

Land Governance Arrangements in Eastern Africa: Description and Comparison

Authors

- a) *Achamyeleh G Adam (PhD)*, Bahir Dar University, Ethiopia
- b) Mrs Aline M Cikara (MSc), Université Évangélique de Afrique, DRC
- c) Hidaya Kayuza (PhD), Ardi University, Tanzania
- d) Lilian Mono Wabineno (PhD), Makerere University, Uganda
- e) Mr Potel Jossam(MSc), INES Ruhengeri, Rwanda
- f) Robert Wayumba (PhD), Technical University of Kenya, Kenya
- g) **Mr** Prosper Turimubumwe, University of Burundi & Bahir Dar University
- h) Prof. Jaap Zevenbergen, University of Twente, Netherlands

Corresponding/Presenting Author: Achamyeleh Gashu Adam(PhD)

Email: agachamyeleh@gmail.com

Tel: 00251918781471

POBox.913

Bahir Dar University, Ethiopia

Abstract

This study is aimed to assess features of land governance arrangements in the Eastern Africa region and its role in minimizing conflict between land governance actors and processes. Comparative and qualitative research approach was employed to achieve the objectives of the study. The research was also conducted within the context of long standing research collaboration under the umbrella of the Eastern African Land Administration Network (EALAN). The Eastern African countries included in this study are those represented through respective institutions in the EALAN, namely: Burundi, Democratic Republic of Congo, Ethiopia, Kenya, Rwanda, South Sudan, Tanzania and Uganda. The findings of this research reveals that the region manifestes diverse background of land governance arrangements accommodating various conflicting land governance actors and processes, due to varied historical backgrounds. Overall the formal systems in most of the countries are not reaching large parts of the society yet, progress is ongoing but many are still unreached. Due to the limitations of the formal systems, aspects of custom and informal authority structures exist and seem to be used by most people for conflict resolution and other transactions related to land. Therefore, more effort is required to make the formal systems more accessible, including altering current formal systems and making them less bureaucratic and more affordable for majority of the people.

Key Words: Actors in Land Governance, Conflict, Eastern Africa, Institutions, Land governance, proceses.

1. Introduction

1.1. Background of the study

Land is not just the earth that people walk on, it is fundamentally the way people think about place (Williamson et al., 2010). It is more than just an asset which is strongly connected to people's feeling mainly linked to individual and community identity, history and culture, as well as being a source of livelihoods and, for many poor people, their only form of social security (Palmer et al., 2009). In other words, land is the most fundamental resource in any society with far reaching social, cultural and economic implications. People require land and related resources such as forests and water for the production of food and to sustain basic livelihoods. Land provides a place for housing and cities, and is a basic factor of economic production as well as a basis for social, cultural and religious values and practices. Access to land and other natural resources and the associated security of tenure have significant implications for development. Access to land for the poor and vulnerable are increasingly affected by climate change, violent conflicts and natural disasters, population growth and urbanization, and demands for new energy sources such as bio-fuels and so on. Therefore, in today's world, land is increasingly recognized as an important governance issue.

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

The contemporary literatures and thoughts show that sound land governance is the key toward the achievement of sustainable development (Deininger et al., 2012) and (Enemark, 2012). On the other hand, weak land governance and corruption in the land sector is one of the key factors for

widespread poverty and it is the cause of many tenure-related problems. Attempts to address tenure issues are also affected by the quality of land governance in place. Weak governance can be exhibited in formal statutory systems as well as in informal and customary tenure arrangements (Palmer et al., 2009). The poor are particularly vulnerable to the effects of weak governance as they lack the ability to protect their rights to land and other natural resources. That is why all countries are attempting to deal with issues of land governance as their priority agenda.

Recognizing the importance of land governance as an important tool to national development goals, the East African countries have introduced land governance systems. However, the status of land governance arrangements, actors, process and conflicts focusing in Eastern African countries is not well studied. The Eastern Africa countries that this study covers include: Burundi, Democratic Republic of Congo, Ethiopia, Kenya, Rwanda, South Sudan, Tanzania and Uganda. These countries were selected because they all have institutions that are members of the Eastern Africa Land Administration Network (EALAN). The region manifests a diverse background of land governance arrangements accommodating various conflicting actors and processes, due to varied historical backgrounds. Thus, this research aims to assess features of land governance arrangements in Eastern African countries and its role in minimizing conflict between land governance actors and processes. A comparison of land governance practices and policies in the Eastern African countries was conducted.

This study provides a comparative analysis of the research conducted in the eight Eastern African countries. The first part of the paper deals with the background, objective and research questions. The second part details with the research methodology employed in the course of conducting this research. The third part of the paper covers results and discussion of the research data collected from different sources. In this section an analysis is made on the existing land governance arrangements and conflicts that emanate from existing land governance arrangements. It also provides insights into how conflicts in land governance are addressed in these countries. The last part of the paper summarizes the key findings of the the research as a conclusion.

1.2. Objectives of the study

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

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

1.3. Research Questions

The study is intended to answer the following key questions.

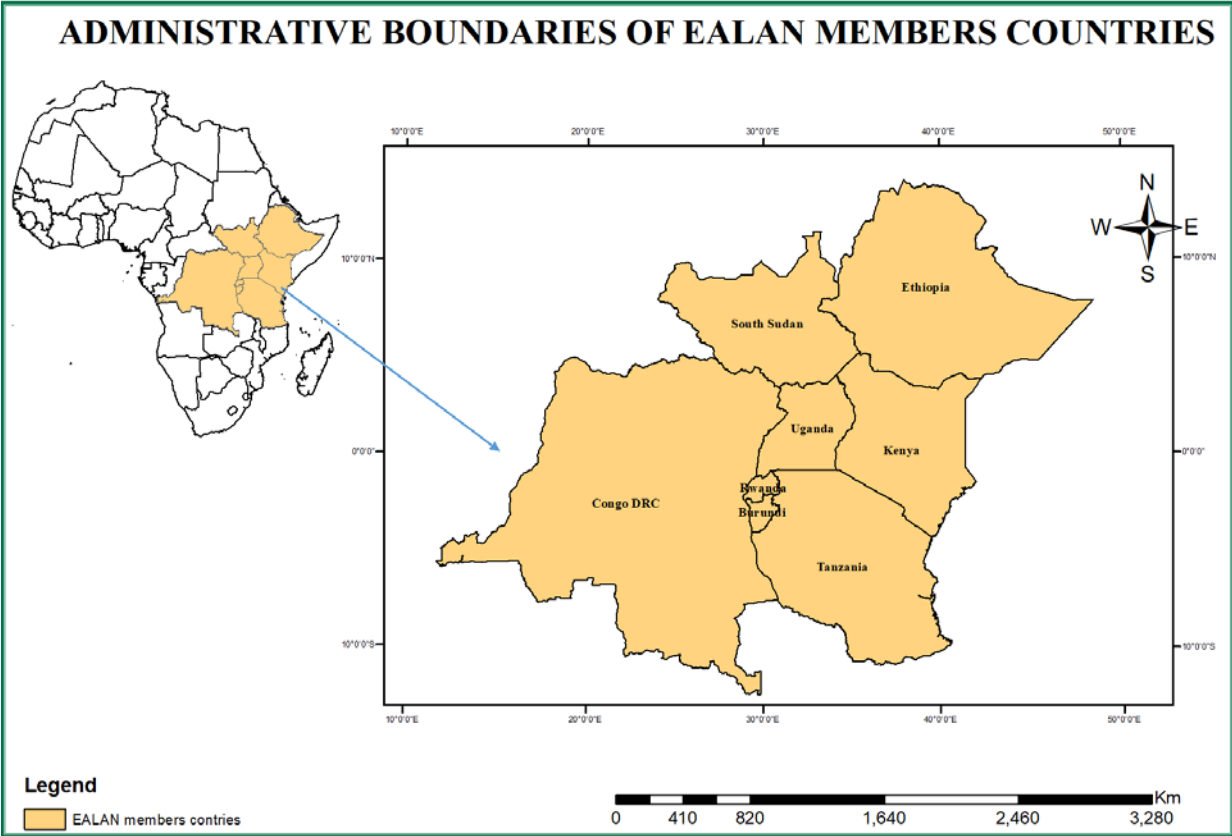
- i. How does the existing land governance arrangement structured in Eastern African countries?
- ii. What are the land related conflicts that emanate from existing land governance arrangements?
- iii. How can conflicts in land governance be addressed in the region?

2. Research Methods and Materials

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

This research has employed a qualitative research approach by using both primary and secondary sources of data. The data collection methods used include interviews, focus group discussions and existing documents on land governance. The people who were interviewed include stakeholders in land administration agencies, professionals in the land sector, policy makers, local authorities and leaders, and selected community members. Thematic categorization and co approach is employed as a data analysis method.

Figure 1: Study Area indicating EALAN Memeber Countries



3. Land Governance Arrangement in Eastern Africa

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

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

a) Traditional actors and their roles in land governance

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

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

The roles of traditional actors in Eastern Africa vary from place to place, in which there can be differences even between neighbouring villages (Chauveau et al., 2007). In some countries, they are mainly involved in dispute and conflict resolution, they represent and defend the interests of their local communities and by doing so, they feel they are land owners and thus, discourage their people from seeking land titles and continue enjoying the fees. However, not all Eastern African Countries have traditional actors in land governance. Countries like Tanzania, where customary land is regulated by statutory laws, traditional leaders have a minimal role. Instead they act within the framework of pre-established legal frameworks.

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

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

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

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

c) Formal actors and their roles in land governance

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

At central government level, all Eastern African countries have Ministries mainly in charge of land, with the exception of Ethiopia, where land issues are treated by the Directorate of the Ministry of Agriculture for rural land or the Ministry of Urban Development and Housing for urban land. Though for each country the names of Ministries are different depending on the mission and duties assigned to it, what is important is the level through which this actor is established. The national land commissions are also common in Eastern African countries, though the duties and obligations differ depending on the mission of the country. There is also a regional land agency at the regional, provincial level that disseminates land governance guidelines to districts/communes/counties for implementation.

On the decentralization level, it is also common that in Eastern Africa Countries, land governance services are decentralized at the level of districts, municipalities, counties, sectors and villages.

The formal actors in land governance mentioned here refer to those public office actors who are empowered by established legal frameworks to establish rules, regulations, processes and structures through which decisions are made about access to land and its use, the manner in which this is implemented and enforced and the way that competing interests in land are managed. These actors have and play different roles in their respective countries among which are to develop and disseminate the land governance, environment and climate change policies, strategies and programs, policy formulation, implementation and initiating legal reviews among others and register land, issue and keep authentic land deeds and any other information related to land governance.

3.2 Land Governance Processes

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

informal and formal. Land governance under traditional setting are being also practiced largely in countries such as DRC, South Sudan and Uganda.

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

The major **formal** land governance processes are those depicting the land administration functions such as land tenure, value, use and development (Enemark, 2005) as it is also prescribed by the relevant laws of the respective countries. Land policy formulation is another key function in all land governance systems of the region. Land adjudication is one of the activities aimed to identify and recognize existing rights in land holdings before processes leading to land registration are accomplished. The other processes are land use planning and subdivision to demarcate the boundaries of individual landholdings to enable registration of rights held in land. The land surveying process culminates with registration of the rights in land and issuance of certificates of title. Regularisation of land is another process undertaken, where land development has occurred not in accordance with planned land uses, such as is the case in informal settlements or in cases of unregistered lands. Disputes and conflict resolution is another key process in land governance. This takes place mainly through judicial systems as prescribed by the relevant laws. The formal land governance processes are to a large extent similar in all participating countries, except for Burundi where they are confronted with problems emanating from a lack of technical capacity to handle the land governance functions and the absence of the laws to guide the implementation of the processes. On the other hand, Rwanda demonstrates very efficient formal land governance among the countries included in the study.

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

3.3. Legislations and Regulations in Land governance

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

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

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

4. Land Conflicts and Conflict Resolution Mechanisms in the Region

4.1. Type and nature of Land Conflicts

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

Lack of proof of ownership in most of Eastern African countries have found to be the major land conflicts since many land owners do not have titles as evidence of ownership. This is because they hold and/or own land under customary tenure system. Others access land through informal purchase for which no efforts are made to formalize the transactions. It also happens that several people may claim rights over the same property because the rights are not registered or if registered they may not have been updated. This conflict can originate

from inheritance, legal pluralism and lack of well functioning registration machinery. In addition, registration machinery could be in place but the land has not been registered for various reasons including not affordable costs for the registration processes.

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

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

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

Moreover, expropriation of land by the state with unfair or without compensation for public interest has been causing conflict between government agencies and land holders/owners in most Eastern African countries. Despite, no country is expropriating land without compensating the holders or owners. In most cases land holders or owners are not willing to surrender their land willingly. The issue of dissatisfaction and resistance comes when it comes to property assessment where land owners are not aware on considerations and formulas used to compute the property values. In addition, they have been subjective to long time to pay the

compensation which makes the land owners not embrace the land acquisition processes. It has to be noted that no government could compensate the encroachers on public or protected land. When government refrains or becomes reluctant to compensate land encroached, conflicts erupts. Finally, what is being observed is that, no one is happy to be displaced from his land since the compensation value does not cover the disturbance on livelihood packages. It can be concluded that the types of conflicts found in these countries are almost similar except that are not having the same impacts or manifest in the same manner.

4.2. Root cause of land conflicts

Conflicts in land governance can be either within a particular setting for example there can exist land governance conflicts within the formal setting and the conflicts can be between settings for example between the formal and the informal or between the formal and traditional setting. This arrangement is also applicable when it comes to the root causes of conflicts. There are various causes of conflicts within and between settings as explained below.

In some countries in the region, there is failure to enact or implement land related laws in time which cause land governance conflicts as the different actors will be operating either under no law or outdated laws. In most cases the laws, regulations and procedures in place are enforced to a limited extent. In the countries studied there is no one country which is completely missing a law to guide land governance except may be some aspects have no law/regulation in place. Also as the law is available, it is not followed. This is problematic as there is no clear and well defined jurisdiction to limit operations of all actors in the land governance sector. This also compels people to do whatever they think is right which may be wrong. In the DRC for example the absence of policies and instruments for planning their use and integrated and collaborative approaches are the main causes of land conflict. There are different institutions (several stakeholders including state actors) each responsible for managing different aspects of the state's land domain but they do not have a correct perception of the relationship between customary land management systems and the requirements of modern land law, as derived from the law of July 20th, 1973. However the case of Rwanda is different as they have no longer problems in enacting and implementing land laws

Most if not all of the countries in the Eastern Africa have different land tenure systems in operation within the same country which is known as dualism of land tenure. In countries such as Uganda, Tanzania, Kenya, South Sudan, DRC and Ethiopia there are statutory tenures running parallel with the customary settings. Dualism of land tenure comes with legal pluralism as there are different legal frameworks for the different tenure systems. In most countries such as Uganda, Kenya and South Sudan and DRC customary land is managed and regulated by the king and chiefdoms in a customary setting where as in Tanzania and Ethiopia it is the Government that manages and regulates dealings and operations on customary land. The case of Rwanda and Burundi is different as they only have statutory law and no customary land. According to (Bruce, 2017), statutory tenure is non dynamic in nature as such the rules and regulations take long to be changed but the same cannot be said of customary tenure. Customary land tenure is dynamic and is ever evolving therefore the rules must also change but this is not the case. Instead in most countries statutory laws do not always adopt to

changing customs. For example in Uganda customary land tenure is now becoming individualized and can be converted into freehold according to the land act. This means that customary land is evolving from its old tradition of being owned as a group and losing its initial characteristic. However, individuals who bought customary land from a community but having neither rules of customary of statutory law being applicable to them as they seem to fall in none of the settings of governance. And if this individual gets any conflicts on land they will run to court yet customary land have their own ways of settling disputes within the customary setting. Therefore such type of land governance arrangements where there is legal pluralism causes a lot of confusion, overlapping authority and conflicts (Uganda National Land Policy, 2013) (2013) in the land governance systems of several countries

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

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

There are complicated procedures and bureaucracy in the land governance processes in Eastern African countries and these have led to people opting for either informality or trying to get shortcuts to have projects executed and this in turn has led to conflicts either within or

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

4.3. Land Governance processes that contribute to conflicts

This segment talks about the question that was formulated as follow: How do processes contribute to conflicts? The results show that processes were in one way or another contributing directly or indirectly to land conflicts in all study area countries.

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

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

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

Still, challenges are to trace and update the information on subjects and objects as time goes on.

Lastly, issues with payment of compensation and rehabilitation for the expropriated landholders have been criticised as a process that pertains to contribute to land conflicts. In most cases, private land holders cannot oppose expropriation of land expropriation. Every country has its own mechanism for assessing compensation. To this extent the way right holders are compensated may vary in each of the country. The way people are settled in new areas and enabled to restore their livelihood is also different in each context.

5. Land Conflict Resolution mechanisms in Eastern Africa

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

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

Based on the above and the research findings, most of the actors in the region address conflicts through traditional/ customary authority structures. In the Democratic Republic of Congo (DRC) approximately 90% of all land conflicts are addressed by traditional methods (research respondent). In this regard, under the moderation of the customary chief, the guilty asks for forgiveness and repairs the damage done without brutality. In Ethiopia, disputes can also be taken to respected elders, religious leaders at village level to seek for remedies in addition to the courts. To some degree, in Ethiopia, the formal law demands that disputes are first taken to alternative dispute resolution mechanisms such as elders, before being addressed formally. Similar trends were observed in the other countries, in which custom has been retained as a means of resolving land related conflicts.

Apart from custom, informal systems are also used to address land conflicts. In this regard, informal systems are those that have emerged in a society and are not necessarily custom and are also not anchored in formal laws (Chauveau et al., 2007). The informal arrangements are those that have emerged due to socio-economic changes in society. The changes include: urbanization, population growth, monetarization of the economy, interaction with other cultures etc. (Chauveau et al., 2007). In most urban areas in the Eastern African region, informal settlements, known as slums have emerged. In these slums, there are informal

authority structures who manage access to land and related resources (Lamba, 2005). Similarly, in rural areas, informal arrangements have emerged, with which people conduct land transactions. For example, some people sell land by merely drafting an agreement between themselves, without involving a lawyer or the land registry. In some cases, the agreements are attested by a chief to make it seem formal, or official, even if the transactions is not recognized in the formal register (Zevenbergen et al., 2013) ;(Goodwin, 2013).

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

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

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

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

Another form of dispute resolution that has been used in some cases is reliance on traditional belief systems. In most African communities, there have always been beliefs in the supernatural or spiritual World. To this degree, when all else fails, some people resort to spirituality to resolve conflicts. The affected party usually approaches a diviner or witch

doctor to cast a spell on the offending person. Based on responses from the researchers from the different countries, “African magic” still exists and in some cases is used to resolve land conflicts.

This section has explained how conflicts related to land are solved within the Eastern Africa member states. In summary, in each of the countries, people use traditional/ customary, informal and formal means in different ways. However, it appears that the use of customary and informal means is higher than the use of formal mechanisms due to costly and bureaucratic formal processes. A problem that usually emerges is that custom and informal rules work well only when the society is cohesive or homogenous and everybody accepts the unwritten rules. However, when new actors emerge, who do not know the customary or informal rules, then the ability to resolve conflicts is diminished (Deininger, 2003). As an example, in some cases of land transfers or inheritance, after the original land owners are long gone, the new actors may not respect informal agreements that were made by the departed. To this end, there is a need to improve the formal land tenure arrangements as a means of enabling more people to use formal systems for conflict resolution.

6. Conclusion

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

The study identified three key actors in land governance arrangements in Eastern African countries. The actors are categorised as traditional actors, informal actors and formal actors.

The traditional authorities include kings and chiefs in a country like Uganda, and elders in the community in most countries. In Ethiopia, the traditional authorities include *Edir* (social associations for helping each in burial arrangements at village level in Ethiopia but also solve succession disputes especially when involving land) have been playing a significant role in conflict resolution. However, in some countries like Rwanda where land is registered and digitized, traditional leaders play a minimal role in land related activities.

In addition to the traditional actors, informal actors are visible in many countries in Eastern Africa. The actors in the informal category include individuals, some local leaders, unlicensed and unstructured brokers, religious clergy and government officials. However, this is not in all Eastern African Countries. In Rwanda, whose land governance system is regulated by statutory law, informal land actors are deemed illegal and thus, not acceptable. The third categories of actors are the formal actors whose role is bounded by the official rules and include all government agencies and professionals. The formal actors are the key actors in all

Eastern countries. The formal actors are either public offices or individual actors who are empowered by established legal frameworks to establish rules, regulations, process and structures and ruled by the established formal or official laws. The formal actors include land registrars, surveyors, physical planners, lawyers and real estate valuers among others.

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

This study has also explored the different conflict resolution mechanisms employed in the region. Formal mechanisms of conflict resolution such as courts and land tribunals exist in all countries. However, as an alternative, some people opt for informal mechanisms of solving conflicts. As an example, in informal settlements, cartels may play a role in solving conflicts. Further, traditional methods of solving disputes also exist. In this case, elders, chiefs and in some cases, Kings, solve the conflicts.

Overall the formal systems in most of the countries are not reaching large parts of the society yet, progress is ongoing but many are still unreached. Due to the limitations of the formal systems, aspects of custom and informal authority structures exist and seem to be used by most people for conflict resolution and other transactions related to land. Therefore, more effort is required to make the formal systems more accessible, including altering current formal systems and making them less bureaucratic and more affordable for majority of the people.

References

- ADAM, A. G. & BIRHANU, T. A. 2017. Decentralized Rural Land Administration in Ethiopia: The Case of Amhara Region. *Journal of Land and Rural Studies* Vol. 6, Issue 1, pp34-49.
- BRUCE, J. W. 2017. Land Tenure Dualism in China: How the Dichotomy between State and Collective Ownership Has Shaped Urbanization and Driven the Emergence of Wealth Inequality. *World Bank Land and Poverty Conference, March 20-24. Washington DC.*
- CHAUVEAU, J.-P., CISSÉ, S., COTULA, L., COLIN, J.-P. & DELVILLE, P. L. 2007. Changes in customary land tenure systems in Africa. *In: COTULA, L. (ed.)*.
- DEININGER, K. 2003. *Land Policies for Growth and Poverty Reduction* Washington DC, World Bank and Oxford University Press.

- DEININGER, K., SELOD, H. & BURNS, A. 2012. *The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector*, Washington DC: The World Bank.
- ENEMARK, S. The Land Management Paradigm for Sustainable Development *In: WILLIAMSON, I., ENEMARK, S. & WALLACE, J., eds. Proceedings of the Expert Group Meeting on Incorporating Sustainable Development Objectives into ICT Enabled Land Administration Systems, 2005 9-11 November 2005, Melbourne, Australia.*
- ENEMARK, S. 2012. Sustainable Land Governance: Three Key Demands. *FIG Working Week 2012 : Knowing to manage the territory, protect the environment, evaluate the cultural heritage Rome, Italy, 6-10 May 2012*
- FDRE 1995. Constitution of the Federal Democratic Republic of Ethiopia (FDRE). *Proc.No 1/1995, Negarit Gazeta Addis Abeba, Ethiopia.*
- GOODWIN, D. 2013. Whatever it Takes: Tenure Security Strategies of Communal Land Right Holders in Zimbabwe. *Africa*, Vol 83, No.01, pp164–187.
- LAMBA, A. O. 2005. *Land tenure management systems in informal settlements – A case study in Nairobi, MSc thesis ITC Enschede.*
- MUNDIAL, B. 2010. Assessing & monitoring governance in the land sector: The Land Governance Assessment Framework.
- OKOTH-OGENDO, H. W. O. 1989. Some issues of theory in the study of tenure relations in African agriculture. *Africa* Vol.59, No.01, pp6–17.
- PALMER, D., FRICSKA, S. & WEHRMANN, B. 2009. TOWARDS IMPROVED LAND GOVERNANCE. *Land Tenure Working Paper 11, FAO & UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME.*
- SIMBIZI, M. 2016. . *Measuring land tenure security: A pro-poor perspective. PhD Thesis. University of Twente. .*
- TULADHAR, A. 2015. Sino-Dutch Spatial Planning and land Registration *Expert Meeting Program.*
- WILLIAMSON, I., ENEMARK, S., WALLACE, J. & RAJABIFARD, A. 2010. *Land Administration For Sustainable Development*, Redlands, California, ESRI Press Academics.
- ZEVENBERGEN, J., AUGUSTINUS, C., ANTONIO, D. & BENNETT, R. 2013. Pro-poor land administration: Principles for recording the land rights of the underrepresented. *Land Use Policy* Vol.31, pp595-604.
2013. *Uganda National Land Policy.*