

Land and Natural Resources Conflict Management in Kenya

*Strengthening civil society in conflict management and
Natural resources management*



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Acronyms

ACORD	Agency for Co-operation and Research in Development
ADR	Alternative Dispute Resolution
ASALs	Arid and Semi Arid Lands
CSOs	Civil Society Organizations
CBO	Community Based Organization
CFA	Community Forest Association
CEWERU	Conflict Early Warning and Early Response Unit
CEWARN	Conflict Early Warning and Response Mechanism
CPRR	Community Peace Recovery and Reconciliation
DRA	Development and Reconstruction Authority
DPC	District Peace Committee
DCs	District Commissioners
EU	European Union
EMCA	Environment Management and Coordination Act
GSDRC	Governance, Social Development Humanitarian and Conflict
GoK	Government of Kenya
ICE	Inter-governmental Committee of Experts
IGAD	Intergovernmental Authority for Development
ILC	International Land Coalition
ITDG	Intermediate Technology Development Group
KFS	Kenya Forest Service
KNCHR	Kenya National Commission on Human rights
KEFRI	Kenya Forestry Research Institute
KWS	Kenya Wildlife Service
LPI	Land Policy Initiative
LDSB	Land Development and Settlement Board
MACOFA	Mau Community Forest Association
NRM	Natural Resources Management
NEC	National Environmental Council
NEMA	National Environment Management Authority
NET	National Environmental Tribunal
NEAP	National Environment Action Plan Committee
NSC	National Steering Committee on Peace-building and Conflict Management
NLP	National Land Policy
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCC	Public Complaints Committee
SERC	Standard and Enforcement Review Committee
SKLA	Systematic Knowledge and Learning Approach
UNFCCC	United Nation Framework Convention on Climate Change
UNEP	United Nation Environment Programme
UNDP	United Nation Development
UNSSC	United Nation System Staff College
WRUA	Water Resource Users Association
WRMA	Water Resource Management Authority
ZERO	ZERO Regional Environment Organization

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1.0. Background:

This study was necessitated due to the fact that currently on the African continent centres of knowledge on land issues are scattered and there is no efficient way to disseminate information, despite the use of social media.

On the other hand, the ILC Africa Platform itself does not have a knowledge system in place, and its organisations invest few resources in knowledge management. However, ILC Africa deals every day with many types of knowledge. Most of this knowledge is integral to its own work, deriving from interactions with its member organizations, from discourse with scholars, and international organizations involved in land rights, rural development and poverty reduction. For the most part, this knowledge is not systematic, explicit or codified. It is mainly held by individual staff of member organisations. As a result, acquisition and exchange of knowledge are fragmented and it is difficult for others – whether within or outside the organization – to locate and access ILC Africa learning in cost-effective ways.

In addition governments on the African continent are increasingly moving towards a more integrated system of policy formulation through regional and continental processes, including the area of land policy. To have a greater influence in these processes, civil society organisations need to ensure that their advocacy is built on strong factual information from national, regional and global spheres. This can only happen if there is a dynamic easy to manage system in place, to disseminate and incorporate the findings from both new and old knowledge that has been generated.

Furthermore, with a multiplicity of global and African actors now engaging on land issues, and a raft of new land policies being formulated, mechanisms for interaction between: community, organisations, governments and, regional institutions will be key in defining a just land agenda for Africa. The AU-ECA-ADB Land Policy Initiative has done a great deal to create that space—movements and CSOs need to be equipped to enrich the work of the LPI with informed and well-articulated arguments from the constituencies that they represent.

ILC secretariat is currently putting in place a systematic knowledge and learning approach (SKLA) which is in line with the findings of the Mid Term Review of the ILC global as well as internal assessments that were carried out. It is important for the ILC Africa Platform to organise itself into a structure that contributes and benefits from these processes.

In addition, ILC is running some very innovative knowledge tools on land including the Land Matrix and Land Portal. In order to both shape and benefit from these initiatives, the ILC Africa embarked on developing knowledge, management system for the platform. In order enrich the knowledge management, this study on land conflicts was commissioned with a view informing the future work of ILC Africa and will be used to test the knowledge management system.

The study was conducted by Mau Community Forest Association (MACOFA) and coordinated by ZERO since it is mandated to evolve Knowledge Management platform.

1.1. The study

Purpose of the study is to equip civil society organizations (CSOs) with relevant information and knowledge on land and natural resources based conflicts and resolution mechanisms available so that they are able to engage proactively in land and natural resources management from an informed point of view and be able to collaborate and network with relevant bodies and stakeholders with informed and well articulated arguments from the constituencies they represent. The content of the study will likewise be used in ILC Africa knowledge management platform that will be accessed by a wide range of actors for wider sharing and engagement.

The study is informed by the following objectives;

1. To strengthen civil society in conflict and natural resource management in the Great Lakes region.
2. To identify existing gaps from various actors in the Great Lakes region who have intervened in natural resource conflict management, with issues revolving around land tenure administration.
3. To identify existing tools for conflict management and existing best practices

Despite the above objectives focusing on the Great Lakes region, this study focused on Kenya as one of the countries within the great lakes region; other country based studies were commissioned to the ILC partners based in respective countries. The process of the study and results are outlined in subsequent components of this report.

2.0. Methodology and data sources:

The methodology for undertaking the study was as follows:

- Desk review of existing literature and data in key documents relating to the study subject matter
- Focused group discussions
- Data analysis
- Report preparation

Primary Data

Primary data was collected through focused group discussion. Focus group discussions were conducted within Nakuru, Kericho and Baringo counties. It involved 14 community based organizations (CBOs), eight Community Forest Associations (CFAs, and two Water resources

users Associations (WRUAs). The discussion reached 230 respondents who include local leaders, and individuals who are involved in land and natural resources management and hence clearly understood issues relevant to the study topic.

Secondary Data

The secondary information was also gathered through extensive desk review of existing literature. A wide assortment of documents, both published and unpublished was assembled and carefully reviewed to make optimum use of data already generated. The reviewed document includes the following:

Reviewed studies

1. **Factors leading to squatter problem in Rift Valley Province in Kenya;** *Omboi Bernard Messah* and Lucy Gachaba M.*
2. **Decolonizing Kenya, Zimbabwe and South Africa: The “Land Issue” ;** Peter Davis
3. **Kenyan Land Disputes in the Context of Social Conflict Theories;** William Kalande
4. **Politicised Ethnic Conflict in Kenya a Periodic Phenomenon;** **Walter O. Oyugi,**
5. **Kenya in crisis, Africa Report N°137 – 21 February 2008;** International crisis group
6. **Conflict motives in Kenya’s North Rift Region;** Jan Van den Broeck, IPIS
7. **Between a rock and hard place: Armed Violence in African Pastoral Communities;** *(Conference Background Paper) by UNDP*
8. **Conflict assessment; northern Kenya;** *PRAGYA*
9. **East Africa regional conflict and instability assessment;** *USAID*
10. **Will Community-based water Management Solve Africa’s Water Problem? The performance of Water Resources Users Association in the Upper Ewaso Ng’iro River basin, Kenya;** Joost Aarts,
11. **“Water Resources Utilization, Conflicts and Interventions in Tana Basin of Kenya”;** Jones F. Agwata
12. **“Global Warming and Conflicts over water in East Africa”;** Annabell Waititu
13. **“Water Conflicts in Kenya; Asymmetric Water Conflicts in Athi River Basin”;** Gerhard Geiger
14. **“Water Resources Users Associations”;** *Around Mount Kenya –Establishing operation and potential for conflict prevention;* Rupert Watson

Reviewed policy and legislative documents

Policy Documents

1. Vision 2030
2. National Environmental Policy 2013
3. The natural resources Development and Management Policy 2012
4. The National Energy Policy 2014
5. The Forest Policy 2014
6. National Policy on Peace-building and Conflict Management

Legislative Documents

1. Constitution of Kenya 2010
2. National Land Policy
3. Kanya Land Act 2012
4. The land registration Act 2012
5. Land tribunals Cap 303
6. The National Land Commission Act 2012
7. Trust Lands Act 1970/Revised 2009
8. Land Control Act 1967/Revised 2010
9. Land (Group Representatives) Act 1970/Revised 2012
10. Land Adjudication Act 1977/Revised 2010
11. Land Consolidation Act 1977/Revised 2012
12. Environmental Management and Coordination Act (EMCA) 1999/Revised 2012
13. Forest Act 2005/Revised 2012
14. New Forest Conservation and Management bill 2014
15. The Environment and Land Court Act 2011
16. Timber Act 1972/Revised 2012
17. Wildlife Conservation and Management Act 2013
18. Protected Areas Act 1980/Revised 2012
19. Water Act 2002
20. Mining Act 1987/Revised 2012
21. Energy Act 2006

National reports

1. National Land Commission; Progress Report March -2013 – January 2014;
2. Nairobi Peace Initiative (NPI-Africa) and NSC: A validated report of National Conflict Mapping and Analysis with Recommendations for Actors

3.0. Institutional arrangements for NRM for the study area(s):

Below is an analysis of constitutional and other policy provisions, and laws on land and natural resources Management.

3.1. Constitutional and other policy provisions, laws governing land and environment

The Constitution of 2010 establishes a governing framework for Kenya that includes land and environment (chapter 5).

The transitional provisions of the new Constitution require that all existing law should be interpreted with “the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with [the new Constitution].”

The Constitution contains a power to make new laws regarding:

- Community land (Article 63);
- Regulation of land use and property (Article 66);
- Legislation on land (Article 68), agreements relating to natural resources (Article 71); and
- Legislation regarding environment (Article 72).

Article 69 of the Constitution deals with **obligations in respect of the environment**, and provides for the State to:

Ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;

- Work to achieve and maintain a tree cover of at least ten percent of the land area of Kenya;
- Encourage public participation in the management, protection and conservation of the environment;
- Protect genetic resources and biological diversity;
- Establish systems of environmental impact assessment, environmental audit and monitoring of the environment²¹;
- Eliminate processes and activities that are likely to endanger the environment; and
- Utilise the environment and natural resources for the benefit of the people of Kenya

3.2. Overview of laws, policies and institutions relevant to land and environment

3.2.1. Land law and policy

The Land Policy of 2007 was developed through a very consultative process. Stakeholders from the public and private sector as well as civil society were involved in the process. The aim of the National Land Policy is to guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity. In addition, it addresses historical land injustices, land rights of minority communities as well as vulnerable groups. The provisions of the National Land Policy, the Constitution of 2010 and the new land Acts are similar. This therefore implies that the National Land Policy guided the drafters of the new land Acts as well as the land provisions in the current Constitution.

Land ownership, use and management was one of the issues addressed by Kenya's new Constitution. Pursuant to the Constitution of 2010, 3 new Acts of Parliament came into force on May 2, 2012:

- The Land Act No. 6 of 2012;
- The Land Registration Act No. 3 of 2012; and
- The National Land Commission Act No. 5 of 2012.

The new land laws have created the following noteworthy changes:

- One Land Registry and one land registration system (not yet implemented);
- Titles to be called 'certificates of lease' or 'certificates of title' (not yet implemented);
- Three categories of land: public land, community land and private land;
- New legal treatment of non-Kenyan citizens;
- Consent of spouses to certain transactions;
- Creation of the Land and Environment Court;
- New formats for documents (new forms have not yet been prescribed, and old forms are still in use); and
- Creation of the National Land Commission.

3.2.2. Key laws governing land

The Constitution

Chapter 5 of the Constitution of 2010 deals with Land and Environment. Article 60 articulates the principles of land policy and holds that land should be “held, used and managed in a manner that is equitable, efficient, productive and sustainable.” Principles of land policy include:

- Security of land rights;
- Sustainable and productive management of land resources; and
- Sound conservation and protection of ecologically sensitive areas

Chapter 5 of the Constitution of 2010, Article 66, gives the State the authority to regulate “the use of any land, or any interest in or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use planning.

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.

Land Registration Act 2012

This is an Act of Parliament 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.

National Land Commission Act 2012

The National Land Commission is established by Article 67 of the Constitution. The National Land Commission Act makes further provision as to, *inter alia*, the functions and powers of the National Land Commission, qualifications and procedures for appointments to the Commission and gives effect to the objects and principles of devolved government in land management and administration.

Trust Lands Act 1970/Revised 2009

This is an Act of Parliament to make provision for Trust Land (Chapter 288 of the Laws of Kenya). Part IV of the Act provides for setting apart of land by the Government or local authorities and the payment of compensation to the affected parties. Under Section 4 of the Act, a local authority is empowered to divide the Trust land vested in it into such divisions as appear to it to be necessary or expedient for proper administration and each such division is governed by a Divisional Land Board which is headed by a chairman who is appointed by the Cabinet Secretary responsible for land. Section 8 of the Act provides for payment of full compensation which must be prompt. Section 10 of the Act provides that any person who is dissatisfied with the award of compensation may appeal to the Provincial Agricultural Board of the province where the land to be set aside and the final appeal lies in the High Court. Section 12 guarantees the right of access to the High Court to any person claiming a right or interest in land set apart for the determination

of the legality of the setting apart and obtaining prompt payment of any compensation awarded.

Land Control Act 1967/Revised 2010

This is an Act of Parliament enacted to control dealings in agricultural land (Chapter 302 of the Laws of Kenya).

Section 2 of the Act defines Agricultural Land as land that is not within a municipality, township, urban centre or market. The Cabinet Secretary in charge of land housing and urban development can, however, declare by notice in the Gazette a land within a municipality, township, urban centre or market as agricultural land.

The Land Control Board of every land control area is responsible for the issuance of the Land Control Board consent to land owners with regard to transactions that require their consent. If the consent is not obtained, the transaction is deemed void. The decision of the Land Control Board is based on considerations laid down in Section 9 of the Act. They include, inter alia, whether the intended purchaser is likely to farm the land, use the land profitably or already has sufficient agricultural land. The decision of the Land Control Board can be appealed to the provincial land control appeals board or the central land control appeals board.

Land (Group Representatives) Act 1970/Revised 2012

This is an Act of Parliament to provide for the incorporation of representatives of groups who have been recorded as owners of land under the Land Adjudication Act, and for purposes connected therewith (Chapter 287 of the Laws of Kenya).

Land Adjudication Act 1977/Revised 2010

This is an Act of Parliament to provide for the ascertainment and recording of rights and interests in Trust land, and for connected purposes. It governs Trust Land. It is contained in Chapter 284 of the Laws of Kenya.

Land Consolidation Act 1977/Revised 2012

This is an Act of Parliament to provide for the ascertainment of rights and interests in, and for the consolidation of, land in the special areas, and for the registration of title to, and of transactions and devolutions affecting, such land and other land in the special areas and for connected purposes. It governs Trust Land. It is contained in Chapter 283 of the Laws of Kenya.

Environmental Management and Coordination Act 1999/Revised 2012

The purpose of the Environmental Management and Coordination Act, as stated in its preamble, is “to provide for the establishment of an appropriate legal and institutional framework for the management of the environment in Kenya and for matters connected therewith and incidental thereto.”

Prior to 1999, a prominent feature of Kenya’s environmental legislation was its diffuse nature – sectoral legislation contained environmental management components formulated “largely in line with natural resource sectors.” The Environmental Management and Coordination Act is

“based on the recognition that improved coordination of the diverse sectoral initiatives is necessary for better management of the environment.”

It is the main Act of Parliament in Kenya that deals with the management of the environment. It contains 148 sections, schedules, and subsidiary legislations. A large section of the EMCA contains provisions that create institutions for environmental management. Apart from the establishment of these institutions, EMCA also contains provisions on the protection of biological diversity, resources, the coastal zone, and the ozone. The EMCA also consists of subsidiary legislation.

The EMCA requires that ‘any written law, in force immediately before the coming into force of this Act relating to the management of the environment shall have effect subject to modification as may be necessary to give effect to this Act, and where the provisions of any such law conflict with any provisions of this Act, the provisions of this act will prevail. The Water Act, Forests Act, Energy Act and Wildlife Management and Conservation Act were revised after the EMCA came into force.

A court may, on an application made by any person or a group of persons grant an environmental easement. The court may impose such conditions on the grant of an environmental easement as it considers to be best calculated to advance the object of an environmental easement. The object of an environmental easement is to further the principles of environmental management by facilitating the conservation and enhancement of the environment.

Forests Act 2005/Revised 2012 and new Forest Conservation and Management Bill 2014

In brief, this is an Act of Parliament to provide for the establishment, development and sustainable management, including conservation and rational utilization of forest resources for the socio- economic development of the country. Section 2 of the Act provides that the Act shall apply to all forests and woodlands on State, local authority and private land.

It is important to note that the current Forest Conservation and Management Bill 2014 that is almost being passed into law will update the Forests Act.

3.2.3. Land classifications

Chapter 5 of the Constitution of 2010 Article 62 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.

Under Article 60, Land is to be held and used in accordance to principles of equitable access, security of land rights and elimination of gender discrimination in law, customs and practices related to land and property in Land. Article 61 provides that land belongs to the people of Kenya collectively as a nation, as communities and as individuals and classifies land into public land, community land or private land.

The definition of **Public Land** includes all minerals and mineral oils, government forests, game reserves rivers and lakes *inter alia*. Article 62 (2) vests public land in the County Government in

trust for the people resident in the county and the land is to be administered by the National Land Commission. This provision removes the administration of public land from the powers of the President.

In regard to **Community Land**, Article 63 of the Constitution provides that it shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. The definition of community land includes land lawfully registered in the name of the group representatives, land declared to be community land by an Act of Parliament and community forests, grazing areas or shrines and ancestral lands and lands traditionally occupied by hunter-gatherer communities.

Private Land is defined under Article 64 of the Constitution as registered land held by any person under freehold or leasehold tenure.

Article 65 limits landholding by non citizens by providing that a person who is not a citizen may hold land on the basis of leasehold tenure only and any such lease shall not exceed ninety nine years. Article 65 (2) provides that a body corporate shall be regarded as a citizen only if the body corporate is wholly owned by one or more citizens.

3.2.4. Forest land

Forest regime

Kenya's forest management regime consists of:

- Forests Act 2005 (and new Forest Conservation and Management Bill 2014);
- Forest Charcoal Regulations;
- Timber Act 1972/Revised 2012; and
- Environmental Management and Coordination Act 1999.

Forest ownership and use

Ownership of forests is divided into the following categories:

- State forests – The Kenya Forest Service;
- Local Authority Forests – A local authority; and
- Private forests – An individual, association, institution or body corporate.

3.2.5. Land administration

National Land Commission

The National Land Commission is established by Article 67(1) of the Constitution. Its functions, according to Article 67(2) of the Constitution, are:

- a) To manage public land on behalf of the national and county governments;
- b) To recommend a national land policy to the national government;
- c) To advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- d) To conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- e) To initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- f) To encourage the application of traditional dispute resolution mechanisms in land conflicts;
- g) To assess tax on land and premiums on immovable property in any area designated by law; and
- h) To monitor and have oversight responsibilities over land use planning throughout the country.

The National Land Commission Act makes further provisions as to the functions and powers of the National Land Commission and gives effects to the objects and principles of devolved government in land management and administration. The additional functions of the commission are in Section 5(2) of the National Land Commission Act and include:

- a) Alienate public land on behalf of and with the consent of national and county government;
- b) Monitor the registration of all rights and interests in land ensure that public land and land under the management of designated state agencies is sustainably managed for their intended purpose and for future generations;
- c) Develop and maintain an effective land information management system at national and county levels;
- d) Manage and administer all unregistered trust land and unregistered community land on behalf of the county government;
- e) Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management; and
- f) Ensure that all unregistered land is registered within ten years from the commencement of the Act (a term that can be extended by Parliament).

To enable the National Land Commission to carry out its functions effectively, it may establish offices in the Counties. In addition, the Commission, in consultation and cooperation with the national and county governments, is required to establish county land management boards for the purposes of managing public land. The main function of the board is to process applications

for allocation of land, change and extension of user, subdivision of public land and renewal of leases subject to the physical planning and survey requirements.

Environment and Land Court

Article 162 (2b) of the Constitution allows Parliament to establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. In this regard, the Environment and Land Court Act (No. 19 of 2011) was enacted to give effect to the above Article 162 (2b) of the Constitution. The Environment and Land Court has original and appellate jurisdiction to hear and determine all disputes relating to the environment and the use and occupation of, and title, to land. Hence, the court is mandated to hear and determine disputes relating to:

- 1) Environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- 2) Compulsory acquisition of land;
- 3) Land administration and management;
- 4) Public, private and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and
- 5) Any other dispute relating to environment and land.

A party to the proceedings may act in person or be represented by a duly authorized representative.

Some of the orders and relief that the court can give include:

a) Interim or permanent preservation orders including injunctions; b) Prerogative orders; c) Award of damages; d) Compensation; e) Specific Performance; f) Restitution; g) Declaration; or h) Costs.

The Court may adopt and implement, 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.

To ensure that all citizens are able to access its services, the Court may sit at any place as it deems necessary.

Appeals from the court lie with the Court of Appeal.

Under Section 31 of the Environment and Land Court Act (No. 19 of 2011), the Land Disputes Tribunal Act (No. 18 of 1990) is repealed.

Land Control Board

The Land Control Act (Cap 302 of the Laws of Kenya) controls dealings in agricultural land. Agricultural land is defined in Section 2 of the Act. Agricultural land is basically land that is not within an urban area, that is, a city, municipality or a town. The Cabinet Secretary in charge of Land, Housing and Urban Development may by a gazette notice declare a land that is in an urban area as agricultural land and hence the Act will apply to such land. Transactions that fall under the ambit of the Land Control Act include the sale, transfer, lease, mortgage and subdivision of

agricultural land. For any of the above transaction to proceed, the consent of the Land Control Board is required. In addition, if a private company or cooperative society owns agricultural land, it cannot issue, sale, transfer, mortgage or carry out any other disposal of or dealing with any of its shares without the consent of the Land Control Board of the area where the land is situated.

Group representatives

With regards to community land, section 5 of the Land (Group Representatives) Act (Cap. 287 of the Laws of Kenya) provides for incorporation of Group Representatives in a procedure in which an identified group¹⁶⁴ elects not more than ten and not less than three persons to be group representatives of the group. Once the said Group Representatives are incorporated, they have perpetual succession with power to sue and be sued in their corporate name and to acquire, hold, charge and dispose of the group's property. It should be noted that some land in Kenya is owned under such groups and, as a consequence, governed by the Land (Group Representatives) Act. Every group should maintain a register of its members. The register should contain the name of each member, the date he/she became a member, his/her qualifications for membership and, on his/her ceasing to be a member, the date on which and the circumstances in which he/she ceases to be a member

Corrupt transactions

Where public land grants or ownership certificates is obtained or induced through corruption linked to any government official or employee of the National Land Commission, the transaction will be void. Any land acquired through a process involving corruption will be forfeited to the Government. "Corruption" is defined by the Anti-Corruption and Economic Crimes Act 2003, including 'breach of trust' and 'abuse of office.'

3.2.6. Environment laws and regulations

Environmental law and policy in Kenya

In the past and during enactment of the Constitution of 2010 Kenyan laws have explicit provision regarding the right to environment. The 'right to life' was interpreted to protect the 'right to environment' by Kenyan courts.

Kenya's criminal law has been used to deal with environmental harms that also constitute criminal activities; in addition, the Environmental Management and Coordination Act provides for both substantive and administrative offences.

International agreements also form part of the environmental regulatory regime in Kenya. Article 2(6) of the Constitution states that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution. Kenya is party to several international and regional treaties related to environmental governance; in addition, Article 71 of the Constitution subjects agreements related to natural resources to further scrutiny by the government.

Overview of environmental policies in Kenya

Environmental policies are also significant as they establish a framework for implementing the relevant provisions of the Constitution and statutory law.

Vision 2030:

Vision 2030, Kenya's long-term national planning strategy, includes environmental considerations that inform environmental policies. Increasing forest cover is stated as a goal (consistent with the Constitution of 2010), in addition to the harmonization of environment-related laws for better environmental planning and governance.

The National Environmental Policy, 2013:

It provides the strategy for dealing with the country's ever-growing environmental issues and challenges such as environmental governance; loss of biodiversity; valuation of environmental and natural resources; rehabilitation and restoration of environmentally degraded areas; urbanisation, waste management and pollution; climate change, energy, security and disaster management; public participation, environmental education and awareness; poverty; data and information; and, chemicals management.

The Natural Resources Development and Management Policy, 2013:

The goal of this policy is to provide the framework for ensuring that the provisions of the Constitution with regard to natural resources are realised.

The National Energy Policy, 2014:

It pre-supposes the review and amalgamation of the statutes in the energy sector following the adoption of Vision 2030 and the promulgation of the Constitution of 2010.

The Forest Policy, 2014:

The Forest Policy 2014 aims to support "sustainable development, management, utilization and conservation of forest resources and equitable sharing of accrued benefits for the present and future generations of the people of Kenya." It is designed to be consistent with the principles articulated in the Constitution of 2010, and will be implemented via a new forests act (at present, the Forest Conservation and Management Bill 2014 is under discussion for this purpose). This revised policy framework places emphasis on community participation in forestry management (including the recognition of user rights to support sustainable forest conservation and management), including strengthening community forestry associations and introducing benefit-sharing arrangements. It also emphasizes the role of both State and non-State actors in the forest sector, and the role of the forest sector in contributing to economic growth and poverty alleviation goals (including the private sector).

Constitutional provisions relating to the environment

The sections of the Constitution that touch on the environment and its management include the following:

- Chapter 4 on Fundamental Rights and Freedoms;
- Chapter 5 on Land and the Environment; and
- Chapter 10 on the Judiciary and Schedules 4 and 5.

Under Chapter 4, Article 42 of the Constitution states that all Kenyans have a right to a clean and healthy environment. The obligations of the State to ensure that environmental rights are realized are found under chapter 5 of the Constitution. Article 70 of this chapter also gives a right to redress for violation of legal rights. Article 69(b) of the Constitution provides that the State shall strive to ensure that at least 10% of its land surface consists of forest cover.

Reviewing of the existing statutes relating to the environment, it is recognizable that there is still a lot to be done in order to come up with an all-encompassing legislation. Section 72 gives parliament the power to make legislation related to the environment within a time frame specified in the 5th Schedule to the Constitution. In particular, and as far as the environment is concerned, the Constitution states under the 5th Schedule that within five years of enactment of the Constitution, an Agreement related to natural resources shall be enacted by parliament. Another key provision related to the environment under the Constitution is Article 162, which states that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. The Constitutional provision relating to the distribution of roles between the county and national government as it forms the basis of engagement in the course of implementing any environmental projects. The national government is charged with the protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including activities such as fishing, hunting and gathering, the protection of animals and wildlife, water and energy.¹⁸⁴ The county governments are responsible for the implementation of specific national government policies on natural resources and environmental conservation, including soil and water conservation and forestry

3.2.7. Statutory law with respect to the environment

Environmental Management and Coordination Act 1999/Revised 2012

The purpose of the Environmental Management and Coordination Act, as stated in its preamble, is “to provide for the establishment of an appropriate legal and institutional framework for the management of the environment in Kenya and for matters connected therewith and incidental thereto.”

Prior to 1999, a prominent feature of Kenya's environmental legislation was its diffuse nature – sectoral legislation contained environmental management components formulated “largely in line with natural resource sectors.” The Environmental Management and Coordination Act is “based on the recognition that improved coordination of the diverse sectoral initiatives is necessary for better management of the environment.”

It is the main Act of Parliament in Kenya that deals with the management of the environment. It contains 148 sections, schedules, and subsidiary legislations. A large section of the EMCA contains provisions that create institutions for environmental management. Apart from the establishment of these institutions, EMCA also contains provisions on the protection of biological diversity, resources, the coastal zone, and the ozone. The EMCA also consists of subsidiary legislation. This includes; The Environmental Management and Coordination (Public Complaints Committee) Regulations, 2012.

The EMCA requires that ‘any written law, in force immediately before the coming into force of this Act relating to the management of the environment shall have effect subject to modification as may be necessary to give effect to this Act, and where the provisions of any such law conflict with any provisions of this Act, the provisions of this act will prevail. The Water Act, Forests Act, Energy Act and Wildlife Management and Conservation Act were revised after the EMCA came into force.

Forests Act 2005

The Forests Act brought a ‘paradigm shift in forest management’ by emphasizing ‘the principles of public participation in natural resource management. It was enacted by Parliament in 2005 to provide for the establishment, development, conservation and rational utilization of forests. The act is divided in four main parts: the preliminary section deals with the establishment section, then the creation and management of forests, community participation, and enforcement sections. The Forests Act also contains a number of other subsidiary instruments besides those that create forests.

Some of these subsidiary regulations under the Forests Act include:

- The Forests (Participation in Sustainable Forest Management) Rules, 2009;
- The Forests (Harvesting) Rules, 2009;
- The Forest (Charcoal) Rules, 2009;
- Declaration of a Provisional Forest;
- Declaration of Likia Extension Forest; and
- Declaration of Amara Forest.

Establishing a forest conservancy or nature reserve under the Forests Act

The Board of the Kenya Forest Service is mandated to establish forest conservancy areas for the proper and efficient management of forests and may divide such conservancy areas into forest divisions and stations. There is a forest conservation committee in each forest conservancy area whose function is to advise the Kenya Forest Service Board on all matters relating to the management and conservation of forests in that area.

Forest Conservation and Management Bill 2014

It is important to note that the current Forest Conservation and Management Bill 2014 would, if passed into law, update the Forests Act. This bill is intended to be the implementing act of the Forestry Policy 2014. With respect to community participation, the Bill authorizes the formation of community forest associations (under the Societies Act), and proceeds to outline the user rights that can be granted to a community forest association by the Government by a Management Agreement.

Forest (Charcoal) Regulations 2009

The Forest (Charcoal) Regulations 2009 regulations were made under the Forests Act, with the aim of legitimizing sustainable charcoal production. The regulations are intended to limit excessive logging through management and regulation.

Timber Act 1972/Revised 2012

This is an Act of Parliament to provide for the more effective control of the sale and export of timber; for the grading, inspection and marking of timber; for control of the handling of timber in transit; and for matters incidental to and connected with the foregoing. It is contained in Chapter 386 of the Laws of Kenya.

The Act creates the office of Conservator who is the chief conservator of forests. The Conservator is empowered to authorize any person to be a grader of timber. Section 6 of the Act makes it an offence for any person who is not a grader to mark any timber with a prescribed mark.

Under section 7 of the Act, it is an offence for any person who sells or offers for sale any timber under any name, or colourable imitation which does not comply with the specifications of such grade as so prescribed.

Section 8 of the Act imposes a restriction on export of timber. It makes it an offence for any person to export or enter for export any timber of Kenya origin, except under and in accordance with the terms of an export permit issued by the Conservator or by a person authorized by him in writing.

Section 12 of the Act imposes a general penalty of six thousand shillings or to imprisonment for a term not exceeding six months, or to both a fine and imprisonment, for any person found guilty under the Act.

Wildlife (Conservation and Management) Act 2013

The Wildlife (Conservation and Management) Act No 47 of 2013 repeals the original law adopted in 1976, becoming operational on 10 January 2014. It provides for the protection, conservation, sustainable use and management of wildlife in Kenya and for connected purposes. The Act consolidates and amends the laws relating to the protection, conservation and management of wildlife in Kenya. It also emphasizes the devolution of conservation and management of wildlife

to landowners/managers by recognizing that wildlife conservation is a form of land-use, and aims to provide better access to benefits from wildlife conservation.

The Kenya Wildlife Service (KWS) is established under Section 3 of the Act. One of their functions under Section 3A is to formulate policies regarding the conservation, management and utilization of all types of fauna (excludes domestic animals) and flora. The service is managed by a Board of Trustees created under Section 3B(1) of the Act, one of whom is the Director of Forests.

The following provisions of the Act are important:

- Sections 18-20: governance of wildlife-related matters to be largely devolved to a Country level via the formation of County Wildlife Conservation and Compensation Committees;
- Sections 4(d) and 70: defines wildlife conservancies, and recognizes wildlife conservation and management as a form of land-use that has equal status as other land-use types (such as agriculture;
- Sections 73–76: create guiding provisions for access, incentives and benefit sharing;
- Section 65–69: Conservation easements can be formed via a legally recognized agreement between the land-owner and another party. Pending the finalization of the Community Land Bill, legally recognized easements cannot be applied on community land.

Protected Areas Act 1980/Revised 2012

The Act defines a protected area as any area, place or premises which is necessary or expedient in the interests of public safety and public order that special precautions should be taken to prevent the entry of unauthorized persons, and no person is allowed to be in that area without the permission of the prescribed authority. It is contained in Chapter 204 of the Laws of Kenya. Any person who is in a protected area without permission commits an offence and would be liable upon conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand shillings, or to both imprisonment and a fine.

Water Act 2002

The management of water was previously under the Ministry of Water and Irrigation, but is now managed under the Ministry of Environment, Water and Natural Resources. The act provides for the management, conservation, use and control of water resources. An important yet controversial area in the act is the licensing of water services. The act further establishes the Water Resources Management Authority, providing the authority with powers to develop principles, guidelines and procedures for the allocation of water resources, and to protect and manage water catchment areas. The act supports the user-pay principle as proposed in the Forests Act. Kenya Forest Service can therefore work with water user groups (consumers), service providers, and water service boards to conserve catchment forests.

The Act creates opportunity for communities to participate in water management through Water Resources Users Association (WRUA).

Mining Act 1987/revised 2012

In Kenya, mining is governed by the Mining Act (Cap.306). Section 3 of the Act excludes mineral oils from the provisions of the Act. Under the Act, all unextracted minerals (other than common minerals) under or upon any land are vested in the Government, subject to any rights which, by or under the Act or any other written law, have been or are granted, or recognized as being vested, in any other person.

Energy Act 2006 and subsidiary legislation

Energy Act 2006

The Energy Act 2006 forms the regulatory framework for energy in Kenya. The act establishes the main body that is responsible for energy regulation, the Energy Regulatory Commission. The act also creates functions and powers for the Minister in charge of energy to promote the development and use of renewable energy technologies, including but not limited to biomass, biodiesel, bioethanol, charcoal, fuel, wood, solar, wind, tidal waves, and municipal waste.²¹⁵ The Minister is also empowered by the act to establish a national energy strategy and to enact regulations.

The Energy (Energy Management) Regulations 2012

The Energy (Energy Management) Regulations 2012 were enacted under the Energy Act 2006 to manage the auditing of energy reduction for purposes of carbon finance. In this pursuit, the regulations define terms of carbon finance, energy auditing²¹⁸ and clean development mechanisms, among others.

In accordance with the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) to which Kenya is a party, these regulations are also intended to promote energy efficiency among owners or occupiers of industrial, commercial, and institutional facilities.

3.2.8. Key environmental governance institutions

Ministry of Environment, Water and Natural Resources

The Ministry of Environment, Water and Natural Resources was created after the 2013 General Election by a government restructuring process that culminated in merging the Ministry of Environment and Natural resources, Ministry of Water and irrigation, and Ministry of Forestry and Wildlife, all into the Ministry of Environment, Water and Natural Resources. The restructuring of the ministries now will see almost all functions that were carried out in the previous ministries merged into what will now be the Ministry of Environment, Water and Natural resources.

Kenya Wildlife Service (KWS)

The Kenya Wildlife Service (KWS) is the key government institution tasked with the management of wildlife. This body is established under the Wildlife (Conservation and

Management) Act 2013. The KWS becomes important as far as the environment is concerned due to indications that the conservation of wildlife also includes flora (vegetation). The areas that are managed by the KWS are also home to many indigenous forests and general vegetation cover. The management areas of the KWS include national parks, wildlife conservation areas and sanctuaries.

Kenya Forest Service (KFS)

The Kenya Forest Service (KFS) is established by section 4 of the Forests Act 2005, whose functions include the formulation of policies relating to forests, the management of forests in Kenya, creation of research partnerships, and the enforcement of the forest related rules. The management of the KFS is through a board that has the powers to approve and ratify policies. The board is also the organ in charge of receiving funds on behalf of the KFS. The rest of the management of this body is carried out through the appointed officers who work under the Director of the board.

Kenya Forestry Research Institute (KEFRI)

The Kenya Forestry Research Institute (KEFRI) was established in 1986 under the Science and Technology Act (Chapter 250). The Science and Technology Act has since been repealed by the Science, Technology and Innovation Act. KEFRI was established to carry out research in forestry and allied natural resources. Among the key achievements of KEFRI was the provision of guidelines in community participation in forest management. This institute receives financial support mainly from the government of Kenya. Its partners include the KFS, universities and other State and non-State institutions. The management of KEFRI is made possible through a Board of Management, which is headed by a director and supported by various other departments including advisory committees.

Institutions under the National Environmental Management and Coordination Act

The National Environmental Council (NEC)

The National Environmental Council (NEC) is created under section 4(1) of the Environmental Management and Coordination Act (EMCA). The following is the mandate of the NEC:

- NEC is responsible for formulating policies and giving directions on the implementation of the Act;
- It sets national goals and objectives that are to be fulfilled by other institutions in the bid to protect and preserve the environment; and
- It brings together the public sector and the private sector and promotes cooperation between them in the environment management programs.

The NEC is chaired by the Minister in charge of the environment – currently housed within the Ministry of Environment and Natural Resources. The secretary of NEC is the Director General of the National Environment Management Authority.

The National Environment Management Authority (NEMA)

The National Environment Management Authority (NEMA) is established under section 7 of the Environmental Management and Coordination Act. NEMA acts as the implementing organ for the coordination of the various activities that are proposed by the lead agencies. Some of the roles that are assigned to NEMA as an implementing organ include the creation of environmental management policies, the monitoring of natural resources in Kenya, the establishment and the review of land use guidelines, and research on environmental issues. NEMA is also charged with initiating programs that will reduce environmental degradation.

Provincial and District Environment Management Committee

These committees are established under section 29(1) of EMCA. The section provides that the Minister responsible for environment is to appoint these committees through a gazette notice.

Just as the names indicate, the committees were to carry out their work at the provincial and district levels. This decentralizes major activities of environmental management and brings them to the local government. The following is the mandate for the Committees:

- Provide assistance in to NEMA in the preparation of annual program estimates;
- Build capacity in NEMA at the two levels;
- Engage in coordinating activities with other government and non-government organizations which deal with environment conservation issues;
- Carry out surveillance of gazetted forest;
- Protect water catchment areas in those under their administration;
- Campaign for agro-forestry in order to ease pressure on government forests;
- Spearhead reduction and prevention of water pollution;
- Promotion of modern water harvesting techniques especially in arid and semi arid areas;
- Promote better farming methods to reduce soil erosion and degradation;
- Create environmental awareness through training and public meetings;
- Promote afforestation; and
- Ensure environmental impact assessment of new industries.

Public Complaints Committee (PCC)

The Public Complaints Committee (PCC) is established under section 31 of the Environmental Management and Coordination Act. The PCC is charged with the duty of investigating complaints relating to environmental damage and degradation. Upon investigation, this committee files its reports to NEC.

Standards and Enforcement Review Committee (SERC)

The Standards and Enforcement Review Committee (SERC) is a committee of NEMA and is established under section 70 of the Environmental Management and Coordination Act. This committee is responsible for the formulation of environmental standards, methods of analysis, inspection, monitoring, and technical advice on necessary mitigation measures.

National Environmental Tribunal (NET)

The National Environmental Tribunal (NET) is established under section 125 of the Environmental Management and Coordination Act. This tribunal is created to hear appeals arising from administrative decisions from the relevant organs charged with the duty of enforcement of environmental standards. It also receives points of environmental issues for clarification from NEMA. However, this body has no power to enforce its recommendations.

National Environment Action Plan Committee (NEAP)

The National Environment Action Plan (NEAP) Committee is established under section 37 of the Environmental Management and Coordination Act. The NEAP Committee is charged with developing five year national environmental action plans, taking into consideration the value and status of natural resources in the country. The Committee, to a large extent, forms a policy-making body for the country since the action plan that it adopts becomes binding upon all organs of government. Provincial and district environmental committees are also required to develop their own five year environmental action plans, which are incorporated in the NEAP.

Environment and Land Court

Article 162 (2b) of the Constitution allows Parliament to establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. In this regard, the Environment and Land Court Act (No. 19 of 2011) was enacted to give effect to the above Article 162 (2b) of the Constitution. The Environment and Land Court has original and appellate jurisdiction to hear and determine all disputes relating to the environment and the use and occupation of, and title, to land. Hence, the court is mandated to hear and determine disputes relating to:

- a) Environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- b) Compulsory acquisition of land;
- c) Land administration and management;
- d) Public, private and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and
- e) Any other dispute relating to environment and land.

A party to the proceedings may act in person or be represented by a duly authorized representative.

Some of the orders and relief that the court can give include:

- a) Interim or permanent preservation orders including injunctions; b) Prerogative orders; c) Award of damages; d) Compensation; e) Specific Performance; f) Restitution; g) Declaration; or
- h) Costs.

The Court may adopt and implement, 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.

To ensure that all citizens are able to access its services, the Court may sit at any place as it deems necessary. Appeals from the court lie with the Court of Appeal.

4.0. Conceptualization of conflict and conflict management in land:

This section analysis factors that influence land and natural resources conflicts as well as conflict management.

4.1. Factors influencing land disputes

Kenya has experienced a lot of land related disputes that are occasioned by various factors. These land disputes have far reaching negative effects on the certainty of land markets, tenure and food security, economic production and reduction of poverty. Often, the land disputes lead to; civil strife, loss of lives, population displacement, destruction of property and international humanitarian crisis. Below is an analysis of factors that influence land disputes in Kenya.

Expropriation of white highlands by colonial settlers

On December 13, 1899, there was seizure of sections of land owned by indigenous Kenyan by colonial government. This was done based on Britain's Jurisdiction Act in whose view there was no settled government and the land had not been appropriated to the local sovereign (Government of Kenya 2002:23). This led to expropriation of the white high lands British colonial government and led to the emergence of Mau Mau (the movement that earned independence).

De-legitimization of customary land law, legal systems and structures

Enactment of Crown Lands Ordinances in 1902 to ensure the enforcement of the Britain's Land Acquisition Act of 1894 was meant to de-legitimize customary land law, legal systems and structures. Also 1954 saw the 'Swynnerton Plan' to ensure 'Intensification of Agriculture' to destroy African land tenure systems and ensure conversion to systems of individualized tenure arrangements, (Swynnerton, 1955) that further pushed the agenda for de-legitimization of the customary land order, legal systems and structures.

Forced displacement leading to landlessness and squatters

1908 promulgation of the 1902 Ordinance to cover the entire country in that all Kenyans claiming interest to declare before the expiration of 6 months failure to which such land shall be deemed crown land (Ojienda 2008: 15). Promulgation of the 1902 ordinance in 1908 led forced displacements causing landlessness and emergence of squatters.

Disorientation of formal practices and disruption of existing land rights

1915 a mere opinion delivered by the then Chief Justice that whatever rights indigenous inhabitants may have had to the land had been extinguished rendered every Kenyan a tenant to the will of the Crown (Ibid). This led to disorientation of the formal practices and disruption of respects to the existing land rights for natives.

Disruption of ancestral sovereignties and enthnecisation of land ownership

1926, pockets of land deliberately delineated from the expropriated unarable farms were set out as 'native reserves' (Government of Kenya 2002). The effect includes disruption of ancestral sovereignties and Ethnecisation of land ownership.

Institutionalization of ethnicised and regionalized land ownership

New Legislations passed in 1938 extinguished any other rights that 'natives' in Kenya as a whole might have had outside their respective reserves (Ibid). The limitation of native rights within respective reserves led to institutionalization of Ethnicized and regionalized land ownership.

Breakdown of social cohesion and national tranquility

1940s Reconditioning of Land through a Development and Reconstruction Authority (DRA) by decongestion of African Native reserves in spite their societal arrangements in the congested reserves. The effect of this effort is ulceration of social cohesion and the eventual breakdown of national tranquility.

Colonialist transfer of land to Kenyan elites

Land expropriation from the indigenous land owners by colonialists and the subsequent transfer of the same to Kenyan, elites gave forth a class of squatters and the slum's urban poor. Thus the squatter problem at Kenyan Coast, the Pastoralist versus Ranch owner's problem in Laikipia and the large Kenyan Slums is as a result land expropriation. The yeoman and a million acre schemes favored the elites than the peasants.

Kinship /political patronage

In Kenya, political patronage or kinship has been natured by post colonial governments and political leaders. Kenya being agriculturally dependent, economic strength squarely lies in land, for land is the main means of generating income, accumulating wealth and transferring the wealth between successive political units. Thus, land has been the means of rewarding loyalists and punishing opponents by political regimes. (Government of Kenya 1999:62, 2004:9) For instance, successive Kenyan government leaders set up resettlement schemes for their loyalists (members of their communities) on public and trust land regardless for what purpose these lands were set aside for. Hence most of the land disputes in Kenya arise mainly from the failure of the authorities concerned to enforce and to comply with the law as it exists. Thus Authorities have over time overseen the abuse of Land laws, land transfer and conveyance procedures.

Politicization of land ownership

Mid 1950s to early 1960s the incorporation of emerging politically active African elites currently the ruling class into principles of colonial land practices. The incorporation of political elites led to politicization of land ownership.

Emergence of corruption in land policies

Mid 1960s, 1970s and 1980s there was re-entrenchment of colonial land policies, laws and administrative structures by the current leading class and their cronies in African government. This led to emergence of corruption in land ownership. This contributed to unacceptable disparities in land ownership, procedural and substantial abuse of land laws and corruption in land administration and management.

Ethnic Influenced Conflict

Motivations for ethnic violence are not necessarily election related but may also have been linked to longstanding competition for access to land and jobs. This development reinforces the view that ethnic conflict in the Rift Valley is essentially over land. The violence has also involved a certain amount of indoctrination and incitement. Ethnic animosity has contaminated all sectors of society and is used to justify the illegal activities.

The politics of self-centeredness

In Kenya there has been a practice of politics of self-centeredness. Politicians incite people against each other for their own benefits. For example, in Uasin Gishu and Trans-Nzoia politicians are widely reported to have been involved in the conflicts directly and indirectly as facilitators, instigators and organizers. By the same token the people of Samburu, Laikipia and Turkana point towards politicians and administrators as significant driving forces behind pastoral conflicts in the region. Comparable situations are also documented by the Waki Commission, the KNCHR, the OHCHR and others in their investigation into the post election violence in the North Rift Region of Kenya.

Water scarcity

The demand for water continues to rise and the available amount of water is constant. The various land use activities by communities require water for their operations and since there is lack of sufficient quantities of the resource to satisfy all water needs, serious conflicts arise due to different water demands.

Cross border conflict

Pastoral groups in Kenya living or grazing their livestock along the borders, often get into scuffles with those from neighbouring Ethiopia, Somalia and Uganda. The causal elements include drawing of administrative boundaries between nation states across traditional migratory routes, as well as the ecological changes such as shrinkage of Lake Turkana basin wholly into Kenya that earlier stretched into Ethiopia.

Traditional Conflicts

These occur due to disputed resource sharing, restocking of depleted herds or accumulating livestock for bride wealth or as revenge for previous raids. Such raids are governed by customary rules and directed by elders, although the participants are the youth and other able-bodied and at times, hired warriors. It is usually with traditional opponents and historically carried out, but killing is limited and women and children are spared. The spoils are shared.

Commercial Conflicts

Although all cattle raids are for commercial gains in some way, commercial conflicts are a more formalized form and are purely for the purpose of accumulating cattle for sale and exploiting otherwise inaccessible resources. The gains receivers are the catalysts and these could be external arms dealers or wealth seekers from the community, and participants are the easily seduced youth and hired warriors. Although killing is not an aim, it does occur and in large numbers.

4.2. Trends in Conflicts

Communities indicate that the frequency and violence involved in conflicts is on a steady rise. In the past, the destructive effects used to be moderated, and there were norms with regards to limits of acceptable violence and a taboo on harming women and children. But with increasing commercialization and politicization of the raids, and the use of automatic weapons, currently much higher number of killings, with no discrimination between warriors as well as women and children. On a shorter temporal scale, livestock raids tend to increase after droughts, as a coping strategy in order to restock the herds that would have depleted due to lack of forage. Droughts also cause the conflicts between pastoralist and farmers as they migrate in search of pasture and water. An increased water demand by different water users has facilitated conflicts between and among various stakeholders. Poor management regimes for natural resources and climate change give rise to competition over resources causing conflicts over the same.

4.3. Drivers of conflict

Local traditions/ritual killings

The pastoral communities have been in constant competition over boundaries, pasture lands, and water sources and cattle ownership. Traditionally raids have been motivated by desire to gain control over limited grazing resources and restocking of livestock herds. Hence livestock raiding continues as an important aspect of the socio-economic organization of these communities.

In pastoral cultures, young boys are still socialized into martial (military) roles, and there is cultural importance given to success in raids. The raiders are not seen as criminals but as heroes

and achievers. Young men perceive raids as a means of gaining recognition and status in the community, and in this they are motivated and encouraged by their elders and the women and families.

Young men from these communities have to pay a bride price in the form of livestock, to the girl's family. Young men, who do not possess much animal wealth, use raids to snatch others' livestock, for paying the bride price. Given the high levels of poverty and the absence of alternative economic opportunities, raids have become the most convenient solution for young men desiring to get married.

Social inequity and exclusion, victimization

A central feature of the post-colonial State and society in Kenya is its falling back along ethnic fault-lines and consequent mutual ethnic antagonisms. The society portrays vast inequalities of power, wealth, and communication. Communities are characterized by poor access to resources and opportunities, insecurity of tenure and alienation from the state administration.

Historically neglected and deprived, they continue to be marginalized in political processes and excluded from the mainstream politics. Citizens lack awareness of existing government schemes and development funds and capacity to access these rights and benefits. Minimal involvement in political domain and lack of voice in governance and electoral processes has perpetuated and reinforced traditional hegemonies, restricted their ability to address most of these issues, and increased their vulnerability in the face of environmental, economic and political problems.

Affected communities have very limited participation in decision-making in relation to matters that affect them. Traditional governance structures have been systematically undermined as well. Minorities are silenced or deliberately harassed by the courts, and security forces tend to enforce the rights of wealthy and influential individuals over those of such communities.

Poverty, low development status

Pastoralist groups in conflict-affected areas of northern Kenya are among the poorest in the country, with lowest educational levels, greatest gender inequality, highest food insecurity. They lack access to basic amenities such as water, food and shelter, and suffer from endemic poverty and perpetual famine. Livestock and farming systems in ASALs are under-resourced and constrained owing to erratic rains, inadequate extension services, limited technologies and productive land, and lack of credit. Further, conflicts are affecting the development process and provision of essential services, destroying the social amenities already in place. Conflict also acts as a disincentive to economic cooperation and investment.

Natural resource stress

About ninety percent (90%) of the people of northern Kenya are dependent on animal husbandry and subsistence agriculture. Nomadic pastoral groups migrate along established routes throughout the year in search of water and pasture for their livestock. The most widespread cause of conflict among the pastoralists is competition over scarce resources.

Boundary disputes between communities that want to acquire as much land as possible and thereby access to and control of natural resources, acts as the trigger for violence and conflict among communities. Diminishing water resources as well as forest and other natural resources fan conflicts between and among communities.

Cross-border conflicts and illicit arms

The complexity of the conflicts is heightened by the presence of international borders. Northern Kenya and its international neighbours have porous and in cases, disputed borders.

The "Illemi Triangle" is a classic example of a disputed land, under de facto control of Kenya, but is frequented by 5 ethno linguistic communities: the Turkana, Didinga, Toposa, Inyangatom, and Dassanech, from Kenya, Ethiopia, Uganda, and Sudan and traditionally migrate to graze in the triangle. Hence, conflict is inevitable. During pre-colonial conflicts, the raiders of Illemi used traditional weapons and guns which they obtained from Ethiopian gunrunners and outlying trade centres (such as Maji), where ammunition was so common it was used as local currency.

Physical boundaries that cut across traditional migratory routes make access to pasture resources difficult. Boundaries between counties and countries have affected nomadic pastoralism, through the creation of administrative units, which split communities that once lived together. Much of the conflicts may be observed to be along borders. Instability and protracted wars in neighbouring countries has resulted in increased cross border conflicts. The pastoralist communities are also directly or indirectly getting drawn into these wars.

Weapons entering the region from neighbouring war-torn countries are leading to proliferation of small arms, and making the traditional raids increasingly dangerous, sophisticated and lethal. Availability of automatic weapons lowers the strength required for participating in violent conflicts and thereby extends the participation to young boys as well. This has now become a source of insecurity.

Declining influence of traditional conflict management

Traditional mediation and conflict management modes involved community elders and local mediators; these modes are declining in their influence however with the changing dynamics and social structure. The position, authority and role of elders are undermined. The elders' peacemaking role has also been undermined by the development of modern state, market economy, and the introduction of armed warfare and the institution of state-based ascribed authority. The multiplicity of actors and influences (local states, international organizations, development agencies) has also contributed to the breakdown of indigenous traditions and practices, and overpowered the culturally approved rules and mechanisms of conflict management.

Leadership has gradually been taken up by the young elite, and tension exists today between customary and formal mechanisms of conflict management and systems of justice. The stark contrast between these two systems makes it difficult to negotiate a peaceful transformation of most conflicts.

Families are breaking up with the men moving to nearby towns, and at the homestead level traditional tribal norms and associated conflict-related norms and practices are weakening.

Emerging issues of control over land and resources

With the new development and exploration projects (power plant, oil exploration), there is growing fear about the locals losing out on their land. The national legislation of land tenure and resource management is in conflict with, and undermines, the traditional land tenure

organization and resource use. The customary regime governing land recognizes the communal use of land and is in contrast to the privatization of land example being the Turkwell Gorge power plant in Turkana. This area had been the dry seasons' grazing reserve and therefore its privatization jeopardizes the source of the user groups' livelihoods as their livestock risk starving to death. The policies regarding damming of river Turkana, geothermal, oil and natural gas exploration have not looked at the impact on the pastoralists and the fisher folk in the region.

Poor state administration and protection

There is inadequate state security, diminishing influence of traditional government systems, and dawdling legislative action. The political context is marked by instability and widespread corruption. Law enforcement is weak, and a long chain of command leads to slow response from the army during emergencies. Most conflict perpetrators have not been brought to justice. The government is perceived to do little to address conflict situations except providing relief.

Policy neglect and injustice

Past historical marginalization include policy of non-interference by the government in pastoralist affairs which led to the creation of alternative power centres in the region and even across the borders. This has been compounded by apathetic government support/investments since then, poor policies and sluggish implementation of regulations/legislations. The specific needs, interests and aspirations of these communities have tended to be disregarded in the general planning of national development.

4.4. Conflict management mechanisms

Kenya for a long time has had traditional conflict management measures; newer measures are being created as the nature of conflict changes and the older management structures become less effective in handling these changes. Some of the mechanisms are discussed below.

Council of Elders

The structural base of communities in Kenya is the 'tree of men'. This comprises the Elders and other men in the society who are rich and influential, who are charged with the responsibility and authority to make decisions on behalf of the community. They also set the rules and norms, which are adhered to by the entire community, and their violation attract penalties. Women do not participate in these forums, although this has changed in some settlements where women are now being involved in decision-making.

Traditional mechanism for peace includes sending a peace messenger followed by community dialogue; elders participated in such dialogues. An olive branch would be extended via the peace messenger, typically a representative of one of the warring communities who would approach the counterpart in the other community, all the while holding up a white feather to signify a friendly visit. He would then be allowed to communicate the message of peace; elders of the two communities would thereafter meet, talk and resolve for peace.

Earlier the Council of Elders would intervene to resolve conflicts and make informed judgments. However, changes in value systems and institutional structures have tended to erode their power base and thereby the conflict management capacity of the elders.

The market economy has made personal interest paramount and weakened clan unity and government appointed agencies and structures have replaced the elders in their functions and undermined the elders' authority. Urbanization and other forces of development are changing the value-system, eroding adherence to it, and challenging traditional hierarchies. There is also increasing conflict amongst the elders themselves and thus the breakdown of the traditional methods and processes for conflict management.

Government initiatives

In an effort to strengthen, coordinate, and integrate various conflict management initiatives, the Government and Civil Society Organization (CSOs) jointly established the National Steering Committee on Peace-building and Conflict Management (NSC). NSC was established in 2001 within the Ministry of State for Provincial Administration and Internal Security in the office of the President, and became operational in November 2002 with placement of a secretariat. NSC brings together representatives from relevant Government Ministries and Departments, Umbrella civil society organizations, development partners, and UN agencies. As a multi-agency organization, NSC is mandated with the co-ordination of all peace related activities in Kenya. It also doubles up as the Kenya's Conflict Early Warning and Response Unit (CEWERU) for the implementation of the CEWARN Protocol acceded to by IGAD Members States in 2002.

District Peace Committees (DPC): The government and stakeholders spearheaded formation of District Peace Committee. The DPCs were aimed to monitor and foster peace, in the areas affected. The DPCs comprise Provincial administration, community representatives and key stakeholders representatives according to areas and context of the conflict situation. DPCs carry out peace meetings/ dialogues with warring communities or parties. There is no regular meeting schedule of the DPCs and the reporting structures are not very clear. Village Peace Committees constituted by communities do not report to DPCs. These structures are active when an event takes place. Therefore they react and respond to conflict situation as it arise or after violence incidents take place. They visit the affected area and gather information that helps in necessary actions. The structures are supposed to be inclusive, but women are not always present. The government District Commissioners (DCs) chair the DPCs but are reported to have abused their positions by embezzlement of funds that are meant to facilitate peace building.

Government patrolling: The government is reported to have intensified security patrols. The government beefs up security by deploying police officers in the affected zones after the incidences of violence, but the officers are not permanently stationed there and thereby fail to react in case fresh conflicts arise. The road network is very poor, making it difficult to respond to crime or to intercept cattle rustlers. At the same time, the number of security personnel deployed in the region is not adequate.

In other conflict incidents related to access to natural resources like water, pasture, and forest products among others, when the security personnel are called upon, they take long before

responding. This allows a lot of damage to take place and mechanism the security administration introduces do not consider the community perspective and context. The government of Kenya and neighboring Governments initiate diplomatic talk to resolve the border wrangles. The diplomatic arrangements at times take too long to bear expected result and hence the border conflicts continue despite the effort.

Civil Society Organizations (CSO) peace initiatives

Much of the effective role of social protection during conflict is played by non-formal actors. Local civil society actors, alone or with external resourcing, may play the critical role in social protection during conflict. Civil society institutions often play a central role in providing for those who have lost the means to support themselves. Levels and types of vulnerability of the conflict affected population in the aftermath of such situations ('post-conflict', 'transition', 'recovery' phases) depend in large part on the nature and duration of the conflict, its effects on people and structures, and the way in which the conflict has ended. Several International Organizations and CSOs are working in the conflict affected areas. There are diverse conflict situation and context and the needs of the actors and victims also vary and multi stakeholders approach is always necessitated.

Apart from responding to the needs of people involved in conflict, CSOs also initiate peace dialogues, conduct training on conflict resolution for leaders and influential individuals within the communities as well facilitating peace and reconciliation among warring communities. The interventions by CSOs take varied approaches and strategies that are dictated by the context and situation the conflict is found.

4.5. Peace building tools in use and good practices

Below are some selected tools and good practices that have been documented, showcasing peace building practices by different actors.

1. Conflict Sensitivity Consortium, "**Embracing the Practice of Conflict Sensitive Approaches**": Embracing the concept of Conflict Sensitive Approaches; *an analysis of the Kenyan context*. Conflict Sensitivity Consortium is active in four focus countries (Kenya, Sierra Leone, Sri Lanka, and United Kingdom). Consortium members across the four countries include Action Aid, Catholic Agencies for Overseas Development, CARE International UK, International Alert, Plan International UK, Responding to Conflict, Saferworld, Save the Children UK, Sierra Leone Red Cross Society, Skillshare International, Sierra Leone Association of Non-governmental organization and World Vision. Conflict sensitivity is a deliberate and systematic practice that ensures that our processes and actions minimize negative and maximize positive effects within a given context, based on the awareness about the interaction between the said processes and actions and the particular context.

2. Cordaid **"Building cross border pastoral communities' capacity to cope with drought"**: Good practice guide. www.cordaid.org the guide focuses on Significance of cross border planning and harmonization in pastoral livelihood.
3. Dr. Babette Wehrmann, Eschborn 2008 **"Land Conflicts: A practical guide to dealing with land disputes"**, published by Deutsche Gesellschaft für, Technische Zusammenarbeit (GTZ) GmbH, P.O. Box 5180, 56726 Eschborn, Germany. The tool provides skills in analyzing land conflicts and engaging in land related conflict resolution.
4. Evie Browne, **"Faith-based organizations, conflict resolution and anti-corruption"**: Helpdesk Research Report; Governance, Social Development, Humanitarian and Conflict (GSDRC). www.gsdrc.org and helpdesk@gsdrc.org. The report reviews the literature on faith-based development organizations (FBOs) and their role in conflict resolution and anti-corruption.
5. Economic Commission for Africa and Land Policy Initiative (LPI) **"Natural Resources and Conflict Management"; A case of Land 2012**; Publication of Economic Commission for Africa P.O. Box 300, Addis Ababa, Ethiopia. Tel: +251 11 544-9900, Fax: +251 11 551-4416, E-mail: ecainfo@uneca.org , Web: www.uneca.org. This paper, commissioned by ECA Sub-Regional Office for Eastern Africa (SRO-EA) and the AUC- ECA- AfDB Land Policy Initiative (LPI) was prepared to inform the Ad-Hoc Expert Group Meeting (AEGM) on "Natural resource management and conflict: the case of land", held in the margins of the inter-governmental Committee of Experts (ICE) on 14-15 February 2012 in Dar es Salaam, Tanzania. The main objective of the paper is to provide a presentation of the diversity of land related conflicts in Eastern Africa, an analysis of underlying causes of conflicts and experiences in conflict resolution and, lessons learnt and best practices from the policy and legal responses and links with enhancement of land governance in the region.
6. Francis Kariuki **"Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities"**; the paper assesses the institution of elders in conflict resolution. Using examples across the African continent, the author examines some of the successes and challenges faced by elders, and opportunities offered by the institution in enhancing access to justice amongst African communities.
7. F. OBEGI & C. NYAMBOGA **"Use of Information and Knowledge Management in Conflict Resolution"** This paper attempts show how the right information could be used in conflict resolution. It examines the sources of information and gives an account on use of right systems & channels to provide and disseminate this information to aid in conflict resolution. It explains how to generate the right and timely information through managed interaction within the society. The paper also expounds on the ways knowledge management can help in conflict resolution. The paper discusses practices that can be used to identify, represent, create, manage and distribute knowledge so that it could help in conflict resolution.
8. Gatluak Ruon Jal **"Cross Border Conflict in Gambella Regional State" (from 1991 to 2011)**: The Traditional Skills, Experiences and Indigenous Knowledge Used by Nuer, Anyuak and Murle Ethnic in Resolving Conflict; Ethiopian Civil Service University, Department of Public Management, Addis Ababa, Ethiopia. International Journal of Science and Research (IJSR) ISSN (Online): 2319-7064, Impact Factor (2012): 3.358,

Volume 3 Issue 6, June 2014 www.ijsr.net. The objective of this article is to identify the impacts of the cross border conflicts in Gambella Regional State and its adjacent States in South Sudan.

9. Institute for Security Studies **"Kenya's new constitution and conflict transformation"** February 2012 No. 232; This paper analyses how the new constitution captures the long-term issues and solutions in dealing with root causes of conflict to prevent further violent conflict in Kenya. The paper provides a brief background to violent conflict in Kenya; looks at the decades-long national history of constitutional review; discusses conflict transformation and the provisions and gaps in the new constitution that deal with root causes of violent conflict; examines the challenges, prospects and indicators of constitutional implementation; and concludes with recommendations.
10. Kariuki Muigua, March 2015 **"Empowering the Kenyan People through Alternative Dispute Resolution Mechanisms"**; The paper discusses the concept of empowerment in the context of the Constitution of Kenya 2010 with a view to demonstrating how Alternative Dispute Resolution (ADR) can be employed as a tool for the empowerment of the Kenyan People to boost their participation in conflict management, governance matters, and improve the socio-economic aspects of their lives.
11. Kariuki Muigua **"Natural Resources and Conflict Management in East Africa"**; Paper Presented at the 1st NCMG East African ADR Summit held at the Windsor Golf Hotel, Nairobi on 25th & 26th September, 2014. The paper seeks to critically discuss the issue of natural resource-based conflicts management in the East African Region.
12. Kariuki muigua **"traditional dispute resolution mechanisms under article 159 of the constitution of Kenya 2010"** The paper discusses traditional dispute resolution mechanisms in view of Article 159 of the Constitution. The author argues that where they have been used in managing conflicts they have been effective since they are closer to the people, flexible, expeditious, foster relationships, voluntary and cost-effective.
13. Mohamud Adan and Ruto Pkalya, edited by Elizabeth Muli (JSD), **"Conflict Management in Kenya: towards policy and strategy formulation"** practical Action publication. The report established that in the past, policies have been implemented with no regard for community local knowledge, their indigenous systems of governance and natural resource management. There remain operational challenges manifested in the continuing need to improve effectiveness and impact of ongoing peace building programs particularly the traditional justice systems. The goal of the report is to prioritize the problems and policy interventions needed to address them.
14. Ruto Pkalya, Mohamud Adan, and Isabella Masinde **"Indigenous Democracy: Traditional Conflict Resolution Mechanisms"** Pokot, Turkana, Samburu and Marakwet, Intermediate Technology Development Group (ITDG)-Eastern Africa, January 2004. This publication details the indigenous methods of conflict resolution among the Pokot, Turkana, Samburu, and Marakwet communities of North Rift Kenya. Traditional conflict resolution structures are closely bound with sociopolitical and economic realities of the lifestyles of the African communities. These conflict resolution structures are rooted in the culture and history of African people, and are in one way or another unique to each community. A detailed description and analysis of their indigenous governance and conflict resolution institutions has been carried out.

15. Unruh, J., and R. C. Williams. 2013. **"Land: A foundation for peacebuilding"**. In *Land and post---conflict peacebuilding*, ed. J. Unruh and R. C. Williams, London: Earthscan. This book examines the diverse experiences of seventeen post-conflict countries in managing land tenure and related issues during the transition to peace. www.environmentalpeacebuilding.org. The full book can be ordered from Routledge <http://www.routledge.com/books/details/9781849712316/>
16. UN-HABITAT **"Toolkit and guidance for preventing and managing land and natural resources conflict"**: Land and Conflict; United Nations Interagency Framework Team for Preventive Action. The Guidance Note was prepared by UN-HABITAT on behalf of the Framework Team and in collaboration with the Standing Committee of the project, consisting of the EU, UNDESA, UNDP, UNEP, UN-HABITAT, DPA and PBSO. The Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict is meant to improve capacity for land and natural resource management (NRM) and conflict prevention at national and other levels and it provides case studies globally.
17. UN-HABITAT **"LAND AND CONFLICT": A Handbook for Humanitarians**; This Handbook was prepared by UN-HABITAT at the request of the Early Recovery Cluster to provide simple and clear guidance for addressing land issues in a post-conflict environment. The Handbook targets both emergency and early recovery humanitarian actors as well as Government, bilateral aid agency staff, national and international land professionals and civil society. The intention of the handbook is to provide a practical tool that brings together current experience and thinking on how to integrate land issues into emergency and early recovery programming.
18. UN-HABITAT **"Secure Land Rights for All"** This publication is for policy-makers and public officials. It is for all those in land management and development who are looking for the best ways of securing rights and meeting increasing demand for land. It stresses the need for policies that facilitate access to land for all sections of their existing and future populations – particularly those on low or irregular incomes.
19. Victor Owuor and Scott Wisor **"The Role of Kenya's Private Sector in Peacebuilding": The Case of the 2013 Election Cycle**; One Earth Future publication. This report documents how, why, and with what effect the Kenyan private sector undertook the prevention of electoral violence. It shows that private-sector actors contributed skills, capacities, influence, and strategies not necessarily available to members of civil society, government, or international institutions.
20. Joannes Michael Nebe (Ed.) **"Peace Building ad conflict Management"**. University of Tier, faculty of political science, Camp 1, 54286 Trier/Germany. This is a research report on assessment of work for 22 Civil Society Organizations (CSOs) in Kenya dealing with effect of the Post-Election Violence 2007/2008. The research was done between University of Tier, Germany and Kenyatta University, Kenya. The research established that a wide range of creative ideas and strategies on peace building approaches.
21. UNHCR, UNESCO, UNDP, UNFRA, UNICEF and UNIFEM **"Best Practices in Peace Building and Non Violent Conflict Resolution"** This is a publication of inter-agency strategy for strengthening the role of women peace makers, with a purpose of documenting and disseminating Africa Women's practices in order to make them visible ad accessible with hope the knowledge of the methods, their strategic elements,

limitations and impact will aid development of similarly effective and appropriate programmes at community, regional and national levels.

22. Search for the Common Ground **"Communication for Peacebuilding: Practices, Trends and Challenges.** This a report that outlines the current field of communication for peacebuilding and it identifies a wide range of activity that uses varying forms of communication (old and new) undertaken by Non-Governmental Organizations, Governments, Multilaterals and the Private Sector to prevent conflict, improve early warning, monitor peace and promote peacebuilding in post-conflict situation.
23. UNDP, ACORD and NSC **"Community Peace a Recovery and Reconciliation"**, a handbook for Generating Leadership for Sustainable Peace and Recovery among Divided Communities. The purpose of the handbook is to find new approaches to conflict management, an approach that allows peoples to process their experiences, to challenge their stereotypes and prejudices, and to take leaderships in the search for solutions towards achieving peaceful co-existence and recovery. It uses the Community Peace Recovery and Reconciliation (CPRR) Model that offers such an approach.
24. CIFA Ethiopia and Care Ethiopia **"Assessing and Consolidation Report on: Existing approaches and Best Practices in cross-border Peace building and Conflicts Mitigation and strengthening CSOs across the Ethiopia and Kenya border"**. The report outlines existing peacebuilding and conflict mitigation activities undertaken by different actors on bordering districts of Borana zone and Northern Kenya, the report has documented the interaction between pastoralists and their institutions that underpin livelihood security and natural resources management, the circumstance that lead to competition over natural resources. It further analyses the multi-faceted impact of conflict, existing mechanisms to resolve the conflict and the role of third party in strengthening existing community institutions and explore the need for facilitating new institutional arrangements. It showcases existing approaches and best practices that stakeholders use to enhance peace in Southern Ethiopia and Northern Kenya.
25. United Nation System Staff College (UNSSC) **"Indigenous Peoples and Peacebuilding : A compilation of Best Practices"** the publication has two parts . the first section covers "concepts and Debates" i.e. Theoretical approach by International Human Rights, indigenous rights and minority rights, UN and Indigenous rights, peacebuilding, UN and peacebuilding, methodologies and related tools, inter-relations between human rights and peacebuilding. the second part document "cases, Best Practices and Conclusions. UNSSC, viale Maestri del Lavoro,10 Turin,10127,Italy. ([URL:http://www.unssc.org/](http://www.unssc.org/) Telephone (+39) 011 65 35 916, Fascimile (+39) 011 65 35 905.
26. UNEP **"From Conflict to peacebuilding: The Role of Natural Resources and environment"** This report aims to summarize the latest knowledge and field experience on the linkage between environment, conflict and peacebuilding and demonstrate the need for those linkages to be addressed in a more coherent and systematic way by the UN, member states and other stakeholders. It was published on February 2009, by UNEP. P.O. Box 30552, Nairobi, Kenya. Tel. +254 (0) 20 762 12 34, Fax +254 (0) 20 762 3927. Email: unepul@unep.org , Web: <http://www.unep.org>

5.0. Mapping and analyzing land conflicts in Kenya

This section analysis land related conflicts;

5.1. Land disputes

In a number of Kenyan regions, land ownership and land use rights are often in dispute resulting into land disputes. These land disputes have far reaching negative effects on the certainty of land markets, tenure and food security, economic production and reduction of poverty. Often, the land disputes lead to; civil strife, loss of lives, population displacement, destruction of property and international humanitarian crisis. A trace of the tenure-political evolution reveals failure of land order which was occasioned by colonialists and later the successive Kenyan governments. To consolidate power; the colonialist took proprietary powers over land. Among others this led to suppression and subversion of indigenous land governance structures, institutions and laws and the emergence of the state and its agents as the dominant factor in land relations. This was bitterly contested by the natives leading to Kenya's independence. However, at independence the Kenyan elites confirmed and safeguarded the unpopular property rights, laws and administrative structures acquired during the colonial period thus prolonging the existing and breeding new land disputes.

Land disputes are a long standing issue in Kenya. They are not only the platform on which the Kenyan independence was fought and won (Nyadimo 2005) but also the strain that has in the recent past threatened the Kenyan cultural and ethnic harmony and often brought the Kenyan economy to its knees.

Currently the issue of land is often treated with fervent sentimentality and sensitivity and in many ways, considered explosive. Whereas the constitution guarantees the right of ownership of property anywhere in the country, the peaceful coexistence of the numerous Kenyan tribes appears to have been profoundly undermined by both new and long standing land disputes (Government of Kenya, 1999). Kenyan land disputes have been continuous, seasonally heightening into land conflicts. Land conflicts have been bloody and often characterized by massive population displacements and extensive destruction of property to levels that culminate into international humanitarian crises.

5.2. Land tenure in Kenya

Kenya's land tenure before the advent of colonialism was fundamentally different from that in feudal England from which alien law was imported (Smokin, 2000). Land tenure in the pre-colonial period was what may be referred to as "communal tenure", where land belonged to no particular individual but to the community (clan, ethnic group) as a whole.

Private land tenure on the other hand is a system of ownership where an individual gets title to land thus secluding all and sundry from access and use of the same land. The private ownership

of land as it is in Kenya today was crafted in the Swynnerton plan of 1954 (Sorrenson, 1967). This plan sought to change the system of land tenure through land consolidation and registration of individual's freeholds and improve on commodity production in the reserves.

Land problem in the pre-colonial period

The pre-colonial period expands from the early days of the East African migration to the colonial invasion. The colonial invasion can be said to have occurred in the year 1886 when the Anglo German agreement was signed and Kenya was born as a country.

Before that, diverse tribes co-existed in Kenya, each governed by different chiefs or councils of elders.

Some of the main tribes, who were known to have their rulers were Maasai (Laibon), the Nabongo of the Wanga people in Western Kenya, the Olkoiyot of the Nandi people, and chief Kivoi of the Akamba, others were ruled by a Council of Elders e.g. Njuri Ncheke of the Ameru. These, in most cases could not be said to have authority over the entire tribe, but sections of the tribe. For most of these communities, land use was dictated by the social formations of people and their philosophy as determined by the historical stages of development -that is, from hunting and gathering to herding and settled farming.

Kenya's land tenure before the advent of colonialism was fundamentally different from that in feudal England from which alien law was imported. Land tenure in the pre-colonial period was what may be referred to as "communal tenure" where land belonged to no particular individual but to the community (clan, ethnic group) as a whole.

Each person had right of access to land, which depended on time and needs, right of accesses were granted by the political authority of the time. The structural framework was necessary for equitable balance between the availability of land and needs of individual member of the community.

The colonial misunderstanding

Ours was a socialistic ownership and as such ownership was not understood as it was in the English law. This misunderstanding cannot be explained in better words than it is in the words of the English law offices when they were asked by the foreign office for an opinion on crown rights to "waste lands" in the interior of the East Africa protectorate – 1899. The colonialist had this misunderstanding that Kenya was unoccupied and its land un-owned.

Failures of the pre-colonial land tenure

The following factors contribute to the difficulty of giving a squarely identified system of land tenure that prevailed in traditional Kenyan society, before the advent of colonial masters:

- i) Lack of authentic literature on the subject (issue).
- ii) Existence of faulty anthropological ethnographic and historical accounts on traditional land tenure by western researchers.
- iii) The diversity and complexity of traditional society.

Compared to the Zanzibar state, where there was a formal system of land ownership in place, the pre-communal land tenure in the interior offered many porous points which the colonial masters exploited to strip off land from the natives as the Law officers affirmatively stated – 1899: "We are of the opinion that in such regions the rights of dealing with waste and

unoccupied land accrues to her majesty by virtue of then right to the protectorate. These protectorates over territories occupied by savage tribes have little in common with protectorates over state such as Zanzibar, which enjoy some form of settled government and in which the land has been appropriated either to the sovereign or to individuals. Protectorates such as those now under consideration really involve the assumption of control over all lands inappropriate. Her majesty might if she pleases, declare them to be Crown lands or make grants of them to individuals in fee simple or for any term. The question of the system to be pursued is really one of policy" (Sorenson, 1968).

Pre-colonial labor issues

The communal land ownership allowed accesses to land depending on the individual ability to till if they were farmers. For pastoralists, all land was held communally, and hence the cattle grazed freely, without regard to the numbers held by any particular member of the community. The above system allowed for free movement of labor. All people with ability to work had access to land which was normally proportionate to their tilling or herding ability. Likewise, hunters and gatherers had unlimited access to the land resource and its produce.

With the introduction of the colonial system, which perpetuated a system of private land ownership, most natives were stripped off chunks of land, which they previously tilled and free movement was curtailed. This resulted in landlessness, limited arable land and distortion in labor distribution since development of tenure systems in Kenya was abruptly interrupted as these systems were forced to respond to the needs of colonizing power (Wanjala, 2000).

Colonial Response to the 'Land Issue'

The Swynnerton Plan, implemented in Kenya (1954), was designed to "replace uncertainty of customary tenure with a system of individual land titles registered and guaranteed by the state". It was envisaged that the Swynnerton Plan would create a new class of 'accumulating' farmers. It was believed that the creation of a formal land market would allow highly productive individuals to acquire larger tracts of land. The people made landless through the sale of their land were to supply labor to the new commercial farms and to the expanding industrial sector. The Swynnerton Plan was the Kenyan colonial administration's solution to the problem of land degradation within the indigenous areas. It was believed that land degradation was caused by overly intensive land use, which was characteristic of indigenous cultivation. The solution was therefore to consolidate indigenous holdings and to impose restrictions on the fragmentation of holdings.

During the late 50s and early 60s, in Kenya, the contribution of small farms (under 20 hectares) to total agricultural output rose from 15 per cent in 1956 to 47 per cent in 1967. It is unclear, however, to what extent the Swynnerton land-tenure reforms were responsible for the growth in small-scale agriculture. It is believed that the majority of growth in small-scale agriculture, during this period, was due to: the "removal of prohibitions against Africans' to produce high value commodities"; investments in communication and transport infrastructure; improvements in extension services; and improved access to credit. Additionally the successful growth of African commercial agriculture has been attributed to favorable commodity prices during the reconstruction following World War II.

Overall the impacts of the Swynnerton plan on agricultural production, in the Kenyan indigenous areas, have been shown to be negligible. Land was not consolidated and fragmentation continued unofficially. An unintended impact of the reforms was the marginalization of women and pastoralists who were not eligible for land titles from the Swynnerton plan. The failure of the Swynnerton plan was because the colonial government did not have the resources to enforce the new system of property rights. Had the reforms been successful, however, it remains doubtful that they would have had a significant impact on the 'land issue'. In Kenya, violent opposition to the colonial government emerged from the class of farm workers outside of the indigenous areas. Additionally given that the origin of the 'land issue' was the alienation of native Africans' right to access; it was hardly likely that an administrative solution which would further excluded many native Africans from their already limited, access to land would be well received.

Inability of the colonial government to resolve the 'land issue' to the satisfaction of native Africans heightened tensions between European settlers and native Africans. Tensions over the 'land issue' enabled nationalists to mobilize Africans and ultimately resulted in independence.

The Decline of Colonialism

In 1960 Kenya was one of the first countries to achieve independence in sub-Saharan Africa. Kenya's early independence is largely attributed to the dominance of the colonial administration by the British government. The British presence in Kenya was further entrenched by the inability of the European settlers to resolve the 'Mau Mau' emergency without the aid of British forces. After 'Mau Mau' had been quelled the British government was positioned to determine the fate of the Kenyan colonial administration. From the perspective of the British the Kenyan colony was an anachronism with limited strategic value. Moreover the Kenyan colony was becoming an expensive anachronism, which led the British government to declare that Kenya would become an independent nation, much to the surprise of the settlers and nationalists alike.

Kenyan independence was to be a "bargain" negotiated between the African nationalists, the British government and the European settler community. It should be noted that since the beginning of colonialism the interests of the European settlers and the British government had significantly diverged. The settlers were primarily interested in extracting as much economic surplus from the Kenyan economy as possible and in this way they had become a parasitic entity; a deadweight on the Kenyan economy. The British government's interests in the Kenyan political economy were increasingly independent of the European agricultural economy. Because the land issue threatened the political stability of the Kenyan economy, the British government was open to compromise in the independence negotiations. The African nationalists were also willing to make significant "constitutional and economic concessions to European settlers in exchange for speedy transfer of political power". This atmosphere of cooperation made the negotiated decolonization feasible.

In Kenya leading up to independence a class of relatively well educated commercial farmers had started to compete with large-scale white commercial agriculture. These educated middle class native Kenyans politically dominated the post-colonial economy.

5.3. Land Redistribution in Kenya

Yeoman and peasant Schemes

The first attempt at agrarian reform was known as “yeoman” schemes that were characterized by settler panic and attempts by certain groups of Africans to seize European land by force. Naturally under these conditions reforms occurred sporadically; in one case the government resettling “nearly 3,000 families on the Kinangop in twenty-one days”. In total the “yeoman” schemes encompassed 180,000 acres; however they were insufficient to defuse the political pressures for the redistribution of land to landless Africans.

The purpose of the “yeoman” (and after 1961 “peasant”) schemes was to resettle entrepreneurial Africans farmers in the traditionally white, highlands. Under the schemes land was, in theory, to be purchased from European settlers by the Land Development and Settlement Board (L.D.S.B) at the prevailing market rate. Land would subsequently be divided into two types of holdings: “yeoman” which, consisted of approximately 50 acres; and “peasant” consisted of approximately 15 acres. The L.D.S.B was scheduled to “settle 1,800 yeomen and 6,000 peasants on 180,000 acres of land by September 1963”. Both of these schemes were intended not for the truly landless but for entrepreneurial African farmers. These individuals were selected by the constraint that a candidate for resettlement needed sufficient assets to qualify for the loan. The capital requirement was 10,000 Kenyan Shillings for “yeoman” schemes and 1,000 Kenyan Shillings for “peasant” schemes. The average agricultural wage at the time being approximately 60 Kenyan Shillings per month, effectively denied landless farmers access to the program. The reforms failed, not on the grounds that they did not address the fundamental problem of landlessness, but due to the inability of the L.D.S.B. to match willing buyers and sellers.

The Million Acre Scheme

The Kenyan government launched the Million Acre Scheme as a program to address the rising demand for access to land and indigenization of agriculture, subject to a number of key constraints. It was important to the nationalist party that the confidence of European commercial farmers not be shattered by uncompensated expropriation of land. The confidence of European settlers in the land market was crucial to avoid the dramatic flight of capital, which would have destabilized the post colonial government and weakened the nationalist political party. For this reason the willing-seller, willing-buyer principle of market-led agrarian reform was adhered to for the most part throughout the scheme. A second constraint on the program, which became increasingly, binding over time, was that settlers were to be expected to pay for their land. This stipulation, negotiated at independence, reflected the strong bargaining position of European settlers at the time of independence.

Given that the settlers were expected to eventually repay the majority of the purchase price of the land, “demonstrable ability to repay the loan” became an increasingly important criterion in settler selection. Because squatters had negligible access to capital this meant that they were increasingly denied access to the program. Those who were settled were generally far from being landless; rather they were members of the emergent middle class. Despite their advantages, even these middle class farmers found repayment of loans to be exceptionally

challenging (sometimes being expected to begin making payments on the loans before the first crop had been harvested) and these parties were often “pushed out by larger farmers, business men, or the urban political class”. Twenty years after the million acre schemes commenced it remained “doubtful whether more than 35 per cent of the settlers” had repaid their loans and received title deeds to their land. A cause of the poor performance of settlement loans was that, due to the fragile political climate, the nationalist government was unlikely to evict settlers.

By 1965 given persistent land hunger the Kenyan nationalist government launched a final series of settlement schemes referred to as the ‘Shirika’ and ‘Haraka’ schemes. These schemes were intended to target specifically the landless squatter class and involved average holding sizes of about 10 acres. In total these schemes settled 46,000 squatters on 416,000 acres of mid-potential land. For the first time throughout the settlement process, “no purchase money [was] required of the settlers. These plans represented the first real programme to address the needs of the growing landless class.

By the end of the settlement schemes, more than 71,000 families had been settled on almost 2 million acres of land. The area resettled under the various settlement schemes represented 17 per cent of European commercial farmland; it represented the majority of white mixed commercial farmland. The remainder of white commercial farmland was primarily large plantations, which were deemed unsuitable for settlement because of exorbitant land prices and the importance of the plantations for the generation of government revenue and foreign exchange.

Kenya’s resettlement program did not adequately resolve the ‘land issue’ in Kenya. In many ways all that changed for the rural poor was the mechanisms of their oppression. Prior to independence native Africans were withheld the benefits of economic development through colonial administrative mechanism. Indigenous people were not permitted to own land outside of the indigenous areas and they were not permitted to cultivate the most profitable crops. In the postcolonial era the oppression of the rural poor occurred through capitalist mechanism. Kenyans without capital cannot obtain capital, they are denied access to land, they cannot invest in education and they are denied access to government. An additional concern with the Kenyan land redistribution program is that a significant quantity of land was transferred to economic and political elites.

5.4. Ethnic Influenced Conflict

Much has been written about ethnicity as a source of conflict in Africa. Ethnicity *per se*, in the absence of its politicization, does not cause conflict. There is evidence to suggest that where ethnic conflict has emerged in Africa, there have always been political machinations behind it (Nnoli 1998). Politicization of ethnicity often takes place in a situation characterized by an inequitable structure of access. Such a structure gives rise to the emergence of the “in group” and the “out group” with the latter trying to break the structure of inequality as the former responds by building barriers to access that ensure the continuation of its privileged position.

The problem of ethnicity, having emerged during the colonial period, has been progressively accentuated since independence with the emergence of ethnicity as a factor in national politics. Ethnicity in Kenya became a national concern as early as during the colonial period but was accentuated in the post-independence period during the implementation of the policy of Africanization. Ethnic tensions developed especially around the structure of access to economic opportunities and redistribution of some of the land formerly owned by the white settlers. Most of the land in question was in the Rift Valley province and was historically settled by the Kalenjin and the Maasai. The other area that was affected by colonial settlement was the Central province. But the crisis was aggravated during the mid-1950s when forced land consolidation took place during the emergency period, which benefited mainly the pro-government group that had not joined the *Mau Mau* revolt. And when the state of emergency was lifted at the end of the 1950s, most of the detainees returned home to find that they had lost their land to the loyalists. Some moved to the urban centres in search of wage and self employment. A number of them joined relatives and kinsmen who had moved to the Rift Valley many decades earlier and were staying in some of the settler owned land as squatters. Therefore, when the redistribution of some of the land formerly owned by the white settlers began, it is these squatters that became the instant beneficiaries of the allocations.

But the policy that gave rise to large scale land acquisition by "outsiders" in Rift Valley was the policy of 'willing buyer willing seller' that the government assumed for land transfers after the initial political settlement on about one million acres.

At partisan political level, the ethnic clashes, wherever they have taken place in Kenya, have been instigated by the fear of loss of political power and the consequences that might accompany such an eventuality such as loss of privilege and the patronage that goes with it. In this regard it has been noted that the only distinct pattern that emerges from the ethnic clashes is that they appear to be connected to political tension in the body politic (W.R. February 6, 98: 8). This is informed by the fact that the Rift Valley clashes took place when the political atmosphere in the country was highly charged due to external and internal pressure for political pluralism.

The use of the state as an instrument of material acquisition has meant that those who have benefited over the years from the structure of access have used every trick available, including mobilizing ethnic support to sustain the regime in power.

Access to Land and jobs

Motivations for the violence are not necessarily election related but may also have been linked to longstanding competition for access to land and jobs. This development reinforces the view that the conflict in the Rift Valley is essentially over land. The Kalenjin appear determined to reclaim what they see as their ancestral lands from the so-called immigrant communities such as the Kikuyu and the Kisii.

The problem is further compounded by a laissez-faire system of land sale and allocation, which often takes no account of communal tenure and is deeply flawed due to corrupt allocation and

registration practices. The dream of many poor Kenyans to own land has turned into a nightmare, with double or triple registration and the repeated issue of fake title deeds. The violence has also involved a certain amount of indoctrination and incitement. Politicians have been whipping up anti- Kikuyu feelings for a long time, and the tempo of their incitement are ratcheted up shortly before polls. Ethnic animosity has contaminated all sectors of society and is used to justify the illegal activities.

Conflict in Kenya often understood as a matter of ethnic calamities. A first glimpse upon violence in the region indeed reveals a number of ethnically motivated confrontations and incidents. Kalenjin organize and get armed to confront Kikuyu communities in Uasin Gishu. Samburu and Borana have a history of conflict that has largely developed along ethnic lines and so on. Calls on ethnic identity are an unquestionable part of most conflicts in the area. Consequently, ethnic affiliation often defines one's possibilities in the social, economic and political spectrum. In this context however, it is equally important to recognize how ethnic antagonisms are more often than not generated and highlighted against a (post)colonial political and economic background.

The politics of self-centeredness

In Kenya there has been a practice of politics of self-centeredness. Politicians incite people against each other for their own benefits. As a result in Uasin Gishu and Trans-Nzoia both are widely reported to have been involved in the conflicts directly and indirectly as facilitators, instigators and organizers. By the same token the people of Samburu, Laikipia and Turkana point towards politicians and administrators as significant driving forces behind pastoral conflicts in the region. During the post election violence local and high ranked politicians reportedly participated in meetings where issues of organization were discussed and where they incited the communities and instigated the attacks. Comparable situations are also documented by the Waki Commission, the KNCHR, the OHCHR and others in their investigation into the post election violence in the North Rift Region.

Political ethnic mobilization and violence cannot be appreciated without considering the fragmentation of the political elite and their struggle for the control of public assets such as land. Fifty years after its independence, ethnic mobilisation still plays a key role in the politics of contemporary Kenya. Currently, it is not possible to understand the formation process of the Kenyan nation-state and particularly the democratic transformations of the past decades without dealing with ethnicity.

5.5. Water and conflict

Policy makers are trying to understand how best to cope with increasing water scarcity in the form of new management strategies. Two solutions are frequently proposed. The first solution proposed, is giving responsibility to government agencies to act on behalf of all citizens. The second solution often suggested, is to privatize water services so as to utilize market systems for allocation (Ostrom, 2003). According to Ostrom however, the dilemma of water management is not easily solved. She states that there is no best system for governing water

resources because the outcome of resource management depends on a multiple number of factors. Faures & Santini (2008) agree with Ostrom and also suggest that there is no “one size fits all” approach for improving livelihoods. Different contexts and needs require different types of investments to guide the choice for specific interventions.

Much of the problems that arise by management of water resources are believed to originate from the fact that water is a common pool resource. Common-pool resources may be owned by national, regional or local governments as public goods. Communal groups use them as common property resources whereas; private individuals or corporations use them as private goods. A common pool resource is often misrepresented as being open access.

Most of the problems which arise in water management occur when water is used as an open access resource. In an open access situation everybody has free access to this resource. Because of the lack of restrictions, the source might easily become depleted which is the tragedy of the commons. Thus water as a common pool resource should be well managed, especially in situation of supply-demand unbalances. The most obvious actor to control such a natural resource is the state. But as Leroy (1993) states, the government alone with its control strategies cannot solve all of the environmental problems.

Management of common pool resources

Water is often a common pool resource, which means that in theory everybody has access to this resource, because it is no one's private property. Though everyone can use water, it can become depleted. Common pool resource problems occurs when water becomes scarce and competition for the resource increases. Then not everybody will have access to water anymore. Thus water as a common pool resource should be efficiently managed.

One way of managing common pool resources is through institutions. Institutions are the rules that people develop to specify the ‘do’s and don’ts’ related to a particular situation (Ostrom, 2002). In regard to common-pool resources, rules define who has access to a resource; what can be harvested from, dumped into, or engineered with a resource; and who participates in key decisions about these issues and about transferring rights and duties to others (Ostrom, 2002).

Community based water management

In the last 20 years, a gradual change occurred in the philosophy and practice of environmental management as well at regional, national, and international levels. This change involves a shift away from top-down strategies, in which planning, policy formulation, and regulation is conducted primarily by centralized government agencies, towards a bottom-up approach, which involves all relevant parties, especially local communities, in the process of environmental management and decision making (Merkhofer et al., 1997; Moote et al, 1997; Vasseur et al., 1997; Smith et al., 1997). The new philosophy that occurred is described by Blaikie (2006) as ‘that communities, defined by their tight spatial boundaries of jurisdiction and responsibilities, by their distinct and integrated social structure and common interests, can manage their natural resources in an efficient, equitable, and sustainable way’. This idea is based on arguments from researchers like Ostrom (1990) and Agrawal (2002) who believe that sustainable resource management can never be independent of sustainability of collective human institutions that

frame resource governance, and that local users are often the ones with the greatest stakes in sustainability of resources and institutions.

5.5.1. The case of Ewaso Ng'iro River

The Upper Ewaso Ng'iro river basin is located to the North and West of Mount Kenya and is an important area for agriculture, livestock keeping and tourism. In the last decades, the basin is facing major changes in its socio-economic situation through immigration, rapid population growth and land use transformation. These changes have resulted in a society where several stakeholders claim access to natural resources. Pastoralists, small-scale farmers, large scale vegetable and flower farms, ranches and the tourist industry are now competing over increasingly scarce land and water resources.

In the Upper Ewaso Ng'iro basin some problems have arisen. Pastures downstream that depend on river floods are threatened as a result of upstream changes (Kohler, 1987). Because of the drying up point backtracking, pastoralist groups are moving into neighboring territory resulting in conflicting situations. The most important problem is believed to be the large amount of river water abstractions. This is mostly due to the rise in agricultural activities foremost. The demand for water continues to rise and the available amount of water is constant. Therefore the stage for water use conflicts, which already have become common in the last decade, is poised to increase.

5.5.2. The case of Tana River Basin

The Tana Basin consists of the Tana as the main river in the basin. Various tributaries that originate from Mount Kenya, Aberdare Ranges and the Nyambene Hills feed the Tana River. The river has a total length of about 1012 kilometres from the farthest source to the Indian Ocean and has an annual mean discharge of five billion cubic meters. It covers a total catchment area of about 126 000 km², which is nearly 21% of the country's total surface area.

The Tana River Basin accommodates various agro-ecological zones. The physiography of the basin comprises of the upper, middle and lower catchment areas, with the upper catchment covering about 15,000 km² at an altitude of 1000 metres above mean sea level. The middle catchment covers an area of 15 700 km² at an altitude of between 1 000 and 200 metres above mean sea level, while the lower portion of the basin covers an area of 95 300 km² at altitudes below 200 metres (Hirji ., 1996).

Demand for water is high due to an increasing population especially in the upper parts of the basin, where rain-fed agriculture is practiced on 21% of the total land area in the basin. The various land use practices within the basin have led to increasing demand for water resources and thus increase in conflicts in water utilization due to competing interests.

Water Usage Conflicts in the Basin

The various land use activities in the basin require water for their operations and since there is lack of sufficient quantities of the resource to satisfy all water needs, there are serious conflicts due to different water demands in the basin. The first conflict has to do with water scarcity and

distribution, which is as a result of the uneven distribution of water in the basin both seasonally and across locations.

This means that water demands have to be met from areas with abundance and the excess stored during the wet season for use in the dry season. Also, consumptive uses such as irrigation, inter basin transfers are known to remove water from the basin that would otherwise be used for hydropower, irrigation, domestic, industrial and ecological maintenance. Due to a high demand, conflicts are bound to rise within the basin that require comprehensive planning to ensure that water diversion upstream of the power plants, dams, and irrigation schemes are managed in an integrated manner.

The use of water in the lower parts of the basin for flood recession agriculture often conflicts with regulating the river for hydropower production and for providing adequate water supplies, flood damage protection of the riverine settlements and infrastructure. One way to avoid this conflict would be the conservation of surface runoff as has been done in some parts of the adjacent Ewaso Ng'iro River basin (Liniger, 1995).

Another conflict is due to sanitation, sewage and pollution resulting from the many industries such as coffee, pineapple processing and tanneries, as well as insecticide, herbicide and fertilizer applications that produce effluents and residues into the rivers. The generation of domestic and sewage wastes also degrades the quality of water in the rivers, if these are not properly treated and disposed of. As a result of the poor quality of the water from the rivers, the water is not suitable for other purposes unless it is treated. This means that there is need to properly plan for the river basin's sanitation industrial effluents and urban sewage to avoid excessive pollution of the rivers of the basin.

Damming of rivers and streams in the basin causes deposition of sediments in the reservoirs causing less water reaching the flood plain areas where flood recession agriculture depends on alluvial waters for irrigation since sediment takes up useful storage space. The accumulation of the sediments in the dams and reservoirs also reduces the operational lifespan of the structures and affects the output in terms of power production. Competition for water is very critical in the basin due to the intensive irrigation together with heavy municipal water abstractions for use in surrounding towns and the City of Nairobi. These causes large water short falls to domestic and irrigation projects downstream of the basin.

Other conflicts are due to water use between upper catchment irrigation and hydropower and the lower Tana irrigation and livestock development due to riverine cultivation and livestock access to water.

Another challenge is therefore water distribution management. The management of water involves several agencies such as Ministry of Water and Irrigation, National Water Conservation and Pipeline Corporation, Nairobi Water and Sewerage Company Limited, Tana and Athi River Development Association and private bodies, agencies and individuals. Although the Water Act 2002 regulates water abstraction and distribution, there is need to streamline water undertaking among various public institutions and other stakeholders.

To this end the sewerage and sanitation functions, which are very vital to the conservation of water and pollution control, should be under local authorities, but regulated by the national body responsible for water resource conservation and distribution.

5.5.3. The case of Athi River Basin

In countries like Kenya, where there are water shortages due to uneven distributed rainfall, rivers are of vital importance, since they distribute water even to arid and semi-arid lands. This is especially true for the Athi/Galana/Sabaki river system in the Athi River Basin in Kenya. This river system is the dominant geo-hydrological structure in the Athi River Basin, originating in the humid highlands of the Aberdare Range Forests, flowing through the country's arid and semi-arid lands and draining into the Indian Ocean. This water resource, which is commonly shared by the riparians from the upper to the lower reaches, faces a conflict of distribution, since in times of low flow there is not enough water to meet all the needs of the riparians.

The Athi River Basin as one of Kenya's five river basins. The upper basin region, which includes the districts Kiambu, Nairobi, and Thika, receives rainfall ranging from 600-2000mm per year. All the other regions in the river basin, that are parts of the districts Machakos, Kitui, Makueni, Kajiado, Taita Taveta, Kwale, Kilifi, and Malindi, receive considerable less rain and thus, most of the river basin lies in arid or semi-arid lands. The Athi/Galana/Sabaki River System as the main surface water resource in the Athi River Basin serves as source of water for several purposes in urban as well as in rural areas. Nairobi District and Mombasa District are the two major towns in the country and both lie in the Athi River Basin. More than 2.8 million people live in these predominantly urban areas and both districts use water of the Athi/Galana/Sabaki River System for mainly domestic and industrial use. Nairobi as one of the most upstream districts is drained by important tributaries to the river system pollutes waters considerably in the rivers and thus, puts health of many riparians at risk. Mombasa District as one of the districts lying most downstream in the river basin is very dependent on the water of the Athi/Galana/Sabaki river system, since a major part of the water used is derived from a well field that is fed by the River Sabaki and from the Mzima Springs as one of the main tributaries to the Athi/Galana/Sabaki river system.

Water conflict evolves among different water use groups in the Athi River Basin, resulting from different political and economic power. For example: Mombasa as the country's second biggest urban region has both economic and political power to invest in a water supply project to improve lives of urban dwellers. Rural communities in Malindi District have needed to invest in irrigation infrastructure to expand food production and thereby, enhance food security. But those communities do not have adequate access to loans and land to properly install efficient and sustainable irrigation schemes. Water use conflicts between communities due to competition over shared water resources are common, and may occur even when water resources are reasonably abundant. Athi River Basin in Kenya water shortages constitutes water conflicts in times of drought. Sound rules for water allocation between the co-riparians of the river basin need to be developed in order to enhance ecological sustainable, efficient and equitable use of the basin's water. To create such allocation rules according to the requirements of Integrated Water Resources Management

The Kenyan water sector

The 2002 water act

In 2002, the present Water Act was enacted, 'to provide for the management, conservation, use and control of water resources and for the acquisition and regulation of the rights to use water' (GOK, 2002). The 2002 Water Act has introduced comprehensive and radical changes to the legal framework of the water sector in Kenya. These reforms revolve around the following four themes as described by Mumma (2007):

1. The separation of the management of water resources from the provision of water services;
2. The separation of policy making from day-to-day administration and regulation;
3. Decentralization of functions to lower-level state organs; and
4. The involvement of nongovernment entities in both the management of water resources and the provision of water services.

The 2002 Water Act separates the management of the water resource from the delivery of the water services. In the act two autonomous public agencies are established. One to regulate the management of water resources and the other to regulate the provision of water and sewerage services (Mumma, 2007). The Water Resource Management Authority (WRMA) was established to regulate the management of water resources. WRMA is responsible for the allocation of water resources through a permit system (GOK, 2002). Next to WRMA the Water Services Regulatory Board (WSRB) was established. The WSRB is mandated to license all water and sewerage services that provide to more than 20 household (GOK, 2002).

The 2002 Water Act also decentralizes functions to lower level institutions. Kenya is divided into six catchment areas. WRMA is mandated to formulate a catchment management strategy for the management, use, development, conservation, protection and control of water resources within each catchment area (Watson, 2007). The authority appoints a committee of up to 15 persons for each catchment area to advise its officials at the appropriate regional office on matters concerning water resources management, including the grants and recitation of permits (Mumma, 2007). With regard to the provision of water and sewerage services, water services boards (WSBs) are established. WSBs cover an area of service which may encompass the area of jurisdiction of one or more local authorities and is responsible for the provision of water and sewerage services within its area of coverage. For this purpose it must obtain a license from the regulatory board (Mumma, 2007). The Act, however, prohibits the WSBs to engage in direct services provision. The WSB must identify another entity as its agent to provide water services. In most cases the water service provider is a private company.

The 2002 Water Act enacts the principle of local users taking responsibility for the guardianship of their own resource (Watson, 2007). This is a complete change in resource management strategy, which in turn will require a major reassessment in thinking on the part of both consumers and managers (Watson, 2007). In the Water Act a role for the community in water management is recognized. The community organized in water resource user associations is seen as an important link in the management of water resources. The 2002 Water Act relies on voluntary membership associations rather than on other institutional mechanism such as local

authorities (Mumma, 2007). The reason for this is the belief that, being voluntary in nature, these associations can draw on the commitment of the members as social capital, as opposed to attempting to rely on more formal statutory structures, which might not necessarily be able to call on that social capital (Mumma, 2007). The act not only sees a role of cooperative management of water resources for these organizations but also as forums for conflict resolution. With regard to the service sector, the act states that service shall be provided only by a water service provider which is defined as 'a company, non-governmental organization or other person providing water services under and in accordance with agreement with a license (GOK, 2002).

The concept of WRUAs

The Act provides a role for community groups, organized as water resources user associations (WRUAs), in the management of water resources. The WRUA is 'an association of water users, riparian land owners or other stakeholders who have formally and voluntarily associated for the purposes of cooperatively sharing, managing and conserving a common water resource' (GOK, 2006). WRUA is a community-based participation model in water resource management. It is believed that; water resources are extremely difficult to control as they are considered 'common property' and available total' (GOK, 2006). It is argued that the model is based on three premises: First, that the water resource users, being the principle beneficiary or direct stakeholder of the water resources, should be integrally involved in the management of the water resources. Second, since their livelihood is at stake, the water resource users can be mobilized to undertake water resource management activities that serve their best. Third, it is more efficient in view of WRMA for the WRUA to mobilize the water users to solve problems at the grassroots level. Likewise WRMA value WRUA as a suitable vehicle around which to mobilize and coordinate the participation of water users in water resource management.

The objectives and activities of WRUAs include promoting controlled and legal water use activities; promoting good management practices to make efficient and sustainable use of the water resource; promoting water conservation practices to ensure sufficient water reserves that meet the demands of the environment, the wildlife, the livestock and all the communities who rely on the water resource; working towards reducing conflict in use of the water resource and participate in solving those that arise; promoting catchment conservation measures to improve water quantities and quality; resolving conflicts on water use among other activities .

Resolving conflicts

WRUAs are not only formed for the concept of community based water management, the government of Kenya also sees them as important actors in conflict resolution. In section 15 (5) of the 2002 Water Act is stated that 'these associations will act as forums for conflict resolution and cooperative management of water resources'. WRUAs are seen as the most significant

contributors the prevention and resolution of water conflict through direct intervention to deal with the major causes of conflict, such as over abstraction of water, illegal water abstraction, wasteful means of conveyance and irrigation and delayed issuance of water permits. Those guilty of such offenses are compelled by the respective Association to take the necessary corrective measures; otherwise, they are reported to the relevant authorities for appropriate legal action. Likewise WRUAs are expected to act as pressure groups to press for speedy issuance of water permits by the concerned authorities and as fora for dialogue and arbitration of potential and existing water conflicts.

Furthermore, practices and developments within the sub catchment that have the potential to cause use conflicts are identified by the water situation monitors and reported to the executive committee (members of the association effected can also report directly to the executive committee) who move quickly to address the problem, either directly or through the district water office (Gikonyo & Kiteme, 2002).

5.5.4. Trans-boundary water conflicts

As competition intensifies, conflicts are brewing between nations that share trans-boundary freshwater reserves. The region is marred with very serious water disputes and bloody/deadly conflicts.

Nile River – Conflicts over the water resources of the Nile River system seem almost inevitable. The nine countries that share the system (Egypt, Ethiopia, Sudan, Tanzania, Kenya, Uganda, Burundi, Rwanda, and the Democratic Republic of Congo) are some of the world's poorest nations and their populations are exploding, increasing stress on endangered water resource.

Lake Victoria – a potential conflict between Kenya and Uganda. The receding Lake Victoria's levels in the recent years is destroying the breeding grounds for fish, and endangering the 30 million East Africans who live around the lake. 'Scramble for fish' in Lake Victoria is turning out to be a source of conflict between nations bordering the lake and could potentially threaten regional stability. Since 2003, a number of Kenyan fishermen have been arrested and their boats and equipment confiscated by either Tanzanian or Ugandan authorities for illegally crossing the common borders. There is an incident when about 400 Kenyan fishermen were kicked out of Migingo Island by Ugandan authorities. Migingo is claimed by both Uganda and Kenya. This incident has exacerbated the already strained relations between the two countries. The Kenyan fishermen have appealed to their political leaders to intervene, some even threatening violence.

Mara River Basin

The Mara River with its source in the Mau forests complex in Kenya is a trans-boundary basin shared between Kenya and Tanzania, and is also part of the larger Nile Basin that is shared by nine countries.

Due to the Mau forest cover loss and unsustainable agricultural expansion and intensification (including irrigation), human population growth, stakeholders in the Mara River Basin increasingly face inadequate access to water. Important threats include loss of native forest cover in the upper parts of the catchment and along rivers, poorly planned tourist facilities, and water pollution and abstractions by industries and urban settlements.

These problems have resulted in decreasing water supplies, competition for and conflicts over available water, inappropriate and poorly planned land use, and ineffective water resource management systems in the two countries.

The Mara River Basin can be divided into four distinct physical and/or land-use sections, mainly on the basis of location along the river. The upper catchment comprises two of these sections: first, the forested Mau Escarpment and second, a section characterized by large-scale agricultural farms. Some of the large-scale agricultural farms are irrigated using water from the Mara River. The Mara River then runs through the third section, which is open savannah grassland protected by the Masai Mara National Reserve on the Kenyan side and the Serengeti National Park on the Tanzanian side, two important and renowned protected areas in the region. The flood plains comprise the fourth section and are located in Tanzania where the Mara River discharges into Lake Victoria. High human and livestock population densities and subsistence agriculture characterize this section. The situation poses a potential conflict between Kenya and Tanzania.

Sub-basin cooperation in the Nile River Basin

A good example of sub-basin cooperation with all its difficulties can be observed in the Nile River Basin. The Nile River is the longest international river in the world (6,825 km). It passes through ten countries in the North eastern section of Africa - Rwanda, Burundi, Zaire, Tanzania, Kenya, Uganda, Eritrea, Ethiopia, Sudan and Egypt - before reaching the Mediterranean Sea. The White Nile and the Blue Nile are the two main tributaries of the Nile. The White Nile generally flows north from its major source, Lake Victoria in the east central Africa, through Uganda and into Sudan. From Sudan, the White Nile meets the Blue Nile at Khartoum, which rises in the Ethiopian highlands. Then from the confluence of the White and Blue Nile, the river flows northwards into Egypt and on to the Mediterranean Sea. The Ethiopian highlands provide 86 per cent of the Nile flow, while the Equatorial Lakes Region provides only 14 per cent (Swain 2002: p. 146). The Nile Basin is faced with a reduction of water flow and an inequitable distribution of water.

In 1995, more than half of the 287 million total population of the Nile relied on the Nile River. The region must also cope with the rising needs of agro-based economies as, for instance Egypt and Sudan depend heavily on irrigation for the well being of their economies. Nile water remains a scarce resource for both Egypt and the Sudan. If both countries but especially Egypt, insist on carrying out all their plans for agricultural, municipal and industrial water expansion, both will face severe water deficits.

Egypt's stand in relation to the development and utilization of the Nile started with the adoption of the doctrine of absolute territorial integrity (see 2.3.1) which gave priority to its historic rights to the Nile waters. With the support and encouragement of Great Britain, the various Century Storage Plans, the Jonglei Canal and other projects all gave priority to Egyptian needs. The 1929

Agreement to share the Nile's water still reflects Egyptian adherence to the doctrine of absolute territorial integrity.

Only in the 1959 Agreement did Egypt distance itself from this doctrine and accepted more the principle of equitable allocation of the Nile's water especially in relation to the Sudan (Kliot 2001: p. 51). The quantities of water actually used by Egypt up to the date of the Agreement constituted the established rights of Egypt (48 billion m³ annually) and Sudan (6 billion m³). (Kliot 2001: p. 84-85).

The 1959 Agreement also finally established the linkage between the varied policies of Egypt and Sudan which formed the foundation for adopting a common policy against the other co-riparian of the Nile. Ethiopia and the East African states were not invited to any of the negotiations of the 1959 Agreement. In this agreement, future Ethiopian requirements from the Blue Nile were not specifically taken into account. Ethiopia and the Equatorial states do not recognize the validity of the 1929 and the 1959 Agreements since their rights for Nile water were not acknowledged (Collins, quoted by Kliot 2001: p. 86). The upper riparians have on various occasions made it clear that they reserve their rights to Nile water. Ethiopia declared this in 1956, 1977 and 1980. Kenya, Uganda and Tanzania adopted a similar policy (Kliot 2001: p. 86). Sreenath (2002: p. 526) created a scenario, where Ethiopia in the year 2050 considerably increases use of Nile water for irrigation, leaving little water for downstream riparians. In such a situation, the available water in Egypt will consequently decrease and lead to water shortages.

The only other agreement in the Nile basin is the Kagera Basin Agreement between Rwanda, Burundi, Tanzania and Uganda, being a multi-purpose agreement. The objectives of the agreement are hydro-power development, the provision of water for municipal, industrial and agricultural use, the development of fisheries trade and transport, and environmental protection (Kliot 2001: p. 85).

It is to conclude, that the legal status of present agreements concerning the Nile basin are not recognized by all co-riparians. (Kliot 2001: p. 86). The experiences in the Nile River Basin make clear, that cooperation over shared water resources is necessary to successfully manage commonly shared water resources.

5.6. Cross border conflict analysis

Pastoral communities inhabit over 21 countries on the African continent, ranging from the Sahelian West, the rangelands of Eastern Africa and the Horn, to the nomadic populations of Southern Africa. They are concentrated in some of the most arid regions of the continent, which necessitate semi- or wholly-nomadic livestock grazing. Many of these communities are affected by armed violence, with East Africa and the Horn, and the Sahel region featuring sustained levels of inter-pastoral armed violence with associated lawlessness.

Eastern Africa has numerous pastoral groups in a broad geographical band that stretches from the Kenya-Somalia border northwards into Ethiopia and northwest to encompass regions of Uganda. These regions have suffered large-scale intra-state wars that have supplied pastoral groups with modern weaponry, resulting in protracted conflicts with numerous neighbours.

In Kenya pastoralists occupy the arid/semi-arid northern districts including Turkana, Baringo, Marsabit, Samburu, Laikipia that are part of a conflict-affected region, ravaged by internal and cross-border conflict with raiders from Uganda, Sudan, Somalia, Ethiopia.²

Conflict and actor analysis

Pastoral groups in Kenya living or grazing their livestock along the borders, often get into scuffles with those from neighbouring Ethiopia, Somalia and Uganda. Turkana county revealed a high number of trans-national raids by Tepeth (Uganda), Jie (Uganda), Dodoth (Uganda), Matheniko (Uganda), Moroto (Uganda), Merilee (Ethiopia), Dongiro (Ethiopia), Dassenech (Ethiopia), Toposa (Sudan), Nyagatom (Sudan) groups. The causal elements include drawing of administrative boundaries between nation states across traditional migratory routes, as well as the ecological changes such as shrinkage of Lake Turkana basin wholly into Kenya that earlier stretched into Ethiopia.

There has been influx of refugees in Kenya in the past and protracted insecurity and prolonged droughts have created severe famine conditions and are leading to intra-region, cross-border migrations. These refugees are forced to trespass into resources used by Kenyan pastoralists, wherein is the source of conflicts that occur farther inland and beyond the borders.

Among cross border raiders, Ugandan tribes Tepeth, Dodoth and Jie are the main aggressors and contribute towards over 60% of the cross-border conflicts. Other cross border actors such as Toposa, Nyangatom, Dongiro, Dassenech, Matheniko operate in limited stretches.

Traditional Conflicts

These occur due to disputed resource sharing, restocking of depleted herds or accumulating livestock for bride wealth or as revenge for previous raids. Such raids are governed by customary rules and directed by elders, although the participants are the youth and other able-bodied and at times, hired warriors. It is usually with traditional opponents and historically carried out, but killing is limited and women and children are spared. The spoils are shared.

Commercial Conflicts

Although all raids are for commercial gains in some way, commercial conflicts are a more formalized form and are purely for the purpose of accumulating cattle for sale and exploiting otherwise inaccessible resources. The gains receivers are the catalysts and these could be external arms dealers or wealth seekers from the community, and participants are the easily seduced youth and hired warriors. Although killing is not an aim, it does occur and in large numbers.

Conflict Actors

The conflicts may be elder-driven or youth-driven, and the characteristics of each differ from those of the other. Although they may start violent conflicts to gain control over resources, the elders have a higher need for ensuring good relations and maintaining general security. Youth on the other hand have little to gain from security, and much more from economic power, prestige, etc., accessed via violent conflicts and illicit arms. Elders and women do incite conflicts, and elders also organize for the larger raids; but they also play a stronger role in maintaining and rebuilding peace. Although in the past, all raids had to be approved by the elders increasingly

the youth are launching raids without such approvals, seeing the wresting of control from the elders as an added benefit.

The traditional raids have metamorphosed with the involvement of actors beyond the traditional communities. Arms sellers supply weapons and mercenaries are also involved in large raids. Politicians promote conflicts and incite violence as a measure for gaining political advantage over opponents, and also enhancing prestige among supporters. Administrators sometimes facilitate the politicians by abstaining from intervening to stop such violence. Civil society carries with it its own biases and prejudices and acts based on these in a conflict-insensitive manner; funds provided by them are sometimes manipulated and provides additional power to warlords. At the same time, administrators and civil society also play a conflict mitigation and resolution role.

6.o. Knowledge generation and dissemination on land conflict

This section discusses the channels used to disseminate information and knowledge on land and land conflicts that are available as well as role of CSOs and media.

Internet and websites

Stakeholders and government commission land related studies, prepare reports on peace building efforts and case studies. These reports and case studies are hosted in the internet and websites of the various stakeholders and government departments, ministries and institutions. for example most laws in Kenya can be found in <http://kenyalaw.org/kl/> Policy documents are also found in websites of relevant ministries and government departments for example Kenya Forest Services, website www.kenyaforestservice.org/ you are able to access forest policy, Forest Act 2005 among other policy and legislation documents. Different organizations likewise host documents including studies, tools and guidelines in their respective websites that are accessed from these sites. Despite presenting huge amount of information and knowledge, internet and websites are accessed by literate individuals that have skills in internet browsing and using of search engines. Individuals without these skills are not able to access the information and knowledge. Internet and websites host significant amount of information and knowledge land and natural resources conflicts and management. This facilitates access to information and knowledge for individuals who have the financial and technical capacity.

Libraries

Libraries that are managed by government, universities and other institutions store information and knowledge on land. The knowledge is stored in books, articles and other media. Individuals

are therefore able to access the knowledge through the set guidelines and conditions. Most documents found in the library require literate people who understand English since they are written in English. The libraries therefore close out the semi and illiterate individuals.

Government printer

Most government policies, laws and guidelines are accessed from government printer which is the main distributor of the document upon paying set fees/prices. Unless a document is out of stock, one is able to access the same at government printer.

Elders

Elders are knowledge holders within and among communities. Knowledge on land related conflicts are held by elders. Also knowledge on conflict resolution processes is held by the elders who also participate in facilitating communities to resolve the conflicts. Different communities have different approaches or strategies that they use to resolve land and resource related conflicts between communities and within a community. In the past there were well stipulated process of handing down the knowledge to younger generation and lately there has been systematic erosion of the knowledge due to developmental factors. Generation gap is developing fast between the elders and youth and effort is required to facilitate intergenerational knowledge transfer between elders and young people with a view of making the young generation appreciate the knowledge and wisdom of elders as they adapt the same within their context.

Television and Radio

Television and Radio develop programmes geared at addressing conflicts related to land and natural resources. Knowledgeable individuals disseminate the knowledge using either television or Radio channels through establishing debates and or dialogues over land and natural resources issues. However these programmes are developed after conflict erupt and are short lived. The two channels have ability to reach a huge population within a short period and therefore have potential to inform and pass knowledge to citizens faster and widely. However, there is need to improve on the content being disseminated to ensure that citizen are well informed and knowledgeable. Radio is the most widely listened to by most citizens and content and language of communication has to be carefully be decided upon in order to reach the illiterate and semi literate cadre of the society.

The role of different actors: CSOs and the Media

Role of CSOs

In Kenya, peace building and conflict management interventions by the civil society have mainly involved CSOs, CBOs, Faith-based and Non Governmental organizations.

Civil Society interventions have focused on reconciliation and building new relationships amongst the warring communities. Such activities include dialogue, negotiations and problem solving workshops, information, education and communication. These set precedence to the coexistence in places where violence was the norm.

Role of media

The advent of the Information Age facilitated increase in availability of mobile phones and access to internet thus generating new interest in the impact of these tools on development and more focus on citizenry as producers and innovators, as opposed to just consumers of information. The advent of M-Services such as M-Finance, M-Health, M-Agriculture are examples of how the availability of new communication tools have spawned new approaches to communication for development.

In the arena of conflict transformation and peacebuilding, communications have historically played a role in shaping the views of policy-makers and influencing popular opinion on conflicts. Before and since World War II, radio, daily newspaper, and later television demonstrate how communication and media has shaped the views of policy makers and the public on war and the prospects of peace. Recent studies recognize the ability of media and communication to support humanitarian relief, improve governance, and contribute significantly to the process of reconstruction and stabilization. Interventions has been evolved that contributed to managing expectations, building both trust in and oversight of state institutions, aiding the formation of an inclusive national identity, and fostering a participatory and engaged citizenry. The potential of media to contribute to peacebuilding, reconstruction and stabilization is significant and laudable. However with increased tools and platforms for communicating, a well thought communication model or models need to be developed in order to realize the peace building agenda putting into consideration accessible tools or platforms by target audience.

Traditional methods, like community meetings, radio, television, and newspapers, have long since served to inform communities and organizations on the ground. With the addition of new communication tools like mobile phones, SMS, and social media, individuals, communities and organizations can now complement these traditional forms of media and even challenge seditious narratives by communicating their own stories. In addition, new tools for communication facilitate more information gathering and interactions between users. In their application to peacebuilding, these new tools can contribute to greater knowledge about

changing conditions on the ground, needs of communities that are enduring or have endured violence, and even increase contact and understanding between opposing groups.

Impact of knowledge on the evolution of land policy and practice

The process of developing the Kenya National land Policy is acclaimed to be one of the most participatory involving citizens and multi-stakeholders. The participation of the citizens and stakeholders can be attributed to the knowledge developed by CSOs and media initiatives on land issues and related policy, legal and management challenges that adversely affected citizens. The policy articulated the pertinent issues on land matters and evolved strategies that would be applied to address various challenges including historical injustices.

Despite providing promising solutions to land related challenges, the national land policy has not contributed to effective land related conflict management. The National Land Policy (NLP) informed the Constitutional provisions and Kenya constitution 2010 requires that among other principles, land be managed in an equitable, nondiscriminatory, efficient, productive and sustainable manner. The constitution further requires that community-based dispute resolution mechanisms be applied in resolving conflicts.

Policy analysts have identified challenges to the implementation process of land policy as: inadequate implementation framework, weak institutional capacity of key reform institutions, limited stakeholder consultation on implementation process and perceived loss of power and privilege by key institutions, competition among land actors and unclear legislative roadmap. These challenges inhibit realization of effective land related conflict management practices, despite having policy provision to evolve the same. However, CSOs and other stakeholders are engaging the National Land Commission and other Government entities with a view of ensuring smooth implementation of the Land policy.

7.0. Discussion/analysis and conclusion

This section discusses emerging trends, lessons and recommendations.

7.1. Emerging trends

Land and natural resources based conflicts

The frequency and violence involved in conflicts related to land and natural resources is on a steady rise. The situation has been complicated due increasing commercialization and politicization of the cattle raids and prolonged droughts necessitating movement from one place to another in search for pasture. Use of automatic weapons, contribute to higher number of killings, with no discrimination between warriors as well as women and children. Droughts also cause the conflicts between pastoralist and farmers as they migrate in search of pasture and water. An increased water demand by different water users has facilitated conflicts between and

among various stakeholders. Poor management regimes for natural resources and climate change give rise to competition over resources causing conflicts over the same.

Competition over land

There has been steady competition over land by local and international investments. Due to population pressure, farming communities are extending farming activities to areas previously reserved for pastoral communities. Government and investors carve significant land for farming enterprises by international large scale farming investments, thus creating competition between local communities and investors. Drought prevalence likewise force pastoralist communities to migrate to highlands in search for pasture and this create conflicts between them and farming communities.

Evolution of policies and legal system

In order to respond to the increasing challenges related to land and natural resources management and access, there has been emergence of policy formulation and review of the legal statutes governing land and natural resources. For example, Kenya had not had National Land policy since independence and due to the multifaceted challenges related to land, the process of developing national land policy was started to provide short and long term solution to the outlined land related challenges. Also environment and land court law was formulated to guide and regulate the process of resolving land and natural resources management issues. The process of reforms saw mainstreaming of land and environment in Kenya's Constitution as a way of ensuring that the agenda on land and natural resources management is adequately addressed. In addition, due to prevalence of conflicts, Kenya evolved a peace building policy that spell out how the country would proactively engage in peace building and ensure harmony among the citizens. In the region there are treaties and bilateral agreements that Kenya subscribe to that are geared at ensuring better management of shared resources like water within Nile basin. The effort nationally and regionally signifies how important land and natural resources management is to the national and regional development agenda.

Peace Actors

There has been increased emergence of peace actors at national and sub-regional levels. The actors use different approach to resolve conflicts and restore relationship between warring communities. Participatory approaches and methodologies have been evolved by the peace actors where communities involved in these conflicts are engaged in find sustainable solutions to ensure peace and harmony among themselves. Some actors combine peace building and development with a view of ensuring they address the underdevelopment of the regions and cultivate enabling environment for maintaining peace.

7.2. Lessons

Existence of best practices in peace building

Although there is no one size fit all practice, the peace and development actors over time have come up with reliable practices that can be contextualized to offer sustainable peace. These peace actors have developed good practices, methodologies and approaches that if contextualized within the community setting can provide solution to sustainable peace at national and sub-region levels. Distilling, harmonization and contextualizing of these practices is needed to evolve sustainable peace and address development imbalances among communities.

Hybrid arrangement to ensure sustainable peace

Traditional mediation and conflict management modes involved community elders and local mediators; these modes are declining in their influence however with the changing dynamics and social structure. Traditional governance structures have been systematically undermined as well. The position, authority and role of elders are undermined. The elders' peacemaking role has also been undermined by the development of modern state, market economy, and the introduction of armed warfare and the institution of state-based ascribed authority. The multiplicity of actors and influences (local states, international organizations, development agencies) has also contributed to the breakdown of indigenous traditions and practices, and overpowered the culturally approved rules and mechanisms of conflict management. Based on the situation, there is need to create a hybrid arrangement that borrow from the traditional systems and conventional approach in order to appreciate the current realities and capture expectation of the parties involved in peace building.

Media Use

Media has great potential of contributing to peace building and reconstruction. Peace actors have used different media platforms in the peace building efforts. Some use the traditional platforms that include use of radio, emails, print media and television while others use new platforms like SMS, blogs, social networks like face book, tweets and crowd-sourcing and satellite technology (GPS,GIS). Media use ensures reaching a wide range of audience and within a short period. Both old and new platforms have their respective advantages and disadvantages. However, a blend of the two would ensure better results and more enhanced engagement of peace actors and audiences.

7.3. Recommendations towards enhancing peace building

Peace content by media

Most of the content used by media largely target literate individuals and is in most instances in international languages, i.e. English, French etc. Therefore there is a need for peace actors to develop local content using the popular languages in order to reach a wide range of people. Policy on peace content development by media is required to provide framework on which to

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develop the content on peace building and ensure there are set standards to be followed by media practitioners.

Translating policy and legislative documents into popular languages

Reforms within land and natural resources management sector have taken place and offered opportunities for communities to participate in addressing related the challenges. However, most of these documents are in official languages like English whereas majority of the population do not fully understand the languages. It is therefore important to translate the documents into local languages so that the citizens are able to read and understand the content and proactively engage the state organs charged with the responsibility of implementing the policies or legislations. Providing the policy and legal document in popular languages would enable open and proactive engagement between state and community members during implementation of the policies and legal statutes. A policy directive should be evolved and specific institutions mandated to translate and distribute the policy and legal documents to citizens for use by respective communities.

Mainstreaming peace building in education system

Peace and cohesion building among citizens is a long term development goal and it is therefore critical for policy makers to consciously mainstream peace building in the education system from primary to tertiary levels. Education policy need integrate peace building and facilitate development of the content for peace education within the education sector. This will enhance cultural competency among citizens who go through education system.

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