LAND GOVERNANCE ARRANGEMENTS IN EASTERN AFRICA & LAKES REGION

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EALAN
Eastern Africa Land Administration Network

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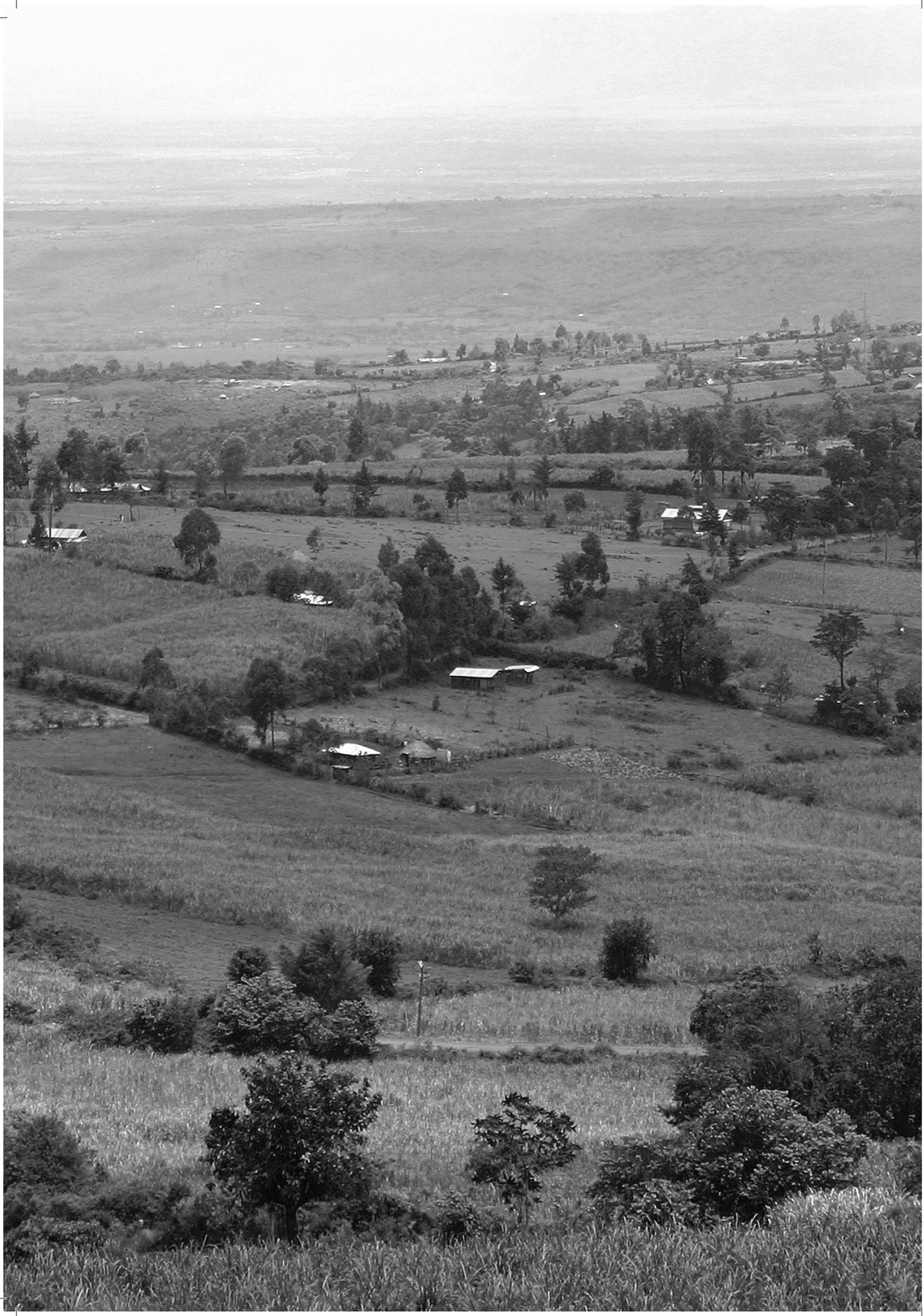

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Preface

Research outcomes of the Eastern Africa Land Administration Network (EALAN), under the Dutch funded Nuffic project – SEALAN 2016-2020

The Eastern Africa Land Administration Network (EALAN) plays an important role in development and support of Land Administration education in Eastern Africa. The Network was formed in 2009, out of interest and informal agreement by four universities in Eastern African Universities to support each other in offering Land Administration related programs. The interest to network was motivated by lack of qualified land administration lecturers across the eastern African countries. The EALAN network started with 4 members institutions across four countries in 2009, and currently has 12 member institutions across 8 countries in the Eastern Africa Region i. e. *Makerere University (Uganda), Technical University of Ke nya, Ardhi University* (Tanzania), *Bahir Dar University* (Ethiopia), University of Burundi (Burundi), Universite Evangelique du Africa (DRC), University of Juba (South Sudan), RCMRD (Kenya), INES-Ruhengeri (Rwanda), University of Rwanda, University of Nairobi (Kenya) and Woldia University Ethiopia. Universities indicated in italics were the pioneers of the EALAN network.

In December 2015 the Netherlands Initiative for Capacity development in Higher Education (NICHE) funded the project "Strengthening the Regional EALAN Network to Build Capacity in Land Administration and Land Governance in the Great Lakes Region" – in short, SEALAN. SEALAN has three focus themes i. e. focus themes: i) Land administration ii) Land governance and policies, and iii) Access to land for women and vulnerable groups, and of course to support the network to be more professional. The SEALAN project is was awarded to the ITC Faculty of the University of Twente. ITC collaborates with the Dutch Kadaster, MDF, and a Kenya-based Land Development and Governance Institute (LDGI) to implement this project. Through the SEALAN project, two researches were collaboratively undertaken by EALAN staff with facilitation by ITC, University of Twente:

1. Research on land governance in Eastern Africa: Focusing on existing land governance arrangements and conflicts that emanate from multiple land governance arrangements within and across the Eastern African countries. Questions guiding this study are:

i.) What are the existing land governance arrangements in Eastern Africa countries?
- Who are the actors involved in land governance?
- What are the roles of land governance actors?
- What are the main land governance processes?

ii.) What are the conflicts that emanate from existing land governance arrangements?
- What types of land conflicts exist in the region?
- What are the roots causes of land conflicts in the region?

iii.) How can conflicts in land governance be addressed?
- How have actors addressed land conflicts in the past?
- What are the other approaches to resolve land conflicts?

2. Research on Access to land for Women in Eastern Africa region:
Focusing on organizations that provide interventions on access to land by women within and across the Eastern African countries. Study adapts the methodology by Quintero et al. , 2014 and uses similar questions to guide the study i. e. :

i) What are the problems commonly reported to your organization?
ii) What are the root-causes of those problems?
iii) What interventions are you providing?
iv) How does the intervention address the root cause of the problems?
v) What are the key outcomes of your interventions?
vi) What are the key challenges you are facing during the implementation processes?

Eight country papers were produced for each topic. The articles were peer reviewed by external (outside EALAN) and internal (peer-review by EALAN staff). Policy briefs have been developed from the country papers. Results of both the country papers and comparative study have been disseminated at the Eastern Africa land Administration Conference 2019 held in Zanzibar, as at the Africa Land Policy Centre (ALPC) Conference on Land Policy in Africa, CLPA-2019: "Winning the fight against Corruption in the Land Sector" held in November 2019 in Abidjan, Ivory Coast.

Two books presents the outcome of the SEALAN project researches on the topics of Land Governance and on Access to land for women. Results have implications on policy and practice.

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Foreword

Land governance is key towards the achievement of sustainable development. Weak land governance and corruption in the land sector has been identified as one of the key factors for widespread proverty in most developing countries. However, the status of land governance arrangements, actors, process and conflicts in Eastern African countries is not well documented. This research was aimed at exploring and creating an understanding of the nature of land governance systems in Eastern African and their role in minimizing conflict between different land governance actors and processes. Compartive research approach by using qualitative research data was employed as a reserch methology. The Eastern Africa countries that the study covered include: Burundi, Democratic Republic of Congo, Ethiopia, Kenya, Rwanda, South Sudan, Tanzania and Uganda. These countries were selected because they all have institutions that are members of the Eastern Africa Land Administration Network (EALAN). The findings of this research reveals that the region manifests diverse background of land governance arrangements accommodating various conflicting land governace actors and processes, due to varied historical backgrounds. In most countries the formal land governance systems do not cover large parts of the society. Customary and informal authority structures still intervene significantly on matters related to land governance. Therefore, more effort is required in the region to make the formal systems more accessible, including altering current formal systems and making them less bureaucratic and more affordable to majority of the people.

Key words: Actors, Conflict, Eastern Africa, Institutions, Land governance, proceses.

1. Introduction

1.1. Background of the study

Land is not just the earth that people walk on, it is fundamentally the way people think about place *(Williamson et al. , 2010).* It is more than just an asset which is strongly connected to people's feeling mainly linked to individual and community identity, history and culture, as well as being a source of livelihoods and, for many poor people, their only form of social security *(Palmer et al. , 2009).* In other words, land is the most fundamental resource in any society with far reaching social, cultural and economic implications. People require land and related resources such as forests and water for the production of food and to sustain basic livelihoods. Land provides a place for housing and cities, and is a basic factor of economic production as well as a basis for social, cultural and religious values and practices.

Access to land and other natural resources and the associated security of tenure have significant implications on human development. Access to land for the poor and vulnerable are increasingly affected by climate change, violent conflicts and natural disasters, population growth and urbanization, and demands for new energy sources such as bio-fuels and so on. Therefore, in today's world, land is increasingly recognized as an important governance issue.

Land governance is concerned with policies, processes and institutions by which land, property and natural resources are managed *(Enemark, 2012).* It is also a process in which decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced *(GLTN,2012).* The process includes decisions on access to land, land rights, land use, land development and conflict resolution mechanisms. It also includes state structures such as land agencies, courts and ministries responsible for land, as well as non-statutory actors such as traditional structure and informal agents. It covers both the legal and policy framework for land as well as traditional and informal practices that enjoy social legitimacy. It is for these reasons that many country's have enacted land governance laws and established land governance institutions to address important land matters relating to land rights, management of public land, land use planning, land taxation, land information management systems and disputes resolution.

The contemporary literature and thoughts show that sound land governance is the key toward the achievement of sustainable development *(Deininger et al. , 2012)* and *(Enemark, 2012).* On the other hand, weak land governance is a cause of many tenure-related problems, and attempts to address tenure issues are affected by the quality of land governance. Weak governance can be exhibited in formal statutory systems as well as in informal and customary tenure arrangements *(Palmer et al. , 2009).* The poor are particularly vulnerable to the effects of weak governance as they lack the ability to protect their rights to land and other natural resources. That is why many countries are attempting to deal with issues of land governance as their priority agenda.

Recognizing the importance of land governance as an important tool to national development goals, Eastern African countries have put in place varied land governance systems. However, the status of land governance arrangements, actors, process and conflicts in Eastern African countries is not well studied. The Eastern Africa countries that this

study covered include: Burundi, Democratic Republic of Congo, Ethiopia, Kenya, Rwanda, South Sudan, Tanzania and Uganda. These countries were selected because they all have institutions that are members of the Eastern Africa Land Administration Network (EALAN). The region manifests diverse background of land governance arrangements accommodating various conflicting actors and processes, due to varied historical backgrounds. Thus, this research sought to compare and describe the nature of land governance arrangement in the Eastern African countries.

This book provides a comparative analysis of the research conducted in eight Eastern African countries. The book is stuctured into fourteen sections. The first section of of the book deals with the background, objective and research questions. The second section covers details about the research methodology. Sections from three to five responds to the three research questions. The third section deals with the existing land governance arrangements in the countries. The fourth and fivth sections respond to the second research question which was to find out conflicts that emanate from existing land governance arrangements and provides insights into how conflicts in land governance are addressed respectively. Section six summarizes the key findings of the research as a conclusion. Sections from seven to fourteen are explaining details on separte country reports.

1.2. Objectives of the study

The primary objective of this study was to explore how Eastern African land governance systems can minimize or mitigate conflicts between land governance actors and processes. The specific objectives of the study were:

a) To review and describe the existing land land governance arrangements in Eastern African countries;
b) To review the status of conflicts between land governance actors and processes in the land governance systems of Eastern African countries;
c) To suggest solutions that can minimize conflicts and overlaps in land governance in Eastern African countries

1.3. Research Questions

The study intended to answer the following key questions:

i. What are the existing land governance arrangements in Eastern African countries?
- Who are the actors involved in land governance?
- What are the roles of land governance actors?
- What are the main land governance processes?

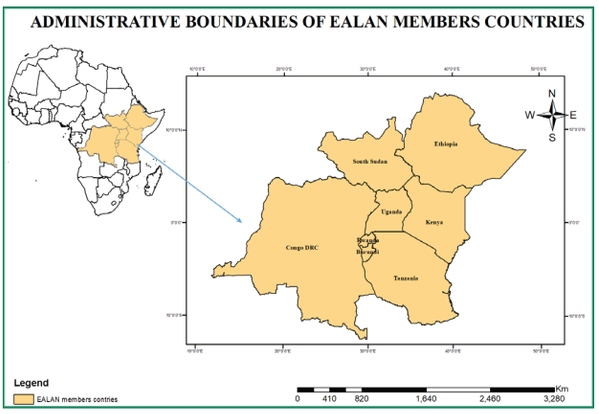
ii. What are the conflicts that emanate from existing land governance arrangements?
- What types of land conflicts exist in the region?
- What are the root causes of land conflicts in the region?

iii. How can conflicts in land governance be addressed?
- How have actors addressed land conflicts in the past?
- What are the other approaches to resolve land conflicts?

2. Research Methodology

This research was conducted in eight Eastern African countries (Burundi, Democratic Republic of Congo (DRC), Ethiopia, Kenya, Rwanda, South Sudan, Tanzania and Uganda) by EALAN member institutions within the respective countries (see figure 1). EALAN member institutions involved in this research were Bahir Dar University in Ethiopia, Technical University of Kenya, INES-Ruhengeri in Rwanda, Universite Evangelique en Afrique in the DRC, University of Burundi in Burundi, University of Juba in South Sudan, Makerere University in Uganda and Ardhi University in Tanzania. Each EALAN member institution selected experts in the area of land governance and established a research team. Research experts/team developed their own research instrument based on the matrix designed in the research kickoff workshop that was held in Dar es salam in April 2016.

Figure 1: Study Area



Source: produced by authors

This research employed a qualitative research approach by using both primary and secondary sources of data. The data collection methods used included; interviews, focus group discussions and

review of existing documents on land governance. The people who were interviewed included stakeholders in land administration agencies, professionals in the land sector, policy makers, local authorities and leaders, and selected community members.

3. Land Governance Arrangement in Eastern Africa

3.1. Actors and their roles in land governance in Eastern Africa

Land governance arrangements in Eastern Africa; though with some commonalities, differ from country to country depending on the actors, their roles, land governance processes and regulations that each country has enacted. This study has identified three key categories of actors with different and overlapping roles and interests on land governance. These three categories of actors are traditional or customary, informal and formal actors in land governance.

a) Traditional actors and their role in Land Governance

Prior to the colonization of Africa, the prevailing land tenure system in Eastern Africa were based on customs. The customary systems had authority and prerogative powers on matters related to governance. Through colonial influence (with exception of Ethiopia), and establishment of statutory land tenure, many of the traditional land governance practices ceased to exist or changed the shape. However, the traditional practices are still operational in different countries in Eastern Africa.

The traditional authority structure is complex and socially embedded (Cousins, 2007). In some countries such as Uganda this includes kings and kingdoms. In some cases this includes elders, family members and chiefs, and *Edir* (traditional/social associations for helping each in burial arrangements but also involved in solving succession disputes. However, in some Countries like Rwanda where nearly all land is registered and digitized, traditional leaders are no longer involved in any land related activities.

The roles of traditional actors in Eastern Africa vary from place to place. There can be differences even between neighbouring villages (Chauveau et al. , 2007). In some Countries, they are mainly involved in dispute and conflict resolution, they represent and defend the interests of their local communities. In some cases they discourage communities from seeking land titles to sustain their control over land use and management. However, not all Eastern African Countries have traditional actors in Land Governance. Countries like Tanzania where customary land is regulated by statutory laws, traditional leaders have minimal role. Instead they act within the framework of pre-established legal frameworks.

In a country like South Sudan, traditional actors play an active role in land governance. They are responsible for managing land within the community and giving rights to land. The actions of traditional actors are binding in formal institutions. For example, if a person is allocated land by the community chiefs, this can be formalized by the government through presenting a signed document from the chief and then one can get a land title from the government. Still, since the country is yet to have a land policy, if the state wants land, it has also to apply through community leadership.

b) Informal actors and their roles in land governance in Eastern Africa

Like many other parts of the world where land governance is still weak, informal actors in land governance are still visible in many Eastern African countries. They involve individuals, local leaders, unlicensed and unstructured brokers, religious clergy and administrative government officials assuming roles with in land governance which are outside their legal mandate. However, this is not the case in all Eastern African Countries. For instance in Rwanda all land governance functions are regulated by statutory law and all informal land actors are deemed illegal and thus, not acceptable.

The review of country experiences also show use of customary and unwritten rules and accepted norms that are not preserved in formally constituted organizations. The informal actors change/modify the legally binding rules in a way that fits their interests. These informal actors play different roles like facilitating land transactions and make possible informal procedures in registration of titles leading to land conflicts as for example one piece of land may be sold to several people. They also participate in land development and construction activities outside the established legal framework and participate in informal land allocation and disputes land resolution.

c) Formal actors and their roles in land governance

With the introduction of statutory tenure, many countries have opted for establishment of legal institutional frameworks for legal and proper land governance. Different governmental and non-governmental agencies have been established and accredited to issue land related services and issue

land governance guidelines. Such institutions cascade from Central government to local government.

At central government level, all Eastern African countries have Ministries mainly in charge of land, with exception of Ethiopia where land issues are handled by directorate within the Ministry of agriculture for rural land or Ministry of urban development and housing for urban land. The names of Ministries are different in each country depending on the mission and duties assigned. The national land commissions are also common in Eastern African countries, though the duties and obligations vary from country to country. In some countries there are land agencies at the regional and provincial levels that disseminates land governance guidelines to districts/communes/counties for implementation.

It is also common that in Eastern Africa Countries, land governance services are decentralized at the level of districts, Municipalities, Counties, sectors and villages.

The formal actors in land governance mentioned here refer to those public offices/ actors who are empowered by established legal frameworks to establish rules, regulations, processes and structures through which decisions are made about access to land and its use, the manner in which this is implemented and enforced and the way that competing interests in land are managed. These actors have and play different roles in their respective countries including; to develop and disseminate the land governance, environment and climate change policies, strategies and programs, policy formulation, implementation and initiating legal reviews among others and register land, issue and keep authentic land deeds and any other information related to land governance.
The actors in this category also include those who involve in policy formulaton, legislative processes; dispute resolution such as parliament, judiciary, tribunals, and commissions recognized Alternative Dispute Resolution (ADR) institutions and those non state actors, profesionals and private institutions.

3.2. Land Governance Processes

Land governance as a process includes key functions such as how decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed (Palmer et al. , 2009). The functions of land governace processes of Eastren African countries largely depend on the land tenure systems adopted by individual countries. Moreover, the similarities and differences are to a large extent a result of varying historic influences experienced prior to attaining political independence, and the land tenure systems practiced. While land governance processes occur under traditional, informal and formal settings, the main ones emerging from the study are informal and formal. Land governance under traditional setting is also being practiced largely in countries such as DRC, South Sudan and Uganda

The **informal** arrangement is that in which the activities are outside the guidelines provided under the relevant laws governing land governance. Data obtained from the countries indicate that land transactions involving individuals and brokers are operating outside the legally recognized framework. Land conflict and dispute resolution is another activity that happens under informal arrangements, mostly where the parties were involved at the time the transaction was taking place. However, a striking difference is noted with DR Congo where officials responsible in the formal land governance system illegally serve their people in informal arrangement for personal gain. Conversely informal practices in Rwanda are declared illegal although it remains a question as to what extent the directive is adhered to. Another difference is the case of Tanzania where private companies engaged in land delivery acquire land in informal land markets and follow formal procedures for selling the subdivided land parcels with titles.

The major **formal** land governance processes are those depicting the land administration functions such as land tenure, value, use and development (Enemark, 2005) as it is also prescribed by the relevant laws of the respective countries.

The conventional key functions in the formal land governace process common to most countries in the region include land tenure registration and certification, land information management, land acquisition (expropriation) and transfer, land use and development control property market and taxation and regulation/operations, Land policy formulation is another key fuction in all land governance sytemes of the region. Land adjudication is one of the activities aimed to identify and recognize existing rights in land holdings before processes leading to land registration are accomplished.

The other processes are land use planning and subdivision to demarcate the boundaries of individual landholdings to enable registration of rights held in land. The land surveying process culminates with registration of the rights in land and issuance of certificate of title. Regularisation of land is another process undertaken where land development has occurred not in accordance with planned land uses such as in informal settlements or in cases of unregistered lands. Disputes and conflicts resolution is another key process in land governance. This is mainly conducted through judicial systems as prescribed by the relevant laws. The formal land governance processes are to a large extent similar in all participating countries except for Burundi where they are confronted with problems emanating from lack of technical capacity to handle the land governance functions and the absence of the laws to guide the implementation of the processes. On the other hand, Rwanda demonstrates very efficient formal land governance among the countries included in the study.

In South Sudan the land is still used largely under customary law. Land governance is through customary arrangement whereby Community Chiefs are responsible for assigning land rights to individuals as well as the government and its institutions. The formal processes start with land given to individuals or government institutions by the Chief of the Community. Upon being assigned land the applicant is given a document that is presented to the responsible government department for the processes of surveying and registration to follow. Thus formal procedures start after approval by the Chief on behalf of the community.

3.3. Regulations in Land governance

The traditional and informal systems of land governance operate without written regulations and rely on customs as practiced in the processes. An example on practices is the informal land transactions in Tanzania where a sale agreement is witnessed and signed by the local leaders in the local government system. The signed sale agreement provides proof of ownership rights that is accepted before the law and can form a basis for issuance of title for the respective land.

The formal system is in principle guided by laws and regulations as enacted by the state. Data presented by the individual countries involved in this research indicate the presence of various laws guiding land matters. It has been observed that Constitution and National Land Policy are instruments available in Kenya, Uganda and Tanzania; the countries which have a common historic legal system from the British. The Land Policy in each of the three countries is further supported by acts of parliament such as: Land Act, Planning Act, Land Registration Act and many other legislations in implementing land governance. Likewise, Rwanda has land matters covered in the National Land Policy, Land Law and *other* related laws.

In Ethiopia land matters are regulated under the Federal Constitution, *Urban Land registration and certification procalamation*, Federal Rural land administration and use proclamation, Urban Lands Lease Holding Proclamation and other related laws. In DRC an encompassing law is in place to guide land governance named "Law No. 73-021 of 20th July 1973 carrying general system of property, land regime and real estate and safety regime such as modified and completed by law No. 80-008 July 18, 1980". Data otained from Burundi indicate that a Land Act was enacted in 1986 but not operationalised until 2003 when it was subjected to review and finally adopted in 2011. Unlike in the other countries, Burundi operates with the Land Act alone. In South Sudan there are Customary Laws that regulate the informal land dealings. The Land Act and Local Government Act are in place to guide the formal land governance arrangements.

4. Land Conflicts in Eastern Africa

4.1. Type and nature of Land Conflicts

This section provides a comparative analysis on the nature and types of land conflicts across the eight Eastern African countries. The question sought to find out "what are the conflicts that emanate from existing land governance arrangements? The results from the country cases have highlighted different types of conflicts that are found across Eastern African.

Lack of proof of ownership in most of Eastern African countries was identified as the major cause forland conflicts since many land owners do not have titles as evidence of ownership. This is because they hold and or own land under customary tenure system. Others access land through informal purchase for which no efforts are made to formalize the transactions. It also happens that several people may claim rights over the same property because the rights are not registered or if registered they may not have been updated. This conflict can originate from inheritance, legal pluralism and lack of well functioning registration machinery. In addition, registration machinery could be in place but the land has not been registered for various reasons including unaffordable costs for the registration processes.

In other case, unclear boundaries between two pieces of land that are made by non-physical features or non-permanent physical features are mostly observed in all Eastern African countries. There is also a tendency by some to remove the non-permanent physical features deliberately so that he can increase the size of his piece of land. There are also situations where permanent boundaries are removed e. g. in Tanzania some people go to the extent of removing the beacons. The conflict can be found between individuals (in the families or neighbours, between private individuals and the state, and between members of clans or tribes). Also, these conflicts are common between communities and the state where reserve/protected lands are encroached because there are no clear boundaries.

The conflicts on land in these countries also emanate from competing uses over land resources. In the absence of land use plans (for urban and rural lands), competition arises between uses on the same land for different purposes. The competition can be observed between farmers and pastoralists competing over land that can be used for farming or grazing as a typical practical example. The nature of such conflicts is the disregard of the use found on the land categories. In most cases pastoralists are seen to let animals graze in areas with vegetation cover not considering whether there are planted crops by farmers or natural grass/plants. This type of conflict has caused eruption of conflicts between neighbouring communities. The material and human losses have not been estimated since it has been a conflict for long time in most EALAN countries.

Land as a source of wealth and at the same time as a source of power has made it to become a precious commercial product.

Informal land sales and multiple allocations are obvious where land governance is not properly working. The selling and purchasing of land in most of Eastern African countries are not regulated by the government or any legal framework. Therefore, there are informal brokers who perform the whole process from advertising up to final transaction. It even happens when a piece of land has been sold to more than one person. Also, the brokers mediate the selling or purchasing of protected/hazardous land which in the long run leads to conflicts. The other case is where land officers can do a double or triple allocation of one piece of land. From there, fake titles can be granted and it is difficult to prove the authenticity of titles. It has to be noticed that, this conflict related to selling is not observed in Ethiopia where land is not allowed to be sold by individuals (FDRE, 1995). In urban areas, the land is government owned and government has to sell or allocate piece of land to individuals and people can get an urban lease.

Moreover, expropriation of land by the state with unfair or without compensation for public interest has been causing conflict between government agencies and land holders/owners in most Eastern African countries. Despite the requirement that no country should expropriate land without compensating the holders or owners, in most cases land holders or owners are not willing to surrender their land willingly. The issue of dissatisfaction and resistance arises when it comes to property assessment where land owners are not aware of considerations and formulas used to compute the property value. In addition, they may have been subjected to long delays in payment of the compensation which makes the land owners not embrace the land acquisition processes. It has to be noted that no government compensates the encroachers on public or protected land. When government refrains or becomes reluctant to compensate land encroached, conflicts erupts. It has been observed that, no one is happy to be displaced from one's land since the compensation value mostly does not cover the disturbance on livelihood packages. It can be concluded that the types of conflicts found in these countries are essentially similar with the exception that they may not all have the same impacts or manifest in the same manner.

4.2. Root causes of land conflicts

Conflicts in land governance can be either within a particular setting for example there can exist land governance conflicts within the formal setting and the conflicts can be between settings for example between the formal and the informal or between the

formal and traditional setting. This arrangement is also applicable when it comes to the root causes of conflicts. There are various causes of conflicts within and between settings as explained below.

In some counteries in the region, there is failure to enact or implement land related laws in time which cause land governance conflict as the different actors will be operating either under no law or outdated laws. In most cases the laws, regulations and procedures in place are enforced to a limited extent. In the countries studied there is no one country which is completely missing a law to guide land governance except may be some aspects have no law/regulation in place.

Another cause is failure to follow the law. This is problematic as there is no clear and well defined jurisdiction to limit operations of all actors in the land governance sector. This also leaves people to do whatever they think is right which may be wrong.

In the DRC for example the absence of policies and instruments for planning their use and integrated and collaborative approaches are the main causes of land conflict. There are different institutions (several stakeholders including state actors) each responsible for managing different aspects of the state's land domain but they do not have a correct perception of the relationship between customary land management systems and the requirements of modern land law, as derived from the law of July 20th, 1973. However the case of Rwanda is different as they no longer have problems in enacting and implementing land laws.

Most if not all of the countries in the Eastern Africa have dualism of land tenure. In countries such as Uganda, Tanzania, Kenya, South Sudan, DRC and Ethiopia there are statutory tenures running parallel with the customary tenure settings. Dualism of land tenure comes with legal pluralism as there are different legal frameworks for the different tenure systems. In most countries such as Uganda, Kenya and South Sudan and DRC customary land is managed and regulated by the traditional authorities in a customary setting where as in Tanzania and Ethiopia it is the Government that manages and regulates dealings and operations on customary land. The case of Rwanda and Burundi is different as they only have statutory law and no customary land.

According to Bruce (2017), statutory tenure is non dynamic in nature as such the rules and regulations take long to be changed but the same cannot be said of customary tenure. Customary land tenure is dynamic and is ever evolving therefore the rules must also change but this is not the case. Instead in most countries statutory laws do not always adopt to changing customs. For example in Uganda customary land tenure is now becoming individualized and can be converted into freehold according to the land act. This means that customary land is evolving from its old tradition of being owned as a group and losing its initial characteristic. However, individuals who bought customary land from a community but having neither rules of customary or statutory law being applicable to them as they seem to fall in none of the settings of governance. And if this individual gets any conflicts on land they will run to court yet customary land have their own ways of settling disputes within the customary setting. Therefore such type of land governance arrangements where there is legal pluralism causes a lot of confusion, overlapping authority and conflicts (Uganda National Land Policy, 2013) in the land governance systems of several countries.

Unclear and overlapping institutional mandates is another root cause of land governance conflicts in the Eastern African countries. Overlapping mandates imply that different land governance actors have no clear boundaries of operation causing each actor to go beyond the duties and roles they are supposed to perform and having more than one actor performing the same duties (Tuladhar, 2015). Overlapping institutional mandates is one of the reason why land governance is often poor (Ibid) . When there is unclear and overlapping mandates, there are cases of contradictions and parallelism which causes confusions in the operations of the land sector (Mundial, 2010) leading to conflicts in the land governance processes and between actors. The case of unclear and overlapping mandates is witnessed in Uganda, Kenya, DRC, Burundi and Tanzania For example in Burundi the Ministry of Land and Planning has conflicting mandates with the Ministry of Agriculture and Environment over land found in a valley in Bujumbura. Whereas the land is good for Agriculture and being managed by Ministry of Agriculture, the Ministry of Lands is claiming mandate over that same area for residential purposes since the city is expanding. This then leads to institutional conflicts. The case of unclear and overlapping mandates could also be within the same institutions. For instance In Uganda you find the District Staff Surveyor and the Senior Staff Surveyor not having clear demarcation of roles. Similarly in Kenya the roles between national government surveyors and county surveyors is not always clear.

As such one finds they are in conflict on who should do what and sometimes fighting over particular roles.

When land laws are misinterpreted, they lead to conflict within the land governance processes. In order to make a decision, officials need to have a clear understanding of all laws and cases that have been heard in the courts of law. If an officer is not aware of court rulings and judgements they can make wrong decisions. For example, in Kenya there are laws such as the Constitution, the Land Act, the Physical Planning and Land Use Act, the Land Registration Act and many others. So it is easy to read one Act and make a decision without referring to the Constitution. When one does not know the law, they act in ignorance and sometimes this will cause problems in the land governance processes.

There are complicated procedures and bureaucracy in the land governance processes in Eastern African countries and these have led to people opting for either informality or trying to get shortcuts to have projects executed and this in turn has led to conflicts either within or between land governance processes and actors. Unlike in Rwanda where there are timelines to all land governance activities, the other countries seem not to exhibit that. Land governance processes in the other countries can take any time based on individuals. There is a case of DRC where formally, in order to acquire land, the interested person applies to the Land Titles Division. For lack of allotment and territorial development plan, the applicants go to the administration at last instance. They identify vacant lands themselves or through formal, informal or traditional actors and develop them. The administrative procedure in force does not suit them at all. Not only are the texts are not well known and are difficult to access, but also the processing time of files is too long. Some people prefer to go to the traditional systems even when the formal system takes precedence. People appreciate the simplicity and flexibility of traditional procedures for acquiring land.

4.3. Land Governance processes that contribute to conflicts

This section reviews the question that was formulated as follows: How do processes contribute to conflicts? The results show that processes were in one way or another contributing directly or indirectly to land conflicts in all the countries studied.

In some cases, rigid and long administrative procedures lead to conflicts. The procedure to have title on a piece of land is not easy and affordable. It takes time to secure a title due to bureaucratic procedures that are long and sometimes not clear. In countries like Burundi and South Sudan services like boundary demarcation can take two weeks or more depending on the responsiveness of relevant officers. In addition, fees for land titling are not negotiable and affordable especially for low income earners. Some people are not aware about the benefit of having their land titled, especially in rural areas where land owners do not intend to sell their land. Finally, due to low salaries offered to land officers, they deliberately delay the procedures so that the client can get tired and discouraged. The title applicant may be compelled to plead with the officers for assistance leading to motivation for corruption.

Informal transactions are also often outside the formal system and not usually handled by government officials. In Tanzania informal land transactions may make their way into the system and eventually produce formal ownership. Land selling and buying is in most cases under private individuals where the government has no stake. Therefore, it is obvious to find a piece of land being sold to more than one client which generates conflict between buyers. In general, there is no policy to govern land transaction and regulates the prices and value of land especially in rural areas. This has also caused the occurrence of informal settlements in urban areas since subdivision of land for selling has not been regulated by any legal procedure.

Moreover, the non-computerized land related files and certificates/titles are among the contributors of land conflicts in these countries. Many countries still use analogue or paper based system for registering land. Others have tried to digitize the current registration systems but have not been able to computerize the titles delivered before the digitization began. From that, it's not easy to provide factual evidence for claimants on piece of land that was registered many years ago especially when it comes to boundary conflicts or ownership conflict. However, countries like Rwanda, Kenya and Tanzania have and are trying to digitize the land related documents. Still, challenges exist in tracing and updating the information on subjects and objects as time goes on.

Lastly, the processes of payment of compensation and rehabilitation for the expropriated landholders have been cited as contributing to land conflicts. In most cases, private land holders cannot oppose land expropriation. Every country has its own mechanism for assessing compensation.

To this extent the way right holders are compensated may vary in each of the country. The way people are settled in new areas and enabled to restore their livelihood is also different in each context.

5. Land Conflict Resolution Mechanisms in Eastern Africa

This section addresses the third research question, which sought to find out how conflicts in land governance are addressed. The question was further divided into two sub-questions, namely (i) how have actors addressed land conflicts in the past? And (ii) what are the other approaches to resolve land conflicts. Based on the above, this section provides a comparative analysis for the countries in Eastern Africa. The first part covers the first sub-question while the second part covers the second sub-question.

In the eight countries, the research showed that the actors addressed land conflicts using three main approaches, namely, traditional (customary), informal and formal. Ideally, it is usually assumed that introduction of formal land governance arrangements eliminates customary and informal authority structures *(Chauveau et al. , 2007)*; *(Okoth-Ogendo, 1989)*. However, customary authority structures are retained even where formal structures have been introduced *(Chauveau et al. , 2007); (Simbizi, 2016)*. In addition, in most developing countries, such as most of those in Eastern African countries , approximately 70% of the land has not been recorded and remains under customary authority structures *(Zevenbergen et al. , 2013)*.

Based on the above and the research findings, most of the actors in the region address conflicts through traditional/ customary authority structures. In the Democratic Republic of Congo (DRC) approximately 90% land conflicts are addressed by traditional methods (research respondent). In this regard, under the moderation of the customary chief, the guilty asks for forgiveness and repairs the damage done thus avoiding any brutality. In Ethiopia, disputes can also be taken to respected elders, religious leaders at village level to seek for remedy in addition to the courts. To some degree, in Ethiopia, the formal law demands that disputes are first taken to alternative dispute resolution mechanisms such as elders, before being addressed formally. Similar trends were observed in the other countries, in which custom has been retained as a means of resolving land related conflicts.

Apart from custom, informal systems are also used to address land conflicts. In this regard, informal systems are those that have emerged in a society and are not necessarily custom and are also not anchored in formal laws *(Chauveau et al. , 2007)*. The informal arrangements are those that have emerged due to socio-economic changes in society. The changes include: urbanization, population growth, monetarization of the economy, interaction with other cultures etc. *(Chauveau et al. , 2007)*. In most urban areas in the Eastern African region, informal settlements, known as slums have emerged. In these slums, there are informal authority structures who manage access to land and related resources *(Lamba, 2005)*. Similarly, in rural areas, informal arrangements have emerged, with which people conduct land transactions. For example, some people sell land by merely drafting an agreement between themselves, without involving a lawyer or the land registry. In some cases, the agreements are attested by a chief to make it seem formal, or official, even if the transactions is not recognized in the formal register *(Zevenbergen et al. , 2013), (Goodwin, 2013)*.

In the study area, some people have resorted to informal means of resolving land disputes. For example, in Kenya, some people approach government appointed chiefs to sign informal land transfer documents, as a means of giving the document some form of officialdom. This is contrary to what the formal system states in which transfers should be done through the registry. In Rwanda where all land is registered and land titles issued to land owners, Kenya and Uganda, if a dispute occurs over boundaries, the responsible person to solve it according to law is the land registrar (Kenya, Land Registration Act, 2012). However, in informal settings, people first approach the chief for a solution. In Ethiopia, the informal arrangements that people use to resolve conflicts include the priests of the Orthodox Church and elders in the village and individuals in some service giving institutions, such as the Kebele administration *(sub-district level) (Adam and Birhanu, 2017)*.

People in the eight countries also use formal systems to address land related conflicts. The formal systems are those that are recognized by official laws. In the formal system, land conflicts are addressed through different mechanisms depending upon the sources and nature of the conflicts. The conflicts can be addressed through formal land administration structures which include the office of land surveyors, land registrars and judicial structures such as court and land tribunals. In a country like Tanzania, conflicts should be first reported to village land councils. If a solution is not found, the parties can escalate the case to Ward Land

Tribunals, the District Land and Housing Tribunal and finally the High Court among others.

There are other approaches that have been used to resolve land conflicts within the region. One alternative method that seemed to emerge in most of the countries was the use of alternative dispute resolution mechanisms. In DRC, non-governmental organizations such UN-Habitat play a role in making people aware of alternative dispute resolution mechanims. In Rwanda, the use of mediation, reconciliation and negotiation is highly employed before conflicting parties transfer their case to courts of law. In some countries such as Kenya, Uganda and Tanzania, documentation of proper land procedures has also been used as another method of avoiding conflict.

There have also been attempts to harmonize custom with formal laws. The assumption here is that if people tend to depend on custom for conflict resolution, then formalizing custom could possibly help in quick formal conflict resolution mechanisms.

Another form of dispute resolution that has been used in some cases is reliance on traditional belief systems. In most African communities, there have always been beliefs in the supernatural or spiritual world. To this degree, when all else fails, some people resort to spirituality to resolve conflicts. The affected party usually approaches a diviner or witch doctor to cast a spell on the offending person. Based on responses from the researchers from the different countries, "African magic" still exists and in some cases is used to resolve land conflicts.

This section has attempted to explain how conflicts related to land are solved in Eastern Africa. In summary, in each of the countries, people use traditional/ customary, informal and formal means in different ways. However, it is apparent that use of customary and informal means is higher than the use of formal mechanisms due to costly and bureaucratic formal processes. A problem that usually emerges is that custom and informal rules work well only when the society is cohesive or homogenous and everybody accepts the unwritten rules. However, when new actors emerge, who do not know the customary or informal rules, then the ability to resolve conflicts is diminished (Deininger, 2003).

As an example, in some cases of land transfers or inheritance, after the original land owners are long gone, the new actors may not respect informal agreements that were made by the departed. To this end, there is a need to improve the formal land tenure arrangements as a means of enabling more people to use formal systems for conflict resolution.

6. Conclusions

This study primarily aimed at exploring and comparing the land governance arrangements in the eight Eastern African countries (Burundi, Democratic Republic of Congo, Ethiopia, Kenya, Rwanda, South Sudan, Tanzania and Uganda). To achieve the objectives of the study, qualitative research approach was used. This study explored the land governance arrangements and key land governance actors and process of each country. The findings from the comparative analysis of countries show that land governance in Eastern Africa though with some commonalities, differs from country to country. The findings show that there exist differences in the actors, their roles, land governance processes and regulations in the different jurisdictions.

The study identified three key categories of actors in land governance arrangements in Eastern African. The actors are categorised as either traditional actors, informal actors or formal actors. The traditional authorities include kings and chiefs in a country like Uganda, and elders in the community in most countries. In Ethiopia, the traditional authorities include Edir (social associations for helping each in burial arrangements at village level in Ethiopia but also solve succession disputes especially when involving land) have been playing a significant role in conflict resolution. However, in some countries like Rwanda where land is registered and digitized, traditional leaders play a minimal role in land related activities.

In addition to the traditional actors, informal actors are visible in many countries in Eastern Africa. The actors in the informal category include individuals, some local leaders, unlicensed and unstructured brokers, Religious clergy and government officials. However, this is not in all Eastern African Countries. In Rwanda, whose land governance system is regulated by statutory law, informal land actors are deemed illegal and thus not acceptable. The third category of actors are the formal actors whose role is bound by the official rules and include all government agencies and professionals. The formal actors are the key actors in all Eastern countries. The formal actors are either public offices or individual actors who are empowered by established legal frameworks to establish rules, regulations, process and structures and ruled by the established formal or official laws.

The formal actors include land registrars, surveyors, physical planners, lawyers and real estate valuers among others.

This study also explored causes and types of conflicts between actors and processes in the land governance systems in the eight countries. Five major types of conflict are prevalent in the Eastern African countries. The first type of conflict is that which arises from unavailability of evidence of ownership. The second type is boundary conflicts between neighbors because of unavailability of clear physical features or permanent physical features between two pieces of land. This type of conflict can originate from inheritance, legal pluralism and lack of well functioning registration machinery. The third type of conflict arises from the severe competition for land resources. The fourth type conflict arises from the informal land sales and multiple allocations are also key causes for land conflicts in the region. Expropriations by the state with or without fair compensation is also found to be one of the causes of conflict between different interest groups in the region.

This study has also explored the different conflict resolution mechanisms employed in the region. Formal mechanisms of conflict resolution such as courts and land tribunals exist in all countries. However, as an alternative, some people opt for informal mechanisms for solving conflicts. As an example, in informal settlements, cartels may play a role in solving conflicts. Further, traditional methods of solving disputes also exist. In this case, elders, chiefs and in some cases, Kings, solve the conflicts. Overall the formal systems in most of the countries do not cover large parts of the society yet, progress is ongoing but many are still unreached. Due to the limitations of the formal systems, aspects of custom and informal authority structures exist and seem to be used by most people for conflict resolution and other transactions related to land. Therefore, more effort is required to make the formal systems more accessible, including altering current formal systems and making them less bureaucratic and more affordable for majority of the people.

References

2013. *Uganda National Land Policy.*

Adam, A. G. & BirhanuIRHANU, T. A. 2017. Decentralized Rural Land Administration in Ethiopia: The Case of Amhara Region. *Journal of Land and Rural Studies* Vol. 6, Issue 1, pp34-49.

Bruce, J. W. 2017. Land Tenure Dualism in China: How the Dichotomy between State and Collective Ownership Has Shaped Urbanization and Driven the Emergence of Wealth Inequality. *World Bank Land and Poverty Conference, March 20-24. Washington DC.*

ChauveauU, J. -P. , Cisse, S. , Cotula, L. , Colin, J. -P. & Delville, P. L. 2007. Changes in customary land tenure systems in Africa. *In:* Cotula, L. (ed.).

Deininger, K. 2003. *Land Policies for Growth and Poverty Reduction* Washington DC, World Bank and Oxford University Press.

Deininger, K. , Selod, H. & Burns, A. 2012. *The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector,* Washington DC:The World Bank.

Enemark, S. The Land Management Paradigm for Sustainable Development *In:* Williamson, I. , Enemark, S. & Wallace, J. , eds. Proceedings of the Expert Group Meeting on Incorporating Sustainable Development Objectives into ICT Enabled Land Administration Systems, 2005 9-11 November 2005, Melbourne, Australia.

Enemark, S. 2012. Sustainable Land Governance: Three Key Demands. *FIG Working Week 2012 : Knowing to manage the territory, protect the environment, evaluate the cultural heritage Rome, Italy, 6-10 May 2012.*

FDRE 1995. Constitution of the Federal Democratic Republic of Ethiopia (FDRE). *Proc. No 1/1995, Negarit Gazeta* Addis Abeba,Ethiopia.

Goodwin, D. 2013. Whatever it Takes: Tenure Security Strategies of Communal Land Right Holders in Zimbabwe. *Africa,* Vol 83, No. 01,pp164–187.

Lamba, A. O. 2005. *Land tenure management systems in informal settlements – A case study in Nairobi, MSc thesis ITC Enschede.*

Mundial, B. 2010. Assessing & monitoring governance in the land sector: The Land Governance Assessment Framework.

Okoth-Ogendo, H. W. O. 1989. Some issues of theory in the study of tenure relations in African agri culture. *Africa* Vol. 59, No. 01, pp6–17.

Palmer, D. , Fricska, S. & Wehrmann, B. 2009. Towards Improved Land Governance. *Land Tenure Working Paper 11, FAO & UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME.*

Simbizi, M. 2016. *Measuring land tenure security: A pro-poor perspective. PhD Thesis. University of Twente.*

Tuladhar, A. 2015. Sino-Dutch Spatial Planning and land Registration *Expert Meeting Program.*

Williamson, I., Enemark, S., Wallace, J. & Rajabifard, A. 2010. *Land Administration For Sustainable Development,* Redlands, California, ESRI Press Academics.

Zevenberg, J., Augustinus, C., Antonio, D. & Bennert, R. 2013. Pro-poor land administration: Principles for recording the land rights of the underrepresented. *Land Use Policy* Vol. 31, pp595-604. Part II. Country Research Reports

7. Land Governance Arrangements in BURUNDI : Gaps, Strengths and Opportunities

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Abstract

For any country, land governance relies on legal and institutional frameworks that provide actors and processes for managing the existing lands. This work tries to explore on the existing land governance arrangements in Burundi, actors and processes as they operate in formal, informal and traditional settings. Land conflicts that emanate from these arrangements, their root causes and mechanisms that are applied in addressing the emerging conflicts have been discussed on. To successfully explore all these mentioned points, a desk review and semi-structured interview were applied to collect primary secondary data. Purposively, 60 respondents were consulted in reference to their experience, positions and contribution in land governance. The collected data were qualitatively and quantitatively analysed and results described. The results indicate that Burundi hasrecognised various land governance arrangements and processes in formal, informal and traditional settings. However, the institutions fragmentation has been found as the major problem of land governance in Burundi. Therefore, these arrangements ledto land conflicts which the main root causes are related to poverty, population growth, land prices and civil wars. The mechanisms to address these land conflicts that have been adopted and applied which in most cases were ranging from mediation to courts arbitration. Finally, this paper recommends minimising this fragmentation by remaining with two ministries so that land issues maybe focussed.

7.1. Introduction

Today, the World faces many complex challenges, including climate change; rapid urbanization; increased demand for natural resources; food, water and energy insecurity; natural disasters; and violent conflict. Many of these challenges have a clear land dimension: unequal access to land; insecurity of tenure; unsustainable land use; weak institutions for dispute and conflict resolution (Mahoney, Dale, & McLaren, 2007). Many initiatives are being taken to scale down the impacts of these challenges by any means. For that, land governance has been sought as one of the means that can be efficient and effective for developing countries (USAID, 2007). Enemark (2004) defines land governance as all about the policies, processes and institutions by which land, property and natural resources are managed. Also, the author highlights that land governance encapsulates the decisions made to access on land, its use, and rights on it as well as development to take place on a piece of land. In addition, Palmer, Fricska, & Wehrmann (2009. P. 1) highlight that land governance comprises "rules, processes and structures through which decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed. What can be stressed on all these definitions is that land governance is concerned with legal and institutional frameworks that are to work together for the betterment of land management.

Moreover, Williamson, Enemark, Wallace, and Rajabifard (2010, p. 31) elaborate more about the concept of governance as it "includes formal as well as informal actors involved in decision making and implementation of decisions made, and the formal and informal structures that have been set in place to arrive at and implement the decision". Therefore land governance is concerned with formal and informal actors as well as institutions that are useful in addressing land governance issues. Generally, government and its agencies as well as NGOs or registered associations dealing with any related land issues are considered as formal actors and institutions whereas traditional institutions, individuals and religious denominations involved in land issues are informal. The informality of actors is observed in land access by selling or encroaching public or state land or in selling where the two parties (seller and buyer) negotiate between themselves and maybe involve witnesses.

7.2. Statement of the problem

Land governance relies on policies, processes and

institutions which are operationalised by actors who are formal or informal. During the process, land related conflicts are observed due to land governance systems that in one way or other fail to accommodate and link actions of different actors in land governance. This failure in Burundi has been attributed to poor land governance that is recognised as source of land related conflicts between families and neighbours, land market imperfections, impacting on socio-economic, political and environment sector. Therefore, there is a need to study on how land governance systems in Burundi can be a tool for minimising or mitigating conflicts between land management actors and processes undertaken.

7.3. Objective of the research

The main objective of this study is to explore how Burundi land governance systems can minimize or mitigate conflicts between land governance actors and processes.

Specific objectives

i.) To document on existing land governance arrangements in Burundi;
ii.) To review the status of conflicts between land governance actors and processes in the land governance systems of Burundi;
iii.) To suggest solutions that can minimize conflicts and overlaps in land governance in Burundi.

Research questions

This research addressed the following questions:

i.) What are the existing land governance arrangements in Burundi?
ii.) What are the conflicts that emanate from existing land governance arrangements in Burundi;
iii.) How can these conflicts in land governance be resolved?

7.4. Methodology

This work is based on secondary data collected through literature review of different existing documents on land governance in Burundi. The documentation is pinned on government documents such as Land Code of 2011, Land Policy of 2008 and other decrees related to land reforms and land disputes resolution initiated by the Government of Burundi. Different articles written and published by academicians, reports by local and international NGOs have been consulted to get insight on land governance in Burundi.

In addition, primary data have been collected by using semi-structured interview where checklist questions were addressed to officials in different ministries that have at least any department related to land, NGOs that have involved in land governance, private sectors that deal with land in their daily business and CNTB (Commission National de Terres et autres Biens). Also local leaders at commune and village level were consulted especially to mine in deep the traditional and local level land governance arrangements. It is acknowledged that 60 respondents were purposively selected in reference to their positions and responsibilities in land management. The thematic categorization and content analysis approaches were used to generate the results.

7.5. Results and Discussions

7.5.1. General Overview About Burundi

Burundi is a landlocked country in eastern Africa, neighbouring Rwanda in North, Tanzania in East and south and Democratic Republic of Congo in west. With an estimated population of 11. 5 million in 2017 living on 27 834 km² (GoB, 2018), it is the second most densely populated country in Africa and Eastern Africa with an average population density of over 310 people per km²after Rwanda. Burundi is currently facing structural and economic difficulties, principally population pressure, lack of land (the average area of family farms less than half a hectare in 2014 compared to 2. 2 ha in 1990), rapid loss of natural resources (the current rate of deforestation is estimated at 2% a year) (AfDB, 2015). The country's economy heavily depends on agricultural sector and other related land exploitation such as hunting and gathering fruits in protected forest.

7.5.2. Land governance arrangements in Burundi

In Burundi, land issues are dealt with by many actors that range from the central government to local governments. The actors are within ministerial departments, provinces (or regions), communes and village level. Their roles also are respectively attributed according to their position and area of intervention. Also, traditional actors are considered to deal with land issues in supporting government actors at village level. In addition, private NGOs (international and national) are contributing technically or financially in land governance. This section is concerned with the elaboration of actors and their roles in land governance.

7.5.3. Land Governance Actors and their roles

i. Actors in central government and their roles in land governance

Land governance at national level in Burundi is under the mandate of at least four ministries that in one way or another have land department or land related sector. These include the:

- Ministry of the Environment, Agriculture and Livestock which major roles in land governance is to set legal frameworks that can manage and protect agriculture and marsh lands, forest and reserved state-owned land like National Parks, natural resources conservation (land as major natural resource), and urban and peri-urban state-owned land. This ministry has General Directorate that deals with natural resources within there are a department of agriculture engineering. At province level and commune level, there are some services related to land, forest and environmental management (Government of Burundi, 2018). It can be underlined that this ministry is concerned with the governance of rural land in all aspects, state-owned land in urban and peri-urban areas as well as marsh lands.
- Ministry of Transport, Public Works, Equipment and Land-Use Planning has roles in managing urban land by preparing and designing Master Plans or Sustainable Urban Development Plans, protecting urban natural resources (land as major resource), Neighbourhood plans preparation and design, Implementing the 2045 Bujumbura Master Plan, plots production and allocation, and ensure the national cadastre and land security. To succeed to this mission, the General Directorate of Territory Development and Directorate of Urban Planning and Housing are in place. Subsequently, different departments such as urban planning department, urban and works standards department, urban management department and housing department are availed to make sure land issues in urban areas are managed. Parastatal agencies are also observed in this ministry such as National Cadastre and Supervision of social constructions and land development (ECOSAT[1]). Also at province level, there are offices that are dealing with managing urban land. But challenges are these offices are suffering from insufficient financial assistance for executing urban planning projects.
- Ministry of Justice, Civil Protection and Keeper of the Seals has roles of accommodating land title department since it is linked to civil protection and judicial issues. The main role is authenticating and proving the land owners as well as titles given. For this, the land titling offices are in three regions where land owners can access to this service. These regions are Northern Region with an office in Ngozi to serve provinces that are located in North; other office in Gitega assist land owners from central and south of the country; and Bujumbura offices to provide service to Bujumbura city, Bujumbura Rural, Cibitoke, Bubanza and Rumonge. What can be noticed here is that this service is among non-decentralized service in Burundi since it is still being accessed at regional level whereas other services can be accessed at commune level.
- Ministry of Hydraulics, Energy and Mines is concerned with the governance of any piece of land that is sought to contain minerals that may be exploited for the public interest (GoB, 2013). Any land that falls under this category is immediately sent to the ministry of Hydraulics, energy and Mines for its management.
- Ministry of Good Governance and Privatization is focussing on governance dealing with political & democratic, administrative and economic issues, sectorial and corruption. Its strategy has to include how people use and interact with land that highlights the land governance.

This is what can be stressed on as land governance at central government level from the ministries up to province level. What can be observed is that land governance issues at central level are fragmented in such away there is a risk of overlapping or loose of focus on some sensitive issues. Also some national commissions have been created by the government of Burundi to handle some pertinent issues related to land management. These include National Land Commission that is mandated to foresee and propose legal frameworks that can address emerging land issues.

For that, the Land Code 2011 (Article 452) mandates the establishment of National land Commission which will have three missions such as (i) assist the government in the development, implementation and monitoring the national land policy, (ii) advise and monitor the application of land legislation, and (iii) to act as a national observatory on land issues as

[1] In French (Encadrement des Constructions Sociales et l'Aménagements des Terrains)

provided in Land Code. The commission should also analyse the cession or concession of general lands, expropriation of land for public interest. Finally, the commission has to give her opinion on any other land issue than the Government can submit to him. The other Commission is The CNTB. These was created by the

ii. Actors of land governance at local level and their roles

The land Code provides for the establishment of communal land services *(Service Foncier Communal - SFC)* in charge of delivering titles to land owners. Among 119 communes, only 57 communes (44%) have the SFC desk. After that, the Land code of 12011in the article 456 provides the creation of Communal land services known as Service Foncier Communal (SFC) to be established at local authorities *(Commune/ District level)* in charge of measuring the plots and addressing land conflicts at local level *(Commission de Reconnaissance Collinaire – CRC[2])* The Land Code highlights that:

The communal land service is a local service created within the framework of the general policy of decentralization to be accessible to all citizens with low income and modest living conditions. Article 384 of the land Code specifies that for the implementation of the certification procedure, in compliance with municipal legislation, the municipality establishes a communal land service. The Communal Land Service operates under the direction and responsibility of the Communal Administrator (Translated in ABELO, 2014, P. 23)

The research revealed that up to 2018, 57 Land desks were in place where 44 are in rural communes and 13 in urban communes. The roles of these Land desks at commune level are to provide:

- A certification service for customary land rights: as means of decentralization of land management at commune level, it issues certificates attesting the land rights of owners of lands not yet registered with the land titles services. It is to say, a service of securing land rights, formalization and legalization of land rights especially customary (public recognition of uses, local practices of enjoyment and acquisition real estate
- A land conflict prevention service: The registration of properties is an excellent way of preventing land conflicts and promoting social peace among community. Land disputes are at the forefront of court cases, in Burundi estimated to be more than three quarter. These disputes often result from land transactions or any transfer. Therefore, certification provides proof of ownership, prevents conflict by delimitation and official / public recognition of land rights by a public officer or the administration. Certified land rights are only challenged by the competent court.

In other communes where these offices are not yet created, there is an office that deals with land transfer issues where land desk has not been created. The target is the commune to collect 3% of the price on which the land was sold.

The role of this office is only to seal on agreement between seller and buyer for sold rural land or peri-urban land. The officer is only concerned to provide the official recognition of the transfer by putting the commune seal and administrator signature. Information about the land is not there concern. According to interview results, at village level, there is a committee that is concerned with land conflict resolution that in most cases members are the so-called Abashingantahe[3] or are to support these latter mentioned. Also, they can be in informal structure especially when the issue to settle is not formally addressed to the village council where volunteering elders can come to hear and provide advices to parties in conflicts before taking the case to formal instances. When this initiative failed village council can be invited to assist and their decisions are written and filed for further authority (judicial) if parties are not satisfied.

iii. Private actors and their roles in land governance
Land governance in Burundi

is confronting a fragmentation of institutions as discussed previously which make the sector to suffer from financial and technical support. Therefore, the private sector especially international and national NGOs have been called or engage themselves in addressing some issues that are directly related to social disruptions and peace instability. These include involving in land related conflicts resolution

[1] Village reconnaissance commission

[3] Selected elders according to their age and reputation in settling social conflicts. They are selected at village level and work in favour of the village administration. Also known as "traditional council of elders" BEAUPRÉ, 2015

and poverty eradication. These NGOs particularly International ones have been assisting the central government of Burundi financially or technically. However, due to misuse of the funds and lack of focus on land related issues, these NGOs tried to involve themselves in local based projects by addressing land rights issues through setting up and building the capacities of the SFCs in the context of land registration. The reports show that

…A number of different non-governmental organizations were leading these decentralized efforts. While the land law was supposed to integrate the existing customary system with statutory law, it was met with strong reservations by the population and people still continue to show a certain resistance towards accepting the new system of land certification…"(ZOA, 2013, p. 24).

In reference to Communal Administration Code of 2005 (GoB, 2005b) and Land code of 2011, land offices were established in twenty-six communes and be supported technically as well as financially by different funding agencies(Beaupré,2015). We can cite:

- DDC supports land offices in six communes of Ngozi province in North European Union supports land offices in eleven communes of Gitega (7) and Karusi (4) with the program Gutwara Neza4. The EU also funded the same projects in Cankuzo province (2 communes) with the program PPCDR
- CTB supports one land office in the commune of Nyabitsinda
- IFAD supports land offices in five communes(1 in Ngozi, 2 in Karusi and 2n in Bubanza
- APDH supports one land office in the commune of Makebuko (Gitega)
- ZOA implemented communal land offices in the communes of Mabanda and Vugizo

These are among recorded initiatives that have been undertaken by different International Non-Governmental Organization to assure land governance in Burundi. When you look at the geographic spatial coverage, only 27 (22. 6%) communes among 119 (100%) that constitute Burundi were covered. You can imagine what effort Burundi has to make in order to cover the remaining communes. Leave alone the remaining communes and look on results of the already done communes, challenges are still there. The land conflicts change in feature and nature as talked over in the following discussion. In the area of research and education, support from GIZ is needed especially for the University of Burundi to launch the BSc. Program in Land Administration and surveying.

iv. Traditional actors in land governance

In Burundi, traditional actors are Abashingantahe who are for long time were assisting the Princes and Deputy of princes before independence in settling social issues (Amani, 2009). Their roles continued even after independence. In land management specifically in rural and peri-urban areas, Abashingantahe are being called in subdivision of land between family members. They are called to fixe boundaries by using traditional techniques and materials. When there is any transfer, the Bashingantahe are called to validate and witness the process. Also, they are called in simple case of land related conflict. However, some of our interviewees comment on today's performance in relation to some years ago where they point out that now these elders are not respected as it was before. They acknowledge the political interference and poverty that make these elders to guide their decisions. According to them, it was the only local level justice that was affordable and acceptable since decisions were socio-cultural oriented and politico-economical disconsederation.

v. Informal actors in land governance

In the case of Burundi, these actors range from land encroachers to land brokers who are involved in land subdivision or transfer without and licence or legal status. For encroachers, they try to take a piece of land in public owned land especially urban areas and state-owned land in rural areas. They can develop it or sell it without any problem on spot. Others are those who look for client for land which is in conflicts or which have has the owner without his consent even being informed.

7.5.6. Land Governnace Processes in formal arrangements

In formal procedures, central government through the four ministries, policies and decrees are formulated to make sure land issues are managed in line with the government objectives. When it comes to formulating a policy or amending a policy related to land, a synergy of stakeholders is formed for capturing necessary information to be included in the document. The validation of the documents in the House of Parliament and House of Senate is done by the concerned ministry

[4] This has the meaning of Good governance in English language. It is a slogan that emphasizes on community participation in planning and management

or commission which the advocacy or lobbying may be required. The implementation of the policy or decree or any official document is also the responsibility of the concerned ministry or commission.

i. Land use planning processes in Burundi:
Rural land and marsh lands are under the Ministry of Environment, Agriculture and Livestock. This ministry has mandate to prepare land use plans that are in line with the projects to be undertaken. They have directorate and department of rural engineering that deals with the preparation of land use plans. In collaboration with the directorate of environment and directorate of forest, integrated land development plans are prepared and adopted. This collaboration makes the related sectors to put together their efforts and produce a plan that may not contradict the overall projected development.

In urban land management, the Ministry of Transport, Public Works, Equipment and Land-Use Planning also works with other ministries in the formulation of policies and other land use plans that are implemented in different urban areas. Stakeholders composed by academicians, profession practitioners, political elites (mayor) and others who can contribute in policy or decree formulation. The Master plan of Bujumbura and other urban land use plans are approved by competitive authorities according to the plan (GoB, 2016 and GoB, 2018).

ii. Land allocation in Burundi:
As discussed above, rural land is managed by the Ministry of Environment, Agriculture and Livestock. The minister in consultation with the National Council of Security and in validation with other institutions like Parliament, Senate and President Office can allocate up to 50ha of rural land for large-scale agriculture investment. For small piece of land, this minister can provide land if the project is judged to be beneficial to public interest and less than 50ha. In urban areas, land allocation is done by the Minister of Transport, Public Works, Equipment and Land-Use Planning. The concerned is land subdivided for new development (residential commercial or service).

The land subdivision and allocation are guided by the urbanism, housing and construction code (GoB, 2016). Also, change of land use can be initiated by the ministry after consulting the ministry who has environment in his responsibilities.

iii. Land registration in Burundi:
Land in urban areas is registered and titles delivered in the Ministry of Justice, Civil Protection and Keeper of the Seals which accommodate the titling offices. This service can be accessed in Bujumbura, Ngozi and Gitega. According to the interview carried out with officials in these offices and private firms that are dealing with land in their business, they reveal that "it is maybe the last service that is not decentralised where the service cannot be accessed at province level". Also, they add in their discussion that "it takes many weeks or even months to get the title". The officials accept that they have many challenges related to equipment for surveying processes, insufficient human resource in quality and quantity, and financial especially transport for site visit especially sites that are outside the province where the office is located. For rural land and peri-urban land, there are only 13 communes that have land desk (service Foncier communal 'SFC') among 19 urban communes and 44 rural communes among 116 (ABELO, 2014).
The process is voluntarily undertaken. Therefore, all pieces of land in these communes where Land desks are established are not registered or are registered but certificates were not collected from the office. However, due to the sensitivity of land conflicts as well as expansion of land rights, many communes are sensitizing land owners to register their land.

7.5.7. Processes in traditional arrangements
Normally, in Burundi traditional settings are losing their strengths in land governance due to many problems that the society is facing. Due to lack of social cohesion and erosion of cultural value as well as modernity, many land issues are now taken to formal institutions or modern techniques. However, some traditional processes in land subdivision among family members are still applicable where Abashingantahe are called to assist the process. Also, the Abashingantahe are called mostly for miner land conflicts given that when the case becomes serious, the Bashingantahe advise the parties to take the case to higher authority.

7.5.8. Rules and regulations governing land in Burundi
Burundi is among East African Countries that is rich in rules and regulations. It has been a struggle to update by amending some of them that have been adopted for long time or those that are seem not to respond to the existing or emerging challenges. In the top of these regulations is Land Code 2011 that was amended from Land Code of 1986 (GoB, 2011). This code fixes most of the issues related to land by recognising customary and statutory laws and arrangement for accessing, using, transferring and enjoying all rights on land. It sets modalities on how

land should be managed, protected and sustainably managed. The other legal frame work is the land policy known as [Lettre de Politique Foncière] validated in 2008, specifies the existing category of lands on the territory of Burundi and how land as natural resources should be protected for sustainable development. It harnesses the consistency with national and sectoral orientations and provides the strategies as guidelines to follow when dealing with land in general (GoB, 2008). Other documents like decrees in different ministerial bodies, ministerial letters are in some case referred on as documents for governing land in Burundi. Other regulations are also found in the decrees that nominate the commissions where responsibilities are outlined. Also, these commissions like National Land Commission, CNTB have their own rules on how to deal with land issues. For traditional and informal actors, there are no known rules or regulations that are followed. They are handling land issues according to their knowledge and experience. 7. 5. 9. Contribution of processes in land conflicts

As discussed above, the land issues are dealt with many ministries at central government and local government level. Also, International and local organisations have been involved to solve some pertinent land issues such as conflict resolution, land right advocacy and lobbying. At the same time, informal and traditional actors have also played their roles according to their capacities and interest. Therefore, their processes contribute in one way or another in creating conflicts related to land.

Long processes of land registration

As revealed by De Soto (2000), land registration in Third World Countries is among long and cumbersome process that it time and cost consuming. This make many land owners to forget about land titles and as results properties remain illegally owned. Also, Burundi is not spared to this. It takes months and some thousands for having title since only this service is delivered in Bujumbura City, Ngozi and Gitega. The established service communal foncier (SFC) that are known as Land Desk at communal level for rural and peri-urban areas, are found inn 57 communes.

Corruption

Land allocation, land compensation and land registration is always accompanied by may claims of land owners. Due to the scarcity of land, everyone tries to use all means or ways to get or protect land. Therefore land administrators profit to this competition not to disseminate information about processes. These opacity and information asymmetries make people to use money in order to get information about processes or pay for having fast services.

Unfair compensation

Normally, land in Burundi is privately owned either by government, individuals or groups. However, the land policy (Lettre de Politique Fonciere, 2008) land Code of 11 give authority to the government of Burundi to access to any land from individuals or groups for public interest by acquisition or expropriation.

But the government has to compensate the owner by an equal land or by paying money according to the market value. Law No. 1/010 of 1 March 2005 on the Constitution of the Republic of Burundi provides in article 36 that:

"no one shall be deprived of his property only for reasons of public utility in the cases and in the manner by law and with just and prior compensation or in execution of a decision court judgment in force of res judicata " (Constitution of Burundi 2005).

In addition, according to Burundi Land Act of 2011 (Article 412),

"Except where the expropriation is intended to constitute an area protected area, only the land required for public utility infrastructures and their outbuildings may be subject to expropriation".

But this has mostly remained in books where in the application, many pieces of land acquired by the government have not compensated, where compensated, it is unfairly or delayed.

7.5.10. Land conflicts that emanate from existing land governance arrangements?

Because the land becomes scarce while it is the main source of income for more 90% of the population, it is also the subject of many conflicts. Land conflicts are manifested in many aspects such political, socio-economic and legal aspect among actors.

They differ according to the regions, the periods, the nature and the modes of land was acquired or accessed, the relations between the persons in conflict and the quality of the parties to the conflict. It is revealed by studies conducted recently that land related cases that are taken to courts amount for 71. 9% of civil cases. The most received cases in the courts and others assisted by different mechanisms give us the opportunity to categorise land conflicts types in reference to land governance arrangements such as formal, informal and traditional respectively.

i. Ownership conflicts linked to inheritance

The issue of succession in Burundi is complicated by

the absence of law to govern it. Succession in land is governed by the customary law which is not even written but orally known by the community. On the whole, disputes arise when a girl asked a piece of land whereas customary laws do not recognise this right. Only boys have right to inherit land from their parents. It is the same for the case of widows to property of their husbands and children born out of wedlock (not registered by the father in the commune). The land code of 2011 does not say anything about inheritance of land for women, girls or children born out of wedlock.

ii. Sales of someone else's private property

These disputes take many forms: land sold by refugees and displaced person without informing the family members. Land sold whereas it was co-owned by two persons without the knowledge of other co-owner. Land sold by commercial banks whereas the owner has fled the country or died. Land sold two times or more without knowledge of the first purchaser and others. Some cases have been observed by the CNTB and courts at different level where the seller or buyer was presenting a forged letter for permitting him to sell a refugee's land or property so that the seller can send the money to the owner in the camp. In most cases, if the seller died or left, the buyer has to suffer from injustice given that he is ordered to give back the land or property without any compensation.

iii. Conflict related to boundary

This is a serious case where even its resolution seems to be difficult even impossible. It is concerned the land left by refugees in 1972 and 1993 where neighbours replaced boundaries features that were made in trees. The trees were cut and new trees being planted after cheating. Therefore, when the refugees returned after decades of years they found the land decreased remarkably. However, it is difficult the victim to prove the really boundaries. As results some decisions are taken by the claimant such as fleeing, eliminating the subject or others.

iv. Ownership conflicts due to lack of land registration

In Burundi, there was a program called "paysannats" (Villagisation programs). This referred to land set as early as 1949 by the Belgian guardianship authority under a special regime farm. It aimed at both promoting a rational agriculture of high yield targeting export crops as well as better distributing the occupation Burundian territory by decongesting overcrowded areas such as Ngozi and Kayanza, in northern Burundi. On the legal side, the situation was rather ambiguous. The installation of these farmers was done in the absence of any legal form or expropriation for reasons of public utility. Until enactment of amended and revised Land code of 2011, the law on villagization plots programs does not have clear legal ownership, since tutelary legislation has not defined rights that those people exercise on the plots. In practice, all lands under the villagization programs are considered to belong to the State. It resulted from this situation a certain number of abuses and a particularly high proportion of conflicts.

v. Conflicting claims in post-conflict situations

From 2005 the country has experienced a massive repatriation of refugees which made the land issues to be complicated given that returnees tried to recover their left land after 30 years and be occupied by their relatives, neighbours or government.

ACORD (2009) in its annual report states that an obstacle for reclaiming land is a lack of witnesses. Few witnesses remain to verify or contradict that the land had belonged to the returnees before they fled the country. Such witnesses are all the more vital in terms of their presence when, amid the mayhem of war, documentation may have been lost, destroyed or stolen. Furthermore, the returnees, who left the country in the most recent wave, in 1993, face the problem that those who now occupy the land were often neighbours known to them, which also makes claiming back the land highly conflictual. Due to the shorter time difference, these recent cases tend to be less complicated than the cases from the 1972 returnees. For these last, what is needed by the CNTB or courts, is an evidence (written or oral) that he (or his parents) lived in that place, the rest is to know the boundaries which is not effective but by estimation. Then, the land is recovered to the returnee.

Finally, an additional major obstacle is experienced by women returnees. Many among them return as heads of households, having lost their husbands or fathers to the violent conflicts. When women seek to claim land previously owned by their families, they face obstacles linked to the absence of inheritance rights of women and traditional patriarchal social views.

vi. Land disputes related to expropriations

In this type of dispute, the protagonists are the State of Burundi and individuals. Law No. 1/010 of 1 March 2005 on the Constitution of the Republic of Burundi provides in article 36 that:

"no one shall be deprived of his property only for reasons of public utility in the cases and in the manner by law and with just and prior compensation or in

execution of a decision court judgment in force of res judicata " (Constitution of Burundi 2005).

In addition, according to Burundi Land code of 2011 (Article 412),

".... Except where the expropriation is intended to constitute an area protected area, only the land required for public utility infrastructures and their outbuildings may be subject to expropriation.

The scarcity of available land, combined with the rising population and consequent land needs, have makes expropriation for public purposes an increasingly common recurrent in Burundi. This tendency is objectively confirmed by the evolution of appropriations voted by the State for the payment of compensation related to these expropriations. Between 2006 and 2012, they rose from 500 million BIF to 4. 5 billion BIF, an increase of 900% 4. In October 2014, a draft inventory and registry of public lands funded by the European Union and executed by GIZ went into operation. In its phase, this project had raised with donors approached by the government and of several actors of the civil society of the questions on the risks of abusive and systematic expropriation that it could entail. It is to prevent these risks that legislative and operational measures were agreed between the Government of Burundi, the funder and the executing agency (CTB, 2015).

The ministerial order n ° 770/065 of January 13, 2016 on the modalities Inventory of State Immovable Property provided that in the course of the proceedings inventory, *"any conflicts were to be settled amicably by the Commission especially in identification and delimitation under participation of local residents*

". The Ordinance stated that "*all conflict which mediation has not been successful is subject of a written statement and signed by the members of the Identification and Delimitation Commission and the residents. The copies should be given to the parties in dispute ".*

According to the PAGGF report of September to october 2016, "since the beginning of the identification and delimitation of State lands, 32 conflicts were declared, of which 16 (50%) were settled. New cases were settled by mediation at 28% ". It is expected that in the medium or long term, in particular, the inventory of state lands helps to mitigate risks of expropriation by allowing the State, inter alia, to give priority to the use of his own domain in case of need of land.

vii. Expropriation by the state without compensation
This case was reported in different provinces where the government acquired land through expropriation for construction of some public infrastructure or offices with a promise to pay compensation. The government has failed to honour the promise and land owners have been demonstrating in front of the Ombudsman and others forgetting about it.

viii. Root cause of land conflicts
According to Wehrmann (2008), root cause of land conflicts may range from poverty (socioeconomic causes), institutional changes (political causes) and change in society (demography as well as ecology). For the case of Burundi, all these aspects have contributed to the above cited land conflicts.

War and post-war situation
Burundi has been shaken by repeated crises and political violence (1965, 1972, 1988, 1993 and since April 2015) that caused hundreds of thousand losing their life and others fleeing the country. Thousands have been forced to be internal displaced people and lose control of the ownership and exploitation of their lands (Kimonyo, 2006). As results, those who remained in the country tried to take land of refugees, change boundaries, sell, government expropriate without compensation and others. When refugees repatriated, many conflicts arose and up to now some are still pending without solution.

Increasing land prices
Land as scarce natural resource which in Burundi is considered as a commodity, its price goes up year after year. According to the findings from land brokers, a 100sqm has increased from BIF 2.5 million to 4 million in peri-Urban areas in 2 years (2016-2018). In other places like Mugoboka, Gihosha, Gahahe, Ruziba in Bujumbura and some peri-urban areas in Gitega and Ngozi, the prices are at 5 million. Therefore, this increase in price pushes people to sell and cheat even in selling one property to two buyers. Also, in municipality, due to scarcity of land the offered planned and surveyed land does not carter the demand. Then, some officials do deliberately a double allocation which provoke conflicts.

Poverty and poverty-related marginalisation/exclusion
Land as a source of wealth and power, it has been a root cause of conflict in Burundi where over 90% of people rely on agriculture as source of livelihood. Agriculture produce has been decreasing and make people live under poverty line (less than $1. 2). As results, competition to the small amount produced

has created conflicts among family members and neighbours which led to fratricides, migrating or even fleeing.

New and returning refugees

As discussed previously, from 2003 up to now, there is a vivid movement of people fleeing and others returning. But the terrible movement is the one of 2004-2010 where mixed returnees who fled in 1972, 1988, 1993 and up to 2003 started massively coming back. During this period, the government started to observe many conflicts between returnees and those who remained in the country. Many killings and abuses related to land conflicts were observed.

Strong population growth and rural exodus

Burundi has 27884 km^2 with a population that is estimated at 10. 8 million in 2018. The National census of 2008 shows that the population was at 8. 5 million; this means that in 10 years, approximately 2 million of people are added to the same 2884 km2. Therefore, it is apparent that the carrying capacity of the country must be challenged by this population growth in satisfying their needs in food and housing.

7.5.11. Mechanisms for addressing conflicts in land governance

Wehrmann (2008) illustrates that the conflict resolution depends on stage and purpose. The "resolution may be more on crisis prevention, peace-making, peacekeeping or peacebuilding, each of which requires different tools and different methods of conflict resolution" (p. 49). Therefore, Burundi Government offers to its citizens three principal ways to solve land related disputes that include formal, informal, and traditional approach in reference to the nature of conflict from simplicity to severity. Glasl (1999, modified, cited in Wehrmann 2008) identifies eight strategies for dealing with land conflicts that depend on the the degree of escalation. These strategies include facilitation, moderation, consultation, socio-therapeutic consultation, conciliation, mediation, arbitration, decision by a powerful authority (adjudication). For the case of Burundi, the following strategies were used by actors.

Facilitation by traditional adjudicating bodies

This is a mechanism for land disputes that is run at village level by the traditional adjudicating bodies by "Abashingantahe". The Bashingantahe are well-known people by all parties in the community, accessible, and provides free and fast verdicts (International Crisis Group, 2014). When a case has been reported, the Bashingantahe invite the other party to the conflict to present their case. They record or hear the allegations from all parties in the conflict, analyse deeply and give solution. The decision is written and all parties sign to manifest their free consent on the decision. However, the decisions are not legally binding and if one party later decides to renege on the agreement, they can then revert to the courts. Many cases related to land conflicts have been addressed in such arrangements and most of them are not documented. This arrangement has been criticised by many, especially loosing parties accusing Bashingantahe to be biased especially when you are not economically, socially and politically renowned. Actually, the Bashingantahe are assisted by elected local committee called "Commission de Reconnaissance Collinaire".

Conciliation by CNTB (National Commission on Land and other Properties)

Another mechanism for addressing land dispossession is the National Commission on Land and other Properties (Commission Nationale des TerresetautresBiens: CNTB), established in 2006, which is responsible for identifying and redistributing illegally occupied land. Currently, the CNTB has about 10 000 unresolved disputes on its books. Inadequate financial support is a major challenge given that the given budget does not cater for the needs on the ground (CNTB, 2017). The CNTB services are free of charge, and have been widely used by returnees who cannot afford the courts charges and time taken for the decision. However, it is sometime much more time-consuming than anticipated. The CNTB is composed of three commissions, each tasked with mediating conflicting claims: communal, provincial and national commission. Using the CNTB for conciliation, the government of Burundi has recommended splitting individual plots between the returnees and the second occupants. While this may seem fair, the resulting plots are too small to enable the owners to use them to generate enough food for their families. Where splitting should not work, the CNTB has the power to make recommendations to the government to compensate the claimant.

Cases in which individuals can be compensated include situations in which the land they claim was taken illegally by a local administration. The commission has the right to arbitrate conflicts in cases where conciliation fails. However, the CNTB has some of its own challenges. Among others are insufficient financial allocations, lack of political and ethnic neutrality, and lack of technical support to provide durable solution.

Arbitration through Courts

The findings show that an It was estimated that in 2017 the total judicial cases registered in the local and appeal courts were 69. 3%. This is due to obvious advantage of going to court which is that the decision is legally binding. However, this strategy is cost and time-consuming in procedure which make it to not to be affordable by poor people. Also, there is a fear of corruption that may make some decisions to be biased. Therefore, many claimants feel excluded from access to the judicial institutions of the government because the legal process is beyond their time and financial resources.

Moderation and or consultation by NGOs

The involvement of Non-Governmental Organisations that operate in Burundi for land conflicts mediation constitutes an additional mechanism for refugees and IDPs. Various NGOs offer mediation services to returnees to solve land disputes. Their service is considered less time-consuming, easily accessible, and free of charge since it is prescribed in humanitarian aid. Whereas arbitration, as a form of dispute resolution, is based on a prior agreement between conflicting parties to accept the decision of the arbitration (APDH, 2015). Technically, the mediation is a longer process that entails facilitating consent among stakeholders. Though, the outcome of mediation is more sustainable given that it involves the agreement of the parties involved. It helps to achieve a more effective foundation for reconciliation for the reason that the conflict parties reach a hard-won, mutually acceptable, agreement. Nevertheless, this arrangement processes are generally problematic in Burundi, particularly when it comes to land disputes: whatever the history, the outcome will invariably entail the loss of a piece of the land under discussion, by one or both parties.

7. 6. Discussion

The findings described above highlights the land governance arrangements in Burundi by identifying gaps, strengths and opportunities. Actors and their roles in land governance arrangements in formal, informal and traditional settings are described their contributions inland management identified. It was found that in formal setting, central government and local government are major actors in providing legal frameworks and establishing institutional frameworks for land governance for rural and urban land. However, the major challenge for these formal setting is the fragmentation of departments or directorates that are concerned with land issues since they are found in four ministries. This situation welcomed the lack of focus on service provision, qualified human resource production, funding advocacy and lobbying for land administration.

On the same point, traditional setting spearheaded by the application of local and traditional institutions at local level (Village or colline), a selected number of respected elders (Abashingantahe) are called for assisting in some matters of land governance especially in land subdivision among family members. Also, they are asked to provide advices for minor land related conflicts before being taken to judicial courts. It has to be noted that this institution is not now appreciated by most of the citizens due to its political and economic as well as social biasedness. For informal institutions, brokers are described and documented on where in most cases; there is a little positive contribution in land governance such as providing information to land seekers. On other side of the coin, they are causing some conflicts through land encroachment and multi-sale or multi-allocation of piece of land in municipalities. When it comes to main land governance processes, formal processes have been on top for land governance in Burundi where Land Policy of 2008 (Lettre de Politique Foncière de 2008) , land Code of 20011 and Urban and Housing Code of 2016 and different decrees are adopted by using a participatory approach via synergies formulation among land practitioners, professions and academicians. In traditional setting, the processes are not well established but, conditions and eligibility criteria of being member of Bashingantahe are considered like age and respect in the community. In informal setting, there are no known processes except that every broker has his way of doing his/her business in land governance.

In this research, it has revealed that the existing land governance arrangements have been the source of related land conflicts due to fragmentation of institutional frameworks where specific rules and regulations, technical approaches are not used; qualified human resources are not produced; adequate financial support and new tools for land administration are not in place. Many conflicts related to inheritance, expropriation, and claims in post conflicts should be addressed by a policy or other legal framework. The conflicts linked to boundary and sales should be addressed by tools for land administration that may clear and provide information about subjects and objects. But, these mechanisms and strategies are not used.

Moreover, the findings show that root causes of land conflicts were linked to war and post war situation, increase of land prices, poverty and other poverty

related issues, returnees and population growth. What can be highlighted is that all these root causes are among the identified causes of land conflicts according to Wehrmann (2008).

Finally, mechanisms used by actors in addressing the land related conflicts ranged from facilitation, moderation or consultation, conciliation to arbitration in the courts. All these mechanisms have been challenged differently by many factors such as lack of qualified human resource, financial support and social cohesion. Formal actors and processes have been applied than informal and traditional due social value degradation where traditional institutions have been appreciated by parties in the conflicts. Courts also in formal have been a problematic in their accessibility and affordability by poor and rural settlers.

7. 7 Conclusion and recommendation

This study was to explore the existing land governance arrangements in Burundi ranging from formal, informal and traditional setting, actors and their roles, conflicts that emanate from these existing arrangements, root causes and mechanisms that were used to address these land conflicts. The results indicate that there are many land governance arrangements ranging from central government to local government with different institutional framework although they are scattered in many ministerial directorates. Actors are from formal, informal and traditional settings that in one way or another have contributed in addressing some land issues under their capacity. Processes also are mostly dominated by rules and regulations that are formulated by formal settings which include policies, codes, decrees and others related to land governance. In addition to that, many conflicts have been observed and some of them being caused by the existing land governance arrangements due to fragmentation of institutional frameworks. However, other causes like poverty, civil wars and land prices have been mentioned as root causes of the conflict. Finally, many mechanisms to address the land issues have been adopted and applied even though they were challenged by many factors.

Land governance in Burundi is therefore suffering from the dearth of focussed institutional framework that may cope with the dynamism of land governance. Having only two ministries that deal with land issues will be the remedy of problems related to land governance. The new tools for land administration, new technologies, new approaches and updated human resources will be provided for better land governance. The production of land administrators, surveyors and urban planners that are equipped with new theories, techniques and practices will be availed for land rights and information provision.

References

ACCORD. (2009) Mid-year report 2009 for the period 1 January–30 June 2009

African Development Bank [AfDB] (2015). Annual Report

Amani J. P, (2009): Land rights and the forest peoples of Africa. Historical developments in Burundi's land law and impacts on Batwa land ownership. Historical, legal and anthropological perspectives.

APDH, Services fonciers communaux au Burundi : Avancées, Incertitudes et Défis, Global Rights, Février 2014.

Association Burundaise des Elus Locaux (2014). Le Guichet Foncier, Service Viable de L'administration Communale au Burundi, Bujumbura

Association pour la Paix et les Droits de l'Homme (APDH). (2015). Projetsencours. Retrieved July 10, 2018, from http://apdh. objectis. net/programmes-et-activites/projets-en-cours

Association pour la Paixet les Droits de l'Homme (APDH). (2014). Service foncier communal: avancées, défisetincertitudes. Bujumbura, Burundi.

BEAUPRÉ J. F (2015): Recognition and Enforcement of Land Rights in the Commune of Ngozi (Burundi), Thesis for Master of Science in Geo-information Science and Earth Observation, Twente

Coopération Technique Belge (CTB). (2015). Burundi.

Décret n°100/34 du 31 janvier 2012 portant création, missions, composition et fonctionnement de la Commission Foncière Nationale et de son secrétariat permanent ;

Decret N° 100/086 du 26 Juillet 2018 portant Organisation du Ministère des Travaux Publics, de l'Equipement et de l'Aménagement du Territoire

Decret No 100/087 du 26 Juillet 2018 Portant Organisation du Ministère de l'Environnement, de l'Agriculture et de l'Elevage.

Direction du développementet de la coopération (DDC).

(2012). Rencontres foncières, Bujumbura 28-30 mars 2011. (P. Thinon, A. Rochegude, & T. Hilhorst, Eds.). Coopérationsuisse&Cardèreéditeur.

De Soto, H. (2000). The mystery of capital: Why Capitalism Triumphs in the West and Fails Everywhere Else. New York: Basic books

Gouvernement du Burundi (2005). Constitution

Gouvernement du Burundi: Loi N°1/09 du 12 Aout 2016 Portant Code de l'Urbanisme, de l'Habitat et de la construction du Burundi

Gouvernement du Buruni : LOI N°1/ 21 DU 15 Octobre 2013 Portant Code Minier Du Burundi

Government of Burundi (2011), LOI N°1/13 DU 9 AOUT 2011 Portant Révision du Code Foncier du Burundi

Government of Burundi (2012), Decree N0. 100/34of January establishing the creation, mission, Member commission, organization structure and functioning of the National Land Commission and its permanent secretariat

Government of Burundi, OI N°1/ 016 DU 20 AVRIL 2005 Portant Organisation de l'Administration Communale.

Government of Burundi (2018). Plan National De Developpement du Burundi 2018-2027

International Crisis Group (ICG), (2014) : Les terres de la discorde (I) : la réforme foncière au Burundi. Rapport Afrique de Crisis Group N°213, 12 février 2014 Interventions Department – Peacebuilding Unit (unpublished document).

Kimonyo, J. P. (2006) Towards a sustainable management of the land problem in Burundi - how much land for how many people? Netherlands Institute of International Relations.

Loi n°1/02 du 25 janvier 2010 portant révision de la loi n°1/016 du 20 avril 2005 portant organisation de l'administration communale ;

Mahoney R. , Dale P. and McLaren R. (2007). Land Markets - Why are They Required and How Will They Develop?, United Kingdom

Palmer,D. , Fricska,S. , &Wehrmann, B. (2009). Towards Improved Land Governance, Land Tenure Working Paper 11, by FAO and UNHABITAT

Republique du Burundi, (2008). Lettre de politique foncière. Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics;

République du Burundi. Loi n°1/02 du 25 janvier 2010 portantRévision de la loi n°1/016 du 20 avril 2005 portant Organisation de l'administrationcommunale (2010).

United State of Agency for International Development, (2007). Land Tenure and Property Rights Framework. ARD inc

Wehrmann, B. (2008). Land Conflicts. A practical guide to dealing with land disputes, Eschborn, Germany

Williamson, I. P. ; Enemark, S. ; Wallace, J. ; Rajabifard, A (2010). Land Administratio n for Sustainable Development; ESRI: Redlands, CA, USA,

ZOA. (2013). Foncier communal dans les communes de MabandaetVugizodans la province de Makamba du Burundi. Bujumbura, Burundi.

8. Land Governance in the Democratic Republic of Congo

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Abstract
The Democratic Republic of Congo has been experiencing multidimensional conflicts for several decades. Land issues are largely responsible for these conflicts. This paper aims to explore the role and place of land governance in maintaining social cohesion in the DRC. Through this study, the legal framework for land governance in the Democratic Republic of Congo is analysed , including the actors (formal, informal and traditional) involved in the process. The conflicts inherent in land governance, their root causes and the mechanisms applied to address them are also examined. Data were collected based on interviews, focus groups and literature review. The data analysis shows that informal and traditional actors interfere a lot in land governance in the Democratic Republic of Congo. The land law is ambiguous with respect to rural land management. It opens a loophole for the traditional authority to interfere in the governance of rural lands by declaring the vacancy of land but does not admit the titles it issues (customary certificate). In addition, the informal actors involved in land are not usually prosecuted, but those who acquire the land near them are often dispossessed. Because of the administrative burden, the high cost of land title and ignorance of the land law, individuals prefer informal arrangements, usually unwritten. As a result, there are conflicts as only titles issued by the land services are recognized and verbal arrangements do not constitute evidence in the courts.

8. 1. Introduction

Governance is "the system of values, policies, and institutions by which a society conducts its economic, political, and social affairs through interactions within the state, civil society, and the private sector, and between these communities' different entities ". Land governance is therefore, "the set of processes through which land-related decisions are made, implemented, can be legitimately challenged, and conflicting land interests are reconciled1. " Legal instruments, services and different authorities define both policies, techniques and procedures for the acquisition and enjoyment of land ownership. This means that formal as well as informal and private actors are involved in making decisions about access and control of the land.

In the Democratic Republic of Congo, land history is consecrated by three highlights. It is the independent state of Congo, the Belgian colony and the Zaire of Mobutu. From 1885 to 1908, the present Democratic Republic of Congo was privately owned by the King of the Belgians (Leopold II). He managed the land according to his moods and interests. The regime of the Belgian Congo (1908 - 1960) was characterized by the desire to fight against the troubles of Leopold II by the establishment of a property regime through the land laws. However, the colonized (natives) were excluded from land ownership and the Belgians had more favors than other colonizers.

At the dawn of independence, between 1960 and 1970, the Congolese leaders were moved by the desire to correct the irregularities of the colonial system and destroy the acquired rights by obliging all the purchasers of the lands to reintroduce the demand to the authority.

The Mobutu regime (President of the Republic of Zaire) brought about a consecutive change in land governance, especially since 1971. Indeed, the promulgation, on July 20, 1973, of the law governing the general regime of property, land tenure and real estate and security interests revolutionized the law of property, codified a new land and agrarian system[2]. According to this land law, the soil and the subsoil are the exclusive and inalienable property of the State. This means that no one can claim land and subsoil ownership. And to become a tenant, you have to submit a request to the competent national authority.

[1] Mohamed S. ; « L'évolution des formes de gouvernance foncière en Afrique de l'Ouest *» ; in des fiches pédagogiques pour comprendre, se poser de bonnes questions et agir sur le foncier en Afrique de l'Ouest ;* CTFD, ADF, MAE, Paris, Octobre 2016 : http://www. hubrural. org/IMG/pdf/2016_fiche-foncier_seck-2. pdf.

[2]. Thomas Lwango; Analyse du code foncier et évolution de la législation foncière en République Démocratique du Congo ; Texte tiré des actes de la Table ronde organisée à Bukavu par l'IFDP du 10 au 11 mai 2010.

However, the promulgation of the land law has not solved the problem because it is not only circumvented, intentionally or unconsciously violated and lacks accompanying measures, but it is not popularized and rural lands are governed by customary law and the land law resulting in land conflicts. Many people and services interfere in land governance and illegally issue land titles.

8. 2. Problem and Objectives

The land law and other additional laws inform the governance of land in the Democratic Republic of Congo. Despite these legal instruments shortcomings and obstacles to the law are observed on the ground. On the one hand there is a coexistence of two regimes in the management of rural lands. This is the land law and customary law. Thus, the authority having land affairs in its attributions grants the title called emphyteusis or certificate of land title while the customary chief issues the customary certificate. Because of the heavy administrative burden and cost of land titles, individuals prefer customary arrangements in lieu of the relevant services. On the other hand, several services and people intervene in the field of land. Customary chiefs and state service managers including military and police arrogate to themselves the power to allocate land to individuals.

This diversity of actors (formal, traditional and informal) in governance is at the origin of land insecurity and contributes to land conflicts. Thus, the main objective of this study is to explore the role and place of land governance in maintaining social cohesion. In a specific way our concern is to understand the existing land governance systems in the Democratic Republic of Congo. We also want to understand the causes and consequences of conflicts that arise from existing land governance arrangements and strategies for resolving land governance conflicts.

8. 3. Methods

This research used the qualitative method. Data collection techniques used included interviews, group discussions and literature review including books, legislation and reports to support information gathered in the field. The interviewees are, among others, the heads of land-based services, the non-governmental organizations and United Nations agencies involved in land tenure, customary authorities, land professionals, local leaders, large concessionaires and land managers.

8. 4. Results and Analysis

This section presents the detailed analysis of the main results of the study. It includes three key points that answer the fundamental question of our research. The first point focuses on the main land governance arrangements in the Democratic Republic of Congo, among others: The actors, their roles and the main land governance processes. The second point in the analysis of the causes and conflicts in the DRC. The last point in the answer to the question to know how land governace conflicts can be resolved in the different land governance systems.

8. 4. 1. The Existing Land Governance Arrangements in DRC: Actors, Roles and Processes

8. 4. 1. 1. The Actors Involved in Land Governance in DRC

Land governance mobilizes both formal and informal actors. Concerning the formal actors, the law foresees a series of competent authorities likely to intervene in the field of land governance in DRC, but all do not pose acts of the same scope or at the same time. Some have general powers to grant and control the management of certain areas and types of land, while others are only there to control or monitor land concessions taken by other competent authorities (Acts 183 LF and 14 OMELF) "Ordinance Implementing the Land Law". Thus for the first category of authorities we have: (1) The National Minister in charge of Land Affairs; (2) The governors of the provinces, except that of the City of Kinshasa Province; (3) The Wardens of Real Estate Securities. As for the second category of authorities, we have, under Act 92 of the Constitution, the Prime Minister and the Parliament (Act 183 LF).

Regarding the informal actors we have: (1) Traditional authorities (chiefs of localities or sectors, chiefs of groupements and village chiefs); (2) The authorities of decentralized or deconcentrated territorial entities (mayors of cities, mayors of communes, heads of districts, administrators of territories, heads of administrative management positions); (3) Senior officials and other managers of public bodies generally appointed by presidential decree (Ministers, Chief Executive Officer, Director General, Head of Division, Head of Office), (4) The agents of the services having the land in their attributions, mainly those of the services of land affairs, Cadaster and Urban planning; (5) Military as well as police and intelligence officers.

8. 4. 1. 2. The role of actors involved in land governance in DRC

i. The formal actors

Theoretically, formal actors enforce state policy

in the management, design and definition of land policy. They elaborate the land use policy using the zoning method, taking into account the blocks of land allocated to specific activities. Thus we can have a block of land or neighborhood assigned to residential, commercial, industrial, administrative, agricultural, or livestock. Depending on the size of the block area of the land concerned, these requirements may be contained in different town planning plans, such as the local development plan, the special development plan, the regional or provincial development plan or at the national level. You can also have a general management plan. All these plans are revisable taking into account the new societal needs to be integrated, including the renovation of cities, population growth and corollaries.

These plans are hierarchical and include a written or legal part and a graphic part. The formal actors essentially enforce the state policy on land allocation and distribution. They thus materialize the development plans developed by other actors and, together with the formal actors of urban planning, they create new settlements. On behalf of the Republic, they conclude land contracts (lease agreement, temporary occupancy contract, conversion contract, perpetual lease agreement, leasehold, use contract, usufruct contract) with individuals. They also issue property titles, in this case the registration title. In practice, land use precedes land use plans in some cases these plans do not exist at all. The authorities note and take action on land use by third parties according to their requirements. In addition, the authorities with the power of control are limited to reports or speeches at the hemicycle because the sanctions do not follow. The authorities that are supposed to enforce the laws abuse their power and become sellers of parts or all the land areas for which they are responsible. The authors are either assigned to very high responsibilities positions, or transferred, or suspended and in some cases revoked without legal procedures. Corruption and the dysfunction of the judiciary come into play.

ii. The informal actors

Informal actors are those who in principle have no role defined by the texts. Nevertheless, as an authority assuming public functions, they are called within the limits of their competences to accompany the formal actors in their legal missions. They take advantage of the state's failure, particular contexts such as disaster and the ignorance of the administration users to act. However, the administration eventually recognizes their deeds of sale because those who apply for registration titles and leasehold contracts get them without worrying about the acquisition procedure. Informal actors are at the root of most land conflicts because buyers usually run the risk of dispossession. Often a piece of land is sold to several people.

iv. Traditional actors

The traditional actors are, from the point of view of the law, regarded as those having quality and capacity to represent their respective local communities in all the procedures which concern the expropriation for public utility of the rights of enjoyment recognized to their communities on the lands they inhabit or exploit in any way. The same is true for the procedures tending to grant these lands.

These traditional actors channel and defend the interests of their communities. In many cases, these traditional leaders see themselves as landowners and as such, they do not encourage their subjects to seek land titles. For them, the customary land certificates they issue or the payments of the customary fee attested by witnesses are sufficient to enjoy the land. The land right is written and the certificate issued by the land titles clerk takes precedence over other acts of land transfer. This coexistence of two provisions (custom and law) in the allocation of land is at the origin of conflicts in rural areas.

8. 4. 1. 3. Main land governance processes

i. Land governance process within the Formal framework

The Congolese State's land allocation and distribution policy is designed to meet the needs of land use by private individuals to carry out various activities in accordance with their original destinations, but also to ensure the socio-economic development of the country without transgression of ecological or hygienic standards.

Thus, after the conception realized through different urban planning plans, the texts in force, mainly the land law in its act 57 and 181 and the decree fixing the attributions of the ministries confer the competence of the application of this State policy of allocation and distribution of land to the Ministry responsible for Land Affairs. For residential land, for example, the Ministry of Land Affairs, together with the Ministry of Urban Planning, develop allotment plans. Once these plans have been developed, parcels can be created and placed on the market by the competent authorities, namely:

- For land located in the City of Kinshasa, the plots are, regardless of their size, created and placed on the market by national minister decree in charge of land affairs;
- For land located in the province, the plots are, whatever their size, created and market by provincial Governor order with territorial jurisdiction (acts 3 and 5 OMELF).

However, in the context of decentralization and in accordance with the law laying down the fundamental principles for the free administration of the provinces, there are adaptations of the land law with regard to the creation of a plots plan by the provincial Governor. The provincial Governor must first send his by-law creating plots to the national land Minister for approval. This means that the Minister has the power to control the acts of the provincial Governor (Act 4 OMELF).

Obviously, the Minister and the Provincial Governor are competent by delegation of powers because normally, according to Act 92 of the Constitution, it is the Prime Minister who has the power to create plots plans to be brought to the attention of the public by decree (Act 63 LF). Other authorities should intervene only after the creation of land plots to concede or distribute on behalf of the Republic. Three authorities are competent to sign land contracts on behalf of the Republic with individuals and this depending on the size to be granted, the geographical location (Kinshasa or province) and the fund nature (urban or rural section). These are the National Minister of Land Affairs, the Governor of the Province (except that of Kinshasa City) and the warden of Real Estate Titles (Acts 183 LF and 14 OMELF).

In all cases, the requests for land are sent only to the Registrar of Land Titles with territorial jurisdiction (Articles 190-192 and 13 OMELF), He will then examine the request and respond to it accordingly; if the funds requested for concession is under its jurisdiction, if not, He will transmits the file to the competent authority which can be either the National Minister of Land Affairs or the Provincial Governor. However, it must be kept in mind that the national territory is divided into land divisions headed by an official called the Registrar of Real Estate Securities. The latter is the only authority competent to sign the registration certificates (land title).

ii. Land Governace processes within the Informal Framework

As mentioned above, the heads of the territorial entities, the agents of the State (public servants), the agents of the services having the land in their attributions and security services arrogate to themselves the power to sell land. They give to the applicants the sale deeds that are worth a title. Lands sold by informal settlements are often green spaces and other sites not covered by land titles such as markets, stadiums, secondary roads, prisons, schools, medical training, research centers, etc. These executives note either the defect of title, the insufficient development, or the abandonment by the owner before proceeding to the sale or from natural calamities. Sites selected to house refugees or forced internal displaced people are later sold by administrative authorities and police or military personnel.

iv. Traditional framework

The traditional executives involved in the sale of land include chiefs and agents of chiefdoms or sectors, chiefs of groupements, village chiefs and first inhabitants. They dispossess the land to anyone who doesn't value it or who exploits it without having paid the customary royalty. Another form of selling is usually done within family units. Following the death of the father, his children share lands and plots. However, they do not rush to look for land titles.

8. 4. 2. The regulations in land governance in the DRC

Congolese legislation on land governance is first and foremost the constitution of 18th February 2006 as amended and completed to date. The latter stipulates in Act 9 that: "The State exercises permanent sovereignty, particularly over the land, the underground, the waters and the forests, over the Congolese air space, river, lake and Congolese waters, territorial sea and continental hills"3. In addition to this, the land law determines in detail the management and concession methods of DR Congo lands. According to this law, in its act 53: "the land is the exclusive, inalienable and imprescriptible property of the State"4. This provision applies without any restriction to all the lands that constitute the national territory of the DRC.

However, for governance reasons, the Congolese State's property assets are subdivided into two distinct domains[5]. These include the public domain of the State and the private domain of the State. Each of these areas has its specific legal regime.

[3] Journal officiel de la RDC, Constitution de la RDC, Kinshasa, 18 février 2006.
[4] Loi n° 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des suretés, article 53.
[5] Ordonnance n° 74-148 du 2 juillet 1974, Articles 55 et 56

In fact, " non access to land "unconcisibility" " is the legal regime applicable to the lands that constitute the public domain of the State, while "the access to land "concessibility" is applicable to the private domain of the State. This means that land in the public domain of the state cannot be the subject of a land contract. Nobody can have an enjoyment right on these lands because they are directly affected to the public.

These special provisions fall under administrative law. Moreover, the concessibility means that it is only on private land that the Congolese State can conclude land contracts with third parties in accordance with the land law. It is therefore on these lands that a physical or moral person may have an enjoyment land right. An enjoyment land right, because no individual can be a landowner. It is in this private State land domain that the land law and its implementing measures apply.

The land governance that is the subject of this study therefore concerns land in the private domain of the State. It is within this area where there is full of land to be conceded or distributed to private individual seekers. In addition to the land law, Ordinance No. 74-148 of 2nd July 1974 implementing the land law as mentioned above mainly governs these lands. Nevertheless, other texts support the aforementioned legal instruments.

These include: (1) Law No. 77-001 of 22nd February 1977 on expropriation for reasons of public utility; (2) Decree of 20th June 1957 on Urban Planning; (3) Ordinance-Law No. 66-344 of 9th June 1966 on notarial deeds; (4) Ordinance No. 98 of 13th May 1963 on the measurement and demarcation of land; (5) Ordinance No. 77-044 of 22nd February 1977 laying down the conditions for granting free concessions to Zairians who have rendered eminent services to the Nation; (6) Interministerial Act No. 0021 of 29th October 1993 implementing the regulation on easements (servitudes); (7) Act No. 90-0012 of March 31st, 1990, setting the terms and conditions for the conversion of perpetual or ordinary concession titles.

Beyond this enumeration, which is certainly not exhaustive, traditional leaders have a privilege over the land that gives them the power to share it with their subjects. Thus, the land is confirmed directly vacant when the customary chiefs have shared it. As such, they issue the customary certificate.

8. 4. 3. Causes And Conflicts That Emanate from Existing Land Governance Arrangement

i. Types of Conflicts Arising from Land Governance

Land governance causes conflicts of many types. The most common are conflicts of jurisdiction, conflicts of limits, conflicts of double attribution, conflicts of overlapping titles on the same plot. Indeed, jurisdictional conflicts are observed between the registrar of land titles and other traditional, formal and informal executives. They are accused of arrogating themselves the power and authority, which is not theirs. Conflicts of boundaries are rooted in encroachment due to the incompetence of the agents engaged in this activity and the lack of specialized equipment for sound measurement and equitable sharing of land. Dual attribution conflicts come from arrangements between sellers and buyers. The latter often buy the land without having visited it. This is also observed in cases of dispossession. All or part of the property is allocated to a second person without notifying the first occupant on the pretext of the expiry of his verbal contract or the non-payment of the customary royalty.

ii. The root causes of land conflicts

The root causes of these conflicts are:

- The almost total ignorance of the population and the authorities of the texts, which, govern the land matter and the indifference vis-à-vis, the consequences which would result from lack of land title;
- The lack of accompanying measures and low dissemination of the land law in force;
- Impunity and lack of political will. Due to influence traffic, a politician or a powerful trader who wants to get land sometimes obliges the agents of the land administration to not respect procedure;
- The failure of land administration due to lack of skills and means both material and financial. In addition to the very low or inappropriate level of training, the agents of the services having land in their attributions move boundaries, add meters to some and reduce them to others deliberately or unintentionally as a result of corruption or lack of appropriate minimum facilities. They still use rudimentary means to measure and limit land with consequent inaccuracy and serious errors that lead to disputes;
- Parallel legislation (custom and land law) and interferences from unauthorized persons. Several titles cover land and those issued by the informal

authorities seem to meet the approval of the population;
- Unclear institution framework;
- Lack of Clear land policy;
- Lack of purpose expropriate and extension policy;
- The absence of management policy of demographic pressure. A piece of land or plot is fragmented to several family members without the assistance of specialized services. Sometimes the heir children challenge the transactions that their deceased parents had already closed. Added to this is the scam caused by illiteracy and poverty. The wealthiest people and the intellectuals extort the poor, because they have means to find documents and to corrupt. This means that people are dislodged without knowing when their domains were sold. Nearly 90 per cent of the court cases in the DRC are related to land management, this is why the customary chiefs came together and decided to start delivering customary land certificates[6].
- Insecurity is pushing people to leave their usual environments to buy plots in extremely dangerous sites and inappropriate for construction provided that these places have the minimum security. Other people move into private leases often without seeking the owners' consent. At the end of several years they think that the occupation is worthy of title and that generates conflicts;
- The sharecropping system applied to date is not far from feudalism in the middle Ages. It places people who have no land in a servile position vis a vis of the landowner.
- The payment of royalties to customary chiefs is arbitrary. The latter is paid according to the customary chief's sensitivities and the refusal to pay exposes the operator to dispossession.

The absence of policies and instruments for planning their use and integrated and collaborative approaches between the different institutions, each responsible for managing different aspects of the state's land domain and the fact that several stakeholders, including state actors, still do not have a correct perception of the relationship between customary land management systems and the requirements of modern land law, as derived from the law of July 20th, 1973, are the main causes of land conflict in the DRC[7].

The land conflicts most known to the general public because they are the daily city life, relate to obtaining a building plot. In Kinshasa, Bukavu and Lubumbashi, for example, it is not uncommon for a plot to be granted to two or more people at a time, with supporting documents: the land title itself, and, where applicable, true-false document issued by local land chiefs (and easier to obtain). The disputes result in fights, imprisonment and sometimes death of man. In most cases the authorities themselves (and first of all cadastral officers, even some army officers, are complicit in these mistakes).

Corruption is the backdrop, but the immediate cause is obviously ignorance of the land law. This is also the case for conflicts relating to agricultural or mining areas, and village communities are more and more often stripped of their land assets.

The contradiction between laws and tradition with regard to land management is a fundamental source of conflict, but there are aggravating factors that vary according to region. In North Kivu, a very densely populated province, where land disputes often linked to ethnicity are a very old phenomenon. In Goma, the provincial capital, 80 per cent of the disputes in the High Court concern land.

The bloody clashes stemming from disagreements between the administration and some traditional chiefs over the sale of land seem to fall into all categories at once. According to local communities the massive return of refugees can only revive the competition for access to land.

In a post-war context, many land conflicts stem from the claim for restitution right after a long absence, during which the land was turned into pasture or arable land, or simply devoted to housing. Influential people buy land during the war period often through dubious procedures. Villagers see this as unjust confiscations and this often results in riotous arbitrary arrests[8].

8. 4. The land governance process and conflicts

Formally, in order to acquire land, the interested person applies to the Land Titles Division. For lack of allotment and territorial development plan, the applicants go to the administration at last instance. They identify vacant lands themselves or through formal, informal or traditional actors and develop

[6]. Interview done in Cirunga groupement / Kabare territory /South Kivu Province, August, 2018.

[7]. *Augustin M. Mpoyi,* Amélioration de la gouvernance du secteur foncier en République Démocratique du Congo, Rapport sur La mise en œuvre du cadre d'évaluation de la gouvernance foncière (CAGF), février, 2013.

[8]. Jean-claude Bruneau, Enjeux fonciers à risques au Congo (RDC) : Contexte théorique et pratiques deviantes in Bulletin de l'association des géographes Français' terres et tension en Afrique , 2012,pp 474-485.

them. The administrative procedure in force does not suit them at all. Not only the texts are not well known and are difficult to access but also the processing time of files is long. People appreciate the simplicity and flexibility of traditional procedures for acquiring land. In fact, according to some traditions, the land belongs to the first occupant, the first person who had cleared the forest to cultivate, erect a pasture or build there. For other cultures, the customary chief privately owns the land. Thus, He has the power to rent or lease it in the long term to his subjects for a fee. The transactions being made verbally, the conflicts do not delay notably following the death or subordination of the witnesses either witnesses or donors.

However, since the titles issued by the formal actors take precedence over those delivered by the other actors, the strongest are always right. Many customary chiefs believe that big landowners who have land titles issued by formal actors must pay them customary royalties. They do not hesitate to call on the population to enter concessions of this category to exploit them. It follows then police harassment and marches of protest. Admittedly, this happens because the normal procedure for acquiring land is not often respected. Claimants of the concessions often have enough means to manipulate poor officials[9] otherwise, some big land owners, if not most, refrain from continuing to pay taxes and other property taxes to the state after obtaining the concession. Others do not value them.

They abandon them in whole or in part and illegal operators settle. These illegal operators are none other than residents neighboring these large concessions. Since they have no jobs or land to cultivate, they come into conflict with the owners. The Congolese administration does not oblige these large landowners to develop activities for the populations bordering their concessions. Nor do they feel compelled to respect the destination or the reason the land was requested for. So, for example, people are asking for concessions for agriculture, but at the end they start to parcel it out or sharecropping it. Through this system, the big landowners make the riparian populations their slaves.

8. 4. 5. How Land Governance Conflicts Can Be Resolvedare Resolved In The Different Land Governance Systems.

Land Conflicts can be resolved by encouraging people to talk about their land problems and to build the capacity of land administration officials and local organizations (farmers 'or farmers' associations, women's associations) in mediation techniques to be able to take charge of themselves and to resort to court only after having exhausted all the other possibilities for making peace. The resolution of land conflicts also involves the cooperation of the actors involved in land governance. Instead of people working in a scattered way, they work together to do joint operations. Teamwork therefore makes it possible to find effective solutions.

So, to resolve land conflicts in the DRC, the reform of the land law is necessary. This law is 45 years old and continues to work. It needs to be adapted to the current context and integrated with the current realities of life; so that it can fit everyone interest and be able to apply it. The harmonization of custom with the law, the relaxation of the procedure for acquiring land and the reduction of land title prices are all alternatives to resolve land conflicts and allow everyone to find his account.

8. 5. CONCLUSION

Land governance in DRC suffers from lack of planning and means (material, financial and human). The current applicable law is outdated and is not followed by accompanying measures. Because of the impunity and vagueness of the law, informal and traditional actors sell land and issue land titles.

Thus, theoretically, the land and underground belong to State which decides on their assignment but in reality the customary authorities, and other persons acting in the informal (the police, the military, the agents of the State and managers of territorial entities) intervene in land governance and legally competent authorities remain indifferent. As a result, land conflicts occur because of abusive expropriations, illegal occupations and encroachments of boundaries. Indeed, the excessive increase of official prices by the agents of the administration and the rather long time do not motivate landowners to seek or to obtain land titles. Amicable settlements are encouraged in conflict resolution but do not replace titles to secure tenure.

[9]. Interview done at UNHABITAT/ Bukavu Office, le August, 2018.

References

Bruneau Jean-claude, *Land stakes in DRC: theory and deviant practices in French Geographers' association Magazine of land and tension in Africa,* 2012, pp. 474-485

Lwango Thomas; Analysis of the land code and evolution of land legislation

Democratic Republic of Congo ; Text taken from the proceedings of the Round Table organized at

Bukavu by the IFDP from 10 to 11 May 2010.

Mohamed S. ; "The evolution of land governance forms in West Africa"; in educational cards to understand, ask good questions and act on land in West Africa; CTFD, ADF, MAE, Paris, October 2016:

http://www. hubrural. org/IMG/pdf/2016_fiche-foncier_seck-2. pdf.

Mponyo M. Augustin, Improvement of land governance sector in Republic Democratic of Congo. Land governance evaluation report of application, febr. 2013.

The law nº 73-021 of July in 1973 concerning land system, real property and safety system.

Decree of 20th June 1957 on Urban Planning;
Ordinance No. 98 of 13th May 1963 on the measurement and demarcation of land;

Ordinance-Law No. 66-344 of 9th June 1966 on notarial deeds;

Congolese law of July, 1973. N° 78-021 & 1980. 80-008 on its Art. 49-51

Legal prescription, nº 74-148 of 2nd July, 1974.

Ordinance No. 74-148 of 2nd July 1974.

Law No. 77-001 of 22nd February 1977 on expropriation for reasons of public utility;

Ordinance No. 77-044 of 22nd February 1977 laying down the conditions for granting free concessions to Zairians who have rendered eminent services to the Nation;

Interministerial Act No. 0021 of 29th October 1993 implementing the regulation on easements

Constitution of the DRC, February 18th, 2006.

9. Land Governance Arrangements in Ethiopia: Gaps and Opportunities

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Abstract
This study is aimed to explore how land governance system in Ethiopia is structrured to minimize or mitigate conflicts between land governance actors and processes. Morespesfialy, this study is intended to explain land governance arrangements in Ethiopia; review the status of conflicts between land governance actors and processes in the land governance systems in Ethiopia. An attempt is also made to suggest solutions that can minimize conflicts and overlaps in land governance. Qualitative research approach is employed to generate relevant research data. Both seconday and primary sources of data were used. Interview, focus group discussion desk review were the data collection tools employed in this rearch. Finaly, it emerged that land governance in Ethioipa has been involving various actors having competing interests overland which has been resulting conflicts aamong varours actors. Therefore, land governance set up in Ethiopia needs to be more responsive to the changing and competing needs of the society. The country needs comprehensive and unified land governace institution responsible for all land matter in the country.

Keywords: Conflicts, Ethiopia, institutions, Land Governance, processes

9. 1. Introduction

Land is the most fundamental resource in any society with far reaching social, cultural and economic implication. Land is not just the earth that people walk on. It is fundamentally the way people think about place (Williamson et al. , 2010). Thus, land governace is not just only about land - it is about the relationship between people and land. Land governace is a complex process which aims to ensure fair distribution of land, economic growth and environmental protection (Adam and Birhanu, 2017). Moreover, land governance Institutions established at any level are the main players to transform the legal and policy framework into action with a purpose to achieve sustainable development (Deininger et al. , 2012). Despite land governance is one of the tools to achieve suatinable review on the implementation it and its performance status at country level in ethiopia in particular and and at regional level in Eatern Africain genral is very limited.

As a result, a comparative study was suggested to be carried out on the land governance system of eight EALAN (East African Land Administration Network) member States. This research is carried out with due recognition of the existing diverse African land governance system. As indicated in the bulk of literatures, the African land governance system varied across the continent. The variability in land governance systems is due to the country's peculiar customary tenure system, colonial legacy and/or imported legal frameworks. This research specifically aims at conducting a comparative study on the gaps and strengths of a historically diverse land governance arrangement of the member States. Particularly it intended to address how Eastern African land governance systems designed to minimize or mitigate conflicts between land governance actors and process.

As Ethiopia is one of the countries in the Eastern African Region, reviewing the land governance arrangement and process of Ethiopia is part of this comparative study. Thus, this study is aimed at reviewing the land governance process and the key actors involved in Ethiopia. A desk review research approach is employed to assess the country's land governance system, land governance processes, involved actors and causes of disputes and dispute resolution mechanisms. In addition, primary sources of data collected by using interview and Focus Group Discussion (FGD) are used. The reviews of the land tenures systems in Ethiopia show that the issues of land governance are closely attached with the changing country's politics. In almost all cases when a new government assumes power in the country with a different political agenda, land becomes the center of the political change. Due to this land governing laws, enforcing institutions and core process were changed.

Ethiopian land governance system is generally divided into rural land governance system and urban land governance system. Both these governance systems have their own special legal frameworks, separate governing institutions and unique land governance processes and actors. According to the finding of this research varied land governance actors and process were identified; and multifaceted conflicts between land governance actors and process both in the case of urban and rural land were also pinpointed.

9. 2. Objectives of the study

General objectives

- To assess how land governance arrangement in Ethiopia is designed to minimize or mitigate conflict between land governance actors and processes.

Specific objectives

- To assess land governance arrangement in Ethiopia
- To review the status of conflict between land governance actors and process in land governance system in Ethiopia
- To suggest solution that can minimize conflicts and overlaps in land governance in Ethiopia

9. 3. Methodology

The study deploys both primary and secondary data collection methods. The primary data was collected through expert panel discussion conducted at bureau of rural land administration and use office and in-depth interview with the deputy head of urban land administration regional office. The discussions were guided by pre prepared discussion points. The primary data was supported by the review of both published and unpublished documents. All the researchers participated in the data collection process. Content analysis method was used to analyze and scrutinize the data collected.

9. 4. Land Governance Legal and Institutional Framework of Ethiopia

The Federal Democratic Republic of Ethiopia constitution (herein after called the federal constitution) is the base of legal instruments applicable to land governance in Ethiopia. Ethiopia is composed of nine regional states each of them having the power to enact their own constitution.

The right of use of land for different purposes is presupposed in the Federal and the Regional Constitutions. All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved for the States. Powers and functions given to the Federal Government are among others as follows:

It shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects.

It shall determine and administer the utilization of the water or rivers and lakes linking two or more States or crossing the boundaries of the national territorial jurisdiction. (Article 51. 5 and 51. 15)

The Constitution of the Federal government has also enshrined the basic principles about the property right of citizens. Accordingly, Article 40 Sub-article 1 of the Constitution generally provides that "every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise. " This is a very big departure from the property system of the previous regime which acknowledged government ownership of the major means of production as the main property relations (PMGE, 1987).

In Ethiopia both rural and urban land is not subject to sale and the issue is proclaimed as: "The right to ownership of rural and urban land, as well as all natural resources, is exclusively vested in the state and in the peoples of Ethiopia. Land is the common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or other means of exchange (FDRE, 1995).

The provisions in the constitution beyond recognizing individual right to land also protect the landholders from arbitrary evictions. The landholders shall never lose his occupation without proper compensation and due process of law. The constitution states the subject in point as: "Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession (FDRE, 1995).

The right to own property is also stated in the Federal Constitution under Article 40, sub-article 7. This right is given for every Ethiopian and the protection includes all immovable improvements made by the citizen. The improvements can be caused by his labor, creativity or capital inputs on land. His rights include the right to alienate, to bequeath, to transfer

and to remove his property when the right to use the land expires.

In Ethiopia there is a clear separation between rural and urban land in terms of the nature and scope of rights provided for the respective land holders, the governing institutions, involved actors and the legal frameworks which intend to regulate these fundamental resources of the country. The federal rural land administration and use law (Proc. No. 456/2005), which is enacted based on the constitution, defined holding right as: " the right of any peasant farmer or semi pastoralist and pastoralist shall have to use the rural land for the purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and include the right to acquire property produced on his land thereon by his labor or capital and to sale, exchange and bequeath same (FDRE, 2005).

The constitution boldly underline that the right to sell or buy land is not included in the bundle of rights given to the landholder. The landholder can be the owner of both movable and immovable properties developed on his land. The intention of legislators while restricting the ownership right is to protect the peasants from eviction caused by distress sell.

The holding right is the highest right for the rural holder, that encompasses all transfer rights except transfer through sales. The right has no time limit and hence it is different from lease system. It is different from use right as the use right can be obtained by renting land from the landholders or the state. The holding right of any person is respected by law. No person shall be expropriated from his holding, unless it is done by re-distribution according to the decision of people or for the purpose of public interest.

The federal constitution delegated the details of land issues to be proclaimed under subsidiary legislations which in effect paved the way for developments of land administration legal frameworks at federal and regional levels. At federal level, for rural land administration and use, proclamation No. 89/1997 was the first to be proclaimed but replaced by the more detailed proclamation No. 456/2005. For expropriation and compensation objectives, proclamation No. 455/2005 has been enacted at federal level. Regional states developed regulations for expropriation and compensation based on proclamation No. 455/2005. Several regional governments have formulate their land policies and land laws, among them Tigray Region proc. No. 136/2007 (first issued 1997, amended 2002 and 2007), Amhara Region Proc. No. 252/2017 (first enacted 2000, amended in 2006), Oromia Region Proc. No. 130/2007 (first issued 2002, amended in 2007), and SNNP Region Proc. No. 110/2007(first enacted 2003, amended in 2007), Afar Region Proc. No. 49/2009, Benishangul Gumuz Proc. No. 85/2010, Gambela Region Proc. No. 185/2011, and Ethiopia Somali Regional State Proc. No. 128/2013. Hierarchically there are also lower level laws developed in almost all the regions including regulations, directives etc which are enacted for the full realization of the proclamation.

The urban land management also has many types of legal instruments enacted by the federal and regional government. Basically the laws which lay down the general principles are initially proclaimed by the federal government and contextually detailed laws will be formulated by the regional governments. Urban land related laws in Ethiopia includes, the revised urban land leasehold proclamation 721/2011, the urban land holding registration Proc. No. 818/2014, Condominium Proc. No. 370/2003, urban plan proclamation 574/2008. For the urban land management, regional states use the federal level urban land laws.

Generally the Ethiopian legal framework, empower regional states to enact their own land administration and use proclamation in accordance with the federal law. The regional laws are supposed to take into account the site specific conditions that can contribute to achieve the regional objectives. The proclamation also enables regional states to establish their own institutions pertinent for the implementation of the land laws.

Currently, due to the division of power between the Federal Government and regional states the Constitutional power to legislate enabling laws concerning the use and conservation of land is vested in the Federal Government pursuant to Article 51 sub-article 5 of the Federal Constitution (FDRE, 2005). Regional States on the other hand are vested with the power to administer land and other natural resources in accordance with Federal laws as provided under Article 52 sub-article 2(d) of the Federal Constitution. The main responsible ministries at the federal level are the ministry of agriculture (rural land) and the ministry of urban development and works (urban land). The Ethiopian Mapping Agency is responsible for country wide topographic mapping and for implementing and maintaining the geodetic control point network. One of the major weaknesses of the institutional setting in Ethiopia is the institutional separation between urban and rural areas. The main reason for

the differentiation is said to be the socio economic variation between rural and urban areas. Even if there is a significant difference in life style between the two areas (urban and rural), the effect on land administration is mainly based on land use differences. Establishing different institutions for variations in land use is not a convincing reason for some (Williamson et al. , 2010).

The responsibility of rural land administration in the ministry of agriculture is the responsibility of two directorates. The first is responsible for land use and tenure, while the other is responsible for federal level management and lease of State holdings. The two directorates are accountable for two different State Ministers. But the reason why the two directorates are accountable for different State Ministers is not comprehensible.

Most regional states have created similar regional and zonal institutions for urban land administration. Municipalities are the major implementing agencies for urban land administration. The regional rural land administration implementing agencies are different in both naming and organizational setting in different regional states. The Amhara region created a bureau responsible only for rural lands and environmental issues. The Tigray region created an authority under bureau of agriculture and the southern region created a core business process under bureau of agriculture. The other regions followed the example of one of the mentioned four major regions. In all cases the smallest functional unit is situated at Kebele level. The land governance that is the subject of this study therefore concerns land holding right in the rural area and mainly lease and holding right in the urban areas.

9. 5. The actors involved in land governance in Ethiopia

Actors involved in land governance in ethiopia are divided into formal and informal (See the following table). Formal actors are those actors who play within the official laws and legislations while those infromal actors are those who play outside the law.

Table 1: Formal and Informal Actors

9. 6. The role of actors involved in land governance in Ethiopia

i. The formal actors

Theoretically, formal actors implement the land law and constitutional rights of the citizens. The main implementing agencies are land administration and use offices at all levels. The rural land administration and use offices are accountable for Woreda (district) administrations where as urban land administration offices are accountable for municipalities. The land administration offices in general are responsible: to plan and implement land administration systems in their respective areas; and to adjudicate and update land rights. Land use planning, development control and valuation of property is also their responsibility. Generally in both cases, under a different institutional set-up, accountability of these offices may also extend to zones, region and even in exceptional circumstances to the federal level.

The other major formal actors are the legal institutions. They are responsible mainly for conflict management and interpretation of the land law. The legal system

Formal Actors		**Informal Actors**
Actors intersted in Urban Land	**Actors intersted in Rural Land**	
• Landholders and users • Municipalities • Federal government • Urban development & Construction bureau • Courts • Bureau of justice • Regional State Council • Woreda public administration offices • Rural land administration offices • Industry park management office • Institutions for infrastructure development • Industrial Park Development Corporation	• Landholders and users • Rural land administration and use offices • Land administration committees • Public administration offices at all levels • NGOs and partners • The federal geo information agency • Information Network Security Agency(INSA) • Courts • Bureau of justice • Banks, credit and finance institutions • Regional council	• Brokers • Customary conflict resolution mechanisms • Edir-association mainly to help each other during funerals • Elderly and religious leaders • Land administration committees

is also responsible for law amendments and further development of the land law. They also involve in the enforcement of decisions on land related conflicts.

The financial institutions, banks, credit and saving organizations and tax and revenue collection authorities are responsible for credit and financing. The financial institutions are using land records for their daily activities. Institutions responsible for infrastructure development use land to effect their responsibility and also use land records and cadastral data for planning purposes. The administrative offices and political representations at all level are responsible for overall planning and implementation of land administration activities. Land administration activities are resource demanding activities. The role of NGOs and development partners cannot be overlooked in the implementation of the modern land administration system in Ethiopia.

ii. The informal actors

The elderly and the religious leaders play a major role in mediation of land related conflicts. The informal system is operating with no legal recognition but has the power to solve land related problems without creating long lasting disagreement between conflicting parties. Much of the evidences to make land administration decisions are available in the informal setting. Boundary demarcation during first adjudication process is largely using informal knowledge and witnesses. Particularly in case of pastoral land, clan representatives were actively involved in the process of landholding registration and certification; and during the process of land rights adjudication, demarcation and mapping of landholdings. Informal land sale is reported from all of the sample sites. According to the tradition, the previous landholder has an informal pre-emption right – before the most recent land redistribution. In some rural areas this right was extended to the former Irist right holders (gebars). In the informal system, the current landholder is allowed for socially accepted sale by informing the previous landholders and the neighbours. He is allowed to sell the land to others, if the previous landholders and the neighbours are either not interested to buy the land or they are not able to pay the requested amount. By tradition, the current landholders are expected to accept a reasonable reduction of the price for the previous landholders and for neighbours *(Shibeshi et al,. 2014).*

9. 7. Main Land Governance Procedures: Formal and Informal Frameworks

i. Within the Formal framework

Formal property rights are those that are explicitly acknowledged by the State and which may need government authorities for enforcement (Williamson et al. , 2010, FAO, 2012) (FAO, 2007). The key difference between formal and informal holding rights is the enforcement mechanism when the rights are violated.

In Ethiopia, the formal land administration system is designed and implemented on basis of the federal and regional land laws. The constitution boldly underlines that the right to sell or buy land is not included in the bundle of rights given to the landholder. However, the landholder can be the owner of both movable and immovable properties developed on his land. The intention of legislators, while restricting the ownership right, is to protect the peasants from eviction caused by distress sell (as proved by the results of the discussion with concerned officials).

There is no land in Ethiopia without any designated holder. The holder of the land can be a natural person, a legal person, a group of people, or the State. The landholders shall never lose the occupation without proper compensation, though some variability is reported in practice (Yeresaw, 2012; Ambaye, 2013). The constitution states the subject in point as "Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession (FDRE, 1995)

In Ethiopian context, holding right refers to the right given on land, and property produced on his land refers to fixtures. According to the constitution, fixtures are subject to sale while holding right is not. Due to this vague statement, land holders, especially in the urban areas, are capable of transferring their right on land together with a building or a house, or any improvement on land during sale. Most property related laws, including land laws, are very much influenced by the civil code of the country promulgated in 1960. The socio-political setting in the country changed very much since the enactment of the civil code. As a result, some of the provisions in the civil code are outdated and not applicable. However, the definition of immovable in the civil code is still valid. The civil code defines the immovable as lands and buildings. Fixtures in the civil code are termed as intrinsic elements of goods. These elements include anything that by custom is believed to be a part of a thing and things that are materially united with a thing. Trees and crops are also intrinsic elements of a thing (EoE, 1960).

As it is described previously the legal system of the country has placed institutional and legal frameworks for the recognition, protection and enforcement of individuals holding/lease right. No person shall be expropriated from his holding without getting fair compensation prior to dislocation. Expropriation in Ethiopia is possible only when land is needed for the public purpose. The term public interest is often debatable. Adequate compensation is supposed to be paid for expropriated land before land acquisition. The controversy is on what is adequate for the subsistence farmer, whose life is entirely dependent on his holding (Yeresaw, 2012; (Ambaye, 2013).

ii. Within Informal Framework

Informal (traditional) property rights are rights without any recognition of the State. In some cases, informal property rights are held in direct violation of the formal law. In the traditional setting, the community defines what activities are permitted and what not. Restrictions in the informal setting are imposed by the local society and by its culture rather than by the land law (Lemmen, et al. , 2009). It is not fencing or guarding a property that is important to assure ownership in the informal setup. The local society has to approve and accept the act (FAO, 2012). The informal system employs a shared control, while a formal system relay on external forces to enforce decisions. Disregarding the informal rights of the local society by rating them as irrational relics of an early age is no more logical.

The central right for the explanation of the informal setup of land issues in the Ethiopia is the informal holding right. The relationship for the informal setup is between the subject (person), holding right, and the object (land). Though the central right in both systems is a holding right, the holding right in the informal setting allows the transfer of properties. In contradiction to the formal law, the holding right of the informal law includes land sale and mortgage (Rahmato, 2005; Mesfin, 1991). The major holding parties in the informal setting are individuals, groups of the community, the Orthodox Church, and other service giving institutions, such as the Kebele administration (sub-district). The land holding parties are similar to those of the formal system. Most of the holdings under individual holdings are crop lands. The holdings of certain groups of the society are either forests or grazing lands.

9. 8. Types and causes of conflicts arising from land governance

Governance related conflicts can emanate from two major sources. The first category is from scarcity and high value of the land resource that can be a cause for severe competition among societies and individuals. The second category emanates from unfair policies, rules and decisions that trigger landholders to complain and disobey rules.

Conflicts arise either from perceived incompatibilities, i. e. , when a person's or group's attributes (such as beliefs, attitudes , goals, interests, values, ideology or resources) are incompatible with those of another person or group to the extent that they give rise to actions which prevent , obstruct, interfere, injure, diminish or make less effective or less likely any attribute of the other that is valued positively by the other; or from perceived utilities , i. e. , conflict is not likely to occur unless a party believes that there is some utility in engaging in conflict.

Some of the main conflicts in Ethiopian urban land administration are:

- Boundary conflict
- Conflicts related to informal settlement
- Conflict related to demolition of illegal holdings
- Land valuation and compensation related conflicts
- Conflicts due to poor file management
- Construction permit related conflicts

The major conflict types reported by rural land administration and use bureau are:

- Grazing land boundary encroachment
- Claims on holding right
- Inheritance claims
- Rental contract related conflicts
- Survey and boundary related conflicts
- Divorce related
- Contractual agreement related
- Land use conflicts
- Expropriation related conflicts
- Urban expansion related conflicts

9. 8. 1. The land governance process and conflicts

In Ethiopia the land governance process and related conflicts vary depending upon whether the land concerned is rural or urban land. This is particularly because in the country there is a trade of categorizing a certain area of land as an urban or rural land based on laws enacted by the concerned body. Such categorization of land has also resulted in establishing separate institutions having their own respective powers and responsibilities. In the current practices particularly concerning rural land, there are four

main land governance processes namely; land use core process, land administration core process, land valuation and sustainable rehabilitation core process and rural land investment core process.

Each core processes are led by its own directorate having its own defined responsibilities. The responsibility of rural land use directorate is preparation of participatory rural land use plan based the socio-economic and biophysical data collected from each planning unite. Such land use plan shall be approved by the bureau and dispatched for implementation to the Zone-Woreda (district) and Kebele (sub-district) level. Concerning land use there are a numbers of conflict related to different reasons.

First due to the delay on the issuance of land use plan farmers were involved in construction of small mud houses and sale of the same to urban speculators. These activities have led the bureau to conflicts both with the sellers and buyers at the same time. Even after the issuance of land use plan some of the landholders particularly those who are living in urban area do prefer to plan eucalyptus trees, chat than to use the land for the intended purposes.

Whereas, the land administration core process primarily focuses on identifying each parcel of land found at sub-district level and making first and second level registration through direct public participation. The land administration core process is also responsible for adjudication, cadastral surveying and registration of holding rights. This core process has also serious challenges and conflicts in addressing communal land encroachments etc.

The land valuation and sustainable rehabilitation core process is responsible for every activities starting from accepting applications of demand of rural land up to rehabilitating the evictee. However, this core process is in conflict with the public in a numbers of issues including due to violation of due process of laws/required procedures, failures to pay adequate compensation, failure to pay compensation on the time specified under the law, failure to provide proportional replacements land in terms of size, location, fertility etc; and lack of concerns in rehabilitating the evictee also led them to conflict.

9. 8. 2. Types of land Conflicts

Land dispute is one of the major types of disputes in Ethiopia which arises from different sources. In the present rural Ethiopia, the root cause of dispute is shortage of agricultural land in the face of high population pressure and very limited alternative means of livelihood. This can be manifested in the form of boundary conflict, encroachment and land grab of community owned, divorce, land transaction related conflicts (inheritance, donation and lease) and corruption by land administration officers and the like. In the following sub-section a brief discussion will be made on the sources of land conflict.

i. Inheritance

Inheritance is the most common source of land related conflict arising between and among family members. It has further become a source of crime in the form of bodily injury and homicide. Inheritance has become a source of conflict mainly in two ways. During testate succession, when a landholder leaves a Will, all or significant share of his land to one descendant, others who have small or no land resort to violence to the extent of killing the testator or the beneficiary.

ii. Donation

There are also conflicts that arise in relation to donation of land. It is common that cases elderly people who cannot cultivate the land because of old age or sickness may want to transfer their land by gift to one family member hoping that the beneficiary would support them for the rest of their lifetime. The experience shows that the beneficiary agrees to support the donor and accordingly the land is transferred to him by donation. Not so long after the transfer, the beneficiary changes his mind and fails to keep his promise. Unfortunately, this condition is not usually included in the donation agreement as ground to revoke the contract and hence the donor is left without any support. Many elderly people are therefore applying to the land administration offices and the Woreda courts in order to invalidate the agreement. Fortunately under some regional States rural land administration and use laws the possibility of invalidating donation contract upon the violation of the donnees promise is allowed.

There are instances in which children compete among themselves to put their old parents under their custody not for genuine reasons but merely to receive their land by donation.

The other problem related to donation happens when parents give part of their land to one of their sons when he gets married. In most cases, this gift is not registered and the son just cultivates the land without fulfilling the registration formalities. But when the parents want more land, or when they quarrel with their son, or when the son dies prematurely survived

by a wife and/or children, they demand the land to be returned back to their control. The son or his wife (if he died) fight back and sometimes some of these cases become violent.

iii. Rent

Land rent is a widely applied form of land transaction in the country. Yet, some of its characters have become sources of dispute among farmers. Especially when the rental contracts are concluded orally despite the written formality requirement of the law, lack of adequate protection for women lessee and other vulnerable groups

iv. Sale and exchange

There are disguised land sale activities in the region which cause high-level conflicts. It is claimed in many Kebeles (sub-districts) that, following the distribution of land in 1997, many poor people sold their land in the name of rent. When land registration was started in 2004, the buyers appeared to be the legitimate holders and received certificates to that effect. When this happened, the sellers had no objection. However, some years after the certification, the sellers brought reclamation cases in mass.

Most of them lost their cases since the defendants have better evidence, the certificate. Others lost their cases because of the period of limitation reasoning since defendants had been using the land for more than ten years. Some courts required explanations from Woreda LA offices which in turn demanded it from Kebele land administration who finally received public comment. The public testified in favor of the original land holders, and the certificates of some buyers were being revoked and getting replaced by other certificates. This will definitely create problems of its own. This has led to some land related conflicts.

There are also cases of unregistered exchange of plots of land. After several years, one of the holders worked hard and made improvements to the land in the form of buildings, planting trees and the like. The second person who had not made much improvement now wished to get back his previous land to get advantage of improvements made by the other person.

v. Boundary Conflicts

Boundary dispute refers to a situation where a farmer tries to cultivate his neighbor's land by pushing the boundary of his plot. This may happen as a result of lack of clarity on boundary demarcation in places where land registration was not completed. Even in areas where land registration and certification was carried out, boundary conflicts are rife, because land demarcations were not actually conducted, or if they were, they were done through customary means. Moreover, in practice there are also various scenarios where by the rich and the powerful are clearly enc broaching boundaries of land belonging to women and other vulnerable groups.

vi. Encroachment on state or communal land

Encroachment on community land is the most worrisome issue in country. Such community land may be grazing land, forest land, and water bodies. There is huge amount of state land grab in lowland areas. The land grab is committed by adjacent farmers, landless local youth, etc. Particularly landless youth who could not get land from the Woredas resort to illegal acts of state or community land grabbing. The situation in low land areas is that landless people (mofer zemet) from other localities (highland) possess and cultivate land without any permission of the Woreda.

Generally the reason why people illegally grab state or community land is associated partly to shortage of land in the highlands, the landlessness of the new generation, the diminutive size of agricultural land, and greed.

9. 9. Land Conflict Resolution Mechanisms in Ethiopia

Historically, the origin of many conflicts in Ethiopia may be traced back to disputes over land. There was little attention given to land administration in general and land dispute settlement mechanisms in particular. Even if land dispute constituted much of the courts cases starting from the imperial period, cases were supposed to be handled through the formal judicial system. During the period of the military government (1974-1991), rural land dispute settlement was handled mainly by a local peasant association (PA) without a right to appeal to formal courts, and as a result the process was spoiled with corruption and inefficiency.

One of the objectives of the current rural land administration proclamation is to create conducive environment to resolve land dispute amicably and efficiently. It envisages that

"where dispute arises over rural landholding right, effort shall be made to resolve the dispute through discussion and agreement of the concerned parties. Where the dispute could not be resolved by agreement, it shall be decided by an arbitral body to be elected by the parties or decided in accordance with the rural land administration laws of the region. "

The law prefers the resolution of disputes at local level with the assistance of the land administration institutional apparatus before it resorts to judicial one. The law also aims to reduce disputes through systematic registration and certification of landholdings. Land certification is the best measure to reduce land dispute and enhance tenure security among land holders and users.

Currently in Ethiopia customary local institutions such as *Edir* and *Mahiber* play a predominant role in making these dispute resolution mechanisms more effective. *Edir* is one of these local institutions set up by the community free participation primarily for funeral ceremony and also undertakes other developmental activities, whereas, *Mahiber* is a religious monthly ceremony in groups. Both these local institutions reinforce the social solidarity of the community. If a household becomes victim of a boundary or any other conflict, he applies the case first to *Edir or Mahiber* members at their scheduled meeting. Members play a conciliation role between these disputants and head of the local institutions invite the disputants to select arbitrators whom they assume neutral. Then, disputing parties present their cases to these arbitrators. Arbitrators try to resolve the dispute by conciliating these disputing parties and if not by making a non-binding decision. These arbitrators report to these institutions their decision and most parties become obedient to it even though the decision doesn't forbid them from continuing into court proceedings if they don't agree with the decision. This is important custom in resolving disputes easily and for maintaining social solidarity.

Whereas formally the country's' Federal and Regional land laws and court establishment laws show that there are various avenues for land dispute settlement. Regular courts (Woreda(district)/first instance, high, and supreme) are recognized as having binding power over all disputes including one emanating from land. However, in some instances, administrative authorities entertain land related disputes without having specific authority on the issues at hand or in some cases exceeding their authority provided under the law.

It is observed that regional States rural land laws are not similar in adopting provisions to resolve a land disputes. However, there is a similarity in that all regions recognize customary or village level arbitration as a starting point in dispute settlement stage. In most cases, while the poor and vulnerable group tends to try first their case by arbitration due to the costly, time consuming nature of litigation, the rich and the powerful usually skip arbitration and resort to courts. With regard to procedure which shall be followed by rural land arbitration committee, even if some regions are good in elaborating the role of arbitration committee and the procedure for dispute settlement, it is not uniformly followed by all.

There are also religious courts recognized by the constitution as operating side by side with regular courts. The federal Constitution under Article 78 sub-article 5 recognizes the possibility of establishment of "religious and customary courts" besides the regular courts. As a result, Sharia courts are established at Federal and Regional levels. The consent of both parties is necessary for the Sharia courts to entertain the case according to Islamic laws.

There are also other types of land related dispute hearing tribunals operating in urban areas: municipal courts and clearance and compensation hearing tribunals. Urban municipal courts operate on some limited level. When the city administration becomes a party, municipal courts are the ones to hear the case. In the event of expropriation of land, there might be claims related to compensation, public purpose or ownership/holding rights. In this case the urban land clearance and compensation hearing tribunal which is responsible to the city administration and possesses a qusi-judicial power, will hear the case. The urban land clearance and compensation hearing tribunal is administrative body with quasi-judicial power, and the judges put in this tribunal are not legally trained judges but people working within the urban land administration institution, and this makes their competence questionable at best. They have neither clear procedure to follow during dispute settlement nor proper legal knowledge to interpret the law.

9. 10. Conclusion

The Ethiopian land governance system has gone through a number of changes across different times. This is particularly because land issue in Ethiopia is not only viewed from its economic perspective rather it is a very sensitive political matter. One of the indication for its political sensitivity is that unlike most countries across the globe, in Ethiopia issues of land is enshrined under the federal constitution. The general tenure structure of the country shows that land and other natural resources are under the joint ownership of the State and the Public. The Federal government has the Constitutional power to enact laws concerning these resources and the regional States have also a delegate power to enact subsidiary legislation and to establish implementing institutions.

Currently though it is subjected to different critics the land governance system in the country is divided into urban and rural land. Such division of governance is manifested through the enactment of different legislation, established institutions and even the formally, informally and customary actors involved in rural and urban matters vary. Urban and rural land administering institutions have their own core process based on their own spheres. Some time due their inefficiency and malpractices, these institutions are involved in a number of conflicts with the landholders or leassees. Particularly the main core-process working on land valuation and sustainable rehabilitation is in continuous conflict with the expropriated landholders due to violation of due process of law, inadequate compensation, failure to pay the determined compensation on time, etc. landholders are also involved into conflict between/among themselves due to issues of boundary, donation, rent, inheritance, exchange etc.

When any land related disputes arise in any part of the country there are a numbers of options provided for the disputant parties to settle their disagreement. Customarily they can resolve their disputes through alternatives dispute settlement mechanism including though negotiation, mediation or arbitration. Whereas, formally they can bring their case to regular courts from first instance up to the supreme court or to the Sharia court specially if the issue of and is embedded with inheritance or divorce.

References

ADAM, A. G. & BIRHANU, T. A. 2017. Decentralized Rural Land Administration in Ethiopia: The Case of Amhara Region. *Journal of Land and Rural Studies* Vol. 6, Issue 1, pp34-49.

AMBAYE, D. W. 2013. Land Rights and Expropriation in Ethiopia. *Doctoral Thesis in Real Estate Planning and Land Law. Department of Real Estate and Construction Management School of Architecture and the Built Environment Royal Institute of Technology (KTH), Stockholm.*

BRUCE, J. W. 2017. Land Tenure Dualism in China: How the Dichotomy between State and Collective Ownership Has Shaped Urbanization and Driven the Emergence of Wealth Inequality. *World Bank Land and Poverty Conference, March 20-24. Washington DC.*

CHAUVEAU, J. -P. , CISSÉ, S. , COTULA, L. , COLIN, J. -P. & DELVILLE, P. L. 2007. Changes in customary land tenure systems in Africa. In: COTULA, L. (ed.).

DEININGER, K. 2003. *Land Policies for Growth and Poverty Reduction* Washington DC, World Bank and Oxford University Press.

DEININGER, K. , SELOD, H. & BURNS, A. 2012. *The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector,* Washington DC:The World Bank.

ENEMARK, S. The Land Management Paradigm for Sustainable Development In: WILLIAMSON, I. , ENEMARK, S. & WALLACE, J. , eds. Proceedings of the Expert Group Meeting on Incorporating Sustainable Development Objectives into ICT Enabled Land Administration Systems, 2005 9-11 November 2005, Melbourne, Australia.

ENEMARK, S. 2012. Sustainable Land Governance: Three Key Demands. F*IG Working Week 2012 : Knowing to manage the territory, protect the environment, evaluate the cultural heritage Rome, Italy, 6-10 May 2012.*

FAO 2007. Good Governance in Land Tenure and Administration. *FAO Land Tenure Studies 9, Rome, Italy.*

FAO 2012. *Voluntary Guidelines on the responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Rome: .*

FDRE 1995. Constitution of the Federal Democratic Republic of Ethiopia (FDRE). *Proc. No 1/1995, Negarit Gazeta* Addis Abeba,Ethiopia.

FDRE 2005. Rural land administration and use proclamation. *Federal Democratice Republic of Ethiopia Proclamation No. 456/2005.* Addis Abeba.

GOODWIN, D. 2013. Whatever it Takes: Tenure Security Strategies of Communal Land Right Holders in Zimbabwe. *Africa,* Vol 83, No. 01,pp164–187.

LAMBA, A. O. 2005. *Land tenure management systems in informal settlements – A case study in Nairobi, MSc thesis ITC Enschede.*

MUNDIAL, B. 2010. Assessing & monitoring governance in the land sector: The Land Governance Assessment Framework.

OKOTH-OGENDO, H. W. O. 1989. Some issues of theory in the study of tenure relations in African agriculture. *Africa* Vol. 59, No. 01, pp6–17.

PALMER, D. , FRICSKA, S. & WEHRMANN, B. 2009. TOWARDS IMPROVED LAND GOVERNANCE. *Land Tenure Working Paper 11, FAO & UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME.*

SIMBIZI, M. 2016. . *Measuring land tenure security: A pro-poor perspective. PhD Thesis. University of Twente. .*

TULADHAR, A. 2015. Sino-Dutch Spatial Planning and land Registration *Expert Meeting Program.*

WILLIAMSON, I. , ENEMARK, S. , WALLACE, J. & RAJABIFARD, A. 2010. *Land Administration For Sustainable Development,* Redlands, California, ESRI Press Academics.

ZEVENBERGEN, J. , AUGUSTINUS, C. , ANTONIO, D. & BENNETT, R. 2013. Pro-poor land administration: Principles for recording the land rights of the underrepresented. *Land Use Policy* Vol. 31, pp595-604.

10. Land Governance Arrangements in Kenya: Gaps, Strengths and Opportunities

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Abstract

This study set out to explore how land governance systems can minimize or mitigate conflicts between land governance actors and processes in Kenya. Its specific objectives were to explain land governance arrangements in Kenya; review the status of conflicts between land governance actors and processes in the land governance systems in Kenya; and to suggest solutions that can minimize conflicts and overlaps in land governance. It thus employed qualitative approaches to help obtain relevant information from the key stakeholders.

In the end, it emerged that land governance in Kenya has undergone significant roles over the last two decades. However, there is still room for reform to make land governance more responsive to the changing needs of the society. The reforms are necessary for transparent and efficient land governance in the country.

Keywords: Conflicts, Kenya, Land Governance,

10. 1. Introduction

10. 1. 1 Background of the study

This document explains land governance systems in Kenya and some of the conflicts between actors and processes related to land in Kenya. Since the colonial era, land is the single greatest resource in the country and is both emotive and contentious. The contentious nature of land in Kenya has largely affected its use. In a sense, this has affected its contribution to the country's economic growth. Yet as both Olima (1997) and Obala (2011) assert, it is a basic factor of economic production as well as a basis for social, cultural and religious values and practices. Access to land and other natural resources and the associated security of tenure have significant implications for development (Obala and Olima, 1998).

Land governance in Kenya remains problematic despite recent reforms in the sector. Land governance is arguably the exercise of political, economic and administrative authority in the management of a country's resource (Château Palmer, 2009). As such it concerns the rules, processes and structures through which decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced and the way that competing interests in land are managed (Château Palmer, 2009).

In a sense, land governance involves procedures, policies, processes and institutions by which land, property and other natural resources are managed. This includes decisions on access to land, land rights, land use, and land development. It is for these reasons that many country's have enacted land laws to address important land matters relating to land rights, management of public land, land use planning, land taxation, land information management systems and dispute resolutions in land. In every society, sound land governance is the key toward the achievement of sustainable development (Osabuohien, 2015).

In general, land governance can be described as the process by which organizations provide normative frameworks and implement policies and programs with respect to land. Key land governance tasks are land administration (survey and registration), land information system provision (records), land dispute resolution, public land management, land use planning (environmental and developmental), land policy and legislation, and valuation and taxation. In other words, land governance is the process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled (UN-HABITAT, 2011).

Land governance processes are categorized into two main governance functions; land administration and land management. Land administration is the process of recording and disseminating information about ownership, value and use of land and its associated resources. It is concerned with four aspects of information which include, registration of land to ascertain ownership, land valuation, land uses and land development (UNECE, 1996). On the other hand, land management encompasses all activities associated with management of land and natural resources that are required to achieve sustainable development.

This involves the utilization of land resources with a goal to achieve desirable social and/or economic objectives.

10. 1. 2. Objectives of the Study

The main objective of the study was to explore how land governance systems can minimize or mitigate conflicts between land governance actors and processes in Kenya. The specific objectives include:

- To explain land governance arrangements in Kenya;
- To review the status of conflicts between land governance actors and processes in the land governance systems in Kenya; and
- To suggest solutions that can minimize conflicts and overlaps in land governance.

10. 2. METHODOLOGY

In undertaking the study, a largely qualitative approach was adopted. Data collection was largely through review of existing literature, documents and reports on land in Kenya. The existing literature, documents and reports include among others – pieces of legislations (land Act Acts and other decrees); published and unpublished articles, reports by both local and international NGOs and bilateral agencies. Limited key informant interviews were undertaken to help corroborate the review results.

In order to collect consistent data, a checklist was prepared addressing the key themes that needed to be containing themes for use in review of literature, reports and documents. This approach helped in ensuring that there was focus by the researchers and time was not wasted collecting irrelevant information. Besides, it ensured that all critical issues were captured. In analysing the data, we employed thematic categorization approach among others. This bring to the fore land governance arrangements in Kenya.

10. 3. RESULTS AND FINDINGS

10. 3. 1 Land Ownership in Kenya

Land rights have always been highly contested in Kenyan. As such its ownership, use and management had been one of the key issues of concern. It is for this reason it was one of the issues addressed by Kenya's new Constitution (Government of Kenya, 2010). But there exist various systems of land ownership and/or tenure in Kenya. Indeed, chapter 5 of the Constitution of 2010 article 62; explicitly states that; "all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals. " Thus, land is classified as public land, private land and community land.

a) Public land: Public land tenure is provided for under Article 62 of the Constitution. Public land may be delineated into two broad categories: the first category vests in and is held by the county government in trust for the people resident in that county and shall be administered on their behalf by the National Land Commission. This first category of land consists of unalienated government land; land held, used or occupied by a State organ (which is not a national State organ) and where the land is not held by the State organ as a lessee under a private lease, land in respect of which no individual or community ownership can be established and land in respect of which no heir can be identified. The second category vests in and is held by the National Land Commission in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission. Public land tenure is an exercise and core aspect of state sovereignty. This consists of minerals and mineral oils, roads and thoroughfares, water bodies including rivers and lakes, the territorial sea, the exclusive economic zone, the sea bed, the continental shelf, all land between the high and low water marks and any land which is not classified as community or private land.

b) Community Land: Although the idea of community land found its way in the 2010 constitution, it remains contentious for several reasons. The main one being the difficulty to reach a consensus on its meaning and/or definition. As would be imagined, the dictionary defines; "community" as a group of people who share certain common values. This is fairly broad and leaves room for more contests. It is to be understood that such values may include intent, belief, resources, pReferences, needs, risks, and a number of other conditions. The nature and extent of these values may affect the identity of the participants and their degree of cohesiveness. This has made it difficult to come up with a standard definition of "community" especially in the context of property ownership.

However, Kenya's new constitution (Government of Kenya, 2010) without providing a definition provides the basis on which community land rights may be claimed. The basis includes among others ethnicity, culture or "community of interest". The National Land Commission Act uses this provision in its definition of community as "a clearly defined group of users of land identified on the basis of ethnicity, culture or similar community of interest which holds a set of

clearly defined rights and obligations over land and land-based resources". While ethnicity and culture "are intuitive and bears the sense of comradeship, it is less clear what community of interest" means. Yet, this concept may hold the key to meaningful recognition of community land rights in the interest of national cohesion. As it is this area remains subject to various interpretations and possibly contests in the future.

According to the Kenya 2010 constitution, community land includes group ranches; land lawfully transferred to a specific community by any process of law; land that is lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities; and land that is lawfully held as trust land by the county governments.

c) Private Land: Like public land tenure, private land tenure is provided for under Article 64 of the 2010 Constitution. Private land tenure consists largely of freeholds and leaseholds interests. Suffice to add that most parcels of land held under freehold comprise mainly of former settler and/or white occupied areas. The other category is where ownership rights were acquired through land adjudication and consolidation and/or where government land was allocated for private development. In the past leasehold interests were granted for 30, 33, 50, and 99 years. However, the 2010 constitution has fixed the period to 99 years.

10. 3. 2. Land Governance Institutions in Kenya

Land governance arrangement in Kenya has over the years been criticized for the involvement of numerous institutions. Many scholars have viewed this as a colonial legacy and therefore archaic and irrelevant (Okoth Ogendo,1991 and Syagga, 2009). While others saw it as contributing to conflicts over land ownership, boundaries and use among others. It has also been blamed for inequalities in access to land as well rampant corruption in the sector (Obala, 2011, Obala and Mattingly, 2014).

Adoption of a land policy in 2009 and the new constitution did not lead to a reduction in the number of land governance institutions.

Interestingly, the constitution created a new body – the National Land Commission . While the creation of the commission on the face of it, is positively viewed for it promised to reduce discretionary powers of the Land Commissioner, the emerging results have not been encouraging. This partly explains the new clamour for further reforms in land governance by the civil society organizations (Daily Nation, November, 2018). The demand for reforms incidentally has coincided with requirement for a review of land policy as espoused in the constitution. The constitution provides for the review of land policy every 10 years.

In general, the institutions and entities tasked with governance and management of land in Kenya include:The Ministry of Lands and Physical Planning, the National Land Commission (NLC), County Governments, Land Control Boards, the Environment and Land Court, Public bodies that manage land-based resources such as forests, water, lake and river basins; environment and wildlife), Private sector, professionals and Professional organizations and Civil Society.

The roles of the various public bodies namely Ministry of Lands and Physical Planning, National Land Commission and other government departments as well as County are clearly spelt out in the various pieces of legislation. Interestingly, there have been disputes over mandates between the Ministry of Lands and Physical Planning and the National Land Commission. These have resulted in duplication of responsibilities and loss of valuable time trying to sort out the problems in addition to slowing economic development through delays in processing titles and other critical documents in land transactions.

Civil society and Professional Associations have however been central in mobilizing the public against the misuse of public land manifested through irregular land allocations. In addition, they have been useful in raising concerns over poor service delivery in the land sector. This has to a great extent ensured that land management agencies are kept on their toes. Besides, land governance has found it appropriate to initiate new policy reforms due to prodding by these two groups.

Table 1: Land Governance Institutions and their roles in Kenya

Institutions	Roles and responsibilities
Ministry of Lands	Provides policy directions on land use and management, facilitating legal reviews and development of guidelines through the different departments.
Department of surveys	Undertakes surveying and mapping on behalf of the Government. Production, maintenance and distribution of accurate geographical data in the form of maps
Department of Land Administration	Main role is the administration and management of private land, control and regulation of land use and property in respect of all categories of land and maintenance of land records.
Department of Physical Planning	Key role is provision of advisory and National Physical Planning services, coordination of planning by counties in terms of policies, standards and guidelines and technical assistance and capacity building for counties on Physical Planning matters.
Department of Land Registration	Registration of land transactions and other legal documents and determination of land and boundary disputes in collaboration with Surveys Department.
Department of Valuation	Deals with valuation of land and assets for stamp duty, Government leasing including foreign missions, asset valuation, rating and development of National Land Value Index.
Department of Land Adjudication and Settlements	Ascertainment of land rights and interests, land consolidation and adjudication, Acquisition of agriculturally viable land for settlement of poor landless Kenyans, management of the Agricultural Settlement Fund, management of Group Ranches as well as Arbitration of Land disputes.
The National Land Commission	A constitutional body created by the 2010 constitution. Mandated to oversee land governance in the country, address historical injustices, resolve land conflicts, promote orderly access and use of land, recommend land policy to national government, manage public land on behalf of County and National governments, assess tax on land and premiums on immovable property in any area designated by law; monitor and have oversight responsibilities over land use planning throughout the country.
County Governments	Responsible for formulation of zoning regulations that are vital in land management and administration in that they direct how land can be used optimally and sustainability. Land management that is effective calls for participatory approach. County Governments being closer to the public use this aspect to popularize their understanding and have the public mandate to do so all for the benefit of the area residents.
Professional Associations/ bodies	Helps ensure that the right quality of recruits enter the training programs and into the professions. Besides, they set and enforce codes of conduct and standards of practice.
Civil society	Informal gate keepers guarding against mismanagement and use of land

Source: National land Commission Annual Report, 2015/6

Other Bodies

Several other government agencies are indirectly involved in land governance. These include the Environmental Management Authority, Water Resources Management Authority, Regional Development Authorities, Road Agencies (KenHA and KURA) among others. The courts too play a key role in land governance in the country.

10. 3 Legal Framework for Land Governance in Kenya

Prior to the adoption of the land policy in 2009 and the enactment of a new constitution in 2010, there were numerous pieces of legislation dealing with land governance in Kenya. However, upon promulgation of the constitution in 2010; several pieces of legalization were repealed and new ones passed. This led to consolidated pieces of legislation that are simple and easy to implement. They include: Land Act 2012, Land Registration Act 2012, Community Land Act, 2015; Environment and Land Court Act, 2012; National Land Commission Act and the Constitution of Kenya, 2010. These pieces of legislation provide the legal framework for land governance, assigning roles and responsibilities to each of the key stakeholders in land governance in the country. A summary of the contents of each of the laws are outlined as below:

i) The Constitution of Kenya 2010: This is the supreme law of the land and every other law is enacted in accordance to the constitution. Chapter five of the constitution is dedicated to land matters in Kenya. It addresses issues of land tenure, management and administration. Thus, it provides a clear framework for land governance. In Article 60 it provides for the principles of efficient, productive and sustainable management of land. While Article 69 deals with the issues of management and utilization of the environment. In addition, it mandates the parliament to revise, consolidate and rationalize existing land laws in order to come up with inclusive land laws.

ii) The Land Act 2012: This is an Act of Parliament enacted to revise, consolidate and rationalize land laws, to provide for the sustainable administration and management of land and land-based resources, and for connected purposes. Article 7 of this Act provides for the methods of land acquisition which include; Allocation; Land adjudication process; Compulsory acquisition; Prescription; Settlement programs; Transmissions; Transfers; long term leases exceeding twenty-one years created out of private land; or any other manner prescribed in an Act of Parliament.

Under Part III and IV the Act provides for the administration and management of public Land in Kenya, previously this was regulated by the Government Land Act while Part V the Act provides for the administration and management of private land in Kenya.

It further provides for the creation of and administration of secondary and/or derivative interests in land including leases, charges and easements. On charges, the law is more elaborate and provides for elaborate procedures on creation of Charges which include: new forms of charges namely formal, informal and customary charges; provides elaborate remedies and rights of the parties in a charge instrument, in particular the Act affords a chargor more protection namely; chargor right of redemption, the chargor right to be informed of a variation in the interests rates, the right of consolidation and foreclosureand the chargor right to have his interests safeguarded during the chargee exercise of the statutory powers of sale.

iii) The Land registration Act 2012:
Like the Land Act and in accordance with constitution the law was enacted to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes. It introduced a number of changes in the registration of land interests in Kenya. However, where it has not introduced new provisions; it has consolidated the existing provisions into one law. The important highlights of this statute include:

- Defining a charge to include a mortgage, this presupposes that mortgages in Kenya will acquire the character of charges. The statute emphasizes that a charge shall always operate as a security only and no a transfer.
- Provides for the establishment of a land registry and for the appointment of a chief registrar of land.
- Provides for the effect of registration an interest in land just as it was provided under RLA.
- Provides for the doctrine of indefeasibility of Title as well as elaborate exceptions to the doctrine namely misrepresentation, Fraud and procedural acquisition of land;
- Provides for additional overriding interests, which include inter alia; Spousal rights over matrimonial property, Trusts including customary trusts, Rights of way, National rights of light, Leases, Charges and Rights obtained through prescription; and
- Provides for elaborate transfer and registration procedures of interests in land, these procedures include inter alia; the transfers' documents to be presented at registration which include; copy of ID, pin certificate, passport photos and where applicable a marriage certificate. In addition, the process of execution of transfer documents has an interesting change in that the documents must be executed and witnessed and the person executing the documents must be examined by the chief registrar of lands.

iv) Land Control Act 1967 (revised 2010):
This is an Act of Parliament enacted to provide for controlling transactions in agricultural land.

National Land Commission Act (Act No. 5 of 2012):
It was enacted to help make further provisions as to the functions and powers of the National Land Commission, qualifications and procedures for appointments to the Commission, to give effect to the objects and principles of devolved government in land management and administration. It further provided thatthe National Land Commission can determine changes to land ownership and rights over land.

V) Environmental Management and Coordination Act 1999/Ammended2014: This was enacted to provide for the establishment of an appropriate legal and institutional framework for the management of the environment. By virtue of Section 44; "The Authority shall, in consultation with the relevant lead agencies, develop, issue and implement regulations, procedures, guidelines and measures for the sustainable use of hill sides, hill tops, mountain areas and forests and such regulations, guidelines, procedures and measures shall control the harvesting of forests and any natural resources located in or on a hill side, hill top or mountain area so as to protect water catchment areas, prevent soil erosion and regulate human settlement.

It further provides that all public land situated on hill sides, hill tops, forests, mountains shall by virtue of this section be governed by the Environmental Management and Coordination Act.

vi) Forests Act 2005/Revised 2012: Section 2 provides that this Act shall apply to all forests and woodlands on State and local authority land.

vii) The community land Act 2016: This was enacted to give effect to article 63(5) of the constitution, to provide for the recognition, protection and registration of community land rights, management and administration of community land, to provide for the role of county governments in relation to unregistered community land among others. It also repealed the Land (Group Representatives) Act, (Cap 287) and the Trust Lands Act, (Cap 288) which formerly provided for community land.

In summary the laws have provided for procedures, processes, conflict and/or dispute resolution, land registration procedures and processes, recognition and protection of community rights. In a sense they have provided for a more inclusive type of governance.

10. 3. 4 Land Conflicts in Relation to Land Governance Arrangements in Kenya
Although definitions of land conflicts are diverse, it may be understood to be a dispute in which at least two parties are involved, the roots of which are different interests over the rights to land: the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. As such the definition by Wehrmann (2005) that indicates that it should be understood as a misuse, restriction or dispute over property rights to land should suffice. Obala (2011) argues that land conflicts emanate from different sources that could be a result of scarcity, social and/or political manipulations.

In Kenya like in other parts of Africa, land conflicts are on the rise. This is largely argued to be the result of various factors among them; changing values, for instance, where land access had traditionally been characterized as relatively egalitarian; land commodification and increasing land values have led increased competition for access to land. In addition, some underlying factors, such as population pressure, agricultural commercialization, and urbanization, have contributed to the increasing number of land conflicts in the country. Thus, it is not far fetched when the National Land Commission reported in its 2015/16 report that it resolved about 3000 disputes mainly in the settlement schemes.

The settlement schemes are across the country and include: Kiboko B settlement scheme in Makueni County, Oljorai in Nakuru county, Chembe Kibabamshe Settlement Scheme in Kilifi County among others. The issue of land conflicts in Kenya has been of great concern since colonial era. It has caused social disruption, loss of life, negative impact on development and economy. About half of the land conflicts are over boundaries that occur mainly with neighbours or relatives who live close by. The second most common reason for conflicts is over inheritance, which exclusively occurs among relatives.

10. 3. 4. 1 Causes of Land Conflicts in Kenya
Conflicts over land are as a result of social, economic, political and legal factors among others. Specifically, it emerged from our study that the main causes of land conflicts include:

i) Succession and Inheritance - Succession refers to the right and transmission of the rights and obligations of the deceased to his heirs. The scope of rights to be transferred to the heirs is wide, ranging from movable properties to fixed assets such as land and buildings. The Kenya law of succession cap 160 of the laws of Kenya prescribes the rules which determine what ought to happen to a person's estate after his or her death. It is also referred to as the law of inheritance that is,transmission of property rights from the dead to the living. The rules of succession identify the beneficiaries entitled to succeed the deceased's estate and the extent of the benefits they are to receive. The Kenya law of succession determines the different rights and duties that persons (for example, beneficiaries and creditors) may have in a deceased's estate.

However, conflicts over land and other properties owned by the deceased arise in absence of a will. The, the absence of a will, is likely to cause disputes among families in the endeavor to succeed the properties left behind by the deceased. Conflicts of land succession manifest between the children, spouses and relatives of the deceased.

ii) Boundaries - Land boundary conflicts are dominant disputes in Kenya. The conflicts have been observed to occur among individuals conflicting over private land, between clans (over communal property) due to oral tradition and physically unfixed boundaries, between administrative and between private individuals and the state (over private or state land). Arguably disputes between private individual and the state are mostly influenced by politics and selfish interests among the elites. A good example in Kenya is Mau forest disputes in the former Rift valley province. The Mau Forest is one of the largest forests remaining in Kenya and it's a source of water for farmlands of western Kenya. However private individuals have invaded the forest in search of good land for farming a situation which has led to a large percentage of the forest being destroyed. Efforts by the government to evict the land grabbers from the forest have resulted to severe conflicts between the state and the citizens leading to loss of lives and properties.

In addition, it has been observed that land boundary disputes have also been witnessed between local communities and the management of national parks and game reserves. In this the case of Tsavo national game reserve is highlighted; here the communities living along the game reserve contend that Kenya Wildlife Services illegally extended the boundaries of the reserve ostensibly to acquire chunks of land belonging to the local communities. Another category of boundary conflict is new but pits counties against each other. The disputes have been over administrative jurisdictions. Examples in this category include: Machakos and Makueni; Nandi and Kisumu as well as Kisumu and Vihiga counties.

iii) Expropriations (Compulsory Acquisition) - Compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society. It is a power possessed in one form or another by governments of all modern nations. This power is often necessary for social and economic development and the protection of the natural environment. Land must be provided for investments such as roads, railways, harbours and airports; for hospitals and schools; for electricity, water and sewage facilities; and for the protection against flooding and the protection of water courses and environmentally fragile areas.

Article 40 of the Constitution of Kenya 2010 gives the state power to acquire land for public interest under the following conditions:

- The land to be acquired is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament;
- A prompt payment in full, of just compensation to be made to the person whose land is being acquired; and
- The state should allow any person who has an interest in, or right over, that property a right to access a court of law.

Land conflicts related to compulsory acquisition occurs when the government expropriates land from owners without (adequate) compensation and prompt compensation as per requirement of the law. This happens as a result of undervaluation of the land and properties to be acquired or failure of the state body to compensate the owners justly.

Delay in compensation lead to disputes as land owners refuse to move from the acquired land. In other cases, unregistered parcels of land become source of disputes because it is hard for the state to identify the legal owners of such land. Compulsory acquisition also leads to social disruption as family members fight for the compensated money. After Compulsory Acquisition some locals encroach the acquired land resulting to disputes with the authorities.

Moreover boundary disputes in the country are as a result of land expropriation by the state. Violent evictions by state authorities including chasing them from their property even when compensation issues have not been solved results to disputes.

iv) Historical Land Injustices - These are traced back to the colonial rule and more so to the declaration of a protectorate over much of what is now Kenya on 15 June 1895 which marked the official beginning of British rule in Kenya. These actions laid the foundation for the land problems that have been experienced in many parts of Kenya over the years. The declaration also saw massive dispossession of indigenous Kenyans as the demand for land for the railway construction and European settlement took precedence. The colonialists applied laws that had been used elsewhere like in India to expropriate land for infrastructure development (Okoth Ogendo, 1991). This subjugated the rights of the Africans to the periphery and the effects are seen to date.

Thus, using the Crown LandsOrdinance of 1902 any empty land or any land vacated by a native could be sold or rented to Europeans, and land had to be developed or else forfeited. The protectorate administration gave no cognizance to customary tenure systems, and by 1914 nearly 5 million acres (2 million hectares) of land had been taken away from Kenyan Africans, mostly from the Kikuyu, Maasai and Nandi communities (Mortensen, 2004). Kenya was declared a colony in 1920 and remained so until the time of independence in 1963. Throughout, land problems remained unresolved.

As a consequence, the effect of the colonial land policy led to a cute land shortages, landlessness and discontent among the rural peasantry (Sorrenson, 1967). By the 1940s there was severe shortage of land within the reserves in central Kenya. The division between the de facto owners of land and those made landless by de facto privatization of land holding prompted demands for restoration of 'stolen lands' by the Mau Mau revolts, which eventually compelled the colonial administration to initiate land reforms in the 1950s and 1960s.

The overall effects of colonial land policy on land ownership in Kenya led directly to inequality in land ownership and use, landlessness, squatting, land degradation, resultant poverty, and Africans' resentment of the white settlers. The colonial administration contributed to the infringement of entitlements to land access and ownership in several ways:

- It created two systems of land tenure based on principles of English property law applying to high potential areas, and a largely neglected regime of customary property law in the marginal areas;
- It facilitated a structure of land distribution characterized by large holdings of high potential land by the white settlers, on the one hand, and fragmented small holdings on the African reserves, on the other hand; and
- Designed policy environment that facilitate the development of the high potential areas and neglect of counterpart marginal areas.

Thus, although there were high expectations among the Africans to get back their land after independence, the polices, laws and practices adopted after independence saw a general re-entrenchment and persistence of colonial themes, policies and patterns of organization in all aspects of Kenya's economy, save only for inconsequential adjustments. The effort to regain back land from the white settlers saw only few individual benefitting. Most of the large white farms were allocated to prominent people and politicians while the majority poor and illiterate black Kenyans remained landless. In addition, the allocations were dominated by ethnic concentration and politically well-connected personalities. In the Rift Valley, for instance, the Kikuyu were seen as outsiders even though the majority had purchased the land they settled on. This poor allocation of land after independence has fueled ethnic tension among communities and has been a major cause of post-election ethnic clashes experienced in 1997 and 2007(Commission, 1999).

Conflicts with their roots in the history of the country are what we refer to as historical injustices. Both the 2010 Constitution and National Land Commission Act 2012 mandated the NLC to tackle this problem. However, limited progress has been in this regard despite the desire and high expectations by stakeholders.

v) Commercial Transactions–Conflicts relatedto land emanate from the use of land as collateral for securing loans. Other commercial conflicts related to land are due to fraudulent sales such as cases of multiple sale of one parcel of land to different individuals.

10. 3. 5 Mechanisms for Addressing Conflicts in Land Governance in Kenya

Kenya offers to its inhabitants two principal ways competing to solve them land related disputes as stated below.

The two ways are formal and alternative methods of dispute resolution.

10. 3. 5. 1 Formal Methods of Land Dispute Resolution
The main dispute resolution mechanisms are formal and alternative dispute resolution mechanisms. They include:

a) Land Dispute Tribunals: Land dispute tribunals were constituted under the Land Dispute Tribunal Act No 18 of 1990. The land dispute tribunals were expected to use local and customary knowledge to address land disputes related to boundaries, ownership and trespass. The rulings of cases heard by the tribunals were ratified, endorsed and adopted by the High Court in order to provide them with the power of a court order to aid enforcement of implementation. The land Tribunal Act has so far been repealed by the Environment and Land Court Act of 2011. This has however left a vacuum in dealing with local land disputes where the litigants cannot afford the high expenses and complexities associated with formal courts.

b) Land and Environment Court: Previously, matters related to land ownership disputes were being heard by the High Court. These cases could take a long time to conclude and take a lot of resources from the litigants. Environment and Land Court Act of 2011 has set up a specialized court for matters related to land and environment with hope of quickening the determination of land cases in Kenya. The setting up of the court is in adherence to section 162 (2) b of the constitution which aim at facilitating so as to enable the Court to provide just, expeditious, proportionate and accessible resolution of disputes governed by this Act.

c)Boundary Dispute Determination: The repealed Land Registration Act cap 300 gave the land registrars power to hear and determine land boundary disputes. This has been retained in a different format under section 18 &19 of the Land registration Act of 2012. All boundary disputes should be reported to the land registrar for hearing and determination. Any appeal against the ruling of the land registrar may be made to the High Court, Land and Environment Court section.

10. 3. 5. 2 Alternative Dispute Resolution Mechanisms
The Land and Environment Court Act recognizes and leaves space to accommodate alternative dispute systems. It states in section 20 (1) and (2) that: (1) Nothing in this Act may be construed as precluding the Court from adopting and implementing, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of alternative dispute resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance with Article 159(2) (c) of the Constitution.

Below are some of the suggested alternative land dispute resolutions mechanisms.

a) Mediation: Mediation is a process in which an impartial third party (the mediator) assists disputing parties in reaching a mutually acceptable agreement regarding their dispute. The mediator identifies pertinent issues, identifies main sources of misunderstanding between the parties, explores options and solutions and negotiates an agreement.

b) Arbitration: In arbitration, the dispute is submitted by agreement of the disputing parties to one or more arbitrators who make binding decisions on the dispute. Arbitration constitutes a private dispute resolution as opposed to a court process. An arbitrator should be an independent, impartial, neutral and knowledgeable person who is jointly appointed by the parties. The arbitration processes is normally held in private places agreed upon by the parties and the public or press are not admitted. Arbitration is a quasi-judicial process in which the parties pay the arbitrators fees and meet other expenses.

An alternative to adjudication is arbitration, which is considered more flexible, quicker and generally less expensive, especially in smaller cases in which no lawyers are involved. It also allows for better conciliation, as the arbitrator can also act as a mediator, the only difference being that s/he has the last say in the matter. The arbitrator-as-mediator listens to the facts, perceptions and arguments presented by both parties, who can be represented by lawyers, but donot have to be. Arbitration is therefore a perfect combination of mediation and adjudication, offering a chance of re-establishing trust and respect among the parties while on the other hand providing a third-party decision. It is particularly suitable in land conflicts among individuals or groups that will have to deal with each other in the future and which also cannot be solved by mediation. These categories include conflicts between tribes or villages; disputes related to illegal sale or lease of communal land, or land use conflicts between farmers and pastoralists. It is also suitable for resolving highly asymmetric land conflicts such as group invasions of private land or evictions from state land can be resolved by arbitration.

c)Negotiation: Negotiation is the least preferred mechanism of the genre of ADR. Negotiation involves

two disputants who are trying to work out a solution to their problem in a give and take mode. The process gives too much power to the disputants making it difficult for an amicable solution to be arrived at due to strong interests and entrenched positions. However in some rare circumstances negotiation may work well.

d) Adjudication: This is a formal litigation process. The decision-maker is a judge at a regular court, a specialized land court or a tribunal. The process follows formal procedures and rules. Both parties – often represented by a lawyer – present evidence to the judge whose binding decision makes one party win and the other lose the case, which can only be appealed through a higher court. Adjudication will therefore not re-establish the relationships between the parties. The current land conflict might be solved, but the hostility may continue or even be sharpened. Adjudication should therefore always be considered the method of last resort.

Adjudication is hindered in many countries by the case overload of the courts. It can easily take several years until a case is finally treated by the court, resulting in a high number of land conflicts pending there. In addition, it is not uncommon that judges are corrupt and allow the richer parties win the case. Even if this is not the case, the more affluent will always be able to hire the better lawyers.

10. 4. Summary and Conclusions

The study set out to explore how land governance systems can minimize or mitigate conflicts between land governance actors and processes in Kenya. It anticipated that in the end it would help explain land governance arrangements in the country, review the status of conflicts between land governance actors and processes in the land governance systems and ultimately identify solutions that can minimize conflicts and overlaps in land governance.

10. 4. 1 Summary of the Findings

It is clear from the study land governance in Kenya has undergone numerous reform processes. The reform has been out of a desire to improve land governance to promote equitable access to land by citizens irrespective of gender, tribe or religion. However, there are still many areas that improvement thus the increasing call for further land reforms by the civil society, professional bodies and politicians. One such area, is the increasingly conflicts in land transactions.

The results further revealed that since 2010, a plethora of laws have been passed to promote responsible land governance. Most of the laws were part of the requirements by the 2009 land policy and the 2010 constitution respectively. They include the National Land Commission Act, that further outlines the role of National Land Commission. The National Land Commission has also since coming to office developed numerous guidelines covering various aspects of land governance. The aims of these laws are invariably to enhance responsible land management and governance.

A review of the various laws and/or guidelines points towards a desire for detailed and prescriptive laws, guidelines and regulations. This is understood to be the result of past mistakes and failures in land governance. However; there is fear being over detailed curtail innovation in land governance. Thus, detrimental in the long run.

That land conflicts results from mistakes and failures in land governance processes and procedures. Land conflicts have been observed both in rural and urban areas. The conflicts are also of various nature – social, economic and political. Although, the National Land Commission (NLC) is engaged in addressing land conflicts many cases continue to pile up in courts. Thus, the increasing need to address these through development of clear and transparent processes and procedures by the National Land Commission.

It is encouraging that the NLC is exploring alternative dispute resolution mechanisms that reduce both costs and time that the affected persons would spend in a court process. What it calls for is the NLC to train locals to be able to handle similar cases at the local level at the earliest opportunity.

Land management and governance, is still plagued by lack of transparency and unclear demarcation of roles. Besides leading to poor decisions and fraud that has seen a section of the NLC being tried for various related offences; it has also contributed to confusion in conveyancing practice by lawyers and land management practice by land related professionals.

That there is still a duplication of roles which the creation of the NLC was meant to cure. County governments like their predecessor local authorities in many cases are still acting as if they are fully in charge of the decisions on land. Yet the law is clear on their limits. This further leads to uncertainty in land management with potential negative effects on attraction of foreign direct investments.

10. 4. 2 Conclusions

It is clear that Kenya has made significant strides in

land governance reforms in the past two decades. However, there are several areas that require reforms for land governance to be fully responsive to the needs and demands of the country.

It is encouraging that both NLC Act and the Constitution provide for a review and preparation of a land policy every ten years. This should provide a more critical look at the successes and failure of the current land policy more so at the implementation stage. In particular, it should be of interest to all stakeholders why the country has been unable to achieve the policy goals.

Overall, there is a need to for further land governance reforms to ensure an efficient and effective allocation, use and management of land resource. In this respect roles of the various stakeholders will need to be properly canvassed. This will reduce territorial conflicts during the implementation of a new land policy and resultant pieces of legislation. #

References

Château Palmer, M. (2009). Decantar Magazine.

Commission, A. (1999). Report of the Judicial Commission of Inquiry Appointed to Inquire into the Tribal Clashes.

Enemark, S. (2005). Understanding the Land Management Paradigm. Madison, Wisconsin, USA.

FAO. (1995). Planning for Sustainable Use of Land Resources: Towards a New. Rome: FAO.

FAO/UNEP. (2004). Integrated Planning and Management 30 March – 3 April 1998. Mbabane, Swaziland.

Institution of Surveyors ( ) Guidebook on Procedures and processes of land administration in Kenya. Nairobi
Mortensen, D. (2004). The White Man's Country. Partner news.
National Land Commission. (2016) Annual Report for 2015/2016; Government Printer, Nairobi

Obala; L. M. (2011) The Relationship between Urban Land Conflicts and Inequity: The Case of Nairobi; unpublished PhD Thesis, University of the Witwatersrand, Johannesburg

Obala L. M. and Mattingly; M. (2014) Ethnicity, corruption and violence in urban land conflict in Kenya,*Urban Studies,* vol51, Issue 13 pp 2735 - 2751

Okoth-Ogendo. (1991). Tenants of the. Nairobi: African Centre for Technology Studies Press.

Olima, W. H. A and Luke M. Obala (1999) The Effect of Existing Land Tenure Systems on Urban Development: A case study Kenya's Secondary Towns, with Emphasis on Kisumu, *Habitat International;* Vol. 23 No. 1 pp113 - 124.

Osabuohien, E. (2015). In-Country Determinants and Implications of Foreign Land Acquisitions. Lagos.

Sorenson, M. (1967). Land Reform in the Kikuyu Country. London: Oxford University Press.

UNECE. (1996). Land Administration Guidelines with Special Reference to Countries in Transition. New York and Geneva.

UN-HABITAT. (2011, January). Good Land Governance. Land governance policy. World Bank. Retrieved from UN HABITAT.

Wehrmann, B. (2005). A practical guide to dealing with land disputes. Eschborn: Deutsche Gesellschaft für.

Wehrmann, B. (2008). A practical guide to dealing with land disputes. Eschborn, Germany: Deutsche Gesellschaft für.

11. Land governance Arrangement and Conflict Resolution Mechanisms in Rwanda

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Abstract
Rwanda's land governance has been for years characterized by complex structures, with dual legal systems (customary and statutory systems) till 2005, when the organic land law (now land law) was enacted, paving way for systematic land registration. This registration paved the way for statutory system of land governance. In post genocide Rwanda, there were a lot of land governance issues resulting from displacement, secondary occupation, and legalization of illegal occupation. All of these created challenges related to land governance in post conflict Rwanda due to successive legitimate land rights. Rwanda government decided to reform land sector by institutionalizing land sector. The research in this policy brief illustrates that there are various actors in the land governance process and these in one way or another have contributed to land governance and reduced land related conflicts in Rwanda.

11. 1. Introduction
Land being a scarce resource in Rwanda with a high population density, the government has taken the decision to initiate a land reform. For that to happen, a continuous political support was provided. In that framework, Land Tenure Regularization Program (LTRP) was initiated by the GOR in 2008. The objectives were to ensure that the forms of land tenure for citizens were secure (1); to ensure efficient management and administration of land (2). Then, the program initiated the procedures to carry out systematic registration of land in the names of the owner, creating complete public records of landholdings.

The envisaged benefits were: increased land tenure security of land owners through established property rights; land conflict reduction; open and flexible land market in both urban and rural areas; access to credits by land owners; increased investment on land and improved land productivity. Other benefits were the increase of government revenue from land taxes, the decentralization of land services, the improvement of land administration and management with the use of land information system and the use of cadastral systems enhancing physical planning (Biraro et al, 2015).

Within relatively a period of short time, many of the targets have been achieved. Globally, from June 2009 to June 2014, on the whole country, it is estimated that 10. 67 million parcels were demarcated and digitized. Approximately, less that 1 % (11,840) disputes were registered and 80 % of those conflicts were of intra family related nature. About 9. 1 millions parcels had ownership information while 8. 6 millions titles were approved, printed for delivery. Among those titles, 7. 2 millions were withdrawn by the owners (Sagashya, 2015).

While undeniable good results have been registered in general as the statistics indicates, it is important to also consider the challenges that came up with the implementation of the reform. It is also interesting to zoom in and make an assessment of experiences of specific administrative units, a sector/cell/village or households. This report discusses the issue of land governance and land conflicts in Rwanda. It is subdivided in different sections: introduction, methodology, the history of land governance in Rwanda, current status of land governance and conflicts and conclusion.

11. 2. Problem statement
Rwanda has invested a lot and there is clear manifestation of the political will towards clear and good land governance. Different laws have been put in place, institutional reforms and training of personnel to professionalize the land sector in the Country is all clear examples of government's effort and will to work towards good land governance. However, there are some claims and complaints from land owners that manifest some challenges in as far as land administration processes are concerned and also land disputes are still received in different public institutions. All of these shows that the land governance the country is targeting are still far from achievable. This research therefore seeks to get a way forward on possible ways in which and how land governance can be improved based on the land governance challenges identified.

11. 3. Objectives
The main objective was to investigate how land governance arrangements in Rwanda can decrease conflicts between land governance actors and processes in the country.

The specific objectives were as follows:

- To describe the land governance actors and arrangements in Rwanda

- To review the status of conflicts between land governance actors and processes in the land governance arrangements
- To suggest ways that can reduce conflicts in the land governance system of Rwanda

11. 4. Methodology

This research was compiled using two main research methods. The first is the literature review on land governance in Rwanda. There is diverse literature on land governance in Rwanda covering different periods including pre-colonial period; the period during the first t and the second Republic and the period after 1994 Tutsi Genocide. Apart from the general information on land governance, the literature review also covered recent policy documents on land in Rwanda as well as detailed documentation on the initiation and implementation of different land reforms that Rwanda has experienced, especially the one being implemented.

Apart from the literature review, another important source of information used in this report is interviews. Two types of interview were carried out to have updated information on the outcome of many changes that have transformed land governance in Rwanda. One is the individual interview that was carried out with some persons responsible for land at Sector, District, Ministry level, etc. The other is the focus group interview that was carried out with group of people involved in land governance. Those groups are made of members of cell and sector land committees mainly. Their information was crucial, since they are the ones dealing with land matters on daily basis.
The qualitative information from interviews was necessary to reflect on achievements of the reform, the challenges faced as well as the proposed solutions. To make sure that the information we collected reflected the situation of the whole country, we tried and managed to conduct interviews in each of the 5 Provinces of Rwanda (including Kigali City) despite the limited time and logistics we experienced. The following tables summarize the Districts visited per province in Rwanda.

Provinces	**District**
Eastern	Kayonza
Southern	Kamonyi
Northern	Musanze
Western	Nyabihu
City of Kigali	Gasabo

In all, 17 individual interviews were conducted while 8 focus group interviews were covered. The interviewees included: Vice mayors, Director of OSC; land administrators, land surveyors, Mediators, Head of Villages and Cells, sector land officers, the Director in charge of Land at ministry level.

11. 5. Results and Analysis

In this chapter, the research presents a detailed analysis of the main findings of the study. The first section addresses the major land governance arrangements in Rwanda; it presents the major land governance actors, their area of operation, and their roles in the land and administration and management. The second section covers the causes and conflicts that exist in the land governance and the conflict resolution mechanisms currently applied. It divulges the types and causes of the conflict and the role of the different actors in persuading these conflicts. And finally, the last section of the chapter provides for a way forward for better land governance in Rwanda.

11. 5. 1. Existing land governance arrangements in Rwanda

The Government of Rwanda has recognized land as a key priority for economic development and poverty reduction and initiated land reforms. The land governance arrangement in Rwanda is well described by describing the actors involved, their roles, the land governance processes and existing legal instruments.

11. 5. 1. 1. Land Governance Actors and their roles

In Rwanda, there is a statutory institutional framework that provides actors and their roles in land governance. Actors in land governance in Rwanda are all provided for by the law. Land governance in Rwanda is formal. All informal land actors were abolished and informal acts are considered illegal. It is therefore formal actors that play major roles in the daily activities related to land governance in Rwanda.

These are government institutions established by the national land policy of 2004 and the organic land law of 2005 that was abrogated and replaced by new land law in 2013.

Ministry of Environment: The Ministry is responsible for addressing issues of policy, in particular through Ministerial orders and/or orders that set out laws and procedures for the administration, planning, and allocation of land. The law places roles of developing and disseminating the Land governance, environment and climate change policies, strategies and programs and formulation of policies related to land governance and Management under the Ministry of Environment

that oversees all land related governance activities.

The Rwanda Land Management and Use Authority (RLMUA): This is the central implementing agency for Land Reform in Rwanda. Its primary function is to support the delivery of land management services; its proposed mission statement is "to effectively and efficiently administer lands for the benefit of all Rwandese citizens and national development". RLMUA is a public institution tasked to oversee all technical aspects related to the daily management of land in Rwanda. Implement national policies, laws, strategies, regulations and Government resolutions related to the management and use of land, provide advice to the Government, monitor and coordinate the implementation of strategies related to the management and use of land, promote activities relating to investment and value addition in the activities related to the use and exploitation of land resources in Rwanda, register land, issue and keep land authentic deeds and any other information relating to land of Rwanda and supervise all land-related matters and represent the State for supervision and monitoring of land management and use.

Office of the Registrar of Land Titles (ORLT): Set in the Land Law and established by the Presidential Order determining the structure, the powers and the functioning of the Office of the Registrar of Land Titles. The office is headed by the Registrar supported by five deputy zonal registrars covering each of the four provinces of Rwanda and Kigali City. The Office has principally the power of signing certificates of land titles (Freehold titles) and long term leases (leasehold certificates).

District Land Bureaus (DLB's):
The district land bureaus are also implementing policies and guidelines issues by Ministry and Land Agency. Rwanda has 30 districts and each districts has a district land bureau, with digital connection to national land administration information system (LAIS), they carry out daily land related services and transactions. The land law establishes District Land Bureaus (DLB) directed by a District Land Officer (DLO), as the focus of land use planning and administration at the district, town and municipality level. Administratively answerable to the Local Authority, the DLB's are the public notary for land matters i. e. the DLO certify applications for land, maintain the cadastral index maps and record all land to be registered by sporadic or systematic means on behalf of the Office of the Registrar.

According to the law establishing district land bureaus, they are tasked with different responsibilities among them are:

- Prepare documents proving land ownership and present them to Registrar of Land Titles to issue a certificate of land registration
- Monitor and approve land survey within the district jurisdiction in accordance with procedures and methods provided by the law and other instructions
- Monitor land valuation in accordance with methods provided by the law and other instructions
- Advise the national institution in charge of land registration and geo-information services and district authorities on all matters related to land
- Supervise and monitor land use within the district.

Sector land Manager: The Law N°13bis/2014 governing the Office of Notary in Rwanda gives notarial powers to the Officer in charge of land at the Sector level. The sector land manager is also in charge of providing information to the clients, receive their applications, check their completeness, and forward them to the District Land Officer. Each sector has a Sector land manager who runs daily land transactions activities.

Sectors and Cells Land Committees: Each Sector and Cell has a land committee responsible for follow up of management and use of land. Sector and cells has a land committee which has an important part to play as the first point of contact for land registration and land use planning.

9. 5. 2. Rules and Regulations governing Land Governance in the different institutions

As stated above, land management in Rwanda is governed by statutory laws. The laws, orders, and regulations governing management and administration of land in Rwanda pre-established by competent authority before they comes into existence. Thus, any act related to land governance that is not supported by an existing legal framework is considered illegal and thus, prohibited. The National Land Policy and land law requires securing tenure right to all Rwandans and it is mandatory to register land privately owned on Rwandan territory. To achieve better policy implementation, the Strategic Road Map for Land Tenure Reform was prepared and adopted in 2004. The road map was a result of exhaustive discussions and thus, systematic land registration was rolled out all over the country.
Land Administration Information System (LAIS) is been developed. All 30 districts are connected to LAIS

and can automatically access the national cadaster. Electronic archiving has also developed in Kigali city and 6 secondary cities in Rwanda, and later it will be expanded in all Districts. A modern GIS lab complete with technical staff has been put in place at the RLMUA and all districts are currently have their own GIS professionals.

To guarantee rational and viable land use, the National Land Use and Development Master Plan was adopted, in 2010, though under revision now. RLMUA has high resolution aerial rectified photographs (Ortho-photos) and a base map covering the whole country. The land use master plan revision is expected to be completed this year. The National Land Use and Development Master Plan will guide development of District Development Plan which will be spatially oriented too.

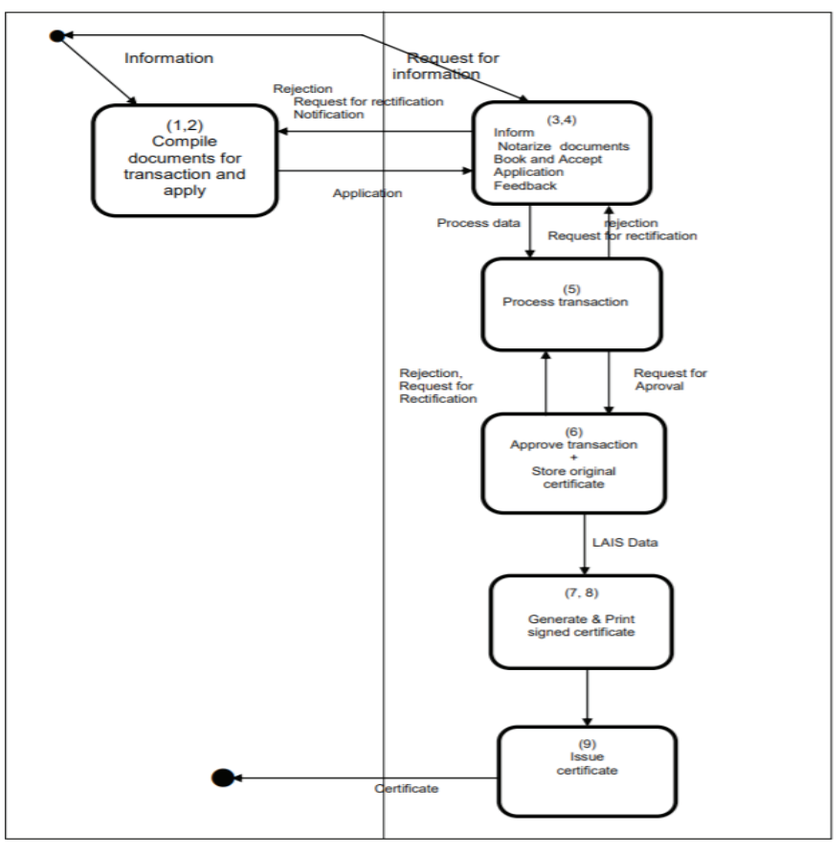
11. 5. 3. Main Land Governance Processes in the different institutions

Land governance process in Rwanda involves both public and private actors. Since land is governed by statutory laws, the government and other actors carry all land governance activities in the respect of the existing laws. Rwanda's system of land administration is based on a reformed cadastral system, including land mapping, recording of all land-related data and land titles. Land registry is, in effect, a tool of reference for an effective land administration system. The land administration system focuses on three concepts that are land titles based on long-term leases, the value of land, and the use of land, within the general context of land management.

As stated in Rwanda's land administration procedure manual, to ensure proper land management and land administration and specifically the maintenance of land certificates issued to landholders during land registration, a Land Administration Information System (LAIS) has been developed. LAIS is a web based land registration tool that is developed based on procedures and processes that are provided for by the Ministerial Order Determining Modalities of Land Registration. The core of the LAIS, comprising the data store and the main processing capacity, are held centrally with the users being able to interface with the core using the web browsers over the internet.

Land governance process at the Sector level

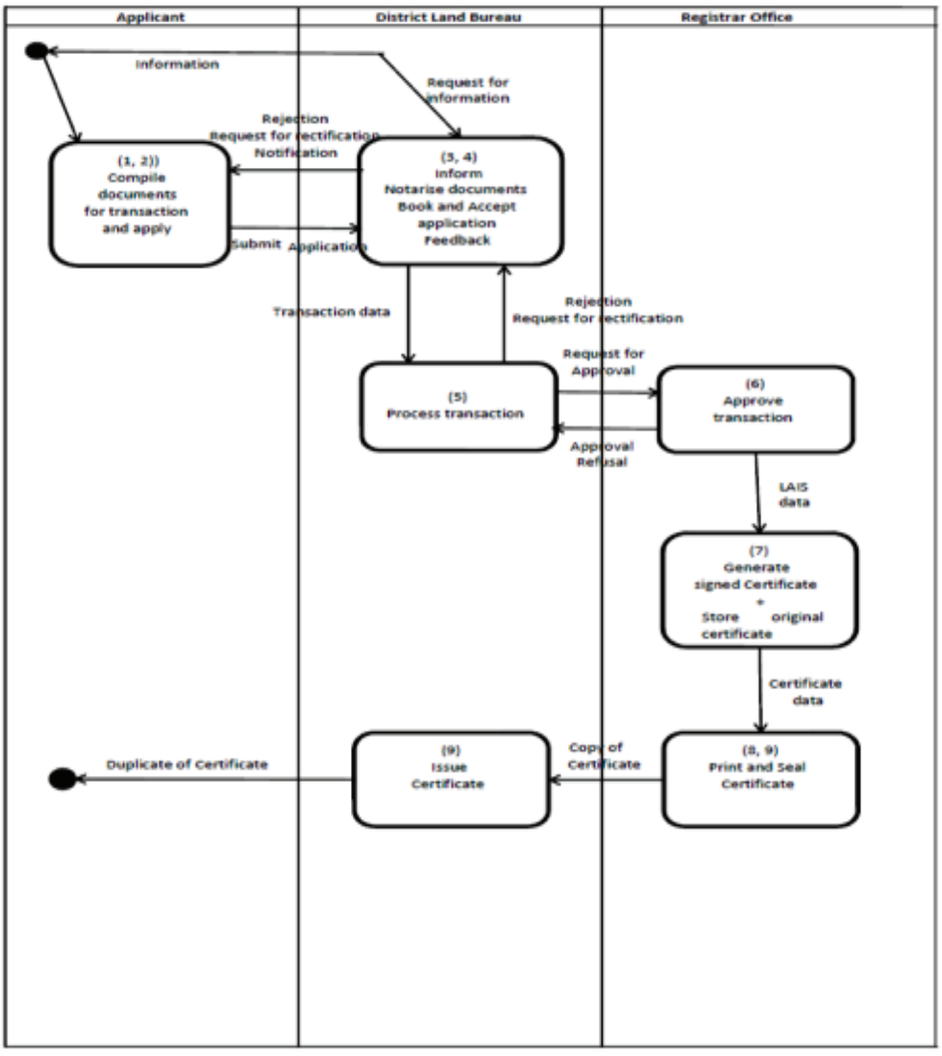
The illustrations below displays the most important steps of the land transaction and registration process in Rwanda, in their respective functional environments. Administrative documents will be received at Sector or District offices, checked and details entered to the



database via an intranet using a web browser. Registrars located in zones' offices will check and approve the work undertaken by Sector or District officers.

Land governance process at the District level

Changes to land rights will be notified to the system through administrative documents. LAIS has been introduced as a way of moving from analogue to digital way of dealing with various land transactions but most importantly to create a more efficient, cost effective, quick and transparent land registration process. For commercial land, applications can be submitted directly at the Registrar's office.



11. 5. 4. Conflicts that emanate from existing land governance arrangements

The consequence of war and Genocide against Tutsi had serious impacts on land sector. It estimated that the death and displacement of hundreds of thousands of Rwandan and the massive return of refugees led to the systematic destruction of existing wooded areas. About 50,000 ha were cut (Ngoga et al. 2017). In addition, anti-erosion structures were destroyed and there was anarchical takeover of protected zones, namely the Akagera National Park and the Gishwati Nature reserve.

After the 1994, with the reconstruction and resettlement programs, there was over-cutting of forest mainly for energy purposes, orphanage, prisons, schools, and tea factories. All these increased the pressure on wood resources with the losses alarming (Ngoga et al 2017). After the Genocide against the Tutsi, the need to resolve land issues became urgent. There was a lack of clarity over legal status and rights to land, with successive waves of landowners returning to Rwanda to find their land occupied by others. As new and old refugees

returned home, land became increasingly scarce and in many parts of the country, land disputes increased (Rurangwa, 2013). Old case refugees (those who fled the country in 1959) tried to reclaim land that was already occupied by others. The surge in population led to the occupation of park reserves, deforestation, land degradation, and increasing landlessness.

On the other hand, In post-conflict period, there were numerous successive legitimate claims by people from different categories that is returnees of 1959, returnees of 1994 and even IDP's who had settled in the land in post conflict period. The above challenges were also complicated further by the legal provisions, which stated that, IDP's and returnees who have been displaced and have been refugees for more than 30 years, loss right to land ownership.

The new phase of reconstruction of the country, started with a starting point for the future shape of land administration in Rwanda. In 2004, the national land policy was adopted; it put a great importance on appropriate land administration system as a key of land tenure security by providing the possibility of registering, transferring, and the possibility of investment in land. The organic land law was enacted that provided for the establishment of a national authority that will be charged with responsibility of administration, use and management of land in the country.

Land reform mentioned here involves the programme adopted by the government of Rwanda which involves adoption of new land law supported by a land policy and with which they provide a new tenure system that aims at contributing to tenure security, enhancing food productivity, tax generation, social equity and the prevention of land conflicts. Therefore, one of the fundamental things to create in the new land governance is to have a good and clear land administration system that should be established first.

Land being valuable resources in Rwanda, most of the conflicts in rural areas are based on ownership of land. Among other objectives, the land reform aimed at addressing the conflicts emanating from land ownership. While most of existing and potential conflicts were addressed by land registration and issue of land certificates, it is necessary to admit that some forms of conflicts persists including new types that are related to the methodology used in land registration, the general environment prevailing during the process of land registration, issue of land ownership proofs, etc. In this section, we present the types of conflicts that we identified from the interviews conducted. We also highlight how those conflicts are addressed at different levels of land administration.

Types of conflicts over land

There are different causes of conflicts that push people to seek the mediation of family (first) before going to the land committee at Cell level or at Sector level. When there is no solution, the cases are taken to court. Most of the conflicts, according to the information from interview, originate from the shared land boundaries. In that case, the parties in conflict do not agree on existing delineation that in many cases is changed or influenced unilaterally by one party without the knowledge of the other. As the Land Manager in charge of Land at Jabana Sector says: "the conflicts we are witnessing today are about boundaries and require to make measurements".

This is confirmed by the Head of Land Use and Protection Unit at Ministry of Environment who estimates that *"conflicts are based on boundaries and erupts between neighbors or between the communities and the government"*. Another important source of conflicts is the selling of land not followed by the formal transfer. In this case, *"the selling person receives the money but do not avail herself/himself for the transfer of land ownership"* (group interview from Gihara, Runda Sector).

In relation to land transaction, it is no longer allowed to subdivide the land that is below 1 hectare. Also, conflicts take place when land transactions is taking place between relatives and pertain to small plots that are not subjects to the physical separation. In this case, the one whose name is on land certificate might continue to use the land as the sole owner, using the land for instance to get a loan.

According to interviewees, it also happens that transaction is concluded without the payment of the entire agreed amount. In this case there is a promise that the remaining amount will be paid later. Normally this agreement is made in the presence of grassroots level leaders, not the land notary. When later, the agreement is not respected by both parties, the conflict erupts. In this case, either the one selling didn't want to release the land as promised when the payment is completed, or the buyer might change the mind and prefer to get the money back.

There are also conflicts between the land owner and the public authority. It is for instance when a road is constructed in someone's land/parcel for public interest. In this case there might be compensation or

not depending on the value of investment available on that land. The problem is not however about the compensation. It is about the update of the land size. The looser of the land continues to pay the same land taxes for a certain period until. She/He takes the initiative and pay for the surveying services to update the delineation of the land. Between husband and wife, cases of conflict originate from the land registration by one (the husband in many cases), leaving out deliberately the name of the wife. Despite obligation to put the names of both spouses as required by the land law of 2005, there are men who sell the land without informing the wives and vice versa.

Other forms of conflicts happen because the land is not registered yet in the name of the rightful owner due to ignorance by the land owners. This is the case when there is no paper justifying the ownership. Some people from this category still keep the receipt distributed after land registration waiting for the land lease papers. Another category of family based conflict is related to polygamy. When a man is having many children with different women, the conflict erupts between the children of different wives.

How conflicts related to land governance are addressed?

In Rwanda, there is a good and institutional framework put in place to deal with land conflicts. Most of the conflicts, as said earlier, are addressed at family level. What is done is to bring together both parties in the conflict so that they can discuss the matter and come up with an agreement. Some conflicts are discussed in the general assembly of the population and addressed openly. When there is no compromise, the mediators come in. Mediators, to facilitate their task ask both parties to call upon their witnesses for testimony. Most of the conflicts are solved with the help of the mediators. In case of failure to mediate both parties, the next level is the sector. In many cases, the one losing the case if the one going to the sector level, unsatisfied on how the judgment was made.

Most of the conflicts are addressed according to the laws and regulations. Among the land conflicts, it was found that most of them are based on boundaries that both sides are not agreeing on. What is done is to correct the boundaries. The challenge is that today, the accuracy used differs from the one used during the original demarcation. To address this, The Head of Land Use and Protection Unit at Ministry level revealed that, there will be in the near future a campaign to correct the boundaries, making sure that the profession of surveying is well organized with a harmonized use of equipment with same accuracy.

Other conflicts are between spouses. There are cases where a piece of land is purchased when a woman was living with a husband with whom there was no legal marriage. When the couple separates, in case the husband sells the land, the woman will have a share. Mediators will make sure that the husband selling the land pays due 50 % to the wife who is no longer living with him. Sensitization campaigns are made for households to be aware of that, the legality of the marriage is different from equal land rights. Even though some spouses are not legally married, they have similar rights to the land they acquired together. In Rwanda, it is accepted that a woman who divorced her husband is entitled to the family land even though She is no longer with the husband. For the men who decide to sell the land without informing their wives, the transaction is cancelled when this is reported to the mediators “Abunzi”.

11. 6. Conclusion

In this report, it was shown that in Rwanda, land governance practices have been shifting from one political regime to another. The pre-colonial period was characterized by the concentration of power over land in the hands of the King with his Chiefs. The land tenure system in that period was characterized by the communal and collective ownership, enabling a harmonious socio economic life for all Rwandans. During the colonial period, Germans recognized the King’s authority preferring the indirect rule system before Belgians brought fundamental changes with the introduction of new written land law. To the customary law was added a written law that offered particular land tenure protection to white settlers, churches, etc.

With access to independence, important role was given to “Communes” without significantly affecting the customary tenure. Meaningful changes occurred in the 60s with the Government abolishing Ibikingi and with the aim to put the vast land under “communal land”. The target was also to recover land abandoned by 1959 refugees. After 1994 Tutsi Genocide, the issue of land was problematic with many claims. The returning refugees of 1959 were not allowed to claim for their land abandoned when fleeing according to Arusha Agreement. There was however serious and pressing need for land for settlement and livestock. Different arrangements were initiated in short term perspectives such as land sharing scheme to allow at least the landless to have a shelter. The long term

solution was found to be the initiation of a land reform. The reform started with a new policy and law in 2004 and 2005 respectively. This allowed the preparation for systematic land registration and issue of land ownership certificates.

After the successful land registration followed by the distribution of land lease certificates, land owners feel satisfied. This was possible thanks to committed institutions organized at different levels of the administration. This study has shown that currently, the level of awareness about land rights is very high. However some people whose level of education if low need particular attention to have more knowledge about land rights. Fortunately, they get assistance whenever they need a service. Moreover, the services provision related to land are appreciated by the majority of those in need. Some forms of debate are however needed in relation to their costs estimates.

Among the most important benefits of acquired land lease certificates is the use of the documents as collateral to have access to a loan from financial institutions. The only worry for many land owners is that land becomes smaller and smaller at household level rendering impossible the possibility to pursue the inheritance practice. Due to the value of land, conflicts abound in different areas of the country. Many conflicts are based on boundaries. In addition it was found that many case of conflicts are family based, especially between husband and wife. The institutions in place especially the mediators at cell and sector levels are doing a good job addressing the conflicts. Good practices in land governance are visible. Some challenges – limited though – need attention.

References

Bigaragaza, J. , Abong, C. , & Mukarubuga, C. (2002). Land scarcity, Distribution and Conflict in Rwanda. In J. Lind & K. Sturman (Eds.), *Scarity and Surfeit- The ecology of Africa's Conflicts.* Nairobi and Pretoria: African Centre for Technology Studies and Institute for Security Studies.

BIRARO, Mireille; KHAN, Selina; KONGUKA, George; NGABO, Valence; *KANYIGINYA,* Violet; *TUMUSHERURE, Wilson and JOSSAM, Potel; 2015. Final Report of Study on the access to the land tenure administration system in Rwanda and the outcomes of the system on ordinary citizens.* Kigali, Rwanda: USAID | LAND Project. September, 2015.

Bruce, J. (2007). Drawing a line under the crisis: Reconciling returnee land access and security in post conflict Rwanda.

FAO. (2005). *FAO Land tenure studies 8: Access to rural land and land administration after violent conflicts.* Rome Jones, L. (2003). *Giving and taking a away: The difference between theory and practice regarding property restitution in Rwanda. In returning home: Housing and Property restitution rights for refugees and displaced persons* New York: Transnational Publishers.

Ngoga, T. (2018). *Rwanda's Land Tenure Reform: Non-Existent to Best Practice.* CABI

NISR. (2012). Population and Housing Census: provisional results Kigali: National Institute of Statistics of Rwanda.

Potel Jossam, Paul Van de Molen, Dimo Todorovski, Walter de Vries & Luc Bourboem. (2014). *Displacement and Land Administration in Post Conflict Period: The Case of Rwanda.* Enschede: ITC.

Prunier, G. (1995). The Rwanda Crisis, History of Genocide (31/05/2013 ed.): COLUMBIA University Press.

Rurangwa, E. (2013). Land Tenure Reform. The Case Study of Rwanda.

Rwanda. (2012). How many are we in Rwanda? , from http://www. statistics. gov. rw/publications/article/how-many-are-we-rwanda

Sagashya, D. (2015). Use of Geo-Information for Land Administration and Management: Case of LTR in RWANDA International Conference on Geospatial Technology for Sustainable Urban and Rural Development. Kigali, Rwanda.

Sagashya, D. , & English, C. (2009). *Designing and Establishing a Land Administration System for Rwanda: Technical and Economic Analysis*. Kigali.

Thu, P. M. (2012). Access to Land and Livelihoods in Post-conflict Timor-Leste. Todorovski, D. , Zevenbergen, J. A. , & van der Molen, P. (2012a). Can land administration in post - conflict environment facilitate the post-conflict state building? – a research problem. *In: FIG Working Week 2012, Rome, 6-10 May 2012 – Knowing to manage the territory, protect the environment, evaluate the cultural heritage. Rome: FIG. 2012. ISBN: 97887-90907-98-3. 21 p.*

12. Land Governance Arrangements in South Sudan

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Abstract
South Sudan's total land area is 619,745 square kilometers, of which more than half is assessed to be suitable for agriculture, approximately78% of all households earn their livelihood from farming and pastoralism. Land is their main source and foundation for livelihood as well as economic development. This paper highlights the land governance arrangements and nature, causes of land conflicts in South Sudan in relation to the economic, political, custom, legal, and administrative factors. These factors have widely caused conflicts and affected development of land governance in the Country. The research argues that South Sudan needs clear policy, regulations, and rules that govern the land sectors, including harmonization of family law to protect women rights to access land, legal frame work to deal with pastoralists movement, to develop basic skills of land administrators; gradual enhancement of land professional's skills; experience and competencies; and eventual advancing the experience of land policy makers.

Key words: South Sudan, land conflicts, land governance, land arrangements.

12. 1. Introduction

South Sudan is a country located in the North East of Africa. It seceded from Sudan and became independent. on the 9th July 2011 and became known as the Republic of South Sudan its joined the group of nations as the 193rd State of the United Nations Organization (UNO), the 54th State of the African Union (AU) and the sixth of East Africa Community Countries (EAC). South Sudan occupies a large territory in central African covering an area of 644,330 square kilometers.

Approximately 78% of all households earn their livelihood from farming and pastoralism. they depend on land as their main source and foundation for livelihood as well as economic development. Its population according to the 5th Sudan population and housing census 2008 is 8,260,490 million people. The Country has borders with Central African Republic (CAR), Democratic Republic of Congo (DRC), Ethiopia, Kenya and Uganda. South Sudan is located in Central Africa and lies within the Northern and Eastern hemisphere. It lies on the Latitude of $4^{0}51'$N and Longitude $31^{0}36'$E. The country has the largest savanna ecosystem in East Africa, and the second largest wetlands in Africa, characterized with the natural forests and wood lands cover almost 30% of total land. This study dealt with the land governance in the South Sudan. Specifically, the study assessed the performance of land governance-arrangements, land conflict and its resolution Mechanisms in relation to the land governance processes.

12. 2. Problem Statement

land use is the basis of environmental , social, economic, and political development in most of custom traditions norms and practices affected the land use ,management and admiration , economically the crises that happened in 2013 up date is an obstacles on land use and security , legal and politically as well as affected land use system by unclear land law addressed land use and political stability in any way play role in conflicts over land use . These conflicts have resulted into a situation of poor and weak land governance in Country.

12. 3. Objective of the Research

The main objective was to explore how land governance systems can minimize or mitigate conflicts between land governance actors and processes in South Sudan. The specific objectives were as follows:

- To describe the land governance arrangements in South Sudan
- To review the status of conflicts between land governance actors and processes in the land governance systems of South Sudan
- To suggest ways that can minimize conflicts and overlaps in the land governance system of South Sudan.

12. 4. Research Methodology

Basically, two main research techniques are used in this study namely documentary reviews and filed research.

ii. Documentary Review

A review of secondary sources of data relevant to the land governance in South Sudan, and others traditional institutions jurisdictions with regard to the cases reports, newspapers, speeches, conferences papers, books and websites was done. The researchers used various published and unpublished materials related to the study to evaluate the land governance principles, processes, policies, legisla-

tions the constitution and the customary laws.

ii. Field Research

The field research was conducted by visiting main public institutions that deal with land issues, such as Ministry of Lands Housing and physical infrastructure, Ministry of Justice, Customary courts {B court}, National Land Commission, civil society organization and Advocate law firms. the author used method of focus group interview that was carried out with group of people work with the institutions mentioned above as they involved in land governance. Those groups are made of members of staff working within this institution. Their information was essential, since they are the ones dealing with land matters on daily basis. The research report was informed various stakeholders that included public Administration institutions, professional institutions, local leaders, policy makers by using observation method that was gathered based on several issues such as the participation in debates, informal discussion and focus group discussions with Students, University of Juba Republic of South Sudan on the actual causes and effect of land governance in South Sudan.

12. 5. Results and Discussions

This section presents findings on land governance in South Sudan as guided by the objectives of the study.

12. 5. 1 Land Governance Arrangement in South Sudan

12. 5. 1. 1 Actors and their roles in land arrangement

There are three level of land governance arrangement in South Sudan. Each level has actors with different roles.

A. Under National Level:

I. Ministry of Housing land, infrastructure, the institution dealing with land on a State level responsible for the Land Registration and Town Use Planning, the institution is led by a Minister, Director General and Technical staff, further includes surveyors and engineers; The Ministry has roles on land dispute resolutions, implementation of laws, as well as has a duty legally assigned to the local government within the State.

II. Ministry of Judiciary, under the Judiciary of the South Sudan the High Court according to the Land Act is also where the Land Registry sits **has** the registration functions to draft the legal land document, The Ministry of Judiciary has Jurisdiction over land dispute or conflicts, also has advisory office that play role in the clarification of the land documents to the parties before exchange or sale of land.

III. National Land Commission,

the commission in South Sudan regulates the land policy and land related laws , in 2005 the South Sudan National Land Commission has worked on translating the Land Act into a Land Policy. However, The Land Policy was formally adopted by the Council of Ministers until February 2013, since that time the land commission has been awaiting review and approval of the National Legislative Assembly.

B. Under Local Level

I. County land Authorities

The County Land Authorities; responsible for the management and administration of land in the county level, according to South Sudan land Act 2009, Section {45}. The Composition of the County Land Authority are, the Commissioner as Chairperson; One representative from each town and municipal council recommend by the County Commissioner; Representative from the Concerned Ministry to Land appointed by the Minister; Representative of traditional authority in the county recommended by the authority; Representative of Civil Society Group to be appointed by the group; and one-woman representative recommended by County Women Association. The tenure of the members of the County Land Authority shall be four (4) years subject to renewal for one additional term.

As well as the structure and organization of the County Land Authority shall be specified by a State law and regulations.

II. Payam Land Counsel Authorities

Its responsible for the management and administration of land in the different Bomas composing the Payam according to the South Sudan Land Act 2009. The Payam Land Council is composing of the Payam Administrator as Chairperson, Executive Chief of each Boma within the Payam; a Representative of Farmers and Herders Association; One representative of the Civil Society Group; one-woman representative recommended by the Payam women Association and such other members as the concerned County Commissioner deems appropriate.

The members of the Council shall be nominated by the concerned Ministry of the State upon recommendation of the Concerned Commissioner after consultation with the Traditional Authority in the Payam.

III. Boma Land Committees.

These can be called traditional communities or actors; they have authorities over land rights under Boma level. The registration of land by communities (group rights) can be done in the name of the traditional leaders, a clan or family, or a community association as trustee for the community. Individual community members may be entitled to register individual rights to certain portions of community land once registered .

C. Under Private sectors

I. National land Agencies

The National Land agencies in South Sudan there many among them **Civil Society its NGOs,** according to the non-governmental organizations Act of 2016 identifies civil society as a non-governmental and non-profit organization that has presence in public life, expressing the interests of their member or others. based on ethical, scientific, cultural and religions. However, one of the aims of this organization is protection of the dispute over land right in cooperation with public institutions to maintain peace and stability in Country.

II. International Land Agencies

There are many international land agencies in South Sudan deal with land issues such as **UN-HABITAT**, its United Nation Programme, the office located in Juba –South Sudan its aims to strengthened land coordination at State level of the government of South Sudan by improved information and outreach regarding land issues as well as support South Sudan land Commission.

12. 6. LAND GOVERNANCE PROCESSES

Land System in South Sudan is process by three level of government.

12. 6. 1 National Government

- regulates the land policy and land related laws with incorporation of the land commission
- Development of master and physical plan for the capital city, define and demarcate its territory
- Allocate adequate budgetary resources for land policy development and implementation processes, including the monitoring of progress.
- Develop the real property tax system
- Keep and manage the land cadaster and registration system
- Solving disputes arising from the management of interstate
- Manage and protect historical sites of common interest
- Ensure that land laws provide for equitable access to land and related resources among all land users including the youth and other landless and vulnerable groups such as displaced persons (AU Declaration on land, RSS Land Policy)
- Strengthen security of land tenure for Females (women) which require special attention.
- Build adequate human, financial, technical capacities to support land policy development and implementation

12. 6. 2 State Government

- Regulation of land tenure, usage and exercise of rights in land
- Delimitation of boundaries between community lands
- Contiguous registration within the state
- Land zoning and gazette
- Land quality evaluation
- Oversee and coordinate different levels of land administration and management in the state.
- Development and implementation of state physical planning board
- Land allotment
- The land supply
- Permit

12. 6. 3 Local Government

- Hold and allocate public land vested in it with the approval of the concerned State Ministry in the state subject to town and municipal planning in the county
- Make recommendations to the concerned State Ministry on gazette land planning
- Advise the concerned state Ministry on any matter connected with the resettlement in the county
- Facilitate the registration and transfer of interest in land
- Implementing the land laws and the system incorporate with the community.
- Support and assist any cadastral operation and survey in its jurisdiction
- Advice the local community on issues related to land tenure, usage, and exercise over land rights.
- Chair the consultation process between community and state government if required.

12. 7. REGULATIONS IN LAND GOVERNANCE IN SOUTH SUDAN

South Sudan's is anew country and still underdeveloped in legal and institutional framework reflects the difficulties that the country has faced in establishing

effective governance and rule of law institutions after decades of conflicts.

12. 7. 1. Before the peace agreement

I. Land Ordinance law of 1906 made all land in the Sudan the property of the government.

II. the 1925 Land Settlement and Registration Ordinance, both stipulated that, "waste, forest, and unoccupied land shall be deemed to be the property of the government, until the contrary is proved.

III. The Unregistered Land Act of 1970 provided that any land not registered in accordance with 1925 Land Settlement and Registration Ordinance was considered to belong to the Government of Sudan (GOS) and was deemed to be registered in the name of the State. Since rural land areas in most South Sudan Part were almost completely unregistered, the Unregistered Land Act effectively eliminated any legal claims that communities may have had to their ancestral homelands.

IV. In earlier nineties, Sharia Law all land in Sudan belongs to Allah/the government.

12. 7. 2 After the peace agreement

After the peace agreement process "Land belongs to people" regime was articulated in the comprehensive peace agreement CPA and subsequently included in the Interim Constitution of Sudan (ICS) and Interim Constitution of Southern Sudan (ICSS) 2005. However, the legislative reforms have been made since the end of the war in 2005 including the passing of the land regulations such as:

I. The 2009 land Act.

All land is owned by the people of southern Sudan, and the GOSS is responsible for regulating use of the land. Provides for the registration of land in southern Sudan; all land, whether held individually or collectively, shall be registered and title granted. The Land Act classifies land as public, community and private land. Public land is land owned collectively by the people of southern Sudan and held in trust by the GOSS. Public land includes land used by government offices, roads, rivers and lakes for which no customary ownership is established, and land acquired for public use or investment. Community land is land held, managed, or used by communities based on ethnicity, residence, or interest. Community land can include land registered in the name of a community, land transferred to a specific community, and land held, managed, or used by a community. Private land includes registered freehold land, leasehold land, and any other land declared by law as private land .

II. The 2009 Local Government Act, calls for land committees, within the local government council, to be responsible for the "mediation of consultation processes of land lease between the community and other investors .

III. The 2009 Investment Promotion Act, Act lays out the procedures for certifying and licensing foreign investors to operate in South Sudan explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively. the laws remain largely unimplemented.

Most land governance institutions operate according to procedures developed in the colonial era, and there is a wide divergence between law and practice. Bridging this gap has been one of the most difficult challenges of the postwar period. Institutional arrangements are also undermined by poor coordination among formal institutions at each level of government (horizontal overlap), between the three levels of government (vertical overlap) and between the formal and customary systems.

The ambiguous and unpredictable legal framework makes it difficult to develop standardized approaches to tenure formalization. Rudimentary processes are in place to formally register landholdings in urban areas, but aside from a few pilot efforts, the registration process has not yet been extended to landholdings in rural areas. Demand for land in urban areas has increased sharply since independence, and the registration process has not kept pace.

12. 8. Nature of Land Conflicts in South Sudan

Conflict in general can be defined as the existence of incongruent interests between people who perceive incompatible goals and expect interference from the other party, when attempting to achieve their goals. .

12. 8. 1 Social -Economic factors

South Sudan holds many natural resources from land including oil, iron ore, copper and Silver. Oil income in South Sudan contribute to the national economy of the country, however 80% of the populations live below the poverty line. Contrary to the popular views of people in the country that the contribution of oil revenue can contribute to the development of the country and develop oil producing areas.

Although the country is an oil producer, there exists a high incidence of poverty unequal distribution of

wealth between urban and rural areas, most people still live on 1 USD per day. That made the country to live below the poverty line. As South Sudan is the least develop region in East Africa. Illiteracy is the highest in the region, education enrolment rate is low, scarce access to health services facilities, no safe and clean drinking water.

Due to these situation communities in rural areas had to diversify their livelihoods by carrying out other small activities such as hunting and gathering, cultivation, fishing and cattle raiding.

Poverty and inequality in wealth distribution can generate civil wars and others micro-level armed conflicts which would affect the security of the country if the resources were not well addressed and used for the development of the country .

The country is experiencing conflicts, lack of good governance, unclear policy and neglected system of good land governance for development of the country has contributed to the land conflict.

12. 8. 2 Social -Political Factors

Land has contributed to the conflicts in Sudan since independence of the country in 1956. In 1983 civil war broken out in the country lead by the Southern Sudanese Liberation army /Movement which was the result of unfair government policies in Sudan which changed the ownership of land to the government as the legal framework of the unregistered land act of 1970, Transaction Ordinance of 1984 and the land Registration 1898 Ordinance have direct effect on the civil war in the country.

Although the war ended by signing of the comprehensive peace agreement one of the main pillars of the agreement was the inclusion of land reform, which stated that land belong to the communities.

After independence of South Sudan in 2011, the country was divided into the 10 States, however on 15 December2013 internal conflict started over power struggle between the president and his deputy this conflict displaced many civilians. The issues of land still continued and became a political issue and created conflicts. The country was divided into 28 States in 2015, however on the January 2017 the number of the states were increased into 32 with serious repercussions on country land. The increase of the States in the Country contributed to addressing injustice and inequality to the other tribes, as a result its caused conflict, and insecurity in different parts of the country by contributing to the poverty and displacement of the people from their traditional land areas. South Sudan has borders disputes with her neighbors even after independence the issues of borders are still hosted disputed, Sudan has claimed that 80% of the borders dispute has been addressed, but South Sudan disagreed that only 40% of the borders issues has been reviewed

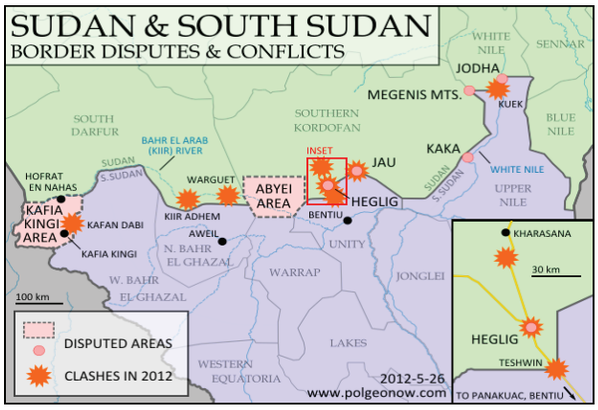

Figure 1 : Map Sudan & South Sudan border dispute and conflicts 2012.

Moreover South Sudan has land disputes with Kenya and Ethiopia over the ownership of Elemi Triangle. As also the country has entered into consultation with Uganda over the five disputed border points.

Figure 2: Map South Sudan, Kenya and Ethiopia border dispute.

12. 8. 3. Social - Custom factors

In South Sudan customary law has been practiced for a long time and still serves the needs of the people especially in the area of personal law and became more powerful in to the communities, when there is dispute in family law such as inheritance property rights, in time of settlement the customary court institutions, applied the customary law of parties to resolving the dispute.

South Sudan customary law does not protect the

female rights to access land, the land polices have always been discriminating against women in many South Sudanese tribes, among many tribes the female is just meant for marriage and produce children and serve her husband but have no right to inheritance of property within her family, however women enjoy only access rights through males in the family or outside the family this can be through the brothers or husband, father or in laws.

Women suffer from un protection in controlling the land they work and live on it. This common practices affects the rights of female to access land in South Sudan, as well as they do not have equal access to courts that deal with local and customary court, this institutions and courts can frequently be biased against women's control and ownership of land.

Customary courts in the country struck down the legal rights that had achieved female to inherit land from their fathers and husband. However there are challenges that prevent women in South Sudan from fully enjoy their rights over land use as a direct effect to the land disputes among societies, for consequences of traditions and cultural norms. Government need to build the culture of rule of law and implement the necessary reforms in the laws by harmonization of legal frame work.

12. 8. 4 Legal factors

In South Sudan about 80% of the population both farmers and pastoralists who live in rural areas depend on land as their main source of survival.

The pastoralists in South Sudan practice mostly traditional methods of livestock keeping which involves moving from one area to another with large herds of cattle looking for pastures and wetlands for their animals. This requires a large part of land as grazing zone. This practice of seasonal migration of pastoralists from one region to another increase the size of the area in which they operate. As a result there is conflicts between farmers and pastoralists over land use in different part of South Sudan due to the unclear legal frame work deal with movement of pastoralists across the region. Lots of lives have been lost in the process and it has led to reported cases of violations of rights to property and freedom of movement. Farmers are unable to safety access their fields for planting and harvesting due to the worsening security situation. The other result is people being exposed to poverty, unable to achieve food security. There is also the element of people being displaced from their original areas. This crisis has widely affected development of peace building among the South Sudanese societies. This is due to the lack of clear policy on land administration system, has precipitated the conflict between farmers and pastoralists. This in turn has impacted immensely the peace building process between pastoralists and farmers. The result is lack of trust between the two communities. As a result, most of these areas affected by conflict have not been able to maximize their agricultural production due to the insecurity on land use. This has led to food insecurity.

The country needs clear policy, regulations, and rules that govern the land sectors. This involves specific land being allocated for grazing purposes to avoid conflict over land use. There is equally need for the promotion and strengthening of traditional mechanism used for the prevention and resolving of land conflicts through the participation of all community members.

12. 8. 5 Administration factors

After the peace agreement signed between Government of Sudan and people liberation armed /in 2005-2006, "Land belongs to people" regime was articulated in the comprehensive Peace Agreement CPA and subsequently included in the Interim Constitution of Sudan (ICS) and Interim Constitution of Southern Sudan (ICSS). After independence of the country land Administration System is managed and governed by the three levels of government, **National Government that** regulates the land policy and land related laws with incorporation of the national land commission, **State Government** that Regulation of land tenure, usage and exercise of rights in land, **Local Government** Facilitate the registration and transfer of interest in land as well advice the local community on issues related to land tenure, usage, and exercise over land rights.

The legal framework for land issues in South Sudan are still dispersed, contradictory and in most cases not widely implemented on the ground due to the lack of responsibility and accountability within the institutions that are to administer land and manage legal procedures regarding to land issues and land rights.

Another obstacle for registration of leasehold and freehold is that the most registry is incomplete and not clear addressed, lack identification documents of land ownership as a result must of land are not considered "legal" in time of ownership, that why cases of land conflict such as grabbing in South Sudan are commonly in the courts.

Land administration systems technical are generally characterized by law level of technology and technical

skill. Most of the survey departments in the states are unable to undertake the necessary cadastral surveys to establish and re-establish real property boundaries, due to insufficient survey equipment and low level of technical skills.

12. 9. Land Conflicts Resolution Mechanisms in South Sudan

12. 9. 1. Formal Courts

Formal courts in South Sudan, stablished under article 123 Transitional Constitution of South Sudan (TCSS) 2011and section 7 of Judiciary Act (JA) 2008 that South Sudan judiciary has five types of courts, the courts has not fully established itself and has limited reach in rural areas . Courts in urban areas of South Sudan are inundated with land disputes. Experts estimate that land disputes comprise as much as 90 percent of civil cases in the formal system. Typical disputes include allegations of land grabbing by security sector personnel, competing claims over ownership, double allotment of plots to individuals during the formalization process, land acquisitions for the purposes of urban expansion, and various disputes involving groups of IDPs and returnees. Appeals are not handled in a timely manner and judges often will adjudicate appeals based on the lower court's findings without notifying the disputing parties or giving them an opportunity to present their positions. Enforcement of court decisions can also present insurmountable obstacles, particularly when decisions are made against individuals who hold military or political power.

12. 9. 2 Informal Courts

The customary courts in South Sudan according to article 97 (4) of local government act 2009, C & B is a regional court, A court or executive chief's courts, and Town bench court. the customary courts and other forms of dispute resolution are available in areas where statutory courts (formal courts) do not exist, the traditional authority have jurisdiction over land dispute that is referred to it for arbitration or mediation that given under Section 92(2) of the Land Act, 2009.

That mean Customary Law Courts have judicial competence to adjudicate on land disputes and make judgments in accordance with the customs, traditions, norms and ethics of the communities. Furthermore, in resolving land disputes the South Sudan land act 2009 gives priority to traditional dispute resolution mechanisms, it's also lays out basic standards governing mediations and arbitrations and how this dispute resolutions mechanisms relate to the other local institutions of land governance.

12.10. Conclusion and Recommendations

Drawing on the nature of land in South Sudan, this paper has highlighted the land governance and causes of land conflicts with relations to the Political, economic, custom and administration factors, it showed that the effect of lack of good governance on land, unclear level of governmental jurisdictions; technical conflicts due to difference in dual administration of customary, civil land tenure and land right systems. Incompetence of land administrators in management and administration of land tenure and land rights. As the existing laws are an inadequate to resolve land conflicts in the country they have contributed in the conflicts.

It recommends that the country needs the harmonization of family law to protect women rights to access land, reform legal frame work deal with pastoralists movement, to develop basic skills of land administrators; gradual enhancement of land professional's skills; experience and competencies; and eventual advancing the experience of land policy makers. Need to create awareness and understanding of land tenure and land rights among the land owners and the communities. Draw clear line between the roles of government interference in management and regulation of land matters. Lastly government need to applying the principles for good land governance such as transparency, security, Equity, accountability and so on in implementing good land governance.

References

Addink, H & Makathimo, M, Elalan Training, *Good land Governance, land rights and nature of land dispute resolution,* Kampala, November 2016.

Aleu . A, Study of customary law in contemporary South Sudan, world vision international, August 2004.

Christin . L, Land right and land conflicts in Africa: A view of issues and experiences / institute of development Studies, June 2006.

Fernando. A, Pastoralist conflict in the Horn of Africa, the Turkana-Dassenech Case, Paulines 2013.

John Woul Makec, Customary law of Dinka people of Sudan, Sudan, 1988.

Tiernan M ,Norwegian Refugee Council, Customary Law and Land Rights in South Sudan ,p 22, March 2012.
Alafi Francis Nixon,Juba Monitor Newspaper, *The*

people of South Sudan should mark an end to the conflicts between the farmers and the cattle keepers. Page 6, Juba, South Sudan, Thursday, Jan 21, 2016.

Chuty Anyar Micheal, Nation Mirror newspaper, page 6, Under 6500 IDPs from Mundri in need Of assistance, Volume No 033, Issue No 034, Juba, South Sudan, 27/01/2016.

Food and agriculture organization of the United Nation/ South Sudan / situation Report 18 July 2017. South Sudan infrastructure action plan, report, 2010.

Land Governance in South Sudan: Policies for Peace and Development, Document of the World Bank, 2014.

Website

www. Sudantribune. com , accessed on 12/Oct/2018.
www. polgeonow. com , accessed on 13/Oct/2018.
www. ss. undp. org/content/South , accessed on 13/ 10/2018.
www. theestafrican. co. ke/news , accessed on 22/Oct/2018.
www. latlong. net , cities, accessed 22/Oct/2018.
www. uneniverionment. org , accessed on 22/Oct/2018.
www. africa. spectrum. org , accessed 22/Oct/2018.
www. africanews. com/tag / animal . accessed 25/10/2018.

Legal Instruments

- Declaration on Human Rights 1948.
- Interim Constitution of Southern Sudan 2005.
- Land Act 2009.
- Land Ordinance 1906.
- Land Settlement and Registration Ordinance 1925.
- Local Government Act 2009.
- Non-governmental organizations Act of 2016.
- South Sudan Civil Procedure Act, 2007.
- The African Charter on Human and People Rights, 1982.
- The Investment Promotion Act 2009.
- The Unregistered Land Act 1970.
- Transitional Constitution of South Sudan 2011.

13. Land Governance Arrangements in Tanzania

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Abstract
The Land governance arrangements in Tanzania constitute a combination of formal and informal systems that operate parallel. The capacity of the legal framework and instruments for guiding formal the land governance system is inadequate to reach the entire population of Tanzania, hence existence of the parallel informal systems. While the actors under the formal system are guided by the legal framework, those operating within the informal system largely operate outside the guiding framework. Despite the existence of clear policies and instruments to support the functioning of the land governance system there are quite significant challenges impacting on the efficiency of the various actors.

This study undertook to explore the land governance arrangements through examining the policies, processes and actors, as well as the resultant conflicts and how they can be minimized. The research results were aimed to document and contribute to the knowledge on land governance arrangements in Eastern Africa Countries.

Land conflicts stand out strongly among the challenges emanating from the deficiencies inherent in the land governance arrangements in place. The study involved extensive review of literature including policy documents, relevant legal instruments, and published research materials.

Empirical data was collected through interviews with the actors in both central and local governments, informal systems, private sector; and local leaders. Findings point to the coexistence of formal and informal land governance arrangements contributing to the many land problems experienced. While various measures have been taken to improve on the land governance more land related problems are still being experienced with many land conflicts remaining unresolved for long durations. A lot more government effort is required to strengthen the land governance system for sustainable land development.

Key words: Land governance arrangements, Tanzania, land conflicts

13. 1. Introduction
Land governance in any society is to a large extent shaped by the tenure systems and instruments formulated to facilitate land management. Land in Tanzania mainland is held under statutory and customary tenure systems (URT 1999). The customary tenure system further embraces traditions of different tribes in assigning land rights to members of society.

Land governance issues in Tanzania have become prevalent particularly because of the rapid population increase and the social diversification (more than 120 tribes) with varying traditional land tenure systems. The country is one of the Eastern African countries occupying a total area of about 945,087 km^2, out of which 61,500 km^2 is covered by water. Politically, Tanzania consists of two formerly independent states namely Tanganyika (now known as Tanzania Mainland) and Zanzibar. The two united in 1964 to form the United Republic of Tanzania.

According to the Land Act No. 4 of 1999, land in Tanzania is categorized into general land; village land and reserved land. The President as the custodian of all land empowered to transfer or exchange land from one category to another. Deininger (2003) opines that land use and administration in the country is governed by legal pluralist frameworks involving statutory and customary tenure systems.

Although the majority of the land areas fall within the village land only in recent years has the state law recognized the customary tenure system through enacting the Village Land Act No 5 of 1999 as an instrument for managing the village land. In line with the fundamental principles of the National Land Policy, all land in Tanzania is public land vested in the President as trustee on behalf of all citizens (URT, 1977; URT, 1995) and individuals have only usufruct tenure rights. Thus individuals can hold land by statutory (or granted) right of occupancy or customary rights of occupancy (URT, 1999). Besides, informal rights in land are in existence especially in urban areas but they may be formalized. Under the statutory tenure system, the rights to occupy and use land are granted by the government for specified terms of 33, 66 and 99 years. The state therefore retains ownership of land and entitlement to take it back at the end of the lease period, or where the title holders fail to abide by the conditions of the grant as well as acquire for public interest

Despite the explicit land tenure systems and clear legal framework for governing land, Tanzania is experiencing various land conflicts due to the rapid increase of population over time and space. The rapid increase in population always exerts pressure on land as well as on other land related resources.

The 2012 Tanzania Population and Housing Census report indicates that there were 44,928,923 people out of which 43,625,354 lived in Tanzania Mainland and the remaining 1,303,569 lived in Zanzibar (NBS, 2012). Currently, in 2019, the country is estimated to have 60,432,916 people and it will reach 62,775,000 in 2020 (http://worldpopulationreview. com). As such, land remains a fundamental resource for the survival of the people and because of the competition among users, land conflicts inevitably arise. Emanating from the discussion above, this paper covers land governance in mainland Tanzania.

The land governance processes involve interaction of various actors at different levels. The land governance arrangements in Tanzania has in place the legal framework and instruments to guide the formal processes. Informal arrangements do also exist to take care on the informal transactions in land rights. The actors in the land governance processes play varying roles and in the course of so doing conflicts arise. The land conflicts need be managed if sustainable land development is to be realized. While the land governance arrangements are functioning albeit with challenges the strengths and gaps in comparison with the other East African countries the knowledge is not well captured at regional level.

This study therefore undertakes to document the land governance arrangements in Tanzania so as to contribute to the regional body of knowledge on land governance.

13. 2. Objectives and Research Questions

The main objective of this study is to explore how the land governance systems in Tanzania can minimize or mitigate conflicts between land governance actors and processes.

Specific objectives

- To describe the land governance arrangements in Eastern African countries.
- To review the status of conflicts between land governance actors and processes in the land governance systems of Tanzania.
- To suggest solutions that can minimize conflicts and overlaps in land governance in Tanzania.

Research Questions

The study is guided by the following key questions:

- What are the existing land governance arrangements in Tanzania?
- What are the conflicts that emanate from existing land governance arrangements?
- How can conflicts in land governance be addressed?

13. 3. Literature review

Increasingly, land related issues are becoming a common phenomenon in most developing countries. Some of these issues relate to how land users perceive access to land as well as tenure security and others relate to land administration, management and governance aspects.

The concept of governance includes formal as well as informal actors while the term "good governance" includes a number of characteristics. These are important for government to be sustainable and locally responsive; legitimate and equitable; efficient, effective and competent; transparent, accountable and predictable; participatory and providing security and stability; and dedicated to integrity (FAO, 2007).

Boone (2007) emphasizes that land governance ties with the way the state is ordered, how political authority is negotiated, and with the nature of citizenship and the relations between communities and the state. Consequently, scholars in land administration and governance such as van der Haar (2001); Berry (2002) and Sikor and Lund (2009) point out that struggles over authority around land tie is directly linked with processes of everyday state formation. Van der Leeuwen and van der Haar (2014: 7) conclude that if conducted strategically, interventions in land governance may potentially contribute to the (re-) establishment of public authority and state building. Also, as suggested by Unruh (2003), addressing land conflicts and land tenure security can play an important role in peace-building and the recreation of order after violent conflicts.

Concerning access to land, Tchatchoua-Djomo (2017: 1) observes that the way users perceive access to land and tenure rights usually end up with violent conflicts which significantly affect land tenure and land governance. Dalrymple and Burns (2008: 1) argue that mobilizing the land sector is considered a principal focus for poverty reduction and a key development strategy in many countries. In this regard, land administration and management systems

in particular, are responsible for providing tenure security and access to land for all (ibid). In addition, these can provide accessible and equitable systems to mobilize land resources that ultimately assist in the alleviation of poverty. Good governance within land administration and land management institutions is essential for sustainable development both in terms of operational longevity, equitable stakeholder participation and benefits, and consistency in law and policy implementation.

Conceptualizing land governance

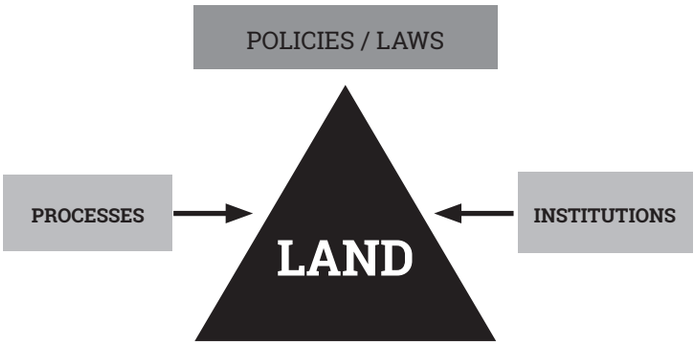
Land is increasingly recognized as an important governance issue. On the one hand, governance is the exercise of political, economic and administrative authority in the management of a country's affairs at all levels (Wehrmann et al., 2009). On the other hand, it is a neutral concept comprising the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights and obligations, and mediate their differences (ibid).

At large, land governance is about the policies, processes and institutions by which land, property and natural resources are managed (Stig, 2015). Wehrmann et al. (2009) add that land governance concerns the rules, processes and structures through which decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed. It encompasses statutory, customary and religious institutions. It includes state structures such as land agencies, courts and ministries responsible for land, as well as non-statutory actors such as traditional bodies and informal agents. It covers both the legal and policy framework for land as well as traditional and informal practices that enjoy social legitimacy.

Fundamentally, land governance is about power and the political economy of land. The power structure of society is reflected in the rules of land tenure; at the same time, the quality of governance can affect the distribution of power in society. Tenure is the relationship among people with respect to land and its resources (Dalrymple and Burns, 2008; Wehrmann et al., 2009). These rules define how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restrictions. They develop in a manner that entrenches the power relations between and among individuals and social groups. It is no surprise, therefore, that the elites and even the middle classes have stronger forms of land tenure, while the poor and vulnerable groups have weaker, more insecure forms of tenure.

Weak land governance is a cause of many tenure-related problems, and attempts to address tenure problems are affected by the quality of land governance. Improving land tenure arrangements often means improving land governance (Wehrmann et al., 2009). On the contrary, sound land governance requires a legal regulatory framework and operational processes to implement policies consistently within a jurisdiction or country, in sustainable ways (Stig, 2015). Land administration systems provide a country with an infrastructure for implementing of land policies and land management strategies in support of sustainable development (Dalrymple and Burns, 2008). Such a global perspective for land management and governance form the conceptual framework for this study as presented in Figure 1.

Figure 1: Conceptual framework for land management and governance



Source: Adopted from Enemark (2005); Dalrymple and Burns (2008; Williamson et al. (2010) and modified.

The operational component of the land management concept is the range of land administration functions that include the areas of land tenure (securing and transferring rights in land and natural resources); land value (valuation and taxation of land and properties); land use (planning and control of the use of land and natural resources); and land development (implementing utilities, infrastructure, and construction planning). These four functions interact to deliver overall policy objectives, and they are facilitated by appropriate land information infrastructures that include cadastral and topographic datasets linking the built and natural environment. Ultimately, the design of adequate systems of land

tenure and land value should support efficient land markets, and adequate systems of land use and land development control should lead to effective land use management. The combination of efficient land markets and effective land use management are seen as a key component in delivering economic, social and environmental sustainability.

13. 4. Methodology

In carrying out this research two main approaches were employed. An extensive desk review of documented material embracing land governance arrangements was conducted to establish secondary data. Since the land governance processes are guided by laws and regulations it was necessary to review the existing literature originating from policy documents and legal instruments in order to understand the processes in practice. Published research materials and reports also formed source of secondary data. A report generated from training workshops on Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGTs) in Tanzania was very useful in capturing secondary data that exhibit real life cases of land conflicts. This is because the training workshops brought together representatives from land administration agencies, professionals in the land sector, policy makers, local authorities and leaders, and selected community members. During the said training workshops, the participants shared rich practical experiences which were documented in the report.

Interviews with key informants were used in collecting primary data. The actors handling land governance process central and local government institutions were interviewed to establish the roles they play and also the challenges and conflicts experienced in the course of discharging their responsibilities. Local leaders, actors in private and informal settings were also interviewed. Moreover, urban professionals and land occupiers both in planned (formal) and unplanned (informal) settlements in the urban setting of Dar es Salaam city, were involved. After collecting data, a thematic categorization approach, among others, was employed in data analysis.

13. 5. Results and Discussion

This section presents findings from the study. The findings are presented according to the key questions guiding the study. The key questions being addressed are focused on the existing land governance arrangements; the types of conflicts that exist and the ways by which the actors have addressed the land conflicts.

13. 5. 1. The existing land governance arrangements in Tanzania

As previously stated land in Tanzania is classified into three main categories as general land, village land and reserved land (URT, 1999).

General land is described as consisting of all land which is neither village land nor reserved land and this is very common in urban areas. All urban areas fall under general land category except parts that are covered by laws constituting reserved land, or that are considered hazard land. The general land is governed by the Land Act No. 4, 1999, under the control and jurisdiction of the commissioner for lands mandated to issue Certificates of Rights of Occupancy (CROs). *Village land which covers seventy percent (70) is* that declared as being the land falling under the jurisdiction and management of a registered village in accordance with the Village Land Act No. 4, 1999.

Reserved land that constitutes twenty-eight percent (28) is defined as land set aside for specific purposes under the provisions of various relevant acts. The reserved land includes environmental protection areas, such as national parks, forest reserves and wildlife reserves; marine parks, also areas intended and set aside for spatial planning and future infrastructure development. Notwithstanding the prescribed categories of land, the President as trustee is empowered by law to transfer or exchange land from one category of the lad described in the Land Act to another category.

The land governance arrangements therefore are structured in line with the land categories as prescribed by the laws. The Land Act No. 4 and the Village Land Act No. 5 are instruments to guide the administration of the statutory and customary tenure systems respectively. Whereas the reserved land is subjected to various relevant laws according to the designated activities accommodated on the land.

13. 5. 1. 1 Actors in land governance and their roles.

McCarthey et al. (1995) consider land governance a concept that entails the relationship between local communities including their civil societies and the state, between rulers and the ruled, between the government and the governed. Conversely land governance involves procedures, policies, processes and institutions which guide the management of land and other natural resources in a society. Land governance, therefore, involves various actors ranging from individuals, groups to institutions. With regard to the laws which are applicable to land mainland Tanzania, the resulting nexus involves public actors (i.

e. the central and local government), local community leaders (at Ward and Sub-ward/Mtaa levels), individual land occupiers and private sector. Previous studies on land governance identified actors in Tanzania to include central government, local governments, communities, private sector, development partners and civil society (Nuhu, 2018). The Village Land Act No. 5, 1999 however, recognizes application of traditional customs and practices in land dealings as long as they are not in contradiction with the land laws in place.

Informal Actors and their roles

Grassroots institutions (Mtaa and Ward levels)

The role of the grassroots leaders at local community level, i. e. at Mtaa and Ward levels, is to support and facilitate the execution of the land acquisition processes. They mobilize residents including informing land occupiers about the various government decisions pertaining to land development such as land use planning, change of use, or plans to expropriate land for public use. While the local leaders perform these activities they are not formerly mandated by responsible authorities but it has become a practice to engage them because they live and interact with the community members. A critical observation worth mentioning here is that a number of functions and decision making powers pertaining to land acquisition and management are centralized in the MLHHSD. However, with respect to land conflicts, the Mtaa units in urban areas are equipped with Land Conflicts Arbitration Committees and at Ward levels there are Ward Tribunals. Cases which cannot be resolved by the latter are referred to the court of law. Generally, the performance of public land management and land conflicts resolution systems in the country has been inefficient.

The very significant role assumed by the local leaders at grass root level is witnessing land transactions between land buyers and sellers in both urban and rural areas. They are also useful in sensitization meetings in land acquisition processes for the acquiring authorities, mostly government institutions.

Apart from the recognized local leaders, elders in informal settlings and villages get involved in arbitration between parties in land conflict. While in Tanzania's political system there are no functional chiefs some elders provide guidance on traditions in relation to land matters as long as they don't contravene the state laws. This happens in some parts of the country such as Kilimanjaro and Kagera where some elements dictated by tribal customs in allocating land rights are practiced.

Real estate agents are mostly involved in informal land transactions with real estate agents taking the lead in bringing together land buyers and sellers. Brokers happen to hold property market information about properties up on sale while on the other hand they would know property seekers hence bring them together. Individual members of the community also come into play when required to witness land transactions or identification of boundaries of neighbour's land during adjudication exercises. Local community members also participate in protecting their rights in land against investors who would want to take land (e. g. village land) without following the laid down procedures. In such circumstances villagers would stop development of the acquired land until the conflict is resolved.

Civil Society Organisations are involved in providing support to the poor (Nuhu, 2018) in terms of conducting land rights awareness campaigns or publicizing land conflicts they uncover through research.

Formal Actors and their roles

The legal framework place land governance responsibility on formal institutions whereby the Land Act No. 4 1999 assigns the land administration obligation for the statutory tenure system to the central government through the Ministry of Lands and Human Settlement Development. The primary functions that central government are to formulate land related laws and policies, provide guidelines on land governance and management and enforce the laws and policies.

Moreover, the central and local government authorities (LGAs) are obliged to provide basic services and service infrastructure such as roads, drainage and water as well as to regulate land development and management. For instance, the Local Government (Urban Authorities) Act, No. 7 of 1982 Section 59 (e) gives LGAs powers to prepare land use plans for streets, buildings and other areas. Local governments are also responsible for the identification of land required for urban development projects (planning areas), preparation of planning schemes (general and detailed), allocation of building land, and enforcement of development control measures. In some specific areas, they are also the initiators especially in cases where land is being acquired for city, municipality and township expansion or other public requirements. Local authorities are also required to work with the

Ministry of Lands, Housing and Human Settlements Development (MLHHSD) in all the stages of acquiring land including the assessment of compensation (i. e. valuation), processing of complaints, and paying the dispossessed prompt and fair compensation. They may also identify and designate land for the resettlement of the dispossessed. The MLHHSD on its part is the actor responsible for many key processes such as assessing and determining whether or not the land in question can be acquired and for gazetting the decision to expropriate land. Often it also mobilizes funds for paying compensation. The function of the MLHHSD expands to providing land required for resettling the displaced households although in practice are compensated with money for acquisition of alternative land of the size that has been acquired.

The formal actors therefore include the Commissioner for Lands departments responsible for the land administration functions (physical planning, surveying and mapping, land allocation and registration, valuation and taxation), Land Use Planning Commission, Physical Planning Department, Physical Planning and Housing, Lands department and valuation department.

Recent years have witnessed the private sector involvement in formal land governance processes, capitalizing on the inefficiency of the public sector. Private companies formed by professionals have evolved, partnering with local authorities in land delivery services in respective jurisdictions under Public Private Partnership (PPP) arrangements.

The private company partners in collaboration with local government authorities engage in identification of planning areas, acquiring land for development from individual holders, preparation of Town Planning drawings, land surveying (subdivision of acquired land) and provision of access roads (Kassala & Burra 2016) in the planned area. The Urban Planning Act No 8, 2007 was behind accommodating the private sector in land development. While the local authorities perform some roles with the Ministry of Lands in Land acquisition processes for example, the Land Act No. 4 (14) prohibits any officer of a local government to make or sign a right of occupancy.

13. 5. 1. 2 Main land governance processes

The land governance processes identified in this study are those executed under the informal and formal settings.

Informal processes

are dominated by individuals and households as main players. The processes of buying and selling of land and property between individuals are conducted before witnesses who may be friends or relatives to the parties involved in the transaction, local leaders of advocates. The local government offices facilitate the transactions by making the buyers and sellers sign forms which include details showing names of the parties, name of location, neighbours on four sides surrounding the transacted property and price. The form is signed by transacting parties and witnesses. Copy of the signed form is kept at the local (mtaa) office as proof of transfer of rights and ownership to the buyer. The buyer may use the form to prove ownership of rights over the land at the time of re-selling or formalizing the rights into statutory right of occupancy.

Real estate agents and brokers also participate in informal transactions by connecting the land/property seekers and sellers. They engage in the processes of identifying properties that are on sale as well as identifying the buyers.

Settlement of disputes is also practiced but at very low scale and mostly arbitration presided by local leaders.

Formal processes

The main formal processes of land governance include policy and legal frameworks, and other land management activities. The formal processes are guided by the laws in place.

i. Formulation of policies, laws, regulations and other legal instruments to guide land governance processes.

ii. Land use planning is implemented in a participatory manner from national to village level whereby the laws (e. g Land Use Planning Act (Cap 116) and the Town Planning Act, (Cap 355) provide for community participation in making decisions in various stages of land use planning conducted in their respective areas. Land use planning facilitate subdivision of land into individual holdings with clear parcel boundaries. The determined rights and boundaries further enable registration. Local governments (City, Town and District Councils) are mandated Planning Authorities to oversee the implementation of the land use plans and development control.

Where land use planning did not take place and informal settlements developed, regularization

processes are common for recognition and registration of rights, as well as provision of various missing services.

iii. Allocation of rights.
The National Land Policy provides for procedures of allocating land that ensure equal rights for all citizens. Rights to land are allocated by use of land allocation committees established at National, City, Town and District Council levels. Moreover, land seekers acquire land through acquisition from councils partnering with registered companies in providing land for development.

iv. Land Management services
Land allocation is not a standalone process but linked with management of land to ensure the rights are protected. The land management systems are set at different levels including zonal offices representing the Commissioner for Lands, Planning authorities to oversee the functioning of the land markets, guiding procedures for land valuation and taxation as well as assessment of compensation and payment.

v. Resolving land conflicts and disputes
Settlement of land disputes is implemented at different levels within the mechanism prescribed in the relevant laws starting from the grassroots to national level. The machinery for settlement of land disputes involves Village Land Council, Ward Tribunal, the District Land and Housing Tribunals, the High Court and the Court of Appeal in order to cater for cases of varying levels.

13. 5. 1. 3. The regulations in land governance
Land governance in Tanzania Mainland is regulated by a number of laws and policies. The following narration offers an overview of the legislative documents that hold relevance to urban land management in Tanzania including the main characteristics of these acts and policies.

The policy framework
The National Land Policy (1995) The policy is a mother law that rests power over land in the President as trustee on behalf of all Tanzanians. , The National Land policy (19950 lays out the government policies to guide land management; describes the existing land tenure system, bestows the land administration responsibility to the Commissioner for Lands on behalf of the President. Also the policy guarantees equitable access to land for all segments of the society for rapid and sustainable socio-economic development as well as public rights in land use. Moreover, it aims to ensure that land value corresponds to the market economy. It also addresses the shortfalls pertaining to land tenure, management and administration. Other objectives include recognizing, clarifying and securing in law existing rights in land; promoting equity in land holding; ensuring correct values of land and full and fair compensation when acquiring lands; setting of ceilings on land ownership; streamlining the institutional arrangements in land management and dispute settlements for transparency purposes; and protecting land from degradation. The Ministry of Lands assumes responsibility of land matters in the country. The City, Municipal or Town Councils are responsible for urban land governance.

Currently, the land policy is under review by the MLHHSD. The new policy promises a thorough update to the legal framework guiding land governance with enhanced focus on good governance and guaranteed accessibility for all citizens to tenure security (URT, 2016). In the policy, the difficulties pertaining to the rising demand for planned land and the lack of capacity in land administration are acknowledged as impediments to economic growth and residents' tenure security. In addition, the recognition of the rights of marginalized people and the challenges in access to land for women are positive developments.

The National Human Settlements Development Policy (2000)
This policy is the key instrument as far as housing delivery in Tanzania is concerned. It promotes the development of sustainable human settlements with a remit to make serviced land available for shelter and human settlements development to all sections of the communities through the improvement and provision of infrastructure and social services. It is also the desire of the policy to facilitate the provision of adequate and affordable shelter to all income groups in the country.

The legal framework

The Constitution of the United Republic of Tanzania (1977)

The Constitution of the United Republic of Tanzania is the principal law in the country. In regard to land (governance) matters, Article 24(1) and (2) of the constitution explicitly provides for the right to own property and to enjoy state protection and fair and adequate compensation in the event of compulsory purchase:

- *Subject to the provision of the relevant laws of the land, every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.*

- *Subject to the provision of sub article (1) it shall be unlawful for any person to be deprived of property for the purposes of nationalization or any other purposes without the authority of the law which enables provision for fair and adequate compensation.*

The Land Acquisition Act (1967)
The Land Acquisition Act of 1967 is the principal legislation as far as land acquisition is concerned. The provisions of Section (1) draw attention to the requirements of the constitution:

"Subject to the provision of this Act, where any land is acquired by the President under Section 3, the Minister shall on behalf of the Government pay in respect thereof, out of moneys provided for the purpose by the Parliament; such compensation as may be argued upon or determined in accordance with the provision of this Act. "

The law mainly addresses two major things: (a) Land (Assessment of the Value of Land for compensation) Regulations, 2001; and (b) The Land (Compensation Claims) Regulations. Principally, it provides the legal framework for compulsory land acquisition while individual ownership can be nulled subject to the President's decision, with compensation provided as governed by the Act. The Act provides for compensation payment based market value of the land and unexhausted improvements. The valuation for compensation must be done by a qualified valuer.

The Land Act No. 4&5 (1999)
In this category, the Land Act No. 4 deals with urban land while the Land Act No. 5 treats the village land. However, both laws stipulate the management of all land classified as general land and reserved land (Village land, the third category, is dealt with in a separate legislation, the Village Land Act, 1999). Also, they centralize all executive powers within the Ministry of Lands through the roles of the Minister, and the Commissioner of Land. As noted earlier, the Land Act No. 4 is the principal legislation on all land administration matters in the country. Also, the Act specifies that an interest in land has a value and that value is taken into consideration in any transaction affecting that interest. Moreover, it recognizes the granted rights of occupancy, customary rights and informal rights as the three major land tenure systems in the country.

Specifically, the Land Act No. 4 provides legal specificities on statutory land tenure (Rights of Occupancy), including length of lease, conditions of renewal and land rent; it provides the legal specificities on granting and acquisition of derivative rights (Residential licenses) in urban and peri-urban areas. Moreover, the law presents the criteria for declaring regularization schemes in already inhabited informal and peri-urban areas.

On the other hand, the Village Land Act No. 5 provides legal specificities on customary land tenure (Customary Right of Occupancy).

The Land Use Planning Act No. 6 (2007)
The Act provides for the procedures for preparation, administration and enforcement of land use plans. It stipulates the distinctive authorities of land use planning, their powers and functions. The power vested in authorities gives them authority to enforce approved land use plans, including taking defaulters to court of law.

The Urban Planning Act No. 8 (2007)
The Urban Planning Act No. 8 of 2007 replaced the Town and Country Planning Ordinance, Cap 378 of 1956 as amended in 1961. This legal instrument provides guidelines for land use planning in urban areas, gives weight to public consultation in land use planning and allows land holders to prepare land use plans in their areas and submit them to authorities for approval.

The Act, among other things, provides for the orderly and sustainable urban development, empowers planning authorities to prior prepare urban development plans and to enforce a comprehensive system of development control. It also provides for the declaration of planning urban areas by the Minister responsible for Urban Planning, in consultation with Local Authorities and Urban Planning Committees (UPC), and issuing procedures for the preparation of general and detailed schemes by local authorities and the approval by the Minister. The Act also provides guidelines for the preparation of general planning, detailed schemes and specific project plans such as housing or satellite cities as planning and management tools to guide urban development.

The Land Disputes Courts Act No. 2 (2002)
This is a very important legislation that sets out the procedures for the formation and operation of the land dispute settlement mechanisms. The land dispute

settlement machinery embraces the Village Land Council at the lowest level of the hierarchy, the Ward Tribunal, the District Land and Housing Tribunal, the High Court of Tanzania (Land Division) and the Court of Appeal of Tanzania.

According to this law, the functions of the Village Land Council include receiving complaints from parties in respect of land; convening meetings for hearing of disputes from parties; and mediating between and assist parties to arrive at a mutually acceptable settlement of the disputes on any matter concerning land within its area of jurisdiction without instituting judgements.

Where the parties to the dispute before the Village Land Council are not satisfied with the decision of the Council, the dispute in question is referred to the Ward Tribunal in accordance with section 62 of the Village Land Act, 1999.

The Ward Tribunal is established under the Ward Tribunals Act of 1985 and it is regarded a Court and has jurisdiction and powers in relation to the area of a District Council in which it is established.

The primary function of the ward tribunal is to secure peace and harmony, in the area for which it is established by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction. Without prejudice, the Tribunal has jurisdiction to enquire into and determine disputes arising, mediate with regard to any customary principles of mediation; natural justice in so far as any customary principles of mediation do not apply; any principles and practices of mediation in which members have received any training.

The Tribunal, in proceedings of civil nature relating to land, may order the recovery of possession of land; order the specific performance of any contract; make orders in the nature of an injunction both mandatory and prohibitive; award any amount claimed; award compensation; order the payment of any costs and expenses incurred by a successful party or his witnesses; or make any other order, which the justice of the case may require. If a person is aggrieved by an order or decision of the Ward Tribunal may appeal to the District Land and Housing Tribunal. The Tribunal, upon hearing an appeal, may confirm, reverse or vary in any manner the decision; quash any proceedings; or order the matter to be dealt with again by the Ward Tribunal. If it is deemed appropriate, the tribunal may give an order or direction as to how any defect in the earlier decision may be rectified. The decisions of the District Land and Housing Tribunal should not contravene any Act of Parliament, subsidiary or legislation; not conflict with the rules of natural justice; and whether the Tribunal has been properly constituted or has exceeded its jurisdiction, may revise any such proceedings.

Any party who is aggrieved by a decision or order of the Appeals of District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court (Land Division). The high court exercises general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all tribunals should comply with such direction without undue delay. Also, the high court can, therefore, revise the proceedings and make such decision or order therein as it may think fit.

Furthermore, any person who is aggrieved by the decision of the High Court (Land Division) may, with the leave from the High Court (Land Division), appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act, 1979. The primary function of the Court of Appeal is to hear and determine appeals from the High Court (Land Division).

The Local Government (District Authorities) Act No. 6 (1982)

This law was enacted to enables the village governments to govern and make by-laws in relation to land ownership. In other words, the law establishes village authorities which are vested with powers to administer and or manage the village land in Mainland Tanzania. It provides for the composition of the village authorities and the meetings of the village government as well the abidingness of the issued decisions thereof. The legal framework extends also to provisions of the other laws designating reserved land. These include the Forests Act (Cap 323); National Parks Act (Cap 282); Ngorongoro Conservation Area Act (Cap 284); Wildlife Conservation Act (Cap 283); Marine Parks and Reserves Act (Cap 146); Highway Act (Cap 167) and Public Recreation Grounds Act (Cap 320).

13. 5. 2. Conflicts that emanate from existing land governance arrangements

13. 5. 2. 1. Types of land conflicts and their major causes
The structures of land governance arrangements have a contribution to the type of land conflicts that emerge as actors interact in land dealings. The existing land conflicts in the Tanzanian context include those originating from boundary disputes between individuals, individuals with institutions, between institutions and also competing uses over natural land resources. Land governance processes as guided by the set regulations may generate conflicts such as those emanating from acquisition of land by government actors from individual owners or groups of members in the community. In some situations, the unwritten customary practices are found to conflict with the land governance laws and procedures leading to land disputes. Conflicts arise also from competing uses over natural resources coupled with conflicting and restrictive laws that may work in favor of certain uses while negatively affecting others. The types of conflicts existing in Tanzania are discussed in accordance with their causes.

Boundary related conflicts
Disputes over land parcel boundaries are common between individual community members especially where land is not surveyed and registered to clearly define the rights of the land holders. Unclear boundaries that are not marked are also sources of conflicts. This is common where individuals or groups of individuals encroach land for which boundaries are not clearly marked and has remained undeveloped for a long time. Cases of this nature are common with land parcels held by government agencies/ departments mostly in urban or peri urban areas. Encroachment into the Morogoro road wayleave in Dar es Salaam is one example of boundary conflicts of which individuals developed structures within the road reserve land and demanded compensation when they were required to move out. In response the government did not pay compensation for reason that the displaced occupied the road reserve land illegally resulting in forceful eviction.

On the other hand, Land conflicts in Tanzania Mainland can be grouped in two categories. The first category encompasses those conflicts related to land acquisition for public use. The second category comprises land conflicts between or among different land-resource users. The first category of land conflicts, i. e. land conflicts associated with acquisition of land for public use, can also be posited in three major types of as follows:
Land conflicts related to land acquisition for public use
Land acquisition for public interest as provided for in the laws may lead to conflicts in varying dimension. The most common type of conflict emanating from land acquisition *is delayed and/or unfair compensation. Most government projects that have involved land acquisition have resulted in conflicts between the acquiring authority and the project affected people.*

The acquisition of land for public interest is explicitly provided for in the Constitution of the United Republic of Tanzania of 1977; the Land Acts of 1999; the Land Acquisition Act of 1967 and the Physical Planning Act of 2007. The laws stipulate that persons whose land is expropriated for public interest have to be fairly and promptly compensated for the acquired land or property and that the compensation payable should be based on the market value. In practice, however, the legal provisions are often flouted with compensation for land acquired for public use either paid less than the market price or payments delayed extensively. Experience shows that delays of up to five years or more after valuations have been done are not unusual. A study carried out in Wazo-Mivumoni, Dar es Salaam (Msangi, 2014) revealed complaints against lower compensation amounts and the affected persons refusing to accept the payments. Shivji (1999) observes that there are also problems associated with clandestine selling after compensation is paid to land occupiers. Where compensation has been paid but development on the acquired land is delayed some of the compensated occupiers take advantage of the delayed development and sell the acquired land. Such actions result in conflicts between the acquiring authority and the buyer of the acquired land and the original displaced land owner. Litigations of such nature have occurred with land acquisition involving power line and gas transmition wayleaves.

Another example of claims against lower compensation is the case of the (1,600) residents of Mbarali District in Mbeya Region who were ordered to leave their respective areas to allow for the expansion and demarcation of the Ruaha National park. The project affected persons sued the government demanding over TZS 16 billion (USD 10,536,757) compensation. This was after the land occupiers had been paid some TZS 6. 5 billion (USD 4,642,857), a figure they considered too low. They, therefore, filed the suit at the High Court's Land Division in Mbeya on 27th October 2008 (reported in Sunday News, 28th September, 2008, p. 2).

In another case, Mbeya villagers were reported pleading for compensation from the government after they were removed from their traditional area to pave way for establishing a new game park in 2008. The villagers claimed before a Parliamentary Committee on Parastatal accounts that they were

forcefully removed from their traditional villages without any compensation (This Day 24th February 2009, p. 6).

Likewise, in Dar es Salaam, during resettlement of Kipawa, Kipunguni and Kigilagila informal settlers for the expansion of Julius Nyerere International Airport (JNIA), not only compensation paid was fair but also it was not paid timely. The affected people received the compensation offered because of fear and prospects that the government could decide not to pay if people could resist it as Zaina Kibanilo, one of the affected people who now lives in Pugu, provided and presented in the quotation below:

"…You know the Government is like a sword. . . this influenced me to receive compensation though in my heart it was not enough. . . The government can decide to vacate people even without doing anything i. e. paying anything. After all, I saw it is a wise decision to receive what was given then complaints could follow…"

Interview with Zaina Kibanilo at Pugu Kajiungeni area, 2018).

Land conflicts due to poor communication and non-involvement of landowners

Conflicts emerge also because sitting land occupiers are not being involved or much educated about the rationale for the valuation process and the method used to compute the compensation payable for land and other developments therein. However, the new law guiding valuation practice (The Valuation and Valuers Registration Act 2016) provides room for the persons affected by land acquisition projects to scrutinize the assessed compensation before they can accept payment. Probably this move would reduce the concerns about compensation assessment. Often, sitting land occupiers are not directly represented in key decision-making stages related to the expropriation of their land, leading to protracted disputes particularly between public authorities and sitting land occupiers (Kombe and Kreibich, 2006).

Land conflicts due to poor land governance

Literature suggest other major causes of land conflicts to be dysfunctional land management systems and problematic governance institutions including lack of transparency especially in public land acquisition; weak structures for checking land grabbing; and exclusion of the disadvantaged. There are also problems related to nepotism, corruption and the disregard of regulations, and unregulated informal land acquisitions (Wehrmann, 2008).

In Tanzania, such typical conflicts are pertinent in cities particularly in Dar es Salaam, Mwanza, Arusha and Mbeya where land markets are vibrant. In Dar es Salaam many issues related to poor land management practices including double allocation of plots and preparation of more than two layout plans in one area are very common. For instance, during interviews with urban residents in Tegeta area they presented a case whereby one area had two layout plans each with a different land use over that land parcel. The first (original) layout showed that the parcel was set aside for individual interest i. e. a residential plot while the second layout indicated a public interest for a police post as presented in the quotation below.

"…The original Town Planning (TP) drawing showed that a plot was for residential and another showed that it was a Police Post area. The police took the plot and the original owner sought remedy through the court where the new plan was scraped as it was not on track…"

(Interview with Tegeta residents, 2018).

13. 5. 2. 2 Land resource-based conflicts

Most land conflicts in rural Tanzania are resource based conflicts, with parties competing over resources like land, water and grazing pastures in rural and urban areas. Likewise, most land related conflicts involve power relations between those who have access to and control over resources and those who are struggling to snatch the opportunities. The most conspicuous resource-based conflicts reported in Tanzania are between farmers and pastoralists, farmers or pastoralists and conservation authorities, and one family against another family. The causes of these land resource-based conflicts are entangled within seven key factors namely: colonialism; post-colonial state governance and associated policies; governance, political leadership and development planning; modernization discourse; economic reform and liberalization; environment scarcity; and public narratives and language usage. For instance, the colonial inherited national policies continue to favour the establishment of national parks, conservation areas and game reserves at the expense of farming (cropping and herding); these policies have led to land alienation. In addition Homewood et al. (2005) observe that the establishment of legislations that favour conservation and reserve areas has increasingly restricted access to natural resources to rural populations impacting on their livelihoods.

Farmers or pastoralists and conservation authorities

The scarcity of land due to population increase in some areas has led to tendencies whereby farmers or pastoralists encroach areas conserved for public use particularly forest reserves or water catchment areas. As a result, there have been conflicts between the communities surrounding conserved resources and the conservation authorities which manage such protected areas. During the VGGT awareness creation session it was reported that in Chamwino district in Dodoma region, the surrounding community to Chimwani forest reserve have encroached it for agricultural extension and livestock keeping purposes. From the interviews with the professionals it was noted that some local farmers had encroached the forest reserve by claiming that they had stayed in that area longer than and even before the forest was declared to be a conservation area. Commenting on the nature of the conflict, the District Forest Officer said:

"...It is true that when Chimwani forest was declared a reserve forest there were people living around that area and they never complained about that decision. As time went on, due to population increase, the surrounding community started encroaching the forest. The conflict is still unresolved and we are looking for viable solutions..."

(Interview with Chamwino District Forest Officer in Dodoma, February 2018).

A similar agro-forest based conflict was observed in Kalambo district council whereby the district council was in conflict with Irimba village. In this circumstance, villagers decided to invade or encroach the conserved forest to undertake agricultural activities. The Tanzania Forest Services (TFS) decided to evict farmers and burned their crops.

Also, designation of open land has resulted in land scarcity, have forced pastoral migration from North of Tanzania to the Southern part leading to increased farmer-pastoralist tension in destination areas (Sendalo, 2009). Thus, pastoralists, unlike farmers, have been the victims of protected areas and conservation policies that do not recognize the transhumant way of life in many communities living near wildlife zones and other protected areas.

Farmers vs pastoralists

Farmer-pastoralist conflicts are further explained as a failure of national policies on agriculture. These policies, which favour expansion of cultivation agriculture, erode the open access land which is primarily used by smallholder farmers and pastoralists. For instance, the National Land Policy (1995) does not guarantee enough security of tenure to smallholder farmers and pastoralists. As a result, large areas of land have been redistributed directly to investors, believing that it is an economically rational policy and, consequently, this has ended up marginalizing smallholder farmers and pastoralists' production activities (James, 2015).

Moreover, political leadership is paramount for explaining the causes of farmer-pastoralist conflicts and is one of the critical areas of sound land governance. For example, Odgaard and Maganga (2007) note the imbalance of political power between farmers and pastoralists in Kilosa district in Morogoro region and Kongwa district in Dodoma region with farmers being over-represented in village governments. Furthermore, the authors argue that pastoralists in these areas have been excluded in development planning due to a lack of political power and poor representation.

As reported by James (2015), in Arumeru district, several effects result from famers versus pastoralists land conflicts in the community. From the interviews with respondents she observes that 77. 6% and 68. 6% of farmers and pastoralist respectively claimed that land was the major source of conflicts that resulted into destruction of peace and distortion of relationships among community members, depression to people, death, injuries and depopulation. One of the clan elders noted that, once a land conflict occurs, the parties involved had no friendly relations until the matter is resolved. Minority of the respondents, 22. 4% and 31. 4% of farmers and pastoralist respectively responded that land is no major cause of land conflicts.

Conflicts between/among individuals in clans in rural areas

As pointed out in the proceeding sections, the vast land in Tanzania (about 70%) is village land and it is managed by village councils under customary tenure arrangements. Because of static amount of land with increasing population, land is continually subdivided amongst family members while in other tribes females are not regarded and considered for land ownership. This is typical in societies where land ownership was under clanship arrangements such as in Kilimanjaro region where the Kihamba land ownership and Kagera region where Nyarubanja land ownership arrangements still prevail. In these societies, women were traditionally neither counted heirs nor right land occupiers. The reason for this situation is hinged on the idea that when daughters

get married they belong to the family they get married to and their land rights could also be considered in that family. However, even for those who could not get married or married but divorced could still not be considered for land allocation in their families. Even in cases whereby they die, they would be buried in marginal lands particularly at the boundaries implying that they are of lower status than men family members. It is worth noting that this is one of the land conflicts in rural areas where customary tenure is practice but the law gives equal access to land to both men and women. Nevertheless, under the customary tenure arrangements women are denied of their access to and ownership of land.

13. 5. 3. The root causes of land conflicts

13. 5. 3. 1 Root causes related to land acquisition for public use

Inadequate resources to manage public lands

Public land would be that which is under the custody of the state, municipality or local authority. There is no comprehensive inventory of public land and its geographical location in Tanzania. Taking stock of land resource seems to be done on an *ad hoc* basis, e. g. where divestiture is contemplated. Responsibility to manage public land may rest with different authorities or agencies which in turn may cause a problem in the management of these assets. In most cases, moreover, there are not adequate resources to manage these lands. Such lands are also left undeveloped for a long time creating opportunity for encroachment by land seekers.

Vibrant urban land markets and government failure to provide surveyed and serviced land

Many cities in Tanzania have experienced vibrant land markets (see also Briggs, 2011). As the cities expand demographically and geographically, the pertinence of understanding urban land governance processes across the urban zone increases. For instance, in 2010, around 80 per cent of Dar es Salaam's residents lived in informal settlements (Sheuya and Burra, 2016: 447) where land was obtained through informal purchases. Already during the 1990s, it became apparent that the official system of land allocation was lagging behind the rate of informal land acquisition (Kironde, 1995). This trend had intensified until in the 2000s. On this aspect, Kironde (2006) argues that because of the challenges that the government is facing in meeting the ever-increasing demand for planned land in the urban zone, the majority of land buyers see no other way than to acquire land informally, often in unplanned settlements. In this way, there is a direct link between deficiencies in the current land management system and the explosive growth of unplanned settlements in Dar es Salaam (Kironde, 2000). The main obstacle to improving the current operating system is the extreme centralization of power in the Ministry of Lands covering all aspects of formalized urban management. While the formal land management of the city is lagging well behind demand, the city's residents make use of a multiplicity of ways to engage in land transactions at a local level.

Kyessi (2010: 1) observes that the diminishing capacity of urban local authorities has resulted into limitations in terms of provision of affordable shelter, basic infrastructure and secured land tenure. To cope with the deficiency in surveyed plot supply, individuals or households turn to informal settlements which are less secure and vulnerable to acquisition if public projects that require land are to be implemented. It has been estimated that more than 90 per cent of the land property owners in the informal settlements have no formal security of tenure (Kyessi, 2010).

Failure in implementing urban planning and development schemes

For many years and in many cases, the government has failed to implement different urban planning and development schemes. This has always given rise to the formation and development of informal settlements particularly in urban areas. The main factors that contribute to the failures of the government to provide planned land, infrastructure and services are insufficient funds to cope with the growing needs. Conversely is the failure to exercise effective management of urban growth including rapid urbanization which has stretched the capacity of urban Local Government Authorities (LGAs), financial constraints as well as limited technical capacity. These factors have resulted into chaotic, sprawling urban growth and land use patterns, entailing higher per capita costs of infrastructure and increased travel costs across long distances from any one point in the city to another.

Evading affected land owners in planning

In many government-led resettlement projects, the affected communities and local authorities such as Ward Executive officers, Local leaders, including the grass root leaders have never been fully involved in the planning and decision making processes. The government institutions responsible for implementing such programmes or projects usually involve the community during the implementation stage. A good

example is the resettlement of Kipawa, Kipunguni and Kigilagila areas for the expansion of Julius Nyerere International Airport (JNIA) which was implemented by the Tanzania Airports Authority (TAA). During the discussion with the Ward Development Committee it was observed that they received information from the Municipal level about the project but the affected households and individuals at the grassroots level did not get informed of the project and they were resistant to the amount of compensation offered to them as the quotation below cements:

"…the affected land owners did not participate in planning. This can be seen from the fact that there was poor planning of this project which resulted in the delay in paying compensation. Preliminary cost estimates such as compensation and impact assessment was not carried out. The government officials pointed out that because the entire area was acquired there was no need for people's participation…"

(Interview with Kipawa WEO, 2018).

Limited knowledge with regard to the laws and regulations

Limited knowledge regarding laws and regulations which govern the compulsory land expropriation processes has been a major contributor to land conflicts. For example, Kironde (2006) by referring to the Land Policy, Land Act, Land Acquisition Act and the Town Planning Ordinance argues that the majority of the affected land occupiers in Tanzania had little knowledge about the stipulated laws with respect to expropriation as Table 1 shows.

Table 1: Level of knowledge in land laws, regulations and procedures

Policy/Legislation	How knowledgeable (Percentage) (N=200)		
	Know very well	**Partly knowledgeable**	**Do not know at all**
Land Policy	3. 5	18. 5	78. 0
LandT Act No. 4	3. 0	14. 5	82. 5
Land Acquisition Act	3. 0	7. 5	89. 5
Town Planning Ordinance	2. 5	12. 5	85. 0

Source: Kironde, 2006

Other causes

Other root causes of land conflicts include excessive bureaucracy and delays in compulsory land acquisition projects, weak coordination between actors, alienation of local communities (including land occupiers) and disregard of social costs such as disruption of social networks and the livelihoods of the dispossessed land occupiers (World Bank, 1990; Olima and Syagga, 1996). This apart, often decisions taken by bureaucrats on behalf of the government seem to ignore the democratic rights of the wider community of land occupiers.

13. 5. 3. 2 Root causes of conflicts related to land resource uses

With respect to land conflicts in rural areas, James (2015) identifies three main causes of land conflicts in rural areas. These include poor or lack of land use planning, increased human and livestock population and scramble for resources as shown in Table 2. Likewise, encroachment of grazing or agricultural land, blockage of water points by the farmers and the influence of political leaders contribute to rural land use conflicts.

Table 2: Root causes of conflicts between pastoralist and farmers in Arumeru

Causes of land conflicts	Farmers		Pastoralists		Total	
	Count	%	Count	%	Count	%
Poor land use planning	15	37. 5	12	35. 3	27	36. 5
Increased human and livestock population	14	35	9	26. 5	23	31. 1
Scramble for resources	11	27. 5	13	38. 2	24	32. 4
Total	**40**	**100**	**24**	**100**	**74**	**100**

Source: James, 2015

Emanating from the Table 2 above, 37. 5% of farmers agreed that poor land use planning, particularly with regard to representation in land use planning decision-making processes, is the root cause of conflict between pastoralist and farmers while 35. 3% of pastoralist agreed on the same reason. Moreover, 35% of farmers considered increase in human and livestock population as one of the reasons behind conflicts between pastoralist and farmers. On the same account, 26. 5% of pastoralists were in agreement. Besides, 27. 5% of farmers agreed that scramble for resources between farmers and pastoralist causes conflict between the two groups while 38. 2% of pastoralist were of the same view. Therefore, the named factors are among the many intra and interpersonal causes of land conflicts between farmers and pastoralists.

In another scenario, majority of the respondents i. e. 58. 3% indicated that the most predominant cause of land conflict between farmers and pastoralist was crop damage caused by herders' livestock, followed by encroachment of grazing or agricultural land (28. 6%) and blockage of water points by the farmers (13. 1%). Other respondents reported that through the influence of political leaders some communal land such as forests, wetlands and rangelands was changed to farmland by ignoring the traditional use rights of other groups to these resources, hence magnifying conflicts between farmers and pastoralists in the area.

Moreover, as also pointed earlier, Massawe and Urassa (2016) add that other causes of these land resource-based conflicts include colonial; post-colonial state governance and associated policies; governance, political leadership and development planning; modernization discourse; economic reform and liberalization; environment scarcity; and public narratives and language usage.

Consequences of land conflicts from the resource use perspective result in loss of lives, food insecurity, fighting amongst people leading to loss of peace among the villagers, crops and livestock destruction, and loss of originally owned land after losing the fight.

13.5.4. Approaches to addressing conflicts in land governance

Land disputes are quite common especially where the significant share of the land holdings are not registered. Settlement of conflicts in land therefore forms an important component of the land government processes. Conflicts may arise due to various reasons and the land governance systems have the obligation to resolve them. The preceding discussion presented the types of land conflicts in the land governance system in Tanzania. The formal approach for resolving land conflict constitutes the dispute settlement mechanism established under the laws. The conflict resolution machinery is established from the grassroots to the national levels.

Land disputes settlement is exercised using informal practices where mostly elders in the family would be involved to mediate the parties to the dispute. On the other hand, dispute settlement under the formal arrangements is dealt with the established dispute settlement machinery.

13.5.4.1. Settlement of land disputes

Approaches to resolving land disputes involve informal practices where elders in the family would be involved in mediating the parties to the dispute. Also in some cases disputes emerging from informal land dealings may be resolved informally with local leaders reconciling the parties to the dispute. It is worth noting that most of the disputes are resolved through the settlement machinery established under the laws. The dispute settlement machinery provides for non-judicial and judicial mechanisms which are employed in addressing

land conflicts, and the nature of the dispute determines which one to adopt. According to Ngemera (2017) the non-judicial category involves an administrative procedure through mediation where a dispute arises between the parties using village land. The Village Land Act No. 5 1999, identifies parties to such disputes the village and a person or body occupying the village land. The law empowers the Minister for Lands to appoint a mediator to persuade the parties to reach a compromise over the dispute. Non judicial approach to dispute settlement may be in form of an inquiry. The Minister may appoint a person or two persons to hold an inquiry where mediation over village land has failed. An inquiry may also happen where a dispute between the Village Council and Village Assembly or dispute between the Village Council and the Villagers. A dispute between the Village Council and the Villagers may arise where the Council may be operating contrary to the Village Land Act in the course of managing village land.

Land Adjudication Committee is another non judicial organ that may be established for hearing claims during adjudication process. The committee may require any interested person to specify boundaries of his land over the adjudication area. The Committee is vested with powers to mediate the parties in dispute to settle a dispute over the disputed boundaries over the land amicably.

The judicial dispute settlement mechanism involves the Village Land Council that is bestowed with the role of hearing appeals against decision by the Village Adjudication Committee. The aggrieved person unsatisfied by the decision of the Village Adjudication Committee may appeal to the Village Land Council. The Village Land Council plays also the role of mediator, to hear disputes and mediate the parties to a land dispute to reach a solution. The Village Land Councils acts with limitation not to institute fines and penalties on the parties involved.

Next on the hierarchy are the Ward Land Tribunals that according to the law should be established in every ward. The Ward Land Tribunal is empowered to resolve land disputes through mediating the parties in an amicable way. Where mediation fails the Ward Tribunal transforms into a court to hear and decide the matter in dispute and institute fines and penalties to any party to be found guilt under the law. However, the jurisdiction of the Ward Tribunal is subject to pecuniary limitation of value not exceeding three million Tanzania Shillings. This limitation creates further challenge as the value of the property in dispute would be known when valuation is conducted. Thus, to some extent the question of value of the property in dispute introduces uncertainties regarding to matters of land disputes to be placed in the jurisdiction of the Ward Tribunals.

Above the village land councils and ward land tribunals; the disputes are dealt with under the Courts system (Land Disputes Settlements) Act 2002, the District Land and Housing Tribunal, the Land Division of the high Court and the Court of Appeal responsible for unresolved conflicts from the lower levels of the dispute settlement organs. . However, the capacity of the District Land and Housing Tribunals to handle the lans disputes in the country is low. This is confirmed by reports that there were only fifty District Land and Housing Tribunals operational with 32,375 disputes awaiting action as of 2016 (Ngerema, 2017). Whereas fourty seven District Land and Housing Tribunals pronounced in the same year were not in operation yet.

However, various studies suggest that this machinery has not helped significantly in speeding up land disputes resolution. The land dispute settlement machinery is poorly resourced with members of Tribunals not receiving any formal remuneration for the work they perform. Mostly they provide voluntary services because even the penalty and fines collected from the mediation tasks are not sufficient to remunerate the members of the Tribunals. Furthermore, organs at the lower level of the dispute settlement machinery set to resolve the disputes through reconciling the parties, in most instances fail to prevent the matters from appeals to the next level of the hierarchy. Hence, the machinery has tended to adopt court-type of proceedings which take long to settle disputes, and is expensive for those involved in conflicts.

13.5.2. Formalization of property rights

Since the year 2005, the government has been implementing an extensive programme aimed at formalizing property rights in informal settlements through identification, demarcation, and the issuance of short term (five years) licenses. The programme was being implemented under the Business Environment Strengthening for Tanzania (BEST) scheme which was under the Prime Minister's Office to support a number of ministries and sectors. For instance, under the land sector it was financing a number of areas such as property formalization and titling, improvement of the performance of land tribunals and land registry with the ultimate aim of issuing long term titles/leaseholds to land and property holders. However, owing to the

rapidly rising number of informal settlements and their high rates of growth especially unregulated expansion in the peri-urban areas - coupled with the resource capacity deficiencies facing this programme, its impact has remained limited. So far, formalization projects have been confined to only a few informal settlements. On the other hand, the thrust of the programme focused on consolidated or densely built informal settlements as such the sparsely built peri-urban areas. In principle, an extension of the property formalization and titling programme to the peri-urban areas had the potential to improve land governance in particular because it facilitated the establishment of a register for land holdings as well as checking unauthorized land subdivision. In the long run, it aims at placing both land occupiers and the government in a better informed position when negotiating over land transactions in informal settlements and in a way prevent disputes.

13. 5. 4. 3. Regularization of informal settlements

In order to cater for the tenure security, accessibility issues and other public interests in informal settlements, the government and the community provide infrastructure, services and the regularization of land tenure in informal settlements. Unlike the issuance of residential licenses through the formalization of informal settlements, regularization intends to provide a long term solution with regard to tenure security i. e. issuance of title deeds to individual land occupiers in informal settlements. The regularization programme has just started being implemented by government agencies with involvement of private firms undertaking the planning and surveying for adjudication of land rights although significant results in most informal settlements in the country are yet to be recorded. It is expected that the implementation of this programme will solve, among other urban challenges and issues, many tenure security problems.

13. 6. Conclusion

Despite the fact that the Tanzanian government has taken a number of steps to improve land governance, the country still travails from problems related to poor land governance in the land sector. Great improvements have been done and realized in the recognition of rights (with the exception of communal rights in rural and urban areas), recognition of the rights for women and stakeholder involvement in developing land policies and laws. However, more needs to be done in areas related to registering land and improving land information systems, urban and public land management, as well as expropriation and dispute resolution. With the increasing population, the demand for and pressure over land resources in both the rural and urban areas is also increasing. This calls for a need to improve governance in the land sector in order to attain economic sustainability, poverty alleviation, peace and security and ultimately a stable society.

References

Ardhi University (2018) Implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in Tanzania. Final Report

Berry, S. (2002) Debating the Land Question in Africa. In: *Comparative Studies in Society and History* 44:638-668.

Enemark, S. , Wallace, J. and Williamson, I. (2005) Building Modern Land Administration Systems in Developed Economies. Journal of Spatial Science. Perth, Australia. Vol. 50 No 2, pp 51-68. *http://www. csdila. unimelb. edu. au/publication/journals/ Building%20Modern%20Land%20Administration%20 Systems%20in%20Developed%20Economies. pdf*

Homewood, K. , Thompson, M. , Trench, P. , Kiruswa, S. , and Coast, E. (2005) Community- and State-based natural resource management and local livelihoods in Maasailand. *Gestione della risorse naturali su base communitaria e statale. Ambiente e sviluppo sostenibile in Africa australe.* Special issue on Community-based Natural Resource management. *Afriche e Orienti* (2), 84-101.

James, H. (2015) Analysis of Pastoral and Farmers Land Conflict in Tanzania: A Case Study of Arumeru District. Master Thesis, Mzumbe University Tanzania.

Kasala, S. and Burra, M. (2016) The Role of Public Private Partnerships in Planned and Serviced Land Delivery in Tanzania. *iBusiness,* 8, 10-17. doi: 10. 4236/ ib. 2016. 81002.

Kironde, J. L. (1994), 'The Evolution of Land Use Structure of Dar es Salaam, 1890-1990: AStudy in the Effects of Land Policy', PhD Thesis, University of Nairobi.

Kironde, J. M. L. (2006), Security of Tenure as a Basic Human Right and Necessary Inputinto Poverty Alleviation Strategies: the Case of Urban Tanzania, Research Report, UNESCO Small Grants Programme for Poverty Eradication.

Kombe, W. J. and Kreibich, V. (2000), 'Formal and Informal Land Management in Tanzania',

SPRING Publication Series No. 9, Dortmund
Maganga, F. , Odgaard, R. and Sjaastad, E. (2007) Contested identities and resource conflicts in Morogoro Region, Tanzania: who is indigenous? Conflicts over Land and Water in Africa, pp. 202-14.

Massawe, G. D. and Urassa, J. K. (2016) Causes and Management of Land Conflicts in Tanzania: A Case of Farmers versus Pastoralists. Uongozi Journal of Management and Development Dynamics, Vol. 27(2), pp. 45- 68

McCarthey, P; Halfam, M. and Rodriquez,. A (1995), 'Towards Understanding Governance: the Emergence of an Idea and its Implication for Urban Research' in R. Stren and J. K. Bell (eds.) Perspectives on the City of Toronto, Centre for Urban and Community Studies,University of Toronto.

Msangi, D. E. (2014), Organic Urban Expansion: Processes and Impacts on Livelihoods of Peri-Urban Households in Dar es Salaam Tanzania. Unpublished PhD Thesis, Ardhi University Dar es Salaam

Ngemera, S (2017), Land Dispute Settlement Machineries: Is Inaccessibility A Source of Village Land Disputes in Morogoro? International Journal of Scientific Research Publications, Vol. 7 (3), pp. 332 – 349

Nuhu, S. (2019), Peri-Urban Land Governance in Developing Countries: Understanding the Role, Interaction and Power Relation Among Actors in Tanzania. Urban Forum, Vol. 30 (1) pp 1-16

Sendalo, D (2009). A Review of Land Tenure Policy Implication on Pastoralism in Tanzania.

Sheuya, S. A. and Burra, M. M. (2006) Tenure Security, Land Titles and Access to Formal Finance in Upgraded Informal Settlements: The Case of Dar es Salaam, Tanzania. Current Urban Studies, 4, 440-460. http://dx. doi. org/10. 4236/cus. 2016. 44029

Shivji, I. , (1998), Not yet democracy: reforming land tenure in Tanzania, 1st Edition, Dar Es Salaam: HakiArdhi and the Faculty of law of the University of Dar Es Salaam.

Syagga, P. M. and Olima, W. H. A. (1996) "The Impact of Compulsory Land Acquisition and Displaced Households: The Case Study of the Third Nairobi Water Supply Project, Kenya", Habitat International - A Journal for the Study of Human Settlements. Vol. 20. No. 1

URT (1967) Land Acquisition Act Cap. 118 No. 47. Dar es Salaam, Government Printer

URT (1995) The National Land Policy. Dar es Salaam, Government Printer

URT (1999) The National Land Act No. 4/Amendment Act (2004). Dar es Salaam, Government Printer

URT (2000) The National Human Settlements Development Policy. Dar es Salaam, Government Printer

URT (2007) The Land Use Planning Act No. 6. Dar es Salaam, Government Printer

URT (2007) The Urban Planning Act No. 8. Dar es Salaam, Government Printer

URT (2002) The Land Disputes Courts Act No. 2. Dar es Salaam, Government Printer

URT (1982) The Local Government (District Authorities) Act No. 6. Dar es Salaam, Government Printer

URT (2016) The Valuation And Valuers Registration Act (Cap. 138) Dar es Salaam, Government Printer

World Bank(1990) World Development Report 1990 : Poverty. New York: Oxford University Press.

Wehrmann, B. (2008) Land Conflicts, A Practical Guide to dealing with Land Disputes, Deutsche Gesellschaft fur Technische Zusammearbeit (GTZ), Eschborn, Germany.

Dalrymple, K. and Burns, T. (2008) Conceptual Framework for Governance in Land Administration. A paper prepared for and presented at the FIG Working Week in Stockholm, Sweden 14-19 June 2008.

Wehrmann et al. (2009) Towards improved land governance. Land Tenure Working Paper 11. FAO and UNHSP.

Stig, E. (2015) Fit-For-Purpose Land Administration in Support of the Post 2015 Global Agenda. Annual World Bank Conference on Land and Poverty, Washington, March 2015.

Tchatchoua-Djomo, R. (2017) Improving local land governance? Exploring the linkages between land governance reforms, institutional pluralism and tenure security in Burundi. The Journal of Legal Pluralism and Unofficial Law, pp. 1-24

Williamson, Enemark, Wallace, Rajabifard (2010) Land Administration Systems for Sustainable Development. ESRI Academic Press, Redlands, California, USA. http://www. esri. com/landing-pages/industries/land-administration/e-book#sthash. Lp4BYcKW. vmY1XWxG. dpbs

Sikor, T. and Lund, C. (2009) Access and Property. A Question of Power and Authority. In: *Development and Change* 40(1):1-22.

Unruh, Jon D. (2003). Land Tenure and Legal Pluralism in the Peace Process. In: *Peace & Change* 28(3):352-377.

van der Leeuwen, M. and van der Haar, G. (2014) Human Security in Fragile States: Land governance as an avenue for local state building in eastern DRC. Occasional paper #7, The IS Academy.

van der Haar, G. (2001) *Gaining Ground; Land reform and the constitution of community in the Tojabal Highlands of Chiapas, Mexico.* Latin American Research Series. Amsterdam: Rozenberg Publishers.

14. Land Governance Arrangements in Uganda

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Abstract
Land Governance issues have been in Uganda for a long time. One of the issues that has stood out in land governance is the issue of conflicts. These have been in place since the colonial times and have been associated with the history of land governance in Uganda. Although in the earlier days this was at a minimal level, it can be seen that this problem has been on the rise till today. The research sought to explore how land governance systems can minimize or mitigate conflicts between land governance actors and processes in Uganda by: describing the land governance arrangements in Uganda, reviewing the status of conflicts between land governance actors and processes in the land governance systems of Uganda and finally suggesting ways that can minimize conflicts and overlaps in the land governance system of Uganda and all was done through reviewing literature and conducting interviews. The research found out that there are various actors in the land governance process and these in one way or another have contributed to land conflicts. However in trying to proposal solutions, it is shown that the different actors in land Governance can still co-exists and at the same time have land governance conflicts minimized.

Keywords: Land Governance, Uganda

14. 1. Introduction

According to Global Land Tool Network, Land governance can be defined in its simplest form as "involving a procedure, policies, processes and institutions by which land, property and other natural resources are managed". And according to Palmer et al. (2009) "land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed. " From these two definitions it can be seen that land governance encompasses all aspects of land management including the different actors and how these actors make laws, rules and regulations to be able to manage land and also carry out different activities on land. The land governance processes include amongst others different transactions on land, the process of surveys, adjudication etc while the rules are the different land laws and regulations while the institutions include statutory institutions /government, religious bodies, informal actors and customary/traditional institutions

Based on previous studies, land governance arrangements in the Sub-Saharan Africa is a composition of both the customary and statutory arrangements co-existing together (Pauline E Peters, 2009; Knight, 2010; Boone, 2014) This situation is not different in the case of Uganda. There is a statutory law that is running alongside the customary law and both are recognized with each institution having its own implementation being done. According to Deininger and Castagnini (2006), such land governance arrangements exist because of the colonialists who introduced statutory laws which were imposed onto the Africans who already had their customary practices in place. For the case of Uganda these have been existent since 1900 when the Buganda agreement was signed between the colonialists and the officials in Buganda Kingdom. According to the Uganda National Land Policy (2013), such a type of land governance arrangement with multiple laws causes confusion, overlapping authority and conflicts.

According to Green (2010) and Quinn (2014), traditional institutions in Uganda cannot be written off when it comes to issues of land governance and that these traditional institutions are very different based on wealth, political power and leverage (Behr, 2017). This means that traditional institutions are different as they have different wealth and political power. They have a mass following considering the fact that they are based on ethnicity and as such the government would always want to interact with them since they have large numbers. Apart from just having a mass following, the traditional and religious institutions are also big stakeholders in land as they hold and own big chunks of land and being that most are holding customary land. This makes them great stakeholders in the land governance process of Uganda bearing in mind that customary land occupies the biggest percentage of land in Uganda.

However with this growing rate of urbanization in Uganda (UBOS, 2016), informal settlements have not been secluded in the growth. As such they have become a major concern for the government. The Government is currently involving the informal settlements in land administration so as to overcome some of the problems faced in the informal settlements.

Moreover, there are different land governance actors involved in the land governance of a country. Whereas the different land governance actors seem to co-exist, there seems to be conflicts in the processes, laws and procedures in which the different actors are involved in. These conflicts have resulted into a situation of poor land governance in Uganda. This research therefore seeks to get a way forward on possible ways in which and how land governance can be improved based on the land governance conflicts identified.

14.2. Research Objectives

The main objective was to explore how land governance systems can minimize or mitigate conflicts between land governance actors and processes in Uganda. The specific objectives were as follows:

- To describe the land governance arrangements in Uganda
- To review the status of conflicts between land governance actors and processes in the land governance systems of Uganda
- To suggest ways that can minimize conflicts and overlaps in the land governance system of Uganda.

14.3. Research Methods and Materials

In collecting primary data, face to face key informant interviews were conducted with key stakeholders in the field of land management in Uganda. These were actors in the land sector who were purposively selected based on the experience and knowledge they had on land governance and the land sector at large. The people interviewed included: Traditional and opinion leaders, representing the traditional setting; Officials from the Ministry of Lands Housing and Urban Development as representatives of the formal institutions. The key informants in this category were drawn from the Directorate of land management, the District Land Boards and the Uganda Law commission; the informal land actors who were categorized as both structured and unstructured land dealers and brokers; the civil society advocacy groups representing land rights activists and advocates.

The study through an extensive desk review analyzed a number of policy documents and studies to provide demonstrable evidence to support and validate primary data.

14.4. Results and Analysis

This chapter presents a detailed analysis of the main findings of the study. The first section addresses the major land governance arrangements in Uganda; it presents the major land governance actors, their boundary of operation and their roles in the land management of Uganda. The second section addresses the causes and conflicts that exist in the land governance systems in Uganda and the conflict resolution mechanisms currently applied. It draws insights on the types and causes of the conflict and the role of the different actors in influencing these conflicts. The last section of the chapter provides for a way forward.

14.4.1. Existing land governance arrangements in Uganda

The land governance arrangement in Uganda will be described inform of the actors involved, the roles of the different actors, the processes the different actors are involved in and finally the norms and regulations.

14.4.1.1. Land Governance Actors and their roles

Actors in land governance were divided into 3 categories. They include majorly the traditional institutions, the government which is also known as the formal, and finally the informal sectors. There was another category identified as religious institutions but in this particular research they were not considered as they are not much involved in the processes of land governance in Uganda. Apart from holding large chunks of land of which they manage, they do not have important and major roles they play in the land governance system of the country.

a) Formal institutions

In the formal setting, land governance in Uganda is under the auspice of the Ministry of Lands Housing and Urban Development (MoLHUD), the District Local Governments, the Uganda Land Commission (ULC), Area Land Committees (ALC) and the Civil Society organizations (CSOs).

The Ministry is responsible for providing policy direction, national standards and coordination of all matters related to lands, housing and urban development in Uganda. According to the Auditor General (2015), the role of MoLHUD includes the following among others: Formulate national policies, strategies and programs in the lands, housing and land development sectors; Provide policy guidelines to land holding authorities for sustainable, orderly development and effective management of land, housing and urban development; Initiate, review and make amendments to existing legislation in the lands, housing and urban development sectors; Set national standards for matters regarding sustainable

use and development of land; Monitor and coordinate initiatives in the local governments regarding the, housing and urban development sectors; Ensure compliance to laws, policies, regulations and standards for the effective management and sustainable development of land, housing and urban centers

ULC was established by the Constitution and its main role is to hold and manage any land owned by the government of Uganda as well as grant leases to applicants for the land they hold and manage. ULC also processes certificates of title for land owned by and vested in the government both in Uganda and abroad.

There is also the Local government institutions which includes the District Land Board (DLB) and Area Land Committee (ALC). In the Land Act (Cap. 227) of Uganda, every district is required to have a DLB which performs the following functions: hold and allocate land in the district which is not owned, by any person or authority; facilitate registration and transfer of interests in land; compile and maintain lists of rates of compensation payable in respect of crops and buildings of a non-permanent nature. The lists of compensation rates are reviewed every year; deal with all other matters connected with land in the district in accordance with the laws. While the ALCs established at sub-county or division level have a role of adjudicating and demarcating land in the customary communities within their jurisdiction. During land adjudication, the ALC may be required to resolve land disputes over boundaries or conflicting claims over land. In hearing and determining any claim, ALC is required to use its best endeavors to mediate between and reconcile parties having conflicting claims to land.

b) Traditional actors

Unlike the state/formal governance bodies, traditional institutions confer traditional systems of governance within a traditional setting rotating around customs and norms of the community in which the traditional institution is operational. The governance system in traditional institutions varies from region to region or even community to community in which they have mandate over. Different communities and regions have different institutions and different ways of managing land. Case scenarios of how different institutions manage land are discussed below.

In Buganda Kingdom, most of the land is under the mailo[1] tenure system. The Kabaka[2] holds land on behalf of the people of Buganda and land has always been a political and economic tool in Buganda which was used as an incentive to attract loyalty from chiefs and men to the kingdom (Monitor Reporter, 2012). The Kabaka of Buganda owns the biggest chunk of land and this land has occupiers or tenants who have occupancy rights only. These occupiers (kibanja[3] holders) are tenants on the land who have access rights by means of inheritance, lease or purchase but the occupiers cannot sell or mortgage without permission from the authority of the King (Wabineno-Oryema, 2014). Buganda Land Board a corporate body was set up to manage the land and its occupants (BLB, 2018) with its jurisdiction being: granting leases, registering occupiers/bibanja holders and solving disputes amongst others.

Within the Acholi kingdom, most of the land is under customary tenure system and is managed by the traditional/cultural institution (Ker Kwaro) through its Ministry of Lands, Natural Resources and Physical Planning. The institution has land managers who are appointed through the agreement of the community they serve. The land managers such as kaka (clan), dogola (family head) and won-ot (head of household) are custodians of land including peaceful resolution of land matters (UWONET, 2015). The Ministry of Lands, Natural Resources and Physical Planning therefore oversees the activities of land managers to ensure peaceful transactions and usage of customary land. Ker Kwaro has the mandate over land held under the Acholi clan system.

Land in Teso is run by Teso cultural union which has different actors who include clan committees at Parish, clan, sub-county, village and district level. These have the same jurisdiction like in the Acholi kingdom. In Lango, responsibility of land is vested in the heads of families at family level, and clan committees at other levels. Like in Acholi and Teso, the Lango Cultural Foundation has the same responsibility over land. From the above traditional institutions

1 'Mailo" is a corrupt word for "mile" and this is a hybrid tenure of both freehold and customary tenure with incidences of freehold and those of customary.

2 Kabaka is the title given to a king in Buganda kingdom found in the central region of Uganda i. e Kabaka means King

3 "Kibanja" (plural: bibanja) holders or owners are tenants on land by occupancy who could be bonafide or lawful occupiers.

it is observed that there are no standards in their operations. Each institutions does what it feels is good for its community. It is also observed that they play an important role in the land governance of their communities an element that cannot be neglected since they have the mandate to do so in a customary setting and under the law of the Land Act.

c) Informal actors

This category collects together a number of actors on land ranging from non-registered land brokers and property dealers, to established real estate dealers and companies with legal and physical addresses but are not part of the government or public land management systems. It also includes the land owners and committees or organizations that do dealings in land in informal ways.

The informal actors can be classified as structured dealers and unstructured dealers. Structured dealers are established real estate brokers with known address and legal status. They have office structures and can buy, sell and own land. They make profits by buying land from original owners in bulky chunks at lower rates and sell it out to their customers at higher prices. In order to make their land affordable, they subdivide the land into different smaller plots of varying sizes so that customers would be able to purchase any of the plots depending on their ability. While the unstructured dealers don't have established structures or even permanent offices. But link up with potential clients through roadside posters or contact referrals from past clients. They are therefore on call whenever there is potential business to transact. They have no legal status and many operate with shrewd methods. They make a living by acting like brokers and go between the buyer and the seller thus earning commission which is always a certain percentage of the sales value of the land in question.

Based on various literature such as Boone (2014), Knight(2010), Peters(2009), Green (2010) and Quinn (2014), it confirms that traditional actors and formal/ statutory actors indeed form the arrangements of land governance. However they seem to have forgotten that the Religious and informal actors also exist. In Uganda the religious actors are not as very active and prominent in the land governance arrangement of Uganda as the other three types of actors. The traditional and informal actors have influence in the land governance of Uganda and that is why Government always has them as stake when discussing issues concerning land governance. The traditional institutions enjoy popularity from the communities they govern and these are big in number since customary communities are about 60% of the country while the informal sector has the greatest part of land dealings since only less than 20% of land in is registered Uganda (Wabineno-Oryema, 2016). This also means that these two institutions cannot be ignored as opposed to the religious institutions who do not have much impact on the land governance system of the country thus not considering them here.

14. 4. 1. 2. Rules and Regulations governing Land Governance in the different institutions.

In the formal setup, normally the rules of the game are the legal frameworks put in place by the Government of Uganda to regulate land, land use and land management. There are a number of legal and policy frameworks already in place to ensure that both private and public land is regulated. These legal provisions have been broadened enough to cover all the different land tenure systems in the country. The rules and regulations in the formal setting include: The 1995 Uganda Constitution, The National Land Policy of 2013, The Land Act, Cap 227, 1998 (as amended), The Land Acquisition Act, Cap 226 of 1965, Registration of Titles Act, Cap 230 of 1924 and the Physical Planning Act, No. 8 of 2010.

When it comes to traditional institutions, the key principle regulation of land management under this system is the customary law in which the customs and norms of the particular community are enshrined. The traditional leaders are envisaged as the custodians of these customs and are expected at all times to hold the values of fairness and reconciliation in pursuit of their roles as the land administrators.

Under the informal kind of arrangement, there are no clear guidelines that govern the establishment of transactions and operations in this system. Players and actors in this system tend to lean on either the tradition or the formal system for the rules to be used. The choice of which rules to be used (whether traditional or formal) will largely depend on a number of factors including: convenience and expedition, the trust and knowledge the actors possess on the available rules on either sides. For instance one of the real estate dealers interviewed in this study revealed that, he normally first seeks to explore the provisions in traditional system especially in matters where customary land is involved before invoking the legal provisions established in the formal laws pertaining to land. To him this is always a quick and cheaper option since formal legalities are always lengthy in time and costly financially. He also notes that many

people have more trust in the traditional rules than they do in the formal laws that have occasionally been exploited by those in authority to the disadvantage of the poor and less privileged.

14. 4. 2. Main Land Governance Processes in the different institutions.

There are different land governance processes that government and other actors carry out and all these processes are geared at governing land very well. Whereas in the formal settings all the processes are governed by law, in the informal setting processes are mainly carried outside the law and in the traditional setting it is a hybrid of the two.

a) Formal arrangement

i. Formulation and implementation of land related laws

In the formal arrangement, the land governance processes include among others policy and regulation formulation and implementation. The central government through the line Ministry, Departments and Agencies is charged with the main responsibility of designing, formulating, developing and implementation of all land policies, laws and regulation that govern land in Uganda. The policies, laws and regulations form the overarching framework within which all other actors operate. For example these policies set the upper and lower boundaries within which the informal land sector operate such that it becomes illegal for players in this sector to transact any business outside such domains of the law.

ii. Land Use Planning and Management

The Department of Land management in the MoLHUD have this as part of their core mandate. With the help of a multiple of other agencies; DLBs, ULC, Planning authorities, National Environmental Management Authority (NEMA) among others, the department aims at ensuring that this process promotes more desirable social and environmental outcomes as well as more efficient use of resources. When properly executed, the process can help mitigate negative effects of land use and can enhance the efficient use of resources with minimum impact on the future generation.

iii. Adjudication and subdivision.

As the value of land continues to increase in Uganda, subdivision of land has become inevitable. This is because those who have land are willing to subdivide and give as gift, inheritance or even sell a part of the land they own and they remain with another portion while there is also a lot of demand for land for investment in the urban areas. The MoLHUD therefore is charged with responsibility of regulation the subdivision processes with the view of ensuring that the processes ae legal, demonstrable and sustainable.

iv. Land registration

Titling and certification to obtain a document that authorizes and verifies ownership and use of land is also another process. In Uganda, the law provides for two types of certificates: a certificate of title issued by a Registrar of Titles under the Registration of Titles Act (Cap 230) which shows the ownership rights on mailo, leasehold and freehold tenures; and a certificate of occupancy which is issued under the Land Act as a Certificate of Customary Ownership (CCO) on customary land or as a Certificate of Occupancy (CO) to lawful or bonafide tenants.

v. Conflict and dispute resolution

Conflict and dispute resolution is one of the mandates of the formal sector through the judicial system and land tribunals. In Uganda, it is now mandatory to use mediation before going to court for litigation more so on civil cases (Esther and Ogwapit, 2017; Akao and Ekemu, 2019). Mediation was rolled out to all divisions of the High Court and is now mandatory prior to proceeding to litigation with a civil matter and as such, the public is beginning to embrace it and see its advantages. The institutions that are in charge of dispute resolution in the formal systems include District Land Tribunals, High Court and Magistrate courts, Local Council 1 courts.

b) Processes in the traditional sector.

Being a complete structure in their own setting, traditional institutions also tend to engage in a number of processes either at a strategic level (top level planning and formulation) or at functional level(implementation level). In Policy formulation and implementation for instance, traditional institutions have engaged in land policy formulation by the formal sector either as key stakeholders for consultations or in other cases they have formulated their own policies in form of bylaws and ordinance to govern land processes, management and land use in their jurisdiction. This is the context of strategic participation. Functional participation on the other hand has been where the institution has helped in the implementation of policies developed by the central government.

The other process is the one of dispute resolution by use of traditional or call them customary methods to settle disputes. The Land Act 1998 recognizes customary law in dispute and conflict resolution on

land held under customary tenure and this is where most of the traditional institution lands fall. Based on Esther and Ogwapit (2017), the act points out that where the courts deem it necessary for disputes to be solved by traditional mediation then parties will be allowed to use the said mechanism up to a period of 3months and both parties can go back to formal proceedings if they fail to reach an agreement. The traditional or clan elders use their customs to hear the case.

c) Processes in the informal sector.

In the informal sector, many processes are carried out that are out of the law but similar to the formal sector. There is a process of dispute resolution where by formal leaders can serve as conciliators, mediators, negotiators, or arbitrators4. They also participate in policy formulation and implementation as stakeholders. They also formulate their own policies that govern them in their informality. There are also processes of subdivision and transfer of land informally. These transactions are usually endorsed by the leaders of the informal settings.

14. 4. 3. Conflicts that emanate from existing land governance arrangements

14. 4. 3. 1. Type of conflicts that exist

i. Boundary conflicts

Boundary disputes have persisted because of poor land demarcation procedures as boundaries are unclear and non permanent. Land boundary conflicts are the most experienced conflicts in Uganda (Rugadya, 2009; Knight, Adoko and Eilu, 2013; Esther and Ogwapit, 2017). According to Mwesigye and Matsumoto (2013) even when boundary marks are used such as plants and edges, they can easily be removed thus causing conflicts. When boundaries are not clear then there are instances of trespass informal of illegal settlements and these are cases of weak land-governance institutions and implementation.

ii. Government compulsory acquisition and takeovers.

Government in some instances has made attempts to acquire private land for government projects and in the interest of public business. This takes cases of projects like public road constructions, dams and in takeovers of places where minerals have been discovered. While the constitution through article 26 provides for adequate and prior compensation by government, many times this has not happened causing conflict between the community and the state as people resist government projects in the fight to retain their ownership and occupancy rights on the land. Therefore it can be said that there are issues of unfair and delayed compensations.

iii. Informal land transactions and multiple allocations of land

This is evident mostly in the informal sector as this is not regulated by the government or any legal framework, however this can also happen in the formal market. According to Wabineno-Oryema (2016), the Government of Uganda only regulates the process of land registration but not land sales and purchases. Selling and buying land or property is left in the hands of the transacting parties to do due diligence to make sure that the transaction is right and this is a case of titled land. In the case of untitled land it's even worse as there are informal brokers who perform the whole process from advertising up to final transaction. Then you find that a piece of land can be sold to more than one person. Also, the brokers can mediate the selling or buying of protected land which in long run brings in conflicts. The other case is where land officers can do double or triple allocations of one piece of land.

iv. Competing uses over land resources

In the absence of land use plans competition arises between uses on the same land for different purposes. Competition between farmers and pastoralists competing over land that can be used for farming or grazing is a typical example and according to Ochieng (2007) such competition cause insecurities amongst the competing communities.

14. 4. 3. 2. Root causes of the conflicts

Land Governance in Uganda has had issues and challenges some dating back from the colonial era to date while others manifested along the way. Below is a discussion of some root causes of conflicts in the land governance process of Uganda.

i. Ignorance of masses/population concerning land governance.

According to Amongi (2017), there is lack of sensitization of masses/different stakeholder on

4 United Nations Interagency Framework Team For Preventive Action 2012, Toolkit And Guidance For Preventing And Managing Land And Natural Resources Conflict- Land And Conflict accessed on 18th March 2014 from http://www. un. org/en/events/environmentconflictday/pdf/GN_Land_Consultation. pdf

land related issues including the new innovations and adoptions being made in the land management systems of Uganda. An example is a case where people do not know what it takes to get land registered and as such they employ agents such as lawyers, surveyors, brokers etc. This has led to a problem of high transaction costs in terms of fees and time and these agents need to be paid on top of the accepted fees and search fees

ii. Legal Framework

Legal framework is another issue affecting the land governance arrangement in Uganda. Some of the laws are outdated and cannot hold for the current situation while others are overlapping or duplicates. Whereas some laws such as the land Act 1998, Physical Planning Act 2010, National Land Policy 2013, have just been formulated or amended or repealed, there are laws that are very outdated and no longer hold. These include amongst others: The Land Acquisition Act 1965, Registration of Titles Act,1924, Survey Act 1939. Some of the provisions in these laws were imported from the British and as such the Government is getting it hard to operate as of now.

Also the ambiguity in some of the land laws have led to conflicts in the land governance process and procedures in Uganda because they create unclearness of the law. For example the Land Act of Uganda still describes land tribunals as an avenue for solving land conflicts yet on ground they are not operational. Also whereas for example in the customary law it is clear that customary disputes will be resolved through the traditional settings, there are some conflicts in the traditional institutions that may not be solved by customs and norms but by other means like the judicial system.

There is failure to enact or implement land related laws on time which cause land governance conflict as the different actors will be operating either under no law or outdated laws. This is problematic as there is no clear and well defined jurisdiction to limit operations of all actors in the land governance sector. This also leads to poor governance as objectives of the land related laws are not met rendering them useless to some extents. An example can be taken from the 1998 Land Act.

According to Rugadya (2009), there are challenges in implementing the land act and as such it can be noted that some of the objectives of the land act such as to redress historical imbalances and injustices in the ownership and control of land and to provide security of tenure to all land users and the lawful or bonafide occupants on registered land have not be met and these have caused problems of massive evictions and land grabbing in Uganda.

iii. Lack of systems that register the continuum of rights is a challenge

Even if the land administration system acknowledges the presence of the different rights that exist in Uganda, only a few are recognized and registered. However with the high growth rates of urbanization in Uganda (UBOS, 2016), informal settlements have not been secluded in the growth and these cannot be ignored as this is where the unregistered land rights are witnessed most. When solutions are not sought on how to regularize the unregistered rights, these will lead to problems of land disputes and lack of government to plan and also earn revenue out of these settlements.

Uganda has a challenge of having multiple land tenure systems in operation. There are statutory tenures running parallel with the customary settings. Dualism of land tenure or multiple tenure comes with legal pluralism as there are different legal frameworks for the different tenure systems. According to Bruce (2017)"title":"Land Tenure Dualism in China: How the Dichotomy between State and Collective Ownership Has Shaped Urbanization and Driven the Emergence of Wealth Inequality","type":"paper-conference"},"suppress-author":1,"uris":["http://www.mendeley. com/documents/?uuid=2e3f3cf7-d4a3-49d8-9176-7ed1bdcc546d"]}],"mendeley":{"formatted Citation":"(2017, statutory tenure is non dynamic in nature as such rules and regulations take long to be changed but the same cannot be said of customary tenure. Customary land tenure is dynamic and is ever evolving therefore the rules must also change but this is not the case. Instead in most countries customary rules are frozen in time and this leads to conflict (ibid) as what is being practiced becomes different from what the law is saying. Such type of land governance arrangements where there is legal pluralism causes a lot of confusion, overlapping authority and conflicts (Uganda National Land Policy, 2013) in the land governance system of countries

iv. Unclear and overlapping institution mandates

Overlapping mandates imply that different land governance actors have no clear boundaries of operation thereby cause each actor to go overboard on what duties and roles they are supposed to perform thereby having more than one actor performing the same duties. According to Tuladhar (2015), overlapping

institution mandates is one of the reason as to why land governance is often poor. This is because when there is unclear and overlapping mandates, there are cases of contradictions and parallelism which causes confusions in the operations of the land sector (Mundial, 2010) thus conflicts in the land governance processes and between actors. The case of unclear mandates could be both vertical and horizontal. For instance in Uganda, you find the District Staff Surveyor and the Senior Staff Surveyor not having clear demarcations of roles. As such you find that they are in conflict on who should do what and sometimes fighting over particular roles. But it could also be a case of ministry or departments fighting over mandates to manage land.

v. Complicated procedures and bureaucracy tendencies
There are a lot of complicated procedures and bureaucracy in the land governance processes in Uganda. it takes ten procedures to register property in Uganda which is nearly double the average in the Eastern Africa region (Doing Business, 2016). The complicated procedures and bureaucracies have led to people opting for either informality or trying to get short cuts to have projects executed which in turn has led to conflicts either within or between land governance processes and actors. People appreciate the simplicity and flexibility of traditional procedures for acquiring land which is very fast as compared to the statutory procedures which are long and yet may not offer an incentive to have land registered as there may not be guarantee of security.

vi. Corruption
Corruption tendencies in the land governance sector is very high as noted by Business Anti-corruption Portal (2018). According to Doing Business (2016), investors encounter a lot of corruption when trading with the land authorities in Uganda. According to Van Der Molen and Tuladhar (2006), although there is no agreed definition of corruption, they cite UN-HABITAT (2004) defining corruption as misuse of office for personal gains which includes things such as bribery, nepotism, favoritism and fraud amongst others. Because of corruption, decisions made are sometimes contrary to what the law demands and this culminates into poor land governance.

14. 4. 3. 3. How do land Governance Processes contribute to conflict

i. Lack of transparency and accountability
This is perpetuated by inequitable systems and processes in the Land Sector institutions which in the end contributes to the inequality of land distribution and land insecurity due to lack of the appropriate mechanisms to resolve land problems. On titled land, and in particular in urban and peri-urban areas, tenure security is undermined by the inaccuracy or incomplete nature of land records as a result of poor record keeping, out-dated systems, processes and records which result in the proliferation of land disputes. The situation is compounded by the fact that the Land Register has got divorced from the real and current situation on the ground, which situation has been exploited by fraudsters who impersonate landowners, declare living persons dead or vice versa, forge certificates and illegally sell land to unsuspecting buyers. (Esther and Ogwapit, 2017)

ii. Government compulsory acquisition and takeovers.
Goverment in some instences has made attempts to acquire private land for government projects and in the interest of public business. This takes cases of projects like public road constructions, dams and in takeovers of places where minerals have been discovered. While the consititution throught article 26 provides for adequate and prior compensation by government, many times this has not happened causing conflict between community and state as people resist government projects in the fight to retain their ownership and occupancy rights on the land.

iii. Long and cumbersome procedures of land registration
These procedures breed corruption since in most casses people need their land registered faster. As such people identify that loophole in the system and the workers in the registration chains take advantage by accepting bribes and considering the fact that their salaries are too low to match the living conditions in the country.

iv. Informal transaction processes of land
The informal processes are to a large extent dealt with by local leaders. Mostly, the local leaders are involved in witnessing land sales in informal settlements. Conflicts may arise where the local leaders fail to verify ownership rights or bless a transaction for a property that had disputes before transacting. The formal processes may contribute to conflicts where land acquisition takes place and procedures as spelt out in the laws are flouted. This could be inadequate compensation and very lengthy processes to accomplish the acquisition with delayed compensation.

v. Different and undocumented rules of precedence

Most land holdings under traditional settings are not registered and protected hence strong contribution to boundary conflicts. The unwritten laws guiding traditional settings are not easily enforced. Within the traditional settings you find laws applied differently because there are not well documented rules of precedence

14. 4. 3. 4. How conflicts in land governance are addressed

A. Conflict resolution under Formal land governance structure.

Before the Constitution of 1995 and the Land Act of 1998 guide on how land conflicts can be solved in the formal settings.

i. Land Tribunals

Land tribunals were created to bring services of conflict and dispute resolutions on land nearer to the people but also solve on the case of courts being very expensive for many ordinary people to afford. Instead of people running to courts which were few and had a lot of other issues to handle, these tribunals would be a better option. According to the Land Act of Uganda, each district was supposed to have a land tribunal but because of lack of financial and human resources capacity, this was impossible. Few districts had land tribunals and these ended up being shared by various districts to meet the demand of dispute resolution at the districts. Because of this scenario, these land tribunals had a lot of backlog cases to handle as they did not have funds to sometimes convene when they had to. Land tribunals although still laid out in the current Land Act, are not functional anymore as they were replaced. Since there was lack of funding for the tribunals to perform their duties and responsibilities, their authority was transferred to the chief magistrates' court and the magistrate grade 1 court.

ii. Local Council Courts (LCC)

Unlike the tribunals that are found at district level, these are found at every village, parish, town, division and sub county level. LCC deals with land matters under the customary tenure system only and these are the first courts you go to before advancing to other levels to have your dispute under customary land resolved. These have the mandate of asking for Reconciliation, Declarations, Compensation, Restitution, Costs or an apology when dealing with cases

iii. Mediation

There is also mediation which is stated under the Land Act Section 89. Before disputes are taken to the courts of law for litigation these days, mediation has to be done compulsorily. The government also established what is known as land courts. Land courts came at a time the public was complaining that the land tribunals were not efficiently performing their duties. Land courts are headed by magistrates and they deal in only land cases. According to Esther and Ogwapit (2017) land cases have been disposed off faster than when tribunals were the ones handling them and this is because the sole responsibilities of land courts is to handle only land cases.

B. Conflict resolution under Traditional or Customary land governance structure

Under customary tenure, disputes are often part and parcel of social reconstruction in specific community settings. The traditional or clan elders use their customs to hear the case. The Land Act 1998 specifically recognized the role of customary law in dispute settlement and mediation in relation to land held under customary law. Where a dispute is because of a customary system of owning land, the traditional or clan elders can hear the case or can be mediators and help the people who are disagreeing to reach an agreement. In case the traditional system fails, parties can go to formal judicial system.

C. Conflict resolution under Informal land governance structure.

The setting does not provide for a well streamlined structure of handling and later managing conflicts arising from land processes under this structure. Instead the actors resort to either of the two systems (whether traditional or formal) for resolving their disputes. Again here, the choice of which mechanism to explore depends among other factors on the convenience, the expedience of the dispute resolution process and the cost in terms of time and finance. According to Mr. John Magandaazi the Executive Director of Jomayi Property consultants, a leading real estate dealer in Kampala, conflicts arising from their transactions with their clients normally determine which procedure and system to follow for resolving the conflict. For instance disputes arising from ownership and right to occupancy are always resolved through mediations and later compensations. However matters regarding customary land are first referred to the community and cultural leadership for determination. To him all land disputes can adequately be resolved under these alternatives without engaging formal courts of law. This is because courts are costly, and have lengthy processes to deal with. Only in extreme

cases are matters referred to courts of judicature and such cases are either referrals or criminal in nature like in cases of fraud.

D. Other approaches to solving conflicts

i. Reconciliation and negotiation

Other Alternative Dispute Resolution mechanisms such as reconciliation and negotiation have been used to solve conflicts on land. This approach has been used regardless of the conflict being or emanating from the informal, traditional or formal arrangement. It has proved to be a better way of conflict resolutions than the courts of law as it still preserves relations amongst the conflicting parties.

ii. Witchcraft

Witchcraft is one approach that is used regardless whether it is in an informal, formal or customary sector. For instance according to Otto (2018), the Acholi people are practicing witchcraft to solve land disputes and conflicts. This is because the judicial system of solving conflicts takes a lot of time as there is an accumulation of previous cases so this frustrates the complainants thus witchcraft. With the massive evictions and land conflicts in place, violence and witchcraft is the way to go (Business Focus Reporter, 2017) as those who are powerful in government and have money have used politics and money to grab land.

14. 5. Way Forward

The following interventions are suggested to improve land governance system in Uganda.

i. By combining the land governance systems

The different land governance systems should come together and see how these institutions can be combined or blended into one. However this may be a difficult task as long as all land institutions still have their operations and settings accepted and recognised by the government.

ii. Land governance information sharing

There should be regular meetings between the different actors to also share information and forge ways of having land governance run effectively and efficietly. For exampe the government should always find ways to interact with people in the informal settlements inorder to make sure that they try to formalise and eventually legalise their operations according to the agreed standards. This could be the case with all these actors meeting after a given duration of time to discuss land governance issues affecting them.

iii. By redefinding/revising laws to avoid overlapping duties

Since most of the laws governing the land governance processes are old, these should be repealed. There is need to redefine land government framework processes so that each land governance actor is well factored in and their roles and duties well defined and demarcated. This can be achieved through clearly implementing law based on the right cause and not pressure from particular groups. Also since some laws are colonial based, they need to be revised.

iv. Documenting proper rules of precedence

This will help on defining boundaries for the traditional institutions as they will be confined to certain practices that cut across. It will be a generic document to help on the running of the traditional institutions.

14. 6. Conclusions

Based on the findings, it can be seen that there are different actors in land governance and all these actors use different arrangements to deal with land. However whereas we have statutory law that helps regulate land arrangements, we also have customary law to regulate land arrangements. These work along each other but also due to the lack of knowledge and unclear laws, the different actors are sometimes torn on what should be done. So you find that statutory law has its particular limits and also customary law has its limits. The best to do is to let the institutions work together to forge a way for the better land governance of the country.

Land disputes do not only stifle investment on land, they also divert scarce resources (labour, time and money) to solve them, thus impacting negatively on productivity and household income generation, resulting into heightened poverty levels. Quite often land disputes result into destruction of property and, in extreme cases, even loss of lives. Very often, the disputed land becomes a 'no-go' area and is not available for use while the dispute lasts, which results in the withdrawal of a critical factor for wealth-generation from productivity. Thus, there is obvious need to find effective ways of resolving and/or mitigating land disputes particularly for poor households and within or between land governance processes.

References

Akao, H. and Ekemu, J. P. (2019) 'Roots of alternative dispute resolution in Uganda', *Daily Monitor,* 14 January.

Amongi, B. O. (2017) *A powerpoint presentation on*

Improving Land Administration for Good Governance.
Auditor General (2015) *The Financial Statements of Ministry of Lands, Housing and Urban Development for the Year Ended 30th June, 2015.* Kampala.
Behr, D. (2017) 'The ambiguous state-traditional relationship in Uganda and Malawi: Repercussions on good land governance?', in *Annual World Bank Conference on Responsible Land Governance: Towards an evidence based approach. 20th- 24th March.* DC Washington.

BLB (2018) *The Land Title Access Financing Initiative (LAFI), Buganda Land Board.* Available at: http:// bugandalandboard. or. ug/index. php/news/117-lafi (Accessed: 15 August 2018).

Boone, C. (2014) *Property and Political Order in Africa: Land Rights and the Structure of Politics.* Cambridge: Cambridge University Press.

Bruce, J. W. (2017) 'Land Tenure Dualism in China: How the Dichotomy between State and Collective Ownership Has Shaped Urbanization and Driven the Emergence of Wealth Inequality', in *World Bank Land and Poverty Conference, March 20-24.* Washington DC.

Business Anti-corruption Portal (2018) *Uganda Corruption Report.* Available at: https://www. business-anti-corruption. com/country-profiles/uganda/ (Accessed: 7 February 2019).

Business Focus Reporter (2017) *Witchcraft, Violence A Solution To Land Question – M7 Advisor, Business Focus.* Available at: https://businessfocus. co. ug/ witchcraft-violence-a-solution-to-land-question-m7-advisor/ (Accessed: 15 March 2019).

Deininger, K. and Castagnini, R. (2006) 'Incidents and Impact of Land Conflict in Uganda', *Journal of Economic Behavior & Organization,* 60(3), pp. 321–345.

Doing Business (2016) *Doing Business 2017: Equal Opportunity for All, World Bank.* Available at: http:// www. doingbusiness. org/en/reports/global-reports/ doing-business-2017 (Accessed: 10 February 2019).

Esther, O. and Ogwapit, J. F. (2017) *Dispute Resolution:The Land Governance Assessment Framework Technical Report.* Kampala.

Green, E. D. (2010) 'Ethnicity and Nationhood in Pre-Colonial Africa: The Case of Buganda', *Nationalism and Ethnic Politics.* Routledge, 16(1), pp. 1–21.

Knight, R. , Adoko, J. and Eilu, T. A. (2013) *Protecting Community Lands and Resources: Evidence from Uganda.* Available at: https://namati. org/resources/ protecting-community-lands-and-resources-evidence-from-uganda/.

Knight, R. S. (2010) *Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation.* Rome, Italy: FAO.

Van Der Molen, P. and Tuladhar, A. (2006) 'Corruption and Land Administraton', in *Shaping the Change XXIII FIG Congress.* Munich, Germany: FIG.

Monitor Reporter (2012) 'The 1900 Buganda Agreement that sealed colonial rule', *Daily Monitor,* April.

Mundial, B. (2010) *Assessing & monitoring governance in the land sector: The Land Governance Assessment Framework.*

Mwesigye, F. and Matsumoto, T. (2013) *Rural-rural Migration and Land Conflicts: Implications on Agricultural Productivity in Uganda.* Tokyo, Japan.

Ochieng, Z. (2007) *Uganda: Scramble for scarce resources as grazing lands shrink.*

Otto, I. A. (2018) 'Acholi resorting to witchcraft to settle land rows', *Sunrise Newspaper,* 23 March. Available at: http://www. sunrise. ug/news/201803/acholi-resorting-to-witchcraft-to-settle-land-rows. html.

Palmer, D. , Fricska, S. and Wehrmann, B. (2009) *Towards Improved Land Governance.*

Peters, P. E. (2009) 'Challenges in Land Tenure and Land Reform in Africa: Anthropological Contributions', *Journal of World Development.* Elsevier Ltd, 37(8), pp. 1317–1325.

Peters, P. E. (2009) 'Challenges in Land Tenure and Land Reform in Africa: Anthropological Contributions', *World Development 37 (8),* . , 37(8), pp. 1317–1325.

Quinn, J. R. (2014) 'Tradition?! Traditional Cultural Institutions on Customary Practices in Uganda', Africa Spectrum, 49(3), pp. 29–54.

Rugadya, M. A. (2009) Escalating Land Conflicts in Uganda: A review of evidence from recent studies and surveys. International Republican Institute (IRI) and Uganda Round Table Foundation.

Tuladhar, A. (2015) 'Sino-Dutch Spatial Planning and land Registration Expert Meeting Program'. Beijing, Chin.

UBOS (2016) *The National Population and Housing Census 2014 – Main Report.* Kampala. Available at: https:// www. ubos. org/wp-content/uploads/publications/03_20182014_National_Census_Main_Report. pdf.

Uganda National Land Policy (2013).

UWONET (2015) *Duty Bearers Handbook on Violance aganist Women/Girls and Women Land Rights.* Kampala: UWONET Secretariat.

Wabineno-Oryema, L. M. (2014) 'Changing Face Of Land Tenure In Uganda: Period Before 1900 To Date', *Journal of Land Administration in Eastern Africa,* Vol. 2(Issue 1), p. 15.

Wabineno-Oryema, L. M. (2016) *A Real Property Register to Support the Property and Credit Market in Uganda. KTH.*

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