented from participating in such deals and poorly compensated. As the local communities are left with little choices with respect to seeking justice for full compensations or human rights violations during the process of communal land acquisitions, & coupled with weak awareness of their rights, the government and investors oftentimes getaway with such unjust massive land acquisitions.

In line with the first of objective of this study, this chapter starts by capturing an overview of communal land acquisitions and rights violations in Eastern Africa. It carefully looks at the trends, drivers, and socio-economic implications on the affected local community. The data has been collected from secondary sources such as scholarly papers and relevant previous researches.

### **2.1 Communal Land Acquisitions and Rights Violations in Eastern Africa**

Although the customary land rights of rural communities are recognized and protected under many constitutions of Eastern African countries such as Ethiopia, Kenya, Uganda etc., in

practice, these rights are being contravened.<sup>56</sup> Consequently, local communities are continuously being displaced and forced to lose vital access to natural resources, which include forest products, firewood, land for farming and water supplies in some places. The reduction in the local food supply in most of the areas in Eastern African countries has led to increased food prices, making it difficult for the local people to survive and make ends meet. In the oil-rich Albertine region of Ugandan, for example, rural communities are losing land to many local businessmen and women, who have made speculated land purchases with a view of selling this land to oil companies at a huge profit.<sup>57</sup> Land conflicts and ethnic clashes are increasing in most of the areas in many Eastern African countries where massive land acquisition has occurred.

Though there have been cases of massive communal land acquisitions since the history of countries in Eastern Africa, the massive land acquisitions after the 2007 and 2008 world food price crisis have accentuated these occurrences.<sup>58</sup> The food price crisis brought about food security fears in developed countries and precipitated a major spike in large-scale foreign agricultural investments, in many Eastern African countries for the motive of biofuels production & large-scale industrial food. This has made countries such as Saudi Arabia, China, India, South Korea, UAE, etc. to place food security at the top of their agenda. In addition to the food prices crisis are the energy & financial crises, as well as globalization, liberalization & political instability in the Middle East, which have altogether galvanized many foreign governments; corporations, foreign investors; and rich nationals in a search for land & agriculture overseas, but also domestically, to secure energy & food supplies, as well as to make swift profits with speculative capital, often at the expense of local poor populations.

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<sup>56</sup> Pamela Mbabazi, "Land grabbing in Uganda", The Nordic Africa Insitite, February 2013. Retrieved on 7 July 2016, from <http://www.nai.u.se/news/articles/13/2/7/131018/index.xml>

<sup>57</sup> Ibid

<sup>58</sup> Borrás Jr., Hall Ruth; Saturnino M.; Ian Scoones; Wendy Wolford; Ben White, "Towards a better understanding of global land grabbing: an editorial introduction", *Journal of Peasant Studies* 38 (2): 209, 24 March 2011

There have been several concerns surrounding the recent acquisitions or land-leasing. Firstly, in many parts of the region, the rates that foreign investors are paying for land is so minuscule that they are practically getting the land for free: annual rental rates in some locations are less than \$2 per hectare.<sup>59</sup> Secondly, though the land often appears to be vacant and unused, several times there are pastoral, hunter/gatherer, or otherwise nomadic peoples that depend on such land for their livelihoods, even though they are not actively engaged in agricultural activities on it. Thirdly, is the concern of water rights. Although such rights are rarely explicitly discussed, they are usually included in the land-rental deals; and in many cases, this has led to adverse consequences for populations living downstream of the foreign-rented land. Fourthly, local people often do not exploit economically opportunities from land-rental deals. This is because, they often lack the technical capacity to be considered for agricultural employment on this land. In several cases, laborers are even sent in from other continents, leaving minuscule benefits of these land-rental deals to the local population.<sup>60</sup>

### **2.1.1 Ethiopia - Communal Land Rights Violations**

Officially, land is government-owned while occupants have customary rights in Ethiopia. Ethiopia is been a major host country for large scale foreign land investment. Between 2008 and 2011, there were around 28<sup>61</sup> land-leasing or acquisition deals between foreign investors and the government. Since then, foreign investors, foreign governments and private agricultural

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<sup>59</sup> Dereje Feyissa, "Land-Grabbing in East Africa," Master of Sustainable Development Practice, NOVEMBER 2014.

Retrieved on 6 July 2016, from <https://mdpprogram.wordpress.com/2014/11/17/dr-dereje-feyissa-land-grabbing-in-east-africa/>

<sup>60</sup> Ibid

<sup>61</sup> Wytke Chamberlain & Christian M. Rogerson, "Agricultural land grabs in Africa: Scope, patterns and investors", African Journal of Agricultural Research Vol. 7 (48), pp. 6488-6501, 20 Dec, 2012.

corporations have been involved in massive land acquisitions.<sup>62</sup> This is being supported by Addis Ababa's land-leasing policy in order to attract millions of dollars and FDI as to create jobs, reduce poverty, reduce the country's chronic food insecurity and improve local agricultural expertise. The policy was part of Addis Ababa's 5-year Growth & Transformation Plan, and resulted in the leasing of thousands of square kilometres, cheaply, of what Addis Ababa termed "under-used or uncultivated land." Gambella region of the country has witnessed several contemporary massive land acquisitions with hundreds of investments in agricultural projects from foreign companies. In one of the land deals, a 10,000 hectare rice farm in Gambella was leased to a Saudi-Ethiopian investor with the agreement that 40% of production should be sold in the Ethiopian market.<sup>63</sup> However, rice, and several of the other of such crops that are being produced on such farms, are not expansively consumed in Ethiopia. 100,000 hectares was also leased to an Indian company.<sup>64</sup>

These massive land acquisitions have been linked to concerns such as forcible relocation of local pastoralist communities, a the inability to deliver on promises such as that of better infrastructure for the villagers, and environmental degradation.<sup>65</sup> At the same time, Addis Ababa doesn't see it as a threat but still focused on expanding large-scale farming in parts of the country where they have ample arable land. In addition, there have been further concerns such as communication/information gap as the locals complain that there were not informed that their land will be given to foreign investors. The locals have further complained that their land was taken illegally and that they do not have sufficient land for grazing anymore.

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<sup>62</sup> IRIN, "The great land-grab debate," 2011. Retrieved on 7 July 2016, from <http://www.irinews.org/report/9229/ethiopia-great-land-grab-debate>

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Ibid



### 2.1.2 Uganda - Communal Land Rights Violations

Kampala, interested in attracting FDI, has been allowing foreign companies to acquire massive areas of land (mostly communal lands) for several projects, such as carbon offset tree plantations, the development of a large scale oil palm plantations and drilling - following the country's recent discovery of oil. Some of these have taken place in the eastern, western and central parts of the country, especially on Buliisa oil rich region, the Bukaleba forest reserve, Lake Victoria's Bugala Island (Kalangala oil palm project) and the Mabira natural forest.<sup>66</sup> In some of these cases, there have been land rights violations and lands being forcefully acquired through evictions, with local people losing access to land, as well as other natural resources.

In Bugala, a huge chunk of the mapped out 6,500 ha of land was taken from community members as they didn't hold legal land rights to the land they occupied.<sup>67</sup> In Bukaleba Forest Reserve, the forest reserve has been a water source for the locals in Bududa, Butaleja, Mbale and Pallisa districts. The Norwegian Afforestation Group and Tree Farms acquired over 80,000 ha of the Bukaleeba Forest and replaced it with eucalyptus & pine. Some 13 villages and 8,000 locals were displaced in the exercise. There were no consultations with the rural community about this.<sup>68</sup>

In addition, some small-scale farmers have commented that were shanghaied to sell their land since after planting oil palm, they couldn't pay for the fertilizer & other inputs needed. As a result, with no proceed from the oil palm, and communal land for growing food, they have minuscule choices that to sell their lands. In Bugala, the oil palm introduction immediately affected the domestic economy, which used to be centred around food crops, fishing and timber

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<sup>66</sup> National Association of Professional Environmentalists –Uganda, "A study on Land Grabbing cases in Uganda," April 2012

<sup>67</sup> Ibid

<sup>68</sup> Ibid

harvesting. Pollution from the oil plant and evictions have threatened the major occupations of the local communities resulting in job losses. The increased pressure on land has accelerated prices – while this has temporarily benefitted subsistence landowners who have sold out – it has ultimately increased the villagers' living costs.

### **2.1.3 Kenya - Communal Land Rights Violations**

Agriculture is the mainstay of Kenya's economy and the primary livelihood source for the preponderance of the population. According to the International Fund for Agricultural Development (IFAD), seven out of each ten Kenyans either engage in forestry and fishing, raise livestock. Or cultivate crops. Of Kenya's 576,000 square kilometres of land mass, just about 16 per cent is of medium or high agricultural prospect with sufficient and predictable rainfall. Policy and Legal instruments for land, investment in it and its ownership have been categorized as government land, communal, and private land. The new constitution which was promulgated on 27<sup>th</sup> of August 2010 embedded the provisions of the land policy. This is an important development since it helps in securing land rights for Kenyans.

Kenya has several large-scale agricultural farms owned by foreigners some of which have been in operations before the country's independence. The manner in which most of these foreign firms acquired land for large-scale agriculture is still being questioned today with many aggrieved communities. In the recent past, several agricultural investments which can be categorized as massive land acquisitions have come to national attention via several media reports like the Dominion farms in Yala swamp & deals which were taking place in the Tana delta. Furthermore, there were news of other land acquisitions such as the one involving Chinese

companies that acquired huge hectares in the rift valley to grow wheat. Some of Kenya's massive land acquisitions by mainly foreigners are as follows.<sup>69</sup>

Yala Swamp-Dominion Farm - In 2003, the US Dominion Group of companies leased 2,300 ha of land for 25 years<sup>70</sup> in the Yala Swamp. Dominion secured the lease through a pact with the Bondo and Siaya county councils which held the land in trust for the community. However, the organization went continued and reclaimed another 3,700 hectares of the swamp and intended to reclaim the entire swamp of 17,500 hectares. Several numbers of families were evicted from the additional area of farmland acquired by Dominion despite that these families have been staying on that land since history. Some farmers that possessed registration documents claimed ownership of the land. Dominion proposed to compensate them with as little as 45,000Ksh per hectare which some of the farmers refused to accept.<sup>71</sup>

In 2007, Biwako Bio-Laboratory, a Japanese company announced plans to build 30000 hectares of circus trees, broadening them to 100000 hectares within 10 years.<sup>72</sup> HG Consulting, a Belgium company has inherited the financing of the Homa-Bay's Ngima-Project as to use sugarcane from outgrowers representing 42,000 ha.<sup>73</sup> Bedford Biofuels, a Canadian company has also obtained 160000 ha for Jatropha with another 200000 additional hectares being secured.<sup>74</sup> In 2010, a Kenyan branch of an Italian company, Jatropha Kenya Ltd, leased 50000 hectares of land in Bungale in Malindi to grow jatropha for the extraction of biofuel. The proposed land was rural

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<sup>69</sup> Pauline Makutsa, "Land Grab in Kenya - Implications for Small for Small-holder Farmers," Eastern Africa Farmers Federation, 2010

<sup>70</sup> From a report of a skills-share exchange mission carried off by the Institute for Law & Environmental Governance where environmental lawyers & activists from 9 countries visited selected environmental hotspots in Kenya. The exchange mission was conducted from 21 -27 Oct 2007

<sup>71</sup> Pauline Makutsa, "Land Grab in Kenya - Implications for Small for Small-holder Farmers," Eastern Africa Farmers Federation, 2010

<sup>72</sup> Gatonye Gathura, "Kenya: Country Ready to Start Producing Biodiesel," The Nation, 19 NOVEMBER 2007. Retrieved on 8 July 2016, from <http://allafrica.com/stories/200711190217.html>

<sup>73</sup> Victor Ogalo, "Foreign Investment in Agriculture in Eastern Africa: A General Overview of Trends and Issues," October, 2011

<sup>74</sup> See <http://www.bedfordbiofuels.com/company/plantations/>

land which was held in trust by the Malindi municipal council on for the local communities. Although many government departments such as the Kenya Wildlife service and National Museums of Kenya as well as conservation NGO's were against the lease, the project cheerleaders went ahead with it even before they received an EIA license from the National Environment Management Authority. In most of these acquisitions, the local community members were forcefully evicted, poorly compensated and were not involved in the negotiations.<sup>75</sup>

#### **2.1.4 Communal Land Violations in Sudan and Tanzania**

In the neighboring Sudan, in 2009, South Korean companies for wheat cultivation acquired 700,000 hectares of northern part of Sudan. Egypt has acquired an unknown size and it reportedly wants to grow 2m tonnes of wheat yearly to export back home. Saudi Arabia finalized in Feb 2010 a 42000 hectares deal in the Nile province. The United Arab Emirates have secured 750,000 hectares; and Jarch Capital, a New York firm has leased 800000 hectares in the southern part of the country near Darfur.<sup>76</sup> In Tanzania, about 40 foreign-owned companies including the UK Sun Biofuels has obtained 8,000 hectares of forest to grow jatropha.<sup>77</sup> Also, the UK D1 Oils had invested in the development of agrofuel, within a context of support from international development agencies, such as the World Bank, DFID, EU Energy Initiative, and USAID. There are further plans to establish sugar cane plantations in the Kilosa, Ruipa, Wami basins, as well as on the Usangu Plains and a palm oil project in Kigoma involving outgrowers.<sup>78</sup> In most of these

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<sup>75</sup> Pauline Makutsa, "Land Grab in Kenya - Implications for Small for Small-holder Farmers," Eastern Africa Farmers Federation, 2010

<sup>76</sup> Victor Ogalo, "Foreign Investment in Agriculture in Eastern Africa: A General Overview of Trends and Issues," October, 2011

<sup>77</sup> Ibid

<sup>78</sup> Ibid

transactions, the local communities did not even know of what has happened, and were forcefully evicted with terrible compensations.

## **2.2 Socio-economic Implications on Eastern Africa Affected Communities**

The massive land acquisition debates have raged on, between its proponents and detractors. For the former it considers massive land investment as a window to bring in needed foreign investment to improve the agricultural sector & transfer of technology so as to affect job creation in developing countries. The latter conceptualizes massive land investment as a food security threat; and as threats to the environment, small farming, & socio-economic stability in developing countries. Although this debate is still going on, available literature suggests out more risks than gains associated with this theme. Some of the risks include the marginalization of subsistence farmers particularly women, conflicts over land, local community members' displacement in affected regions, food insecurity, adverse environmental impacts, and expansions of poverty.

From what we have discussed so far, Eastern Africa is more affected by massive land acquisition than any other African region. The region's agricultural sector is made up of primarily subsistence farmers. Predominantly, the first victims of massive land acquisition are the subsistence farmers, who are forced out of their farm space to make space for foreign investors. Such displacement of subsistence farmers has social denouements. It destroys communities, and creates tensions & conflicts. It also has economic consequences by putting at risk an important sector that supplies a significant market value of all final goods manufactured within a given country in the region. In addition, it affects the capacity of subsistence farmers to raise income and cater for their families.

While the concerned farmers are in many instances promised to be transposed to new farms or/and to receive measurable compensation for the lost land and consequent resources, the promises, in many cases are neglected with the evicted farmers left suffering since they lost the only source of livelihood they had. Even when the foreign investors make a promise of offering job to the evicted farmers, it is usually little, periodical, and comes with poor working conditions.<sup>79</sup> In the light of this, massive land acquisitions exacerbate the life conditions in affected areas and leave the affected population worse off.

In the Bugala Island of Uganda, during forceful land acquisitions, culturally important sites were destroyed, as well as local traditions being lost as the local populations have been migrating and diversifying. Forests were expunged to make a path for the plantations and wetlands were drained, damaging the rich natural biodiversity.<sup>80</sup> The reduction in domestic food supply resulted to food being imported to the island, leading to increased food prices. As the oil palm plantation only offers little paid casual work, local population struggles to survive. In addition, the tree plantations which were developed to seek carbon credits replaced native forest with monoculture plantations of non-native species.<sup>81</sup> Land conflicts, as well as inter-ethnic conflicts have occurred in some local communities where massive land acquisitions have occurred. While the latter is intensifying and extending throughout the country, rural poverty has exacerbated.

Bugala community members have reported that they were not given access to resources such as building materials and water, grazing lands, which violate their human rights. On the Island's Kulugulu village, the path to the communal well, which has been a source of water for

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<sup>79</sup> Sylvain Aubry, Rolf Künnemann, Alison Graham and Sofía Suárez, "Advancing African Agriculture - The Impact of Europe's Policies and Practices on African Agriculture and Food Security-Land Grab study", 2010

<sup>80</sup> National Association of Professional Environmentalists –Uganda, "A study on Land Grabbing cases in Uganda," April 2012

<sup>81</sup> Ibid

the community, was barricaded by an investor. Fertilizers and pesticides used in the oil palm plantation have affected the community's water point.<sup>82</sup> Water wells in Kibaale – Jovu village were destroyed.<sup>83</sup> Animals that have been seen trespassing on initial grazing lands in the oil palm project area have been seized while the owners were fined.

Portions of the island formerly used for sand mining in Bukuzzindu have also been allocated for oil palm, encompassing shelters for workers and staff. This has prevented the local community from having access to the sand supplies, which are used for building. A community field in Kasenyi – Bamungi has been acquired and converted into an oil palm plantation, depriving children of opportunities to play.<sup>84</sup> While one of the stated goals of the development of the oil palm was to create jobs for the local community,<sup>85</sup> most of the available jobs are for irregular laborers with most not being from Kalangala. The laborers are paid around a dollar a day.<sup>86</sup> With such minuscule pay, there are complaints from the local people of thefts of food crops & other items, with irregular laborers being blamed.

## **2.4 Conclusion**

In consideration of the above discussions, the benefits of foreign land acquisition for agriculture still lie significantly with the foreign actors, with very minuscule benefits for East African countries or their citizens. The trickle down effects that governments in the region and foreign investors often promise are far from becoming a reality. It is needful that Eastern African governments improve national land administration mechanisms to promote better land

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<sup>82</sup> National Association of Professional Environmentalists, "Land Grabbing: A case study of the World Bank group investments in agribusiness in Uganda," 2011

<sup>83</sup> Kalangala District Local Govt, "District state of the environment report," 2005.

Retrieved on 7 JULY 2016, from [http://www.nemaug.org/district\\_reports/Kalangala\\_DSOER\\_04.pdf](http://www.nemaug.org/district_reports/Kalangala_DSOER_04.pdf)

<sup>84</sup> National Association of Professional Environmentalists, "Land Grabbing: A case study of the World Bank group investments in agribusiness in Uganda," 2011

<sup>85</sup> International Fund for Agricultural Development, "Rural Poverty Report," 2011. Retrieved on 7 July 2016, from <http://www.ifad.org/rpr11/index.htm>

<sup>86</sup> Kalangala District Local Government, "District state of the environment report," 2005.

Retrieved on 7 JULY 2016, from [http://www.nemaug.org/district\\_report/Kalangala\\_DSOER\\_04.pdf](http://www.nemaug.org/district_report/Kalangala_DSOER_04.pdf)

governance. There should be maximalist government strategies in the host countries to make sure that that large-scale foreign land investment leads to overall economic development. Ultimately, our discussions in this chapter have shown that according to the first hypotheses of this study, while several customary land rights of rural communities are recognized in East African national constitutions, in practice these rights are being violated.



## **CHAPTER THREE: COMMUNAL LAND ACQUISITIONS & RIGHTS VIOLATIONS IN NAIVASHA, AND MEASURES USED TO SECURE JUSTICE**

### **3.0 Introduction**

In the previous chapter, we examined the trends and drivers of massive land acquisition in Eastern Africa. It was learnt that the 2007/2008 food crisis, oil crisis, and financial crisis triggered massive foreign land acquisitions in East Africa. We also examined several cases of massive communal land acquisitions and rights violations in some countries the region as well as the socio-economic effects of such exercise on the local communities.

Following the second objective of this study, chapter three starts with an investigation of communal land acquisitions and rights violations in Naivasha, Kenya. Thereafter, it examines the trends, dynamics and drivers of communal land acquisitions in the town. Furthermore, it looks at social-economic implications of such exercise on the local community. Ultimately, it investigates measures that are used by the affected communities in seeking justice.

The data used in this chapter has been collected from primary & secondary sources. Primary data was gotten through interviews with 60 interviewees selected from relevant departments of the NLC, and Ministry of Land, Housing & Urban Development, KLA, KNCHR; as well as relevant officials at the Naivasha law courts; and some of the displaced community members in Olkaria, Narasha, Naivasha & Maasai community leaders. Secondary sources were through reliable sources such as scholarly papers and relevant previous researches.

### 3.1 Investigation of Communal Land Rights Violations in Naivasha

As mentioned in the background of this study, there are several reasons why there have been ceaseless massive communal land acquisitions in Naivasha. Some of them are Naivasha's good road link to the airport, ideal agro-climatic conditions, favoring all year round production of flowers (the third foreign exchange earner in Kenya),<sup>87</sup> as well as the fact that Lake Naivasha represents an available source of fresh water for irrigation farming. Naivasha accounts for 70 percent of Kenya's flower exports<sup>88</sup> and the flower farms further employs about 30,000 people.<sup>89</sup> The town is being considered as Maasai's ancestral land, with many Maasais being traditionally pastoralists.<sup>90</sup>

Since independence of Kenya, there have been several cases of communal land rights acquisitions and violations in Naivasha by mostly foreign flower investors and the government.<sup>91</sup> Through most of them, there have been forceful evictions of mostly the Maasais and an obstruction in the sources of their livelihoods. For instance is the Maasai's traditional usage of the Naivasha Lake for their livestock which has been restricted. Maasai leaders have also voiced concerns over inadequate compensations for acquired communal lands, non-involvement in most land negotiations and labour exploitation of their members in foreign flower farms.<sup>92 93</sup> Down to 1984 are the communal land displacements of the Maasais during for the establishment of Hell's

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<sup>87</sup> Kenya News, "Flower farming in Naivasha, Kenya", August 26, 2015.

<sup>88</sup> Victor Odhiambo, "Water Use and Suggested Carbon Management around Lake Naivasha," Kenyatta University, Kenya.

<sup>89</sup> SARD Initiative, "Field trip to the Lake Naivasha area: conflicting claims to access to and use of natural resources," 22 October 2006

<sup>90</sup> Ibid

<sup>91</sup> SARD Initiative, "Field trip to the Lake Naivasha area: conflicting claims to access to and use of natural resources," 22 October 2006

<sup>92</sup> Shadrack Kavilu, "Kenya's flourishing flower sector is not all roses for Maasai herdsman," Thomson Reuters Foundation, 30 June 2016. Retrieved on 8 July 2016, from <http://news.trust.org/item/20160630040147-vaehl/>

<sup>93</sup> SARD Initiative, "Field trip to the Lake Naivasha area: conflicting claims to access to and use of natural resources," 22 October 2006

Gate Park, Kenya Electricity Generation Company (Ken Gen) Plant; and by flower investors during the late 80s flower boom.

In 2009 and 2013, Ken Gen plant through the organization's fourth and fifth Olkaria geothermal power projects also displaced many Maasai community members from their homes in Olkaria, Narasha, Naivasha. In the former, during the expansion of electricity project, over 1000 Maasai people were directly affected and an approximation of over 2000 people were indirectly affected by the projects.<sup>94</sup> When the local community raised concerns, many of them received threats from the government and Ken Gen Co. Ltd which was the implementing agency.<sup>95</sup> In the later, 120 families were displaced; and 3093 hectares were acquired.<sup>96</sup> In these displacements, there were forceful evictions, threatening of source of livelihood of the pastoralist community, and loss of historical and cultural sites among others.<sup>97 98</sup>

Furthermore, 2 years ago, the government acquired 3,000 acres of land in the town for power generation purposes. The community members protested, claiming that the sale of the land was kept in secret; and that they were not consulted, were inadequately compensated and forcefully evicted.<sup>99</sup>

### **3.2 Socio-economic Implications on Naivasha's affected Local Communities**

There have been several socio-economic implications of massive land acquisitions in Naivasha on the local communities. Maasai community leaders have commented that massive land acquisitions/privatisation and subdivision of their ancestral lands have endangered livestock

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<sup>94</sup> Narasha Community Development Group, "Narasha Community Concerns on the powering Africa summit," Washington DC, January 2016

<sup>95</sup> Ibid

<sup>96</sup> Anthony Gitonga, "Sh100m to Compensate Narasha Families", the Standard Newspaper, 23 September 2014, page 27

<sup>97</sup> Ibid

<sup>98</sup> Narasha Community Development Group, "Narasha Community Concerns on the powering Africa summit," Washington DC, January 2016

<sup>99</sup> Daily Nation, "Protestors Burn Four Houses in Naivasha in Society Land Row," 10 February, 2016. Accessed on 8 March 2016, from <http://allafrica.com/stories/201602100186.html>

production, threatened ancient pastoralist practices & their sources of livelihood, and eroded communal rights to land & natural resources – through:

Firstly, until the early 1990s there were seventeen open corridors for accessing Lake Naivasha by Maasai pastoralists, further massive land acquisitions around the lake have left almost none of these corridors, with fences for private uses - majorly by flower farms or tourist infrastructures. As a result, having access to the lake for the community members has been restricted. This has affected especially pastoralists, who can no longer get water for their animals and are currently displaced.<sup>100</sup>

Secondly, restricted access to the lake resulted in cultural loss for the communities. For instance, the Maasais have foregone their circumcision ritual of swimming in the lake's cold water in the early hours of the morning. Another instance is the red earth that young Maasai warriors, the Morans used to apply in their hair. This cultural practice was interjected when access to the land containing the red earth was limited as part of the establishment of Hell's Gate national park.<sup>101</sup>

In addition, 90% of the interviewees and affected community members agreed they were not properly consulted before they were evicted, displaced as a result of the massive land acquisitions, lost their sources of livelihood and did not have sufficient time to relocate. They further commented that they were displaced from their own areas and taken to unfamiliar areas. In cases where the displaced community members started working for the organizations that acquired their land, 80% of them are being paid less than 30,000 Ksh/month as drivers and labourers. This according to them are way less than what they were making as small-scale

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<sup>100</sup> SARD Initiative, "Field trip to the Lake Naivasha area: conflicting claims to access to and use of natural resources," 22 October 2006

<sup>101</sup> Ibid

farmers and herders and cannot enable them to take care of their families. 70% of the interviewed community members also explained that they experienced psychological trauma after they were evicted, and that were anxious to know whether they would be compensated or not.<sup>102</sup> Furthermore, they also suffered family disintegration, and loss of properties.

In the case of 1984 communal land acquisition for the Hell's Gate Park, one of the interviewees commented that, "local communities were not compensated, there were no proper procedures to inform the communities about the acquisition and promised job opportunities never came."<sup>103</sup> Another interviewee commented, "there was the issue of translocation of the locals, compensations of the communities residing in the area - as at today, there are still pending issues from that."<sup>104</sup>

### **3.3 Investigation of the Measures used by Naivasha Community Members in Securing Justice over Communal Land Rights Violations**

Through the primary data collection process, many measures used by the communities to secure justice for communal land rights violations were indentified. They include: arbitration, litigation, advocacy by the NGOs, publicity through the media, demonstrations by the affected communities, creation of strong committee members of the displaced that agitate for the rights of the locals and government's direct intervention. Naivasha law courts has been overwhelmed by land suits some of which are about communal land rights brought by the communities against the government or investors. Some of the ongoing cases at the court are Kedong Ranch Limited VS Maasai Community Leaders, and Kiambu Nyakinywa Land Buying Company VS Maasai

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<sup>102</sup> Interview No 8

<sup>103</sup> Interview 24

<sup>104</sup> Interview 31

Community Leaders. Most of the respondents agreed that they mainly use litigation to seek redress of abuses in courts.

The Kenyan Land Alliance and Kenyan Human Rights Commission have been involved in several advocacy programs for the community members whose rights were violated. The National Land Commission has the mandate of ensuring that the investment in land profit local communities and their economies; initiating investigations, on a complaint, or on its own initiative, into recent or historical land injustices, and suggest appropriate redress; developing and encouraging alternative dispute resolution measures in land dispute handling and management etc.<sup>105</sup>

In the 2009 expansion of electricity project, “Olkaria IV project” in which over 1000 people were directly affected, the community pressed on, demonstrated and contacted the World Bank Inspection panel to investigate the claims which included lack of economic recovery plan, titling, and failure to apply an indigenous policy in the resettlement action plan. In the 2013 Olkaria V project, the affected Masaai population protested, got media attention and subsequently, the president’s attention. This forced Ken Gen to earmark 100mKsh as their compensations, and the 120 families that were involved got within a range of 200,000 to 300,000Ksh as payments for their land.<sup>106</sup> In addition, as part of their resettlement plan, the Masaai families got 5 acres of land each.<sup>107</sup> According to an interviewee, and one of the

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<sup>105</sup> National Land Commission, "Mandate and Fuction." Retrieved on 9 July 2016, from [http://www.landcommission.go.ke/?page\\_id=68](http://www.landcommission.go.ke/?page_id=68)

<sup>106</sup> Anthony Gitonga, "Sh100m to Compensate Narasha Families", the Standard Newspaper, 23 September 2014, page

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<sup>107</sup> Ibid

displaced in the Olkaria V power project, the locals have created an organization of registered members, who contribute monthly to hire lawyers for legal assistance.<sup>108</sup>

### **3.4 Conclusion**

In this chapter, we have examined the trends and drivers of massive communal land acquisitions in Naivasha. We further looked at the socio-economic implications of such acquisitions. Ultimately, we looked at the measures used by the displaced community members to seek justice and according to the second hypotheses of this study, these measures are mostly litigation and arbitration.

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<sup>108</sup> Interview 40

## **CHAPTER FOUR: EVALUATION OF THE MEASURES USED TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS VIOLATIONS IN NAIVASHA**

### **4.0 Introduction**

In the previous chapter we learnt that Lake Naivasha and favourable agricultural climate of the town are mostly the drivers of massive communal land interest in Naivasha. We further learnt that most of the Naivasha local communities, in different massive land acquisitions examined were poorly consulted, poorly compensated, forcefully evicted; and lost their sources of livelihood and cultural ties. Finally, we looked at the different measures used by aggrieved community members in Naivasha to seek for land justice.

This chapter starts with a brief evaluation of the measures used by affected communities in Eastern Africa to seek justice for communal land rights violations, and challenges that these measures face. Thereafter and following this study's third objective, this chapter evaluates the effectiveness of measures used by affected Naivasha community members in securing justice for communal land rights violations. It examines the challenges of these measures. The data used in this chapter has been collected from primary & secondary sources. Primary source was gotten through interviews with 60 interviewees selected from relevant departments of the NLC; Ministry of Land, Housing & Urban Development; KNCHR and KLA; as well as relevant officials at the Naivasha law courts; and some of the displaced community members in Olkaria, Narasha, Naivasha & Maasai community leaders. Secondary sources were through reliable sources such as scholarly papers and relevant previous researches.



#### **4.1 Brief Evaluation of Measures used by affected Eastern Africa Communities to Secure Justice over Communal Land Rights Violations**

The negotiations of most communal land agreements are carried off in secrecy and in a less-transparent manner. In most negotiation processes, the concerned local population ain't consulted and even when they were, they are often in weak positions since they don't have the even resources and capabilities as their counterpart (investors) for the negotiation of fair terms. This has led to situations where there are ambiguous and uneven provisions of the contracts in favor of the investors.<sup>109</sup> In addition, the communal land rights are commonly ignored. The FAO report, in its foreword opines that a "...lack of respect for the rights of the poor has contributed to tenure insecurity, which in turn can endanger human development, mire people in poverty and led to food insecurity."<sup>110</sup> Although, one of the debates for massive land acquisitions is food security, the actual trend rather leads to this highlighted concern of food insecurity. It is this flawed process of leasing or acquiring land in the region that has precipitated legal concerns and in several cases accentuates the consideration of deals between countries involved and foreign investors as defectives contracts.

In international massive land acquisitions where local communities feel wronged, there are limited and complex channels to seek justice. Some of them are litigation, arbitration, advocacies by civil society organizations or through resistance/prevention to the land being used. However, in the case of litigation, legal processes against a foreign investor or the government are majorly determined by the domestic legislation of the host state. A major concern has been whether seeking justice are only available to direct owners of the land or whether they also profit local resource users not having entire ownership rights. Whether local communities can seek

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<sup>109</sup> Tinyande Kachika, "Land grabbing in Africa: A review of the impacts and the possible policy responses," 2010.

<sup>110</sup> Rachael Knight, "Statutory recognition of customary land rights," 2010

justice in court for losses suffered by huge numbers of community members is also imperative, as it will help them to combine efforts and combine resources.

Beyond judiciary processes, and in the case of East African local communities, other factors imperil local capacity to seek justice, such as lack of financial resources (with legal aid occasionally being available for such litigation); limited levels of elementary literacy; economic, linguistic & geographical inaccessibility to courts; and limited autonomy of & trust in the judiciary.<sup>111</sup> With respect to litigation against foreign investors, there are rare cases brought against foreign companies in their home country, instead of local branches in the host state. The efficacy of this strategy is mainly dependent on the home country's law. In addition, in government-backed investments in Eastern Africa, it is more hard for local people to seek redress against the foreign investor.

Other ways in Eastern Africa can be through political pressure by the communities on local governments. This has in some cases led to delays in land leasing or acquisition because of demonstrations, and even sometimes, armed resistance. Advocacy has relatively been successful in parts of the region, although in Ethiopia, this channel has been frozen because of several policies. Amongst them is a legal prohibition on advocacy from organizations that attract more than 10% of their funding from foreign sources. However, organizations such as the UN FAO have been attempting to provide assistance to the locals, and smallholder farmers in ways and manners that will enable them to oppose large-scale, foreign-run agriculture in the region.<sup>112</sup>

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<sup>111</sup> Sonja Vermeulen, Rebeca Leonard, Lorenzo Cotula, and James Keeley, "Land grab or development opportunity - Agricultural investment and international land deals in Africa," IIED/FAO/IFAD, London/Rome, ISBN: 978-1-84369-741-1

<sup>112</sup> Dereje Feyissa, "Land-Grabbing in East Africa," Master of Sustainable Development Practice, NOVEMBER 2014.

Retrieved on 6 July 2016, from <https://mdpprogram.wordpress.com/2014/11/17/dr-dereje-feyissa-land-grabbing-in-east-africa/>

In Uganda, because the local communities occasionally hold official land titles for the land they occupy & use, they find it difficult in seeking redress. In Article 243 of the Ugandan Constitution, land tribunals are supposed to address land disputes but the tribunals operated for just a short time before they collapsed.<sup>113</sup> Later the tribunals were replaced with District Land Committees, but these committees have not yet become completely operational in most parts of the country. As a result, the local communities are deeply incapacitated to prevent massive land acquisitions that violate their rights, and the government having noticed this has ceaselessly continued to give land occupied under customary tenure to foreign investors.<sup>114</sup> However, through local resistance and the efforts of civil society organizations, since 2007, Kampala has not been able to give 7100 hectares of the Mabira Rain Forest Reserve land to the Ugandan Sugar Corporation.

In Kenya, following massive land acquisitions in the Tana River Delta region, the Tana River Delta Conservation coalition took the Mumias Sugar Company to court in order to prevent the company from converting over 25000 hectares of the Tana delta into sugar plantations.<sup>115</sup> However, the court ruled in favour of the investors due to technical issues. A coalition of the communities living in the Tana delta has in 2009 gone to court to seek a peroration of all large-scale agricultural investments in the delta.<sup>116</sup> Several community groups that have also taken court action against investors and government agencies over land rights and environmental concerns include Hewani Farmers Co-operaitve Society and Wema Ngatana Co-operative Society limited. The groups have sued the NEMA, Tana River County Council, Tana & Athi

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<sup>113</sup> National Association of Professional Environmentalists –Uganda, "A study on Land Grabbing cases in Uganda," April 2012

<sup>114</sup> Ibid

<sup>115</sup> Pauline Makutsa, "Land Grab in Kenya - Implications for Small for Small-holder Farmers," Eastern Africa Farmers Federation, 2010

<sup>116</sup> Ibid

River Development Authority, and Commissioner of Lands & the Water Resources Management Authority.<sup>117</sup>

## **4.2 Evaluation of the Measures used by Naivasha Communities in Seeking Justice over Communal Land Rights Violations; as well as the Challenges facing them**

### **4.2.1 Litigation**

This study identified litigation as one of the measures used by the aggrieved communities in Naivasha to seek justice. However, 85% of the interviewees and displaced community members agreed that litigation is one of the most frustrating measures in seeking justice because of court delays. In the case of Kedong Ranch Limited VS Maasai Community Leaders, an interviewee and Masaai community leader stated that, this is becoming more and more frustrating, we have been in the court for months without knowing what would be the outcome of this, court processes are too long.<sup>118</sup>

In evaluating the judicial process of seeking redress and challenges facing it, another interviewee commented that, while we contribute in our organizations to pay for legal services, the amount involved for such is huge because most of the affected community members are poor and the challenge of bearing such amounts discourages them from going to the law courts. The delays there are also unimaginable.<sup>119</sup> 90% of the respondents and displaced community members agreed that court delays are unbearable and that justice delayed is justice denied. Some also agreed that even when they get justice, it takes time for the compensations to be released.

However, 70% of the interviewees and affected community members agreed that the best they get in courts is an extension of their stay in their land while other negotiations for

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<sup>117</sup> Ibid

<sup>118</sup> Interview 50

<sup>119</sup> Interview 18

compensations are still ongoing. The interviewed Naivasha law courts officials explained that while there are many challenges facing community members whose communal rights have been violated, the most disturbing one is the unavailability of witnesses in the court proceedings,<sup>120</sup> as well as the technicality of the cases. For the former, it is primarily because, they are already displaced and the court often times cannot refund them their travel expenses.<sup>121</sup> They are also vulnerable to be bribed by bigger actors and such do not turn themselves in. Another commented that another key issue is the transfer of judicial officers.<sup>122</sup>

#### **4.2.2 Arbitration and Government's Direct Intervention**

Through the NLC, the government has been able to facilitate the acquisition of communal land and compensation of the affected persons, in Naivasha. A key instance is the 2013 Olkaria V power project through which most of the interviewed community members agreed that they were adequately compensated. According to an interviewee and personnel of the NLC, the organization has also been involved in continuously addressing public complaints from Naivasha's local communities on land issues, either through visits by individuals and delegations, or written memoranda.<sup>123</sup>

Another interviewee commented that the NLC has started the formation of County Land Management Boards to facilitate interventions in land disputes and carrying out investigations. The commission is also working speedily to address issues such as arrears of court cases, conflicts among communities, conflicts/tensions among communities and boundary disputes, and delivery of services in a scheduled & efficient manner, which will directly affect the Naivasha

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<sup>120</sup> Interview 5

<sup>121</sup> Interview 53

<sup>122</sup> Interview 55

<sup>123</sup> Interview 20

communities.<sup>124</sup> Another interviewee from the Commission stated that the Commission facilitated dialogues between the affected community members and Ken Gen, made sure there were more compensation and was able to set up committees to mitigate the dispute that arose.<sup>125</sup>

### **4.2.3 Advocacy by NGOs**

Several NGOs such as the KHRC and KLA have been conducting scientific research and gathering & disseminating information about massive communal land acquisitions in Naivasha.<sup>126</sup> They have continued trying to find and disseminate information about the land deals. This is because, as mentioned earlier, most of the deals are done in secrecy without the involvement of other stakeholders such as concerned locals and NGOs. By gathering information and sharing it, these organizations are encouraging public response and outcry. This has resulted in some of the investors reconsidering the investments.

The KHRC has been creating awareness through various of its reports on illegal massive communal (in most instances) land acquisitions in the country, most of which covers Naivasha. In its “Unjust Enrichment – the Making of Land Grabbing Millionaires Report”, in partnership with Kenya Land Commission, it revealed several illegal allocations of public lands to the country’s elite by the previous administrations, in total disregard of the law & public interest.<sup>127</sup> According to the 2 organizations, many allottees went on to sell the land to state corporations or other parties at huge sums of money far in excess of the actual market value. The intention of the publication was to give voice to those who are most hurt by the illegal diversion of land resource, and empower the general public to demand accountability and transparency. Few of the involved

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<sup>124</sup> Interview 27

<sup>125</sup> Interview 33

<sup>126</sup> Interview 9

<sup>127</sup> KNHRC and KLA, “Unjust Enrichment – the Making of Land Grabbing Millionaires Report”, 2015. Retrieved on 9 July 2016, from <http://www.knchr.org/EcosocReport/Unjust%20Enrichment20Volume201.pdf>

land in question involved the public land of Kenya Agricultural Research Institute. According to them, the Moi regime illegally allocated over 3550 acres of the organization's land worth over Ksh 1.3 billion.<sup>128</sup>

### **4.3 Conclusion**

In this chapter, we have evaluated and examined the challenges of the measures used by affected Naivasha's community members to seek justice for communal land rights violations. Further to the challenges stated by the interviewees include the lack of proper awareness creation during such exercise and the issue of non-involved persons, appearing during placement of the people that are supposed to benefit in the communal land ownership and displace others. Finally, according to the last hypotheses of this study, it was found out that the litigation measure has not been effective because of court delays.

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<sup>128</sup> Ibid

## **CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS**

### **5.0 Introduction**

According to its objectives, this study has been conducted to investigate communal land acquisitions and rights violations in Eastern Africa and Naivasha, Kenya; as well as to investigate and evaluate the measures that are used by affected Naivasha community members in securing justice for communal land rights violations. Therefore, this chapter summarizes what we have found out through the research, and then provide the study's conclusion and recommendations.

### **5.1 Summary**

This study has discussed issues of massive communal land acquisitions and rights violations in Eastern Africa and Naivasha, Kenya. It has also investigated and evaluated the measures used by aggrieved local communities in securing justice over communal land rights violations. In line with the first objective of this study, the study investigated and examined communal land acquisitions and rights violations in Eastern Africa. It was found out that there are many cases of communal land rights violations in Eastern Africa during massive land acquisitions by mainly foreign investors for mainly agricultural purposes. The study found out that in most of these cases, local communities were forcefully evicted, lost sources of living, denied information about deals, prevented from participating in such deals and poorly compensated. The study found out that the drivers of massive land acquisition in Eastern Africa include the 2007/2008 food crisis, oil crisis, and financial crisis. Our discussions in chapter 2 also show that according to the first hypotheses of this study, while several customary land rights of rural communities are recognized in East African national constitutions, in practice these rights are being violated.



Furthermore, in line with the second objective of this study, the study investigated trends and drivers of communal land acquisitions and Naivasha; and also went ahead to investigate the measures used by the affected local communities to seek redress over communal land rights violations. It was found out that Naivasha's favourable agricultural climate and lake were incentives that facilitated massive communal land interests in the town. It was observed that Naivasha community members have been victims of communal land rights violations even since pre-independence of Kenya. It was also observed that through such massive land acquisitions, the Maasais have lost land they used for grazing of their cattle, lost access to the lake; were displaced, poor consulted during negotiations and forced to abandon their cultural practices. The study further observed that the aggrieved community members use litigation, arbitration, advocacy by the NGOs, demonstrations and creation of strong committee members of the displaced to agitate for their rights.

Finally, in line with the last objective of this study, the study evaluated these measures used by Naivasha community members to seek justice over their communal land rights violations. It was observed that the litigation process has not been effective owing to court delays, unavailability of witnesses, transfer of legal officers, and limited financial resources of the communities to pay for legal services. It was also found out that government's intervention through the NLC and advocacy by NGOs have been effective with respect to speedy compensations of the affected locals through the Olkaria V power project in which Ken Gen acquired massive communal lands. Ultimately, according to the last hypotheses of this study, it was found out that the litigation measure has not been effective because of court delays.

## **5.2 Conclusion**

The study concludes that the benefits of massive communal land acquisitions by various actors still lie significantly with the foreign actors and governments (in few instances), with very minuscule benefits for the local community members. The trickle down effects that governments in the region and foreign investors often promise for large-scale foreign investments are far from becoming a reality in all the examined case studies. The practice in many instances on Eastern Africa has left local communities poorer, abused their rights, displaced them and destroyed their cultural linkages with their ancestral lands. While the government has good justifications for inviting and leasing/selling land to foreign investors, it is extremely imperative that the concerns of the local communities are adequately taken care of in future occurrences. Finally, securing communal land rights is central to ensuring equitable agricultural development.

## **5.3 Recommendations**

Following the findings of this study, the study makes some policy suggestions and recommendations for future massive communal land acquisitions in Eastern Africa and Naivasha. Firstly, elongated land leases for 50 or 99 years ain't sustainable unless there's some level of communal satisfaction. Following this, innovative business models that champion local inclusion in economic activities is needful. There should be comprehensible cost and benefit analysis of such business transaction from the start. This encompasses sincere communication of what the project would bring and realistic estimates. Secondly, mechanisms should be created to discourage land acquisitions built on speculations, and fast track court processes involving communal land rights violations.

Thirdly, high-paneled governmental commitment and capacity across administrative structures are important to mainstream compliance with investment requirements. Coherent

thinking must be employed to create ways to prevent non-compliance beyond the early stages of the project. Fourthly, investment decision-making must be open to public criticism; and transparent with all concerned parties, equally involved. Fifthly, awareness creation and advocacy are needed at each stage of the land investment process. NGOs should enhance monitoring of land investment. Sixthly, legal support to communities affected by investment projects can help them get better deals from future investments, through investor-community partnerships and better compensation regimes. This may involve the establishment of paralegal programs, and legal clinics, literacy training, & advice.

Seventhly, there should be a termination of massive land acquisition for agrofuels and carbon credit trading. Instead there should be a backing of laws and policies that champion agro-ecological farming systems and practices. Eighthly, there should be mechanisms to safeguard investors compliance with social & EIAs, including assessments of effects on local community based food production before the start of any project. Ninthly, land investment policies should favour national interests such as food security, employment and export earnings & those of the local community where the project is to be located. There must be correct mechanisms for replacement of affected local communities. Finally, as the transfer of land ownership generally imperils the economic assets of local communities, governments should consider alternate business fashions to land acquisition. In addition, the government should make incentives available for transferring FDI into other subsectors that have the prospect of decreasing poverty via job creation.

#### **5.4 For Further Study**

This research suggests further studies on massive land acquisitions by powerful individuals in Eastern Africa and Naivasha to get more perspicacity about the phenomenon.

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## **APPENDICES**

### **Appendix I: Letter of Introduction**

Date:

TO WHOM IT MAY CONCERN

Dear Sir/Ma'am,

#### **REQUEST FOR COLLECTION OF DATA**

I am FARAH HASSAN, a MA student at the Institute of Diplomacy and International Studies, University of Nairobi.

I am carrying off a research study titled “ACCESS TO LAND JUSTICE IN EASTERN AFRICA - A CASE STUDY OF COMMUNAL LANDS RIGHTS IN NAIVASHA, KENYA”.

You've been selected to form part of this study.

Please assist by filling in the attached questionnaire or interview guide. The information given will be treated in s confidence and will be mainly used for academic purposes.

Your cooperation and assistance will be highly treasured.

Yours Sincerely,

**FARAH HASSAN,**

R50/75463/2014

## **Appendix II : Consent Form**

**Title of the Research:** “Access to Land Justice in Eastern Africa - A Case Study of Communal Lands Rights in Naivasha, Kenya”

**Institution:** IDIS, University of Nairobi

**Researcher:** Farah Hassan

**Supervisor:** Dr. Prisca Kamungi

**Ethical Approval:** Ethical and Research Committee of the University of Nairobi

Permission is requested from you to be part of this research study. With principles that You:  
Voluntarily agree to be included in this study;

May wish to exempt from the study at any point you wish;

May seek clarity to understand the nature and importance of this study

**Purpose of the study:** To investigate and evaluate the measures that are used to secure justice for communal land rights and interests’ violations, in Naivasha, Kenya.

**Procedures to be followed:** With your collaboration, you will answer concerned questions with respect to the objectives of this study. All information gotten from you will be handled with confidentiality.

**Risks:** There will be no risks involved in this study to you.

**Benefits:** There may be no direct benefits to you but the results of this study will be useful in investigating and evaluating the measures that are used to secure justice for communal land rights and interests’ violations, in Naivasha, Kenya.

**Assurance on confidentiality:** All information obtained from you will be used confidentially and used only for the purpose of this study.

**Contacts:** you may wish to reach me with regards to issues concerning this research through any of the various addresses provided above.

I request you to sign the attached consent form:

CONSENT FORM

“Access to Land Justice in Eastern Africa - A Case Study of Communal Lands Rights in Naivasha, Kenya.”

I \_\_\_\_\_ (interviewee) give my consent to the researcher to use the information that I will provide as part of his/her study and that the nature of the research has been explained to me by the .....

Signature \_\_\_\_\_ Date \_\_\_\_\_

I (the researcher) confirm that I have explained the nature and effect of the research.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Appendix III: Interview Guide for the officials of selected government agencies**

Date \_\_\_\_\_/2016

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**QUESTIONS:**

Tick and Fill as appropriate

**SECTION A: DEMOGRAPHICS**

1. Gender Male \_\_\_\_\_ Female \_\_\_\_\_
2. Age? \_\_\_\_\_ Years
3. Name of organisation? \_\_\_\_\_
4. What is your field of specialisation? \_\_\_\_\_
5. What is your period of experience in the organisation? \_\_\_\_\_ Years
6. Highest Level of education? \_\_\_\_\_

**SECTION B: MEASURES TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

- 1) What do you understand by communal land rights?

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- 2) What do you understand by communal land interests during massive land acquisitions?

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3) Naivasha has been a spot for massive land acquisitions by both the government and investors. Are there notable cases of communal land rights and interests' violations during these acquisitions?

YES [ ] or NO [ ]

If yes, mention some of them:

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4) What are the measures used to secure justice for communal land rights and interests' violations, in Naivasha:

a). By the government:

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b). By the communities:

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5) In what ways has the government regulated agricultural investment projects in Naivasha, in such a way that the relocated local population will actually benefit, like the inclusion of indigenous farmers in these subsequent big farms?

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6) In what ways has your organisation facilitated dialogues on communal land disputes in Naivasha?

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7) In the cases of 1984 Hell's Gate Park and Ken Gen plant (2009 and 2013 fourth and fifth Olkaria geothermal power projects):

a). What were the major issues that triggered agitations from the local communities?

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b). How were your organisation able to resolve these issues between the government and communities?

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**SECTION C: EFFECTIVENESS OF THESE MEASURES TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

1) Use few case studies to illustrate how effective some of these measures have been?

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2) Part of your mandate is initiating investigations into unlawful displacements, evictions and inadequate compensations for acquired communal lands. Using few case studies:

a). How effective have these investigations been?

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b). What were their outcomes?

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c). What actions were taken?

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3) At the end of 2014, KenGen reallocated lands and earmarked Sh 100 million for the evicted 120 Maasai families in Olkaria, Narasha for their geothermal power plant, how effective was the implementation of this compensation?

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**SECTION C: CHALLENGES FACING THESE MEASURES TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

1). What are the challenges facing some of these measures?

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2). How do you think these challenges can be mitigated?

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3). How do you think that the interests and rights of the local communities and the foreign investors or government could be reconciled in future massive land acquisition cases?

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**Appendix IV :Interview Guide for the Officials of Selected NGOs**

Date \_\_\_\_\_/2016

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**QUESTIONS:**

Tick and Fill as appropriate

**SECTION A: DEMOGRAPHICS**

1. Gender Male \_\_\_\_\_ Female \_\_\_\_\_
2. Age? \_\_\_\_\_Years
3. Organisation's name? \_\_\_\_\_
4. What is your field of specialisation? \_\_\_\_\_
5. Your period of experience in the organisation? \_\_\_\_\_Years
6. Highest Level of education? \_\_\_\_\_

**SECTION B: MEASURES TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

- 1) What do you understand by communal land rights?

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- 2) What do you understand by communal land interests during massive land acquisitions?

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3) Naivasha has been a spot for massive land acquisitions by both the government and investors Are there notable cases of communal land rights and interests’ violations during these acquisitions?

YES [ ] or NO [ ]

If yes, mention some of them:

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4) What are the measures used to secure justice for communal land rights and interests’ violations, in Naivasha:

a). By the NGOs:

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b). By the communities:

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5) In what ways have your organisation advocated for the communal land rights and interests of the Maasai pastoralist community and/or the Narasha community members in Naivasha?

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What has been achieved from such campaigns?

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6) What major campaigns for communal land rights and interests' violations is your organisation championing currently in Naivasha?

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7) In the cases of 1984 Hell's Gate Park and Ken Gen plant (2009 and 2013 fourth and fifth Olkaria geothermal power projects):

a). What were the major issues that triggered agitations from the local communities?

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b). How were your organisation able to come in, to advocate for the rights and interests of the local communities?

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**SECTION C: EFFECTIVENESS OF THESE MEASURES TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

1) Use few case studies to illustrate how effective some of these measures have been?

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2) At the end of 2014, KenGen reallocated lands and earmarked Sh 100 million for the evicted 120 Maasai families in Olkaria, Narasha for their geothermal power plant, how effective was the implementation of this compensation?

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**SECTION C: CHALLENGES FACING THESE MEASURES TO SECURE JUSTICE  
FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

1). What are the challenges facing some of these measures?

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2). How do you think these challenges can be mitigated?

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3). How do you think that the interests and rights of the local communities and the foreign investors or government may be reconciled in future massive land acquisition cases?

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**Appendix V: Interview Guide for the Naivasha Law Courts Officials and Lawyers**

Date \_\_\_\_\_/2016

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**QUESTIONS:**

Tick and Fill as appropriate

**SECTION A: DEMOGRAPHICS**

1. Gender Male \_\_\_\_\_ Female \_\_\_\_\_
2. Your age? \_\_\_\_\_ Years
3. Organisation's name? \_\_\_\_\_
4. Your area of specialisation? \_\_\_\_\_
5. Your period of experience in the organisation? \_\_\_\_\_ Years
6. Highest Level of education? \_\_\_\_\_

**SECTION B: JUDICIAL MEASURE TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

- 1) What do you understand by communal land rights?

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- 2) What do you understand by communal land interests during massive land acquisitions?

---

Naivasha has been a spot for massive land acquisitions by both the government and investors. Are there notable cases of communal land rights and interests' violations during these acquisitions? If yes, mention some of them:

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3) In the cases of 1984 Hell's Gate Park and Ken Gen plant (2009 and 2013 fourth and fifth Olkaria geothermal power projects):

a). What were the major issues that triggered agitations from the local communities?

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b). Did the local communities lodge complaints of communal land rights and interest violations, on either of the cases or other cases, in the Naivasha law courts? YES [ ] or NO [ ]

If yes,

i). What are complaints?

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ii). What were the court's decision?

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5). Have there been further lawsuits from the Maasai pastoralist community and/or Narasha community members on their communal land rights and interests' violations?

YES [ ] or NO [ ]

a) If yes,

When were they made?

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b) Has justice been delivered on these lawsuits?

YES [ ] or NO [ ]

i) If yes,

When and when?

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ii) If no, why?

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**SECTION C: EFFECTIVENESS OF THE JUDICIAL MEASURE TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

1) Use few case studies to illustrate how effective the Naivasha law courts has been in securing justice for communal land rights and interests' violations?

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2). In what ways have court delays, corruption, missing files and unavailability of witnesses jeopardised the secure of justice for communal land rights and interests' violations?

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**SECTION C: CHALLENGES FACING THE JUDICIAL MEASURE TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

1). What are the challenges facing some of the court process for securing justice for communal land rights violations?

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2). How do you think these challenges can be mitigated?

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**Appendix VI: Structured Interview Guide for Displaced Community Members in Olkaria,  
Narasha, Naivasha**

*This will be converted into the local language before it will be administered . . .*

Date \_\_\_\_\_/2016

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**QUESTIONS:**

Tick and Fill as appropriate

**SECTION A: DEMOGRAPHICS**

1. *Gender* Male \_\_\_\_\_ Female \_\_\_\_\_
2. *Your age?* \_\_\_\_\_ *Years*
3. *Highest Level of education?* \_\_\_\_\_
4. *Are you married?* \_\_\_\_\_  
*YES* [ ] *or* *NO* [ ]  
*If yes, how many children do you have?* \_\_\_\_\_

**SECTION B: SOCIO-ECONOMIC IMPLICATIONS OF MASSIVE LAND**

**ACQUISITIONS ON THE LOCAL POPULATIONS, IN NAIVASHA**

- 1) Were you working before you were evicted from your land in Olkaria?

YES [ ] or NO [ ]

If yes, what was your occupation?

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Since you were displaced:

- i) Where do you stay now?

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ii) What is your present occupation?

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2) How many plots or hectares of your land or family land were acquired by the government or foreign investors?

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3) Were you fully consulted before your land was acquired?

YES [ ] or NO [ ]

If NO, what exactly happened?

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4) Were you fully monetarily compensated for your land that was taken in terms of market value of the land then?

YES [ ] or NO [ ]

If yes, how much are/were you paid?

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5) Are you in any ways working for the company that took your land?

YES [ ] or NO [ ]

If yes, in what capacity and how much are you paid monthly?

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6) Did you lose your source of livelihood after your land was acquired?

YES [ ] or NO [ ]

If yes, in what ways?

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7) Did you lose your future harvest through the land acquisition?

YES [ ] or NO [ ]

If yes, explain:

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8) In what other ways were you negatively affected from your land that was acquired?

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**SECTION C: MEASURES TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

1) In which of these massive land acquisitions were you affected in?

i) 2009 fourth Olkaria geothermal power projects: YES [ ] or NO [ ]

ii) 2013 fifth Olkaria geothermal power projects: YES [ ] or NO [ ]

2) If applicable, what collective measures were/are been used by all the members that were displaced, and have their rights and interests violated in securing justice?

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3) What are the measures used to secure justice for communal land rights and interests' violations, in Naivasha:

By the communities:

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**SECTION D: EFFECTIVENESS OF THESE MEASURES TO SECURE JUSTICE FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

1) With respect to question numbers 2 and 3 of SECTION B, how effective have these measures been?

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2) At the end of 2014, KenGen reallocated lands and earmarked Sh 100 million for the evicted 120 families in Olkaria, Narasha for their geothermal power plant, were you a beneficiary of this?

YES [ ] or NO [ ]

If yes, what was your compensation?

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**SECTION E: CHALLENGES FACING THESE MEASURES TO SECURE JUSTICE  
FOR COMMUNAL LAND RIGHTS AND INTERSESTS VIOLATIONS, IN NAIVASHA**

1). If applicable, what are the challenges facing the collective measures been used now by all the members that were displaced, and have their rights and interests violated in securing justice?

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2). How do you think these challenges can be mitigated?

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3). How do you think that the interests and rights of the local communities and the foreign investors or government may be reconciled in future massive land acquisition cases?

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