A Critical Analysis of Factors that Contribute to Maasai Land Appropriation: The Case of Maasai Land Appropriation in Kajiado and Narok Counties in Kenya

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A CRITICAL ANALYSIS OF FACTORS THAT CONTRIBUTE TO MAASAI LAND APPROPRIATION IN KENYA: THE CASE OF MAASAI LAND APPROPRIATION IN KAJIADO AND NAROK COUNTIES

A Dissertation
Presented to
the Graduate School of
Clemson University

In Partial Fulfillment
of the Requirements for the degree
Doctor of Philosophy
International Family and Community Studies

by
Ben R. Ole Koissaba
December 2016

Accepted by:
Dr. Mark Small, Committee Chair
Dr. Bonnie Holaday, Committee Co-chair
Dr. Betty Baldwin
Dr. Kenneth Robinson
Dr. Martie Thompson
ABSTRACT

The aim of this case study was to analyze events, practices, laws, and decrees that have contributed to Maasai land appropriation and acquisition from the perspective of the Maasai in order to make policy recommendations. This case study was both intrinsic (how the Maasai understood the situation of land appropriation and acquisition) and instrumental (what can others learn from the situation of the Maasai).

This study used a form of qualitative research known as a case study. This particular study uses both intrinsic and instrumental case study designs (Denzin and Lincoln, 2006, Stake, 1995). The goal of the intrinsic component of the case study was to understand better land appropriation from the Maasai (see Research Questions 1-3). The intent for instrumental components of the study was to gain more insight into the past and future policy elements of Maasai land appropriation (see Research Question 4). Here the case study was of secondary interest; it played a supportive role, facilitating our understanding. Both approaches were considered appropriate for the analysis and themes derived from an exploration of events, practices, laws, and decrees that have been associated with Maasai land appropriation and acquisition (Hughes, 2006). The instrumental component of the study was not possible without information from the intrinsic part.

According to the research findings, 25% of the participants were conversant of events that led to Maasai land appropriation and alienation in the past, 98% understand the current events going on now regarding Maasai land appropriation and alienation. Regarding the issue of what needs to be done about Maasai land appropriation and
alienation, the participants gave varied views. Further, 45% percent of the participants said that the implications of the Maasai land appropriation and alienation case will inform policy on the ongoing global land grabs.

The key lessons from the case study of the Maasai land appropriation in Narok and Kajiado counties indicate that there is evidence to suggests that the privatization of land into individual land holdings has had negative effects on the sustainable use of resources, access to loans, disparities between rich and poor, wealth creation, and the ability of the Maasai to earn a living through pastoralism. Secondly, the example of the Maasai in in Narok and Kajiado counties suggests that, contrary to the commonly held development wisdom that private property is a cornerstone of successful economic development, formal property rights are not a one-size-fits-all reform suitable in all contexts.

This study used a form of qualitative research known as a case study. This particular study uses both intrinsic and instrumental case study designs (Denzin and Lincoln, 2006, Stake, 1995). The goal of the intrinsic component of the case study was to understand better land appropriation from the Maasai (see Research Question 1-3). The intent for instrumental components of the study was to gain more insight into the past and future policy elements of Maasai land appropriation (see Research Question 4). Here the case study was of secondary interest; it played a supportive role, facilitating our understanding. Both approaches were considered appropriate for the analysis and themes derived from an exploration of events, practices, laws, and decrees that have been associated with Maasai land appropriation and acquisition (Hughes, 2006). The
The instrumental component of the study was not possible without information from the intrinsic part.

The choice of the two types of approaches was guided by 1) the need to put aside prior theories and assumptions about Maasai land appropriation (Fairhead, Leach, and Scoones, 2014) and let the participants and data “speak” in order to allow themes, patterns, and concepts to emerge; and 2) the need to understand a variety of underlying factors that contributed to Maasai land appropriation and acquisition beyond the typical reasons such as government annexation, encroachment by urbanization, establishment of parks and forest reserves, high levels of illiteracy among the Maasai. To understand the contextual background of Maasai land appropriation and acquisition the investigator used historical documents (laws, decrees, policies) from 2004, the year the Maasai in Kenya commemorated the 100th year since the first Maasai agreements were signed in 1904 and 1911.

Keywords: Land appropriation, Maasai, Agreements, Laws and Decrees, Colonization, Globalization
DEDICATION

Thanks beyond description belong to my understanding father the late Sironka Lendapana Koissaba (RIP) who despite having not had the privilege of going to school, valued education and believed that by allowing me to go to school will not only be an investment in the family but it will be an example to many Maasai families who would rather have their sons look after livestock and become coveted warriors.

I dedicate this to my family who had to endure my absences due to my education work load, and foregone the quality presence of a husband and a father to help me succeed in school. Serena, Roine, Rianto, Rarin, Rotiken, Reteti, and Riyies deserve a praise for bearing with the absent husband and father.

This dedication also goes to the late Marima Ole Sempeta for his tireless efforts to dig into the annals of history for information that informed the Maasai movement. The late, William Ole Ntimama for his steadfast protection of Maasai land, the late Ole Moiyiare, Ole Kipury, Ole Kunkuru, Ole Mpoye, and the many others who gave their lives for the cause of the Maa Nation. The late Justice Moijo Ole Keiwua for his financial, material and intellectual contributions to the process of liberating the Maa Nation. This dedication also goes to the late Vincent Ole Ntekerei and the Matura ole Karia for the massive and invaluable knowledge about the Maasai history that they have gone to rest with.

Finally, I dedicate this to all that believe that all human beings are equal and they all deserve justice, and have stood firm to become the voice of the voiceless in their work for
justice for all in a world where might is considered right as opposed to living in a world

where right is considered might.
ACKNOWLEDGMENTS

In the long journey through the dissertation process, I have been fortunate to have benefited from the academic support and professional guidance of some very thoughtful people. The encouragement, direction, redirection, and the gentle nudges were all delivered at just the right time. I never dreamed that I could complete a project of this nature until I met Dr. Bonnie Holaday. She answered my initial plea for care and from that point I never felt alone. This special woman is gifted with accurate perception, truthful delivery, and faith that allows others to make mistakes and learn from them. Under her guidance I have been able to publish several papers.

I also acknowledge Dr. Mark Small for the role he played in ensuring that I think out of the box and through his legal studies background, I was able to critically analyze issues and arguments during my study and research. Dr. Kenneth Robinson for his constant encouragement even when I was almost giving up. I also wish to acknowledge the patience of Dr. Betty Baldwin in ensuring that I understood qualitative data analysis. I also wish to appreciate the role that Dr. Martie Thomson played in secondary data analysis which was key in my research project.

I do acknowledge the role played by many Maa speaking people who have come together under the auspices Maa Civil Society Forum for the great work they have done in educating, informing, and empowering the Maasai to be able to speak and demand their rights. I do acknowledge the great role played by the research participants for voluntarily accepting to take part in this study, and for the time they put to contribute to the outcomes of the study.
The international community who have identified with the Maasai struggle and have helped in one way or the other to facilitate processes that were aimed at enabling the Maasai address issues of land, disinheritance, and marginalization. For those that ought to have contributed but for one reason or the other they did not, I acknowledge your support and willingness to take this project forward and where you did not I still appreciate the fact that you know about it.

Thank you also to Ellen Graben at Clemson University for her help with editing and formatting this work.
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<td>CBNRM</td>
<td>Community Based Natural Resource Management</td>
</tr>
<tr>
<td>AFC</td>
<td>Agricultural Finance Corporation</td>
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<td>CSO</td>
<td>Civil Society Organizations</td>
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<td>EACJ</td>
<td>East African Court of Justice</td>
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<td>ECF</td>
<td>East Coast Fever</td>
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<td>FAO</td>
<td>Food and Agricultural Organization</td>
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<td>GOK</td>
<td>Government of Kenya</td>
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<td>IEBC</td>
<td>Independent Electoral and Boundaries Commission</td>
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<td>Institutional Review Board</td>
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CHAPTER ONE: INTRODUCTION

Introduction

The Maa speaking people commonly known as the Maasai of East Africa live in southern Kenya, central Rift, and northern Tanzania along the Great Rift Valley on semi-arid and arid lands. The Kenyan Maa speaking people are mainly found in Samburu, Kajiado, and Narok counties as well as parts of Baringo, Nakuru, and Laikipia counties. In the 2009 National Census, the total Maasai population in Kenya was projected at 841,622.¹ That of the Samburu (Isampur) was 223,947, and the population of Njemps (Ilchamus) was 34,500 (ROK, 2009). The Maasai society is comprised of 16 sections or sub-tribes.² Historically the Maasai were a pastoral community (due to land sub-division, some have turned into agro-pastoralist in the recent past) who were well known for keeping large numbers of livestock such as cattle, goats and sheep which were their primary source of their income.³ Families moved with their livestock from place-to-place to place in search of water and pasture for their large herds of livestock using seasonal rotation patterns. For this reason, the Maasai required large tracks of land for grazing their animals. Since the Maasai lived under a system of communal ownership where land traditionally belonged to the Maasai community, this system of seasonal rotation was not a problem.

² Known in Maasai as Iloshon, they are the Ildamat, Ilpurko, Ilkeekonyokie, Iloitai, Ilkaputiei, Ilkankere, Isiria, Ilmoitanik, Iloodokilani, Iloitokitoki, Ilarusa, Ilmatatapato, Ilwuasinkishu, Kore, Parakuyu, and Ilkisonko.
The coming of the colonialists in the late 1800s and beginning of the 1900s ushered in a new and devastating century-long governance and economic system that disrupted pastoralism, land, and land ownership systems of the Indigenous communities in the new colonies. Land appropriation occurred through forceful acquisition, legislation, and treaties that introduced privatization of land, which was a foreign concept to the Maasai. This resulted in the massive appropriation of Maasai land and also natural resources (Hughes, 2006). After Kenya’s independence in 1963, legislation was introduced that created group ranches, individual land titles, and subdivision of the land into individually owned and controlled parcels (Kibugi, 2009; Mwangi, 2007).

These small land parcels did not support pastoralism which is a critical component of the Maasai way of life. For the Maasai people of Kenya, land goes beyond being an economic asset, it serves to provide social capital in the form of social status among the community and is part of their cultural and religious identity. According to Boone (2014), land politics and policy in Kenya have been controversial for some time and will continue to be controversial. Largely absent form this discussion are processes of land appropriation from the perspective of the Maasai people of Kenya.

Land appropriation and acquisition from the Maasai in Kenya is embedded in the global concern about the dramatic increase in large-scale land appropriation deals that have occurred in the past two decades. The motives, means and time spans vary by country, but domestic and transnational interests have acquired large quantities of land through the global South, especially in Africa. Much has been written about this land
appropriation or “land grabs” (Borras, Hall, Scooners & White, 2011; Margulis, McKeon & Borras; Oxfam, 2010; Sassen, 2013 & World Bank, 2010).

However, we are still in need of a framework for understanding how these deals were shaped, who shaped them, why they were shaped, and the impacts and outcomes of land appropriation within each country. The globalization aspect of land appropriation and acquisition has also been under-studied and under-theorized. Given the complexity of land appropriation, annexation, acquisition, the number of factors involved, the political and economic overtones, and the far reaching impacts these have on local livelihoods and long term development, focused case studies are an effective way of examining this issue. Studying the appropriation and acquisition of land from the Maasai in Kenya provides a unique opportunity because land appropriation and acquisition has occurred over a long time period. According to the Truth Justice and Reconciliation Commission Report (GOK, 2010), there is evidence from laws, policies, reports, and the media.

People from government agencies, NGOs (Non-Governmental Organizations), academics, and Maasai tribe members have also had time to develop perspectives about land appropriation. In addition, the viewpoints, the impacts and outcomes of land acquisition have been developed over time. The results of such a case study allows us to understand how the phenomena of land appropriation affects local livelihoods, identity, unintended consequences, and to possibly formulate hypotheses that can be tested through quantitative methods, as well as provide a foundation for policy recommendations.
**Statement of purpose**

The aim of this case study was to analyze events, practices, laws, and decrees that have contributed to Maasai land appropriation and acquisition from the perspective of the Maasai in order to make policy recommendations. This case study was both intrinsic (how the Maasai understood the situation of land appropriation and acquisition), and instrumental (what can others learn from the situation of the Maasai).

**Research questions**

The research was guided by both intrinsic and instrumental questions to discover factors that have contributed to Maasai land appropriation and acquisition in Narok and Kajiado counties in Kenya where the Maasai have experienced massive land appropriation. To analyze factors that have contributed to Maasai land appropriation and acquisition as well as economic, cultural, and emotional issues that arose from the processes of appropriation, semi-structured interviews were used to question the research participants. The following key questions were used to guide participants in the research:

1. What do you know about Maasai land appropriation in the past?
2. What is your understanding of what is currently occurring regarding Maasai land appropriation?
3. What do you think needs to be done about Maasai land appropriation in future?
4. How can the lessons learned from Maasai land appropriation be useful in addressing the increasing trend in land grabs in developing countries?

Since the research data was obtained through semi-structured interviews, the research allowed a story telling approach to probe each participant and to ensure that the
responses address the intrinsic and instrumental questions because this practice is a common way the Maasai communicate.

**Rationale for the research questions**

These research questions sought to understand; 1) common Maasai beliefs about land ownership; 2) current events and activities that are related to Maasai land appropriation and acquisition, key actors and the roles they are playing regarding Maasai land appropriation; 3) views, suggestions, and recommendations about how to address Maasai land appropriation and acquisition; and, 4) how lessons learned from Maasai land appropriation can be used to address global land appropriation.

**Research sites**

This study was undertaken in Narok and Kajiado counties whose inhabitants represent various Maasai clans in Kenya. The choice of the two counties selected for the study was because they were the first Maasai counties that experienced land subdivision, privatization, and subsequent land appropriation by non-indigenous communities through sale, and fraudulent allocation of land to non-Maasai by government officials and corrupt Group Ranch officials. This has contributed to the expansion of urban centers in Kajiado.

The leasing of land for large scale farming in Narok has increased the influx of non-pastoralist communities and decreased the pasture for the pastoralist Maasai communities. Secondly, Narok and Kajiado counties have experienced a common problem of population increase due to the immigration from other Kenyan communities from the late 1980s to date which has acerbated the increase of land losses by the
Indigenous Maasai community (ROK, 2009). The two counties have also experienced political marginalization from immigrant communities who because of their numbers have influenced many political and economic decisions including the creation of two constituencies representing mostly non-indigenous communities both in Narok and Kajiado counties.

During the 2013 general elections, the Independent Electoral and Boundaries Commission (IEBC) carved out the Emurrua Dikirr constituency from the Kilgoris constituency in Narok County. The Kajiado North constituency was divided to create two constituencies, namely Kajiado West and Kajiado North. Kajiado North is now comprised of the cosmopolitan areas that are inhabited by mostly the immigrant communities. This, therefore, can be generalized to be representative of other counties where the Maasai live in Kenya.

**Kajiado County**

Kajiado County lies at the southern edge of the former Rift Valley province, and about 80 km from the Kenyan capital of Nairobi. The name Kajiado was derived from the Maasai word “Olkeju-Oado” which means “the seasonal long river” that flows through the Kajiado town. The County occupies an area of 21,901 square kilometers and boarders Narok to the west, Nairobi, Nakuru and Kiambu to the north, Makueni and Machakos to the east, and Taita-Taveta and Tanzania to the south4 (see Figure 1.1). According to the 2009 Kenya population and housing census, Kajiado County had a population of 687,321

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4 See http://www.kenya-information-guide.com/kajiado-county.html
people (ROK, 2009). The County has five constituencies: Kajiado North, which is the most cosmopolitan, Kajiado Central, Kajiado South, Kajiado West, and Kajiado East.

Figure 1.1

Economic activities in Kajiado County are mainly pastoralism in areas where the Maasai are predominant, tourism (Amboseli National Park), and community conservancies being the key focus, real estate, sand harvesting, mining, and general enterprises. Kajiado County has experienced rapid urbanization due to its proximity to Nairobi, which is the Kenyan national capital with many industries and private
developers who have built homes in the area to avoid the congestion in the city. This county is the home of Africa’s largest soda ash mining that is located in Lake Magadi. Kajiado County has in the recent past, been the center of exploration for oil, geothermal as well as an emerging producer of wind energy that is expected to increase the demand for land for prospecting purposes by local and international investors.

**Narok County**

Narok County (see Figure 1.2) is located in the South Rift Valley province of Kenya. It covers an area of 17,944 square km with a total population of 850,920 (GOK, 2009). The county is divided into six constituencies; Narok North, Narok South, Narok West, Emurrua Dikirr, Kilgoris, and Narok East. Narok County borders Kajiado County to the south, Tanzania to the west, Nakuru to the east and Bomet and Kisii counties to the west. Narok County is endowed with vast resources including tourism attraction, fertile farmlands, and livestock. The county is the home of the world famous Maasai Mara National Reserve that boasts the presence of the Big Five (African lion, African elephant, African buffalo, African leopard, and White/Black rhinoceros), the natural wonder of the world that is the wildebeest migration corridor and, perhaps, one of the world’s most diverse wildlife concentration areas, and the Mau forest that is the largest water tower in Kenya.

Despite these resources, the county is ranked low nationally in socio-economic and political development indices. Narok is the bread basket of Kenya, growing a sizeable amount of wheat, corn (maize) and tomatoes consumed in Nairobi. This vast county is endowed with fertile farmlands and a stable climate.
Figure 1.2
Map of Narok County (Source: Daily Nation, 2014, p. 16).

Significance of the policy conflict

In this century, the issue of public policy is complicated due to many factors. There are multiple definitions of what public policy is, how it is made, and who makes it. Public policy is ordinarily construed by the general public to mean whatever government or institutions chose to do or chose not to do. But according to Anderson (2011), public policy can be defined as a relatively stable, purposive course of action or inaction followed by an actor or set of players in dealing with a problem. According to Cloate and Conning (2011), policy refers to statements of intent or an action plan to transform a perceived problem into a future solution. This implies that since nation states are the
custodians of land within the national boundaries’ all activities that relate to the land are policy driven. Given that this research was meant to contribute to policy decisions that relate to the Maasai, a critical analysis of policy and other factors that contributed to land appropriations, and acquisition is of great significance.

The statement “one does not sell land upon which people walk” was made by Tashunka Wikto a Lakota leader in 1800. Similarly, there exists a Maasai saying that states that “it is only a son and land that can never be given away.” Both statements reflect the fact that people live on land and off the land. Globally the relationship the people have with the land varies considerably. The Maasai people of Kenya and Tanzania are pastoralists who lived sustainably by practicing their traditional methods of subsistence that were bonded by traditional collective land ownership practices. There were customary rules about the rights to use the land and no rules that said an individual or corporate entity could own land outright according to the Maasai culture.

From a world-historical viewpoint, the history of capitalism begins with the transformation of land rights. From the perspective of the modern system, it is easy to take the concept of land property rights ownership for granted. But to do so would be missing the massive social transformation that involved centuries of struggles for and against the establishment of property rights in land and its usage. The forms of transformation are complex and varied over time and place. Maasai land appropriation and acquisition in Kenya provides both an intrinsic case study (exploration is driven by a desire to know more about the uniqueness of the case rather than to build theory or how the case represents other cases), and instrumental (because the case study will be used to
understand more than what has been seen as obvious about the phenomenon) (Stake, 1995).

In August 2004, the Maasai in Kenya held countrywide demonstrations to commemorate the 100th year since the signing of the first Maasai agreement with the British in government in 1904. In 2010, for the first time, the Maasai land issues and historical injustices became a national debate due to the inclusion of clauses related land use and land ownership in the Kenyan Constitution (GOK, 2010) and the National Land Policy (GOK, 2009). For the Maasai, this became an opportunity to seek redress for land that the Maasai lost through the Maasai agreements of 1904 and 1911. The addition of the new clauses had an impact on the Maasai perceptions of land sale in both Kajiado and Narok counties. The inclusion of these provisions have been associated with an upsurge of Maasai civil society demanding the return of the land that was either part of the 1904 and 1911 agreements, and other lands that the Maasai believe were unlawfully appropriated and or acquired.

This case study is further strengthened by the Report of the Truth, Justice and Reconciliation Commission (GOK, 2014). In this case study, one can examine the process Maasai over time. The case study also enabled for an examination of the role of the state in controlling land as well as the inner workings of the state in shaping new understandings and articulations of territory, sovereignty, authority, and subjects. Land appropriation from the Maasai in Kenya also features the salient components of the current problems in the global crisis in land acquisition. First, Kenya experienced the transformation from the system of customary rights of land usage to a system of legal and
written titles of land ownership. Second, was the transformation of a concept of property concretely defined by physical space, (i.e. boundaries). Third was the use of land as a form of capital and expanded capital consumption, and fourth was the increasing privatization of land. The outcome was the acquisition of land through such actions as forced long-term leases for large parcels of land, or outright seizure of land using both legalized and highly unconventional methods. The results for the Maasai have been displacement, poverty, loss of identity and self-determination (Lyman & Kew, 2010).

Akram-Lodhi and Kay (2009) divide the complex history of the process of the commodification of land rights into four historical periods: primitive accumulation, colonialism, developmentalism, and globalization. This study focused on the appropriation and acquisition of Maasai land in Kenya during the last fifteen years. Understanding what occurred from the Maasai, the principal actors involved, and the outcomes are critical to understanding the policy issues faced today, and to identify a way forward.

Some of the most urgent and strategic policy issues center on governance and globalization. The role of the state and land appropriation in Kenya has been a major concern for years. The policy issues are related to addressing Indigenous claims to the land, state processes in acquiring the land, legal barriers to Aboriginal rights, transparency, and community dialogue in the governance of the land and tenure security, and the view of land as a commodity. Globalization policy issues are related to the political economics that are driving the commodification, and the financialization of land (Akram-Lodhi and Kay 2009).
International land rights advocates are now recommending the development of global land policy similar to the global approach to climate change (World Bank, 2014). By interrogating the events, practices, decrees, laws, and policies both at the national, regional and international level from the Maasai context, and the effects that such events, practices, decrees laws, and policies have contributed to Maasai land appropriation, this case study was aimed at informing future policies in Kenya that have a direct influence on Maasai land.

Potential research bias

Having been born in and growing up in Kenya, I was active in human rights and civil society activities. I worked directly with Maasai communities who had land related grievances. In my position as the national coordinator for Maa Civil Society Forum (MCSF), we were mandated to research, document, and disseminate information on the processes used to appropriate Maasai land. I was instrumental in facilitating public dialogue at national, regional, and international levels, and worked for redress of both historical and current loss of land. When conducting this analysis, the researcher identified where he fitted between the etic and the emic. In the emic, the researcher analyzed schemes, and categories regarded as meaningful and appropriate by the Maasai while, in the etic, the researcher analyzed the conceptual schemes and categories regarded as meaningful and appropriate in the community of scientific observers.

The researcher-participant relationship, as well as the relationship of the researcher to the topic, were placed on this continuum (Creswell, 1998). Etic characteristics were more detached relationships where the researcher acted as an outsider viewing the subject
and interpreting the phenomenon. The emic on the other hand, was characterized by the researcher becoming one with the subject, and experiencing the phenomenon. Researchers place themselves on this continuum based on the needs and purposes of the study. The researcher approached this study using both perspectives.

For the objectivity of the study the etic (outsider), an approach that eliminated cultural biases by the researcher becoming culturally neutral, limiting any ethnocentric, political or alienation of the Maasai culture, and perspectives of land appropriation. The researcher critically analyzed the data and compared it with perspectives from other cultures and similar case studies, the researcher had a broader understanding of the phenomenon under discussion without prejudice for any particular situation. In order not to influence the study outcomes, the etic of the study was undertaken before the emic approach. In taking an emic approach, as the researcher and insider, the researcher tried to put aside previous theories and assumptions to let the participants and data speak to them and to allow themes, patterns, and concepts to emerge. This enabled the respect for local viewpoints, and its potential to uncover unexpected findings.

**Organization of the dissertation**

Chapter One provides the introduction to the dissertation, the statement of purpose and research questions, the conceptual framework, the significance of the study, and study limitations. Chapter Two presents the literature review that includes a historical overview of Maasai land appropriation, and an examination of articles, reports, and media reports related to the impact factors and outcomes associated with land appropriation from the Maasai. This chapter also examines the opportunities available for
the Maasai to address land appropriation. Chapter Three provides the methodology used in this study. Chapter Four presents the research findings, and chapter five provides a discussion of the results.
CHAPTER TWO: LITERATURE REVIEW

Introduction

The objectives of the literature review were twofold. First was to provide a historical context for the study by examining the literature related to Kenya’s land appropriation and acquisition from the Maasai. The second objective was to review the literature related to factors associated with the appropriation of land from the Maasai and also to examine the outcomes of land acquisition for the Maasai people.

A literature review is a rigorous examination of the body of literature related to the research question(s). This literature review included scholarly literature such as laws and other relevant databases. This literature review also examined newspapers, magazines, and other secondary sources. This review was an examination of both primary and secondary sources on social, economic, legal and policy issues, and other documented first-hand accounts of involuntary and voluntary land loss by the Maasai people of Kenya from colonial times to date.

Document review is a systematic process of reviewing and evaluating both printed and electronic materials. Examination of documents for this study was the process of identifying and isolating literature that had content relevant to this study. The rationale for document review was related to its methodological value for data triangulation, the immense value of records in case study research, and its usefulness as a stand-alone method for specialized forms of qualitative research (Bowen, 2009). According to Creswell (2013), document review is a social research method that involves extensive reading to find, and interpret patterns in data, classify patterns, and generalize results.
In this study, the following documents were reviewed: national laws that have a bearing on land ownership, policies related to land use, ownership, and appropriation, and presidential decrees. Document review also provided a means to track changes and development of the phenomenon being researched. The study examined both historical and contemporary documents to identify themes, topics, and patterns that relate to policies, laws, decrees as well as social, and economic factors that relate to the land appropriation in Kenya.

Such documents included colonial and post-colonial legislation on land; the Maasai agreements of 1904 and 1911; the Maasai case of 1913; the Kenya Land Commission Report of 1932; the 1962 Lancaster Independence Conference Report; the Registered Lands Act (Cap. 300) of 1963; the Land (Group Representatives) Act (Cap 287) of 1968, and the Constitution of Kenya, 2010 (ROK, 2010), Truth Justice and Reconciliation Report, newspapers, journals, study reports, and blogs that were relevant to the study.

Historical overview

After 50 years of independence in Kenya, land grievances have continued to be the primary cause of ethnic strife. This has resulted in several tribal clashes that have led to the loss of life, and property mainly in the Rift Valley, Coast and North Eastern parts of Kenya (Koissaba, 2014). Since the advent of the multiparty system, incidents of ethnic violence peaked during the election years—1992, 1997, 2002 and 2007 (IRIN, 2013). 1997 saw a spate of clashes in the Likoni division of Mombasa District. In Likia, where the Kikuyus inhabited most lands in the early 1990s, local Kalenjin politicians reminded
people of their previous ownership of the land (Koissaba, 2014). In 1992, the so-called “Kalenjin Warriors” began burning Kikuyu houses and grabbing the land.

According to the United Nations Office for the Coordination of Humanitarian Affairs, land-related grievances were among the underlying causes of the violence that followed Kenya’s disputed presidential election results in 2007 (IRIN, 2013). Most recent incidences in Baringo, Mpeketoni, Tana River, and Marsabit are considered to be related to historical injustices on land appropriation as well as resource conflict that are ethnically based. According to the Truth Justice and Reconciliation Commission (TJRC) report, it is widely acknowledged, even in government circles, that one of the main problems that have bedeviled Kenya since independence revolves around the land (ROK, 2013). Failure by the post-independence governments to rectify the injustice and human rights violations associated with land appropriation has been one of the primary sources of economic marginalization and a trigger for conflict and ethnic clashes (ROK, 2013).

While available literature has attempted to approach this area of study from a national perspective, there are very limited studies that have addressed the events of Maasai land appropriation (Sanford, 1919; Morgan 1960; Mungeam, 1966; Vambe, 1972; Grandin, 1986; Okoth-Ogendo, 1991; Galaty, 1999; Klopp, 2000; Fratkin & Mearns 2003; Mortenson, 2004, Mwangi, 2007; ROK, 2009; Syagga, 2011; ROK, 2010 and ROK 2013). Despite various recommendations made by a government instituted commissions, and task forces about land to seek remedies for land related conflicts, there have been no government efforts to implement these recommendations (ROK, 2002 and ROK, 2004). The absence of literature on factors other than laws and policies that have continued to
contribute to Maasai land appropriation was crucial in this study because it permitted this study to contribute and add to the existing literature from a different perspective.

**Colonization and Maasai land appropriation**

Colonization led to the scramble for Africa that began with the Berlin Conference of 1884-1885 when the Europeans partitioned Africa into spheres of political, military and economic influence that marked the beginning of more than a century-long of grievances by Indigenous African communities (Michalopoulos and Papaioannou, 2012). The Europeans divided the territories and drew borders on their maps, without taking into account the local geographic conditions or the ethnic composition of the territories. African leaders were not invited to attend the conference. The literature has argued that the exercise was arbitrary. For example, Asiwaju argued that the study of European archives supported the accidental rather than a conspiratorial theory of the marking of African boundaries, and was purely unfair (Asiwaju, 1985). It has also been argued that most of the conflicts in Africa today arose from the partitioning of Africa, and the exploitation of resources by the colonial governments, and post-independent regimes that adopted the colonial governance systems (Asiwaju, 1985; Wesseling, 1996; Wimmer et al., 2009; Englebert et al, 2002; Miguel, 2007; Bates, 1981, and Herbs, 2000).

In East Africa at the dawn of the 18th century, the British used deception and, more importantly, their military strength to appropriate land for British settlers at the expense of the local populations, otherwise referred to as Indigenous communities (Vambe, 1972). Barume argued that “the term Indigenous was applied to all peoples found in colonized territories, regardless of whether or not they had been born there or were newcomers.
Terms like natives, aborigines, populations found in these territories, were used interchangeably. It is also interesting to note that the Berlin Conference of 1885 failed to make a distinction between people present in the various colonized territories” (Barume, 2010, p. 21). Kenya was officially declared a British Protectorate on June 15th, 1895, and the declaration marked the beginning of massive land acquisition from the natives to create settlements for the British settlers (Syagga, 2011). With the Declaration of Protectorate, the stage was set for the systematic expropriation and exploitation of native lands (Koissaba, 2014).

To predicate their actions on the law, the unsolicited protectors imposed the Common Law on the Protectorate and made laws that purported to legitimize their illegal dealings (Koissaba, 2014). This argument was further supported by Brennan who argued that:

“The common law itself (with its feudal doctrine of tenure) took from Indigenous inhabitants any right to occupy their traditional land, exposed them to deprivation of the religious, cultural and economic sustenance which the land provides, vested the land effectively in control of the imperial authorities without any right to compensation, and made the indigenous inhabitants intruders in their homes and mendicants for a place to live. Judged by any civilized standards, such a law was unjust and its claim to be part of the common law must be questioned.” (Brennan, 1993, p. 219)

Brennan’s argument was further supported by the Okoth-Ogendo argument that the Land Acquisition Act of India of 1894 was extended to Kenya, and was then used to appropriate all the land situated within one mile of either side of Uganda Railway for the construction of the railway as well as compulsory acquisition of land for government buildings in 1897 by the Commissioner of the Protectorate (Okoth-Ogendo, 1991). He
further argued that in 1902, all land within the protectorate was declared Crown land whether or not the land was reserved for the natives or occupied by the same which, in effect, made all Africans become tenants of the Crown (Okoth-Ogendo, 1991).

Kanchorry further corroborated the argument by stating that The Crown Lands Ordinance No. 21 of 1902 gave powers to the Commissioner to identify and sell freehold land to desiring European settlers without giving due cognizance to customary and indigenous land tenure systems (Kanchorry, 2006).

According to Mortensen, by 1914 nearly five million acres (two million hectares) of land had been taken away from Kenyan Africans, mostly from the Kikuyu, Maasai and Nandi communities (Mortensen, 2004). Boone (2007) argued that “colonial and post-colonial rulers have defined, manipulated, codified, and adjudicated land tenure rules and relations in attempts to project the authority of the modern state into rural Africa” (p.3).

According to Moiko “the desire to achieve higher agricultural productivity and attain social and economic progress in the developing world have in the last century, stimulated the implementation of development programs that have facilitated the gradual replacement of customary community-based systems of tenure and rights to land with formal private systems akin to those practiced in countries in the West” (Moiko, 2004, p. 1).

To restrict the African natives from returning back to their lands that were now appropriated by the British, Syagga (2011) argued that legal segregation through the fixing of the boundaries of the Native Reserves, and the White Highlands as recommended by the Report of the Kenya Land Commission (1934) effectively removed
the Africans natives from the White Highlands and gave the European settlers assurance of permanency in their new settlements. Further, Okoth-Ogendo argued that The Crown Ordinance, that which regulated how government land was to be distributed, gave powers to the Governor without consultation to distribute the land through auctions to individuals, and corporations for development (Okoth-Ogendo, 1991). The removal of the Natives from their ancestral land in the East African Protectorate to create room for European settlement was the driving force behind the African struggle for independence as well as the beginning of land related conflicts in what later came to be known as Kenya after the attainment of independence in 1963 and after that.

Although almost every African community in the East African Protectorate lost land to the British, Hughes (2013) noted that the Maasai lost the most land due to the climatic and geographical conditions of the lands they occupied. Sena (1986) further elaborated that the loss of the land was precipitated by the signing of the 1904 and 1911 agreements between the Maasai, and the British which according to Sena was done under duress. During this time, the Maasai were also weakened by inter-clan wars and disease that decimated their population. Sena’s argument supported Sanford (1919), who explained the circumstances under which the Maasai moves were made possible by the British, who found the Maasai weakened by both inter-clan war and human and livestock diseases. The British used this opportunity to convince the Maasai to sign agreements to move from their traditional lands to provide room for European settlement during 1904 and 1911. According to Lays, the two agreements defined Maasai land as an autonomous
reserve that shall never be encroached. Lays in his remarks regarding the Maasai moves stated that:

“The Maasai left the Rift Valley in obedience to the Government and in return for the surrender of their best land, they were given by the Government a promise never again to be disturbed.” (Lays 1973, p. 124-129)

The moves had adverse impacts on the lives of the Maasai and their livestock in because the new land was dry, and it was infested with both human and livestock diseases that decimated most of the livestock. This was supported by Hughes who noted that:

“The Maasai claimed that they and their herds succumbed to diseases in the Southern Reserve, which were unknown or not prevalent in their northern territory, most specifically Laikipia, and that they had been blighted by sickness ever since.” (Hughes 2013, p. 3)

According to Hughes (2006a), the agreements between the Maasai, and the British settlers were that the Maasai shall keep the land in the reserves for as long as the Maasai existed as a race. This was not to be case for the Maasai since the real reasons for the scramble for Africa, and the subsequent partitioning and colonization were economic and not strategic as has been argued by some apologists, land as an important aspect of the agro-industrial economy of the time and was top on the list of the Imperial agenda (Kanchorry, 2006).

Driven by demand for more land due to the influx of white settlers, the British abrogated the rules of engagement between the Maasai, and the colonial office by demanding more land for settlement in disregard of the initial agreements signed in 1904. The desire for more land for European settlement, and to retain control over the Maasai
by concentrating them in one reserve led to another forceful eviction at gun point from the northern reserve in 1911 through the second Maasai agreement.

The Million Acre Scheme

Towards the end of the colonial rule, and arising from the African Natives clamor for land that was taken by the colonialists, the Imperial regime in collaboration with the African elites hatched a plan to help safeguard the interest of the settlers on the lands they occupied. According to Syagga (2011, p. 19), the Million Acre Scheme was a scheme aimed at Africanization of the White Highlands, socializing the new African elites into the colonial political, economic, and social patterns, and preventing the creation of critical mass by the Natives who would oppose colonial policies after independence. To facilitate the process, the Land Development and Resettlement Board was formed to administer the resettlement of some 20,000 families of all race.

The plan was part of the independence negotiations and was to be funded by the World Bank, and the British government and handed over at independence to the Kenyan government. It was envisaged that the program would buy 240,000 acres from the White Highlands to be subdivided into 100-acre pieces and sold to selected African families. The land was to be sold on a willing-buyer-willing-seller basis with loans provided to those that had the capacity to repay, and to those that had the cash to buy (KLA, 2004).

Post-Colonial land regimes

According to the Truth Justice and Reconciliation Commission (TJRC) report, it is widely acknowledged even in government circles, that one of the main problems that
have bedeviled post-colonial Kenya to-date are issues that revolve around land (TJRC, 2013). According to the Financial Times, the re-Africanization of the white highlands increased focus on the Kikuyu, ethnicized the land question, and cultivated conditions for mobilizing ethnicity as a means of accessing land rights (Manson, 2013). According to Syagga, the Million Acre Scheme was a scheme aimed at Africanization of the White Highlands, socializing the new African elites into the colonial political, economic, and social patterns, and preventing the creation of critical mass by the Natives who would oppose colonial policies after independence (Syagga, 2011). The lack of a national land policy to govern land ownership and land use processes created an opportunity for land prospectors to manipulate land transactions in their favor, and to disregard the rights of other citizens were being infringed.

Arising from the prevailing neoclassical economic theory and with the support of multi-lateral donors the Kenyan Government advocated for the formation of the Group Ranches (Group Representative) Act of 1968 (ROK, 1979). According to Grandin, a Group Ranch is an organizational structure in which members hold a collective title deed to an area of land, although the animals are owned and managed individually (Grandin, 1986).

According to Fratkin and Mearns land that was collectively owned and governed by traditional laws was legislated, and legal tenure conferred to registered members of the Group Ranch with a selected committee holding the title in trust for the members (Kimpei, 1987, Fratkin & Mearns, 2003). This argument was further supported by Mwangi (2007), who contended that the system was alien to the Maasai, and although it
sounded good in theory, from the outset the Group Ranch system suffered from rampant embezzlement of funds and low rates of compliance with the de-stocking imperative.

Kituyi (1998), identified that the transformation of land from customary to private and individual tenure alongside state alienation of land in the Maasai land, have combined to restrict livestock movements across the different ecological zones in the Maasai districts, made unavailable critical dry season grazing areas, and generally made difficult the practice of a nomadic pastoral system. This restructuring of the nature and patterns of traditional land use contributed to the loss of pasture that in effect resulted in reduced livestock and hence increased poverty among the Maasai.

The problem was compounded by greed for land by the elite Maasai with support from government officials who colluded with Group Ranch committees to either illegally lease or allocate individual parcels of land to the rich, and politically correct individuals (Mwangi, 2007). As a result of these social ills, some Group Ranches opted to subdivide the land into individual holdings; a process that was equally corrupt, segregative, and it also alienated women, and the poor members of the Group Ranches (Galaty, 1999). The sub-division of the communal land into uneconomical parcels of land that could not support pastoralism led to an endemic and uncontrolled sell-off of the that led to the current position where many Maasai families are land poor (Galaty, 1999).

Collusion between the Group Ranch, and corrupt land officials dispossessed and continue to dispossess the community through illegal and fraudulent deals by transacting land transfers with the help of the Provincial Administrators who sanction the local Land Control Boards to expedite the sub-division, and subsequent the transfer of land and
issuance of land titles. Grievances by the Maasai community about land loss from the Iloodoariak and Mosiro group ranches that were the first to be expropriated illegally are contained in the Njonjo Land Commission (ROK, 2002), and the Ndungu Report (ROK, 2004). These commissions were formed to investigate issues related to the legal structure of land laws and the historical injustices related to land appropriation. The most recent grievances are from Naroosura, Suswa, Maji-Moto, Kamorora in Narok County, and Elangata Wuas, Shompole, and Olkiramatian in Kajiado County (Koissaba, 2013).

Another way in which the Maasai lost their land was through Trust Lands. Trust Land is land that is declared to be Trust Land, and defined in Section 114 of the Constitution of Kenya. Under both the old Constitution and the Trust Land Act (Chapter 288 Laws of Kenya), Trust Lands were neither owned by the Government nor the County Councils. The local County Councils directly held those lands on behalf of the local communities (ROK, 2009). The constitution defined control of Trust Land as:

“All trust land shall vest in the county council within whose area of jurisdiction it is situated.” (Constitution of Kenya, Section 115(1))

“Each county council shall hold the Trust land vested in it for the benefit of the persons ordinarily resident on that land and shall give effect to such rights, interests or other benefits in respect of the land as may, under the African customary law for the time being in force, and applicable thereto, be vested in any tribe, group, family or individual.” (Constitution of Kenya, Section 115(2), [ROK, 1998])

This contributed to the annexation, for example, of the Mau forest, most livestock holding grounds, and urban centers. Rewarding political supporters with land was seen as the best option to win political support mainly during the rule of President Daniel Arap Moi. To address the issues arising from this dilemma, the Kenya’s national flagship
project, commonly known as Kenya Vision 2030, recommended the development of a National Land Policy that would provide a framework for land administration in the country (ROK, 2007). In 2009, the Ninth Parliament approved Sessional Paper No. 3 of 2009 on National Land Policy (ROK, 2009), but most of its goals are yet to be implemented due to the sensitivity of land and political interests of the ruling elites.

The National Land Policy (NLP) made some far-reaching recommendations aimed at solving the current, and future land problems in Kenya, some of which were incorporated into the chapter on Land and Environment in Kenya’s new Constitution (ROK, 2010). Key among the recommendation was the formulation of the National Land Commission (NLC). This is a constitutional body mandated by the constitution to manage land on behalf of both the national and county government as well as investigate and provide recommendations on all claims arising from land related disputes.

After the new Kenyan constitution had been promulgated in 2010, land administration and management were supposed to be decentralized placed under several actors including the National Land Commission, and the County Land Boards (CLB). The National Land Commission is charged with the administration and managing of land on behalf of the people, National, and County governments (Lucianne, 2013; Wanambisi, 2013). The Commission is given the power to recommend a National Land Policy to the government. It is this Commission that has the mandate to deal substantively with all historic and present land injustices in Kenya, and to recommend a long-term, lawful, simple and consistent National Land Policy and measures to address such injustices throughout Kenya.
The streamlining of the multiplicity of the laws about land management through the enactment of new legislation, the amendments on old laws, and the repealing of uncomplimentary land related laws is seen as an opportunity to address land-related conflicts in Kenya. Such amended legislation included the Registered Land Act (Cap. 300 revised in 2010 from 1989); the Registration of Titles Act (Cap. 281 revised in 2010 from 1982); the Land Dispute Tribunal Act (Cap. 303A revised in 2010 from 1990); the Land Planning Act (Cap. 303); and the Land Titles Act (Cap. 281) (revised 2010 from 1989).

Although much work has been done to streamline legislation on land management, the challenge still exists related to the roles of both the Ministry of Lands, and that of the National Land Commission. The main tasks of the National Land Commission (NLC) are to protect the citizens’ rights to land, initiate investigations of historical and present land injustices, recommend redress measure, regulation of leases for non-citizens, and the management of all public land on behalf of the people of Kenya, National government, and County government. The commission is also faced with an enormous task of delineating political interests, the entrenched corruption and impunity for the process to succeed. It is hoped that this process will bring the process of restitution, and compensation to a manageable and acceptable the conclusion.

**Contestation of Maasai land appropriation**

To understand the impact of land appropriation in Kenya, it is important to review the literature about how such appropriation has been challenged by the affected communities, and the opportunities that may be available for them to use in seeking redress. Atuahene (2009) noted that seeking redress for past land theft has always been a
volatile political issue. This is evident in Kenya in the way the report by the Truth Justice and Reconciliation Commission has been handled (GOK, 2010). Since the completion of this report, and subsequent submission to the President, the government of Kenya has given conflicting signals about whether it will be made public as it was drafted, or make changes to accommodate the interests of the political elites who were adversely mentioned by the report (Koissaba, 2014).

Seeking legal redress for land dispossession, evictions, and human rights violations in Kenya is not easy given the political issues that are involved, and the fact that case law has long influenced the development of Kenya’s common law from other common-law jurisdictions (Wachira, 2008). It is a known fact that the Maasai were the first Kenyan Indigenous community to use legal processes to challenge the British colonial regime (East African Protectorate, 1914). Given the outcomes of the case, it is evident that without an independent judicial system that is free from political influence, the Maasai case will have several challenges.

While the Maasai did not resist the 1904 and 1911 move violently as expected, with the advice of from European sympathizers, the Maasai filed a legal challenge to the move in the High Court of British East Africa in 1913 in a landmark case often referred to as the Maasai case the Ole Njogo Case of 1913 where the Maasai lost on a technicality (Hughes, 2006). Other recorded instances where the Maasai attempted to seek legal redress of the rights to their land was during their presentation at the Kenya Land Commission Evidence and Memoranda 1934, and also during the Lancaster Independence (Colonial Office, 1963).
The Maasai were presented with yet another opportunity to seek legal redress for the injustices that arose as a result of the 1904 and 1911 agreements that expropriated their lands by the outgoing British colonial government, during the second Lancaster conference convened to deliberate the independence of Kenya held from February 14th to April 16th, 1962 in London. The basis for the formation of Maa Civil Society (MCSF), which is a conglomeration of groups and individuals from Maa speaking communities in Kenya in 2004, was to research, document, and disseminate information on how best to respond to the loses that occurred during the Lancaster independence. The MCSF considered the use of community organization and litigation.

**Local instruments for contesting Maasai land appropriation in Kenya**

According to Wachira (2008), the current Kenyan legal framework has the potential to redress the Maasai land claims if it is progressively interpreted in keeping with international standards. The Constitution makes provision for rights whose enjoyment demands the recognition and protection of group rights as well essential clauses that protect the rights of individuals and marginalized groups (ROK, 2010). As drafted, Kenya’s new Constitution gives the National Land Commission the mandate to manage public land on behalf of national and county governments, among other functions [(Section 67). (ROK, 2010)].

The incorporation of the National Land Policy into the Constitution, and the enactment of laws on land by Parliament was seen as an opportunity that will eradicate legal roadblocks that have hindered the implementation of recommendations made by the Njonjo Land Commission (ROK, 2002), and the Ndungu Report (ROK, 2004). These
commissions were formed to investigate issues related to the legal structure of land laws and historical injustices related to land appropriation.

Another constitutional provision that provides an opportunity for the Maasai to seek redress is the Land and Environmental Court that is enshrined in the Constitution (ROK, 2010). The Land and Environmental Court will be expected to adjudicate cases related to land disputes arising from claims filed by the communities that have grievances related to land ownership. Since the new constitution took effect in 2010, the Maasai community has filed several cases in various courts in Kenya. Some cases have been decided in their favor, but most are yet to be concluded.

The promulgation of the Constitution of Kenya 2010 is regarded as the most significant achievement in governance in Kenya since independence in 1963. However, full implementation of the letter and spirit of the Constitution is crucial to realize the promise of a democratically stable and prosperous future for all Kenyans. Deep-seated interests still pose threats or challenges to the implementation of the Constitution (Koissaba, 2014). Key challenges are evident in how some political elites want to maintain the status quo, reverse gains, and manipulate the pace and nature of changes recommended in the new constitutional order (Koissaba, 2014).

As is evident by recent actions and decisions by the President and Parliament, there seems to be a reversal of gains in the areas of human rights, freedom of expression, and freedom of association (Koissaba, 2014). The Kenyan parliamentarians are working on amendments to muzzle the freedom of the press, and the conduct of nonprofit organizations (Ogema, 2013). This is a challenge to the Maasai quest for justice and
rights to their land given the fact that the political elites are beneficiaries of the land that the Maasai lay claim.

Grievances of continued loss of land by the Maasai were vividly expressed in a memorandum submitted to the Truth Justice and Reconciliation Commission by the Maasai-speaking pastoralists in Kenya in January 2011 (MPIDO, 2011). This outlined how land in Iloodoariak and Mosiro group ranches was illegally allocated to ineligible and non-residents of the said areas through illegal transactions by the ministry of land officials in collaboration with the Group Ranch Committees (MPIDO 2011).

The challenge to contested land appropriation lies in the historical legitimatization of dispossessions through the retention and entrenchment of colonial land laws and policies in Kenya (Koissaba, 2014). This according to Wachira (2008), betrayed the people who fought for independence and those who had hoped to get back whole or parts of their land that was appropriated by the colonial regime. Various Maasai individuals and groups have filed numerous court cases in different tribunals.

There have been mixed outcomes of the cases arising from the challenges of the interpretation of the laws governing private property, and the sanctity of land titles (MCSF, 2005). Other challenges in pursuing both legal, cost, and the time such cases take to be decided (Koissaba, 2014). A unified approach by the Maasai has also contributed to a slow process that has often resulted in conflicts between the Maasai political leaders and those in civil society who have been fronting for the case.

The unfriendly political climate has also put the Maasai human rights activists in a confrontation with the government that has led to intimidation, incarceration, and death
of some of the MCSF members (MCSF, 2007). Another phenomenon that has caused problems is the commodification of the process by some Maasai non-profits who have used the Maasai predicament as a cash cow to raise funds that in many instances have not been directed to the Maasai cause.

Regional instruments for contesting Maasai land appropriation

**The East African Court of Justice (EACJ)**

The East African Court of Justice (EACJ) is a treaty-based judicial body of the East African Community tasked to ensure adherence to the law in the interpretation and application of and compliance with the East African Community Treaty of 1999. The Court is made up of two divisions: a First Instance Division and an Appellate Division. The Court has jurisdiction over the interpretation and application of the Treaty, and may have other appellate, human rights or other jurisdiction upon conclusion of a protocol to realize such an extended jurisdiction. Reference to the court may be made by Legal and Natural Persons, the Partner States and the Secretary General of the community.

Given that the court does not require that litigants exhaust local mechanisms before filing claims, the Maasai can leverage its existence where the Kenyan courts have failed to address their claims. Attempts by Maasai Non-governmental organizations to use the EACJ have not achieved any real results due to the lack of a united approach, and the dilemma among the Maasai sections had with the overall mandate to represent the Maasai in any land related case (MCSF, 2005).
The African Charter established the African Commission on Human and Peoples’ Rights and was inaugurated in 1987. The African Commission on Human and Peoples’ Rights is a quasi-judicial body that monitors the implementation of the African Charter on Human and Peoples Rights (ACHPR. 1986). Depending on who files suit, the court has mandatory jurisdiction, which every state automatically acknowledges on ratification of the Protocol. It also has discretionary jurisdiction, for which a corresponding additional declaration of recognition of jurisdiction is required.

Kenya is among the 53 states that have ratified the Protocol. In addition to performing any other tasks that may be entrusted to it by the Assembly of Heads of State and Governments, the Commission is officially charged with three primary functions namely; 1) the protection of human and peoples’ rights, 2) the promotion of human and peoples’ rights, and, 3) the interpretation of the African Charter on Human and Peoples’ Rights.

The African Commission on Human and Peoples’ Rights has already set a precedent in the ruling of the Endorois case that was approved by the African Union in January 2010, and the recent case filed by the Ogiek People Development Program that was heard in Addis Ababa on November 27th and 28th 2014. Despite having had representation in various meetings where the Maasai have expressed the need for the African Commission on Human and Peoples’ Rights, the Maasai have not made real progress on that front (MCSF, 2005). The possibility for the Maasai to use the African Commission on Human
and Peoples’ rights will depend on how the Maasai will organize themselves and develop a consolidated front to pursue their case.

**International instruments**


“Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.” (ROK, 2010, p.14). Regarding Article 261 (1 & 4) and the 5th schedule of the Constitution the Ratification of Treaties Bill, 2011 has been submitted to the Attorney General for drafting and subsequent publication (ROK, 2010). The Bill is for an Act of Parliament to make a provision for the ratification and domestication of international instruments and related matters.” (ROK, 2010)

*International Labor Organization Convention No. 169 on Indigenous and Tribal Peoples (ILO)*

Convention No. 169 of the International Labor Organization (ILO) provides a set of subjective and objective criteria that are jointly applied to guide the identification of Indigenous Peoples (ILO, 1989). The Maasai, by their unique cultural practices and attachment to their land, have been identified as Indigenous people. Once a country ratifies it, the country has one year to align legislation, policies, and programs to the Convention before it becomes legally binding (ILO, 1989). Countries that have ratified
the Convention are subject to supervision with regards to its implementation. The Convention recognizes and protects tribal peoples’ land ownership rights, and sets a series of minimum UN standards regarding consultation and consent (ILO, 1989).

The International Labor Organization Convention Number 169 Article 14 and Article 15 gives the right of ownership, and possession of the peoples concerned over the lands that they traditionally occupy (ILO, 1989. Art. 14). Also, Article 14 provides measures that shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditional activities. It calls for particular attention to be paid to the situation of nomadic peoples and shifting cultivators, and urges governments to take steps as necessary to identify the lands which the people concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession through the adoption and establishment of adequate procedures within the national legal system, and to resolve land claims by the peoples concerned (ILO, 1989. Art. 14). In Article 15, the Convention provides for safeguards for natural resources associated with Indigenous peoples’ land and territories including the right to participate in the use, management, and conservation of such resources (ILO, 1989. Art.15).

According to the Maa Civil Society (MCSF, 2006), the ILO Convention NO 169 can play a significant role in arguing the Maasai case in any local court of law or policy environment. By stating that people have rights for and protection of lands that they historically and currently hold, and in the light of the provisions of the current constitution, the Maasai have made attempts to use such constitutional provisions to
argue their cases. As it is, the Kenya Constitution gives the Maasai a legitimate chance to frame their case (ROK, 2010), but this will require the translation of the provisions of the convention into Kenya’s legal instruments. This will also need a judicial system that recognizes and supports international human rights instruments.

**The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**

The Maasai are globally acknowledged and considered as an Indigenous people due to their unique way of life, culture, and relationship with their land. The lack of recognition of their traditional land use practices by Kenyan national legal frameworks has contributed to the continuous appropriation of their land as well as other natural resources. The United Nations Declaration on the Rights of Indigenous People (UNDRIP), Article 26 provides recognition of Indigenous peoples as having the right to own, develop, control and use their lands and territories, including the total environment of their land, air, waters, coastal seas, sea-ice, flora and fauna, and other resources that they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions, and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation or encroachment of these rights” (UN, 2008).

While Kenya has not ratified the United Nations Declaration on the Rights of Indigenous People (UNDRIP), there are relevant provisions of the law that could be invoked to give legal credence and meaning to Indigenous peoples’ land and resource rights. The legal framework is inadequate concerning protection of these communities,
but the law can be adequately interpreted as well as other case laws adopted to file claims of land appropriation. The Maasai have on several occasions raised the issue of land appropriation and the impact it has had on local land governance institutions and courts in Kenya, but its interpretation by the Kenyan policy makers and the tribunals have been a constant challenge (Koissaba, 2013).

Case laws

Case laws are a set of legislation that are established by following earlier judicial decisions and are based on judicial precedents rather than statutory laws of any country or state. In using case laws to seek redress, it should be noted that case laws are persuasive but not controlling. Such cases that may have a bearing on the Maasai case include the cases in Kenya such as the Environment and Land Court at Nairobi (ELC) Civil Suit no. 821 of 2012 (OS) (Kenya Law Review, 2014); the African Commission on Human and Peoples Rights (ACHPR) and the Endorois case; (ACHPR, 2009); Australia, such as Mabo v Queensland (No 2) (1992) 175 CLR 1; John Cecil Clunies-Ross v. The Commonwealth of Australia, Thomas Uren and John Joseph Brown (1984) HCA 65; 155 CLR 193, and Gerhardy v Brown (1985) 159 CLR 70; Botswana, Sesana and others v Attorney General (52/2002) (2006) BWHC 1; Some examples in Canada that can be cited are the Chippewas of Sarnia Band v. Canada (Attorney General), 195 D.L.R. (4th) 135, and Tsilhqot’in Nation v. British Columbia 2014 SCC 44. Most of the cases filed by the Maasai in several courts in Kenya have used such case laws to argue their case regarding land appropriation.
While the above mechanisms may be instrumental in the Maasai case in either seeking justice or putting a stop to the increasing land losses, the greatest challenges lie in the individualization of land titles; commodification of what was once community land; increase in non-pastoralists land use systems, and the lack of supportive national policy. The interpretation of legal instruments by the judiciary and domestication of international legal statues will also contribute either as helping factors.

Conclusion

The review indicates that while many authors have attempted to address the processes through which Maasai land has been appropriated and acquired, no study has critically analyzed factors that have contributed to Maasai land appropriation from a Maasai perspective. According to this review, I argue that Kenya’s colonial past to the present day, the land has always been an extremely emotional issue and a source of conflict. This review has demonstrated that there is adequate evidence that historically, the processes of land adjudication and consolidation in Kenya were aimed at replacing customary land tenure with statutory land tenure, a concept that was alien to many Kenyan Indigenous communities. I further argue that the adjudication and consolidation processes ignored and undermined traditional African land and resource rights that did not fit within the confines of individual land titling that was the main thrust of statutory tenure. This argument is supported by the recent report of the Truth Justice and Reconciliation Commission (TJRC) that concluded that there was a close link between land injustices and ethnic violence in Kenya (TJRC, 2013).
Failure by the post-independence government to rectify the injustice and human rights violations have been one of the primary sources of economic marginalization for the Maasai people, and a trigger for conflict and ethnic clashes (ROK, 2013). One of the reasons among many is that the biggest land owners in Kenya are the political elite who have acquired vast tracts of land at the expense of poor masses through state power that has historically been used for distributing and redistributing land (ROK, 2004). Several policies and legal regimes formulated under the guise of Africanization at the time of independence were skewed to favor certain communities (Syagga, 2011).

The lack of a national land policy to govern land ownership and land use processes created an opportunity for land prospectors to manipulate land transactions in their favor, and in disregard of whether the rights of other citizens were being infringed (Syagga, 2011). According to the Report of the Commission of Land Inquiry into Illegal and Irregular Allocation of Public Land (Ndungu Land Commission), over two hundred thousand illegal land titles were created between 1962 and 2002 with ninety-eight percent of these were issued between 1986 and 2002. The beneficiaries of such grabbed land included ministers, senior civil servants, politicians, politically connected business people, and even churches and mosques (ROK, 2004).

While the purpose of this literature review was to analyze the factors that contributed to Maasai land appropriation in Narok and Kajiado Counties, it also took note that many Kenyan communities starting with the Giriama, Pokomo, and Taita at the Coast, the Kikuyu in the Central Highlands, the Nandi in the Nandi escarpment and the Luhya and Pokot in the western highlands have land dispossession claims that have often resulted
in ethnic conflicts (Boone, C., 2014; Kibugi, R. M., 2009; ROK, A. 2002; Kagwanja, P., 2008, and Klopp, J. M., 2001). Ethnic clashes that have characterized every Kenyan election since 1992 have been associated with communities perceiving other migrants to their ancestral lands as a threat to their political and economic dominance (Klopp, 2001).

In my argument, I posit that numerous land related legislation and policies that have been in place have contributed to skewed, unpopular decisions that have fueled land-related conflicts that have an indelible mark on the future of Kenya. It is also of great importance to note that other land-related conflicts in Kenya have also manifested themselves in human-wildlife conflicts that came into being through the adoption of wildlife management and conservation arrangements. These policies allowed appropriation of vast tracts of lands from communities through legal gazettement that converted community land into trust lands, national parks, national game reserves, forest, and conservation sanctuaries (Koissaba, 2014).

The Maasai people have been victims of historical, economic and political marginalization. Their pastoral economy has not been fully mainstreamed into the national economy despite its high potential (Galaty, 1999). They have been subjected to acute land loss and misuse, from the dawn of colonialism in Kenya. During the colonial era, their lands were routinely appropriated because their nomadic and pastoral lifestyle did not require the cool areas better suited for agriculture, while, in independent Kenya, the Maasai have become victims of the much touted “willing-seller-willing-buyer” capitalist theory (Koissaba, 2012). At the root of this serious plight has been widespread
ignorance among the affected communities regarding their land rights and the obligations they have to ensure good land tenure and environmental management.

The review attempted to seek evidence of any critical analysis of how the legal and policy regimes instruments were formulated and implemented, but there is very scarce evidence to show that such instruments have been subjected to any critical analysis. There is also very little written information about how the Maasai have contested land appropriation. The available literature is limited to the Maasai agreements through the Maasai Case of 1913, Kenya Land Commission Evidence and Memoranda 1934 (Watkins, F.O., 1933), and during the Lancaster Independence Conference (Colonial Office, 1963). Of particular interest to this inquiry is how the various leadership regimes in Kenya since independence have influenced land laws and land policies that have contributed to Maasai land appropriation. It is within this context that a historical review of land administration was used as a point of reference for this inquiry.

With increased levels of awareness, thanks to globalization, there has emerged a vibrant civil society movement that has since the late 1980s started to examine the processes through which Maasai land had been appropriated and acquired. And in consultation with other Indigenous people from other countries began to agitate for redress of both historical and contemporary injustices related to the land appropriation and acquisition.

Various Maasai groups in Kenya have also filed numerous cases in the courts to either forestall further land appropriation or to claim back what was illegally appropriated and acquired. Key among the cases that have been heard in the Kenyan High Court is the
Ilchamus Constitutional reference case. Even though the court rulings are yet to be honored and implemented, the case set a precedent in the legal community in Kenya. Other such examples include: Olmara (Narasha) in Nakuru; Olooseos Maasai Rural Development Center; Oloololo; Olteyani; Magadi; Inkipikoni Holding Ground; Ngong Veterinary Farm; the Sheep and Goat farm in Kitengela, and the latest threat to auction Olkiramatian and Shompole group ranches in Kajiado as well as many others that are awaiting determination in the Kenyan courts (Koissaba, 2014). While the processes are known to members of the civil society and the Maasai in Kenya, most of what has been done have not been adequately documented except as organizational reports.

This literature review sought to fill in the missing gaps that exist in the literature regarding the analysis of processes that were used in formulating both legal (regulatory) and policy frameworks in Kenya that have contributed to Maasai land appropriation in Kenya. It is also important to note that the outcomes of this research will inform the ongoing national processes being undertaken by the National Land Commission, and the National Land Task Force related to historical injustices in seeking lasting solutions to land related human rights violations.
CHAPTER THREE: METHODOLOGY

Introduction

This chapter describes an overview of the methodology used to study land appropriation and acquisition from the Maasai people in Narok and Kajiado counties in Kenya. The chapter begins with a description of the research design followed by a description of the boundaries of the study, the sample and sampling procedures, the participants, data collection, and data analytic plan. Finally, the chapter concludes with a discussion of the potential research problems that could impact the results.

Research design

This study used a form of qualitative research method known as a case study. This particular study uses both intrinsic and instrumental case study designs (Denzin and Lincoln, 2006, Stake, 1995). The goal of the intrinsic component of the case study was to better understand land appropriation from the Maasai (see research questions 1-3). The intent for instrumental components of this study was to gain more insight into the past, and future policy elements of Maasai land appropriation (see research question 4). Both approaches were considered appropriate for the analysis, and themes derived from an exploration of events, practices, laws, and decrees that have been associated with Maasai land appropriation and acquisition (Hughes, 2006). The instrumental component of the study was not possible without information from the intrinsic part.

The choice of the two types of approaches was guided by 1) the need to put aside prior theories and assumptions about Maasai land appropriation (Fairhead, Leach, and
Scoones, 2014) and let the participants and data “speak” in order to allow themes, patterns, and concepts to emerge; and, 2) the need to understand a variety of underlying factors that contributed to Maasai land appropriation and acquisition beyond the typical reasons such as government annexation, encroachment by urbanization, establishment of parks and forest reserves, and high levels of illiteracy among the Maasai. To understand the contextual background of Maasai land appropriation and acquisition the researcher used historical documents (laws, decrees, policies) from 2004, the year the Maasai in Kenya commemorated the 100th year since the first Maasai agreements were signed in 1904 and 1911.

To gain deeper and richer understanding of what land appropriation and alienation experience mean to participants, it was necessary to engage in open dialogue and to allow participants to simply share their experiences, tell their stories, and reveal their personal narratives. This inductive, participant-centered methodological approach allowed participants to reveal what is important to them, with the researcher following the leads presented by the respondent. This allowed for the personal meaning to emerge from the respondents themselves.

According to Denzin and Lincoln (2011), “qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or interpret phenomenon regarding the meanings they bring to them” (Denzin & Lincoln, 2011, p. 3). Further, this study fitted into the framework of “naturalistic” ontology. (Lincoln & Guba, 1985).
In this study, the researcher used data collected from semi-structured interviews and literature review (reports data related to policies, decrees, and laws) that have a bearing on land ownership and land use, policy decisions that have an impact on land and property access, ownership and control, and materials from the news media that have highlighted past and current land related issues in Kenya, and the territories occupied by the Maasai.

To avoid biases in the interpretation of the data collected, the researcher used expert review of both sources (participants and subject matter experts), and methods (semi-structured interviews that were conducted by phone) to seek clarification. Creswell (2013) described the use of triangulation as a way of to improve the study’s validity. The comparison and corroboration helped to determine if the data accurately reflected what was being studied. This process compared and contrasted the information provided by the research participants and the other data sources. The continuum in the reflection and comparing data from various sources during the research process facilitated the emergence of pertinent issues that helped in communicating, and articulating the participants own expressions and feelings about the particular phenomenon that the researcher is studying. For this study, the researcher had to call back a selected number of interview participants to validate the themes and topics that emerged from the research.

**Boundaries of the study**

The purpose of this study was to examine a social phenomenon, the appropriation and acquisition of land from the Maasai people in Kenya to understand the factors that contributed to the continued land loss among the Maasai in Kajiado and Narok Counties.
and not about whether the Maasai have been victims of land appropriation. The focus was on the processes involved in land appropriation and acquisition, and the outcomes for the Maasai. Yin (2003) and Stake (1995) suggested making the spatial and temporal boundaries of the phenomenon being studied clear. Suggestions on how to bind a case study to include 1) by time and place (Creswell, 2013); by time and activity (Stake, 1995); and, 3) by definition and content (Miles and Huberman, 1994). Components from these authors were used to bind this case. The period to be studied is from 2004 to the present. In 2004, the Maasai in Kenya held a country-wide demonstration to commemorate the 100th year since the signing of the first agreement with the British in 1904. This event triggered a renewal of interest and activity among the Maasai about the land that had been appropriated or acquired from them. Since 2004, for the first time, clauses related to land use and ownership have been added to the Kenyan Constitution (GOK, 2010) and the National Land Policy (GOK, 2009), the report of the Truth Justice and Reconciliation Commission (GOK, 2014) also examined previous land appropriation from Indigenous people in Kenya. Thus, the past 15 years have been an important period for Maasai and Kenya government activities related to land use and land ownership.

Research questions

Intrinsic research questions

1. What do you know about Maasai land appropriation in the past?

This question sought to know and understand the perceptions held by both the Maasai actors about events, practices, laws, and decrees that contributed to land
appropriation, the history of how land was appropriated and acquired, the principal players, and the outcomes of Maasai land appropriation. Through such narratives, the research was able to identify perceptions of historical facts about how Maasai land was appropriated or acquired, and how the appropriation and contributed to the current situation of the loss of land by the Maasai in Narok and Kajiado counties.

2. What is your understanding of the current events regarding Maasai land appropriation?

This question sought to understand the present reality of Maasai land appropriation, and how it is affecting the general well-being of the Maasai people and other stakeholders from informants who are active participants in the discourse, advocacy, and affected by land appropriation. The question sought to obtain evidence about potential conflicts that exist as a result of land appropriation, and how such conflicts are being addressed both by the Maasai, the government, and other stakeholders’ perspectives. The description and explanation of social processes that unfolded between persons and organizations, participating in the process were essential to understanding the phenomenon that was being studied.

3. What do you think needs to be done about Maasai land appropriation in future?

To permit the development of policy recommendations, this question guided the participants to consider what needs to change in the processes used to address land appropriation issues, both past, and present.
**Instrumental research question**

4. **How can the lessons learned from Maasai land appropriation be useful in addressing the increasing trend in land grabs in developing countries?**

Since this study sought to generate new information and perspectives regarding land appropriation, this question will help participants look through land appropriation from a global perspective. This question aimed to solicit and recommendations that could be used to address global land grabs. All the research questions will be answered by all of the research participants through the use of guided interview questions (see Appendix C).

**Other definitions**

**Laws**

In this study, a law is any instrument that has been passed by the Kenya National Assembly (Parliament), and subsequently consented through signing by the President of the Republic of Kenya, and is then a recognized instrument and the law of the land. The laws that will be reviewed are those that were related to land ownership, control and access, land subdivision, land registration, and land transfer (see page 22 paragraph 2 for list of documents).

**Decrees**

Decrees are formal and authoritative public pronouncements that are translated and implemented by the national government as law. In the Kenyan context, presidential decrees are presidential pronouncements that are enforced regardless of whether they are legally binding or not. The decrees that this study reviewed were decrees that were made by the first president Jomo Kenyatta from 1963 to 1978, Daniel Arap Moi from 1978 to
2002, Mwai Kibaki 2002 to April 2013, and the current president Uhuru Kenyatta 2013 to present as they relate to land appropriation and land ownership.

Sample

The places and people that constituted the sample for the study were carefully considered. Miles and Hubberman’s (1994) criteria were critical to the selection process. Feasibility, and richness of information, and relevance to the land appropriation and acquisition phenomenon were the largest influences on the sample choice. The two counties in Kenya selected for the study were Narok and Kajiado.

Participants

The participants for the study were volunteer participants. The volunteer participants from these two Counties were selected because they provided the “thick description” required for a case study about land appropriation. The participants for this study were pre-selected. The preselection was based on both inclusion and exclusion criteria. To be considered as a participant in this study participants were required to meet the following criteria: 1) the past and present involvement in Maasai land issues; 2) affected directly or indirectly by land appropriation; 3) they have worked or currently work with government departments that have a relationship with land related issues in Narok and Kajiado counties; 4) reside or have relatives who live in the two counties; 5) volunteer to participate in the research, and 6) have access to a phone. The exclusion criteria for potential participants were 1) do not live nor have families who live in the two counties;
2) have no past or present involvement in Maasai land issues; 3) have not been affected in any way by laws, policies, and decrees that relate to land, 4) have no access to a phone.

While the researcher had a list of fifteen volunteer participants during the initial stages of developing the research proposal, the list changed in the number to sixteen as well as the research participants due to the dynamics on the ground. Five of the initial participants recommended other people as replacements due to their new roles in the new Kenyan political dispensation where an election will be held in 2017, and they have political ambitions and hence have limited time to participate. Three participants also dropped because they were newly appointed to government jobs, and four could not make the time because they have enrolled in graduate school. All the participants were given an opportunity during the initial phone calls to suggest other sources of information that will help in the research.

In total, the researcher was able to interview sixteen participants during the data gathering stage of the research. Table 3.1 is a demographic distribution of the research participant and their current roles and responsibilities. The demographic distribution of the participants was 6 of the participants were from Narok County; 5 were from Kajiado County; 2 were from Non-Governmental Organizations; 2 were from government institutions that deal with land issues, and where one was from academic research institutions who is considered a subject matter expert. Female participants for the research accounted 4 of the participants, while male participants accounted for 12. All the research participants could express themselves both in English and Maa languages.
The ages of the participants ranged between 35 years to 80 years (See Table 3.1). According to the research findings, 25% of the participants were conversant of events that led to Maasai land appropriation and alienation in the past, 98% understand the current events going on now regarding Maasai land appropriation and alienation. Regarding the issue of what needs to be done about Maasai land appropriation and alienation, the participants gave varied views. Further, 45% percent of the participants said that the implications of the Maasai land appropriation and alienation case would inform policy on the ongoing global land grabs. Of the 16 participants, 12 participants accepted that their identities could be revealed in the research. The remaining four research participants opted not to have their names disclosed. As per the IRB requirements, the participants were given the option to either decline or accept to be disclosed and therefore the researcher respected the wishes of those that declined to have their names disclosed in the thesis. Apparently, this new list generated very useful data that this research would have missed if the respondents were not part of the research.

The time difference between the United States where the researcher resides and Kenya where the interviewees lived changed the mode and timing for interviews. The phone interview sessions which were planned to take one hour for each interviewee were divided into four sessions of between twenty to thirty-five minutes each for each participant. Literate participants opted to validate the data through written statement, while the illiterate participants validated the data through phone interviews (See Table 3.1).
<table>
<thead>
<tr>
<th>Participant</th>
<th>Current role</th>
<th>Resident County/ Constituency represented</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Jackson Shaa</td>
<td>The chairman of Narasha Maasai community. He has played a big role in advocating for land rights for people being evicted to create room for geothermal extraction in Narok and parts of Kajiado</td>
<td>Narok County</td>
</tr>
<tr>
<td>2 Rahab Kenana</td>
<td>Formerly program Officer with Oxfam and a leading environmental justice activist in Narok</td>
<td>Narok County</td>
</tr>
<tr>
<td>3 John Kisimirr</td>
<td>A renowned Maasai journalist and currently leading a Maasai rights group called Engape Emaa which is involved in human rights activities in all Maa speaking counties in Kenya</td>
<td>Kajiado County</td>
</tr>
<tr>
<td>4 Fredrick Kamakei</td>
<td>A recipient of the Mandela presidential award and an active member of the Maasai human rights civil society group that has been involved in drafting the Community Land Bill</td>
<td>Narok.</td>
</tr>
<tr>
<td>5 Julius Lemankun</td>
<td>Has worked for World Vision for over 10 years and has been involved in land rights activities in Narok</td>
<td>Narok</td>
</tr>
<tr>
<td>6 Dr. Lotte Hughes</td>
<td>An acclaimed researcher and the author of the book “Moving the Maasai” and many articles on cultural and political issues in Kenya</td>
<td>Subject matter expert/Academic</td>
</tr>
<tr>
<td>7 Vincent Ole Ntekerei</td>
<td>Olentekerei as he was commonly known was among the first Maasai elites, a great historian who has extensive knowledge about the history of the Maasai, their land loses, the impacts these has had, and a respected elder who was before his demise a member of the Maasai Council of Elders</td>
<td>Narok</td>
</tr>
<tr>
<td>8 Moses Ole Marima</td>
<td>Was the Member of Parliament from 1969 to 1974. He played a big role during the immediate post-independence government by asking the then Kenyatta government allow the Maasai to buy back land from the White settlers but the Maasai were denied the opportunity. He has served in various positions in government and currently a member of the Maasai Council of Elders</td>
<td>Narok County</td>
</tr>
<tr>
<td>Participant</td>
<td>Current role</td>
<td>Resident County/Constituency represented</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------------------------------------------------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>9 Lemayian</td>
<td>Lemayian is a member of Elangata Wuas group ranch. He is also the director of</td>
<td>Kajiado</td>
</tr>
<tr>
<td>Ole Taiko</td>
<td>Kenya Community Based Tourism Network. He has been instrumental in advocating</td>
<td></td>
</tr>
<tr>
<td></td>
<td>for the rights of members of Elangata Wuas group ranch for equal distribution</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of land and other natural resources</td>
<td></td>
</tr>
<tr>
<td>10 Clement</td>
<td>A member of the Kenya National Land Commission (NLC)</td>
<td>Government</td>
</tr>
<tr>
<td>Nachuru</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 Michael</td>
<td>The national coordinator for the Pastoralists Development Network of Kenya;</td>
<td>NGOs</td>
</tr>
<tr>
<td>Tiampati</td>
<td>an accomplished journalist with several publications on land rights</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and a founder member of Maa Civil Society Forum</td>
<td></td>
</tr>
<tr>
<td>12 Daniel</td>
<td>Member of Maa Civil Society Forum and an Official of a local Maasai NGO</td>
<td>Kajiado/NGO</td>
</tr>
<tr>
<td>Salau</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13 P1</td>
<td>Department of Lands</td>
<td>Government/Kajiado</td>
</tr>
<tr>
<td>14 P2</td>
<td>A widow who was denied land after the husband died</td>
<td>Kajiado</td>
</tr>
<tr>
<td>15 P3</td>
<td>A woman whose husband sold all the land</td>
<td>Kajiado</td>
</tr>
<tr>
<td>16 P4</td>
<td>A male working for an international finance institution based in the USA</td>
<td>International Development Financier</td>
</tr>
</tbody>
</table>

The participants for this study were pre-selected. The preselection was based on both inclusion and exclusion criteria. To be considered as a participant in this study the participants were required to meet the following criteria: 1) past and present involvement in Maasai land issues; 2) affected directly or indirectly by land appropriation; 3) they have worked or currently work with government departments that have a relationship with land related issues in Narok and Kajiado counties; 4) reside or have relatives who
live in the two counties; 5) volunteer to participate in the research; and, 6) have access to a phone. The exclusion criteria for potential participants were: 1) do not live nor have families who live in the two counties; 2) have no past or present involvement in Maasai land issues; 3) have not been affected in any way by laws, policies, and decrees that relate to land appropriation; and, 4) have no access to a phone.

**Data collection**

This research used the three procedures as recommended by Yin (1994) which are: 1) preparing for data collection; 2) carrying out semi-structured interviews, and document review; and, 3) validating information from the semi-structured interviews by conducting phone interviews as a follow-up. These phone calls were made to a selected number of participants to validate the themes that emerged from the data analysis. The sources used for the study included a review of relevant laws, policies, and decrees, and semi-structured telephone interviews with written comments from literate participants to validate the data from the interviews. An initial phone call was made to each of the volunteer research participants to inform them of the research proposal and the intended objective of the research.

An informal cultural approach was used in the form of an open discussion commonly known by the Maasai as “news eating.” During this call, both the researcher and the participant asked open questions that led to a common understanding of what the research entailed. The researcher also used this opportunity to seek other possible sources of information related to the research from the research participants.
Data collection instruments

Semi-structured telephone interviews

Several authors (Hill et al., 1997; Hill et al., 2005) recommend the use of 8 to 15 interview participants for qualitative research studies. Fewer participants are needed when more than one interview is conducted per participant, or when the group of participants is particularly homogenous. Due to budgetary, time difference, and travel constraints the researcher used 16 participants for this study. Participants for the study were pre-selected from individuals from Kajiado and Narok counties, government officials, and members of NGOs (Non-governmental organizations) that have been involved with land related issues in Kenya. The data was collected during the months of January, February, and March of 2016.

The semi-structured telephone interview is a qualitative research method used in the social sciences. An interview guide was prepared by the researcher to use in conducting the interviews. The interview guide was an informal grouping of topics and questions that the interviewer asked in different ways for different participants. The interview guides helped the researcher focus the interview on the themes at hand without constraining them to a particular format. This freedom helped the researcher to tailor the questions to the interview context or situation, and to the research participants. To obtain critical information about factors that contribute to Maasai land appropriation, and bearing in mind that most of the participants are Maasai, semi-structured interviews were the most appropriate data collection tool (See Appendix C).
Semi-structured interviews were used in the study to solicit responses that were analyzed using a content analysis approach to answering the research questions, and to unearth new information about the phenomenon of Maasai land appropriation and acquisition. Semi-structured interviews were chosen for this study because they provided the opportunity to generate new information and data.

Due to the time difference between Kenya where the interview participants lived, and the United States where the researcher is based, the researcher had to agree on the specific times and dates that were convenient for each research participant. Most of the interviews were done over the weekends when the research participants were available over a period of three months, and the research participants responded from the location they were at the time of the call but the data provided was about the Counties they represented.

Each interviewee was contacted by phone with a description of the project and why they were being asked to participate in the interview. The call was also used to give an overview of the project, and reason they were selected to take part in the project. During this call, the researcher and participants set dates and times when the next call would be made. The second call was made to answer research question one and two. The third call was made to respond to research question three and four, while the fourth call was made to pre-selected participants to validate the themes that emerged from the data analysis. The selection criteria for the pre-selected participants who participated in the fourth call was based on the content of their transcripts and the richness of knowledge they had on the research subject.
Participants were given an opportunity to ask questions for either clarity about the content or content of the interview tools. The participants were found through personal knowledge, and through asking the pre-selected people if they knew other sources and people who knowledgeable about Maasai land appropriation.

During the phone calls that were quite informal and followed a naturalistic pattern, the snowballing sampling was used to give the participants an opportunity to make suggestions regarding further sources of information and other people that may have more or other details about the phenomenon being studied. Where the participants felt inadequate in information or were not comfortable with the subject, they were allowed to suggest other people. During this process, the researcher took notes of what the participants were expressing regarding either their willingness to participate, other people, and sources of data.

Where a participant suggested another person, the researcher requested the participant for their contacts and used the same process of reaching out to the new prospecting participants to inform and seek consent. Where the participant did not have the contacts of the persons they referred to, the researcher requested that the participant contacts the person and gives the researcher a call once they have made contact, and the other person agrees to be contacted by the researcher, the researcher made a call and to inform the new participant about the research and seek consent. Since most of the research participants knew each other, all the suggested participant contacts were obtained by the researcher and followed the same phone protocol as he did for the rest of the research participants (See Table 3.2).
Table 3.2  
Sequence, duration, and purpose of phone calls

<table>
<thead>
<tr>
<th>Calls</th>
<th>Duration for each participant</th>
<th>Purpose for the call</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Between 20 to 35 Minutes</td>
<td>Introduction of the research project Project description</td>
</tr>
<tr>
<td>2</td>
<td>Between 20 to 35 Minutes</td>
<td>Research questions 1 &amp; 2</td>
</tr>
<tr>
<td>3</td>
<td>Between 20 to 35 Minutes</td>
<td>Research question 3 &amp; 4</td>
</tr>
<tr>
<td>4</td>
<td>Between 20 to 35 Minutes</td>
<td>Validating themes that emerged from the research</td>
</tr>
</tbody>
</table>

The interview structure applied in this research permitted spontaneous comments; however, where issues of interest were not spontaneously described by the respondent, the researcher utilized prepared probes which directed the participants toward these issues. This structure allowed the interview participants freedom to connect, correct, rephrase for understanding, and digress to related topics.

The Maasai people are very oratory and using semi-structured interviews was culturally appropriate as data was collected through a storytelling process guided by the semi-structured interviews. The advantage of using semi-structured interviews for this study was based on the fact that most of the research participants were the Maasai, who are very verbal. Thus, as part of their culture telling stories made semi-structured interviews a culturally appropriate tool for data collection. This also enabled the researcher to obtain in-depth information as opposed to using other instruments that required literacy skills. In total, there were 58 calls made to all the research participants. The questions used in the semi-structured interviews are in Appendix C.

The semi-structured interviews took into consideration the protection of the rights and welfare of human subjects recruited to participate in research activities. This study
was conducted under the auspices of Clemson University by adhering to Institutional Review Board (IRB) requirements (see Appendix A). The researcher obtained approval from the Clemson University Institutional Review Board (IRB). Before collecting data, the researcher called all participants to brief them about the research and to seek their participation. Once they accepted, the researcher used the same call to get consent from each of the research participants.

**Data management**

Interview data were collected using an audio recorder and were transcribed and stored in a password protected electronic document. Since the study possessed no threats to the participants and the researcher, all the transcribed data were stored by the researcher and accessible to the research participants and other stakeholders who may want to use the information for awareness raising and for influencing policy. While the research posed no threats, some participants requested that their identities be concealed for personal reasons.

**Transcription of data**

Telephone audio digital recorder was used to record the interviews. The recorded telephone interviews were transcribed verbatim by the researcher, including any nonverbal or background sounds. The transcription of the tapes was an intensive and time-consuming process. If interviewer or interviewees mispronounced words, these words were transcribed as the individual said them. The transcript was not “cleaned up” by removing foul language, slang, grammatical errors, or misuse of words or concepts.
The researcher stored all the transcribed data, and with permission of the participants, the data were accessible to all the research participants as well as other stakeholders who might want to use the information for awareness raising and for influencing policy.

**Data analysis**

Case study data analysis involves a spiraling, iterative and cyclical process that proceeds from more general to more specific observations (Creswell, 1998; Palys, 1997; Silverman, 2000). Qualitative data analysis involves the identification, examination, and interpretation of patterns, and themes in textual data, and determines how these patterns and themes help answer the research questions at hand (NSF, 1997). Qualitative data analysis is not guided by universal rules, it is a very fluid process that is highly dependent on the researcher, and the context of the study, and is likely to change and adapt as the study evolves and the data.

While initial categorizations were shaped by pre-established study questions, the researcher remained open to inducing new meanings from the data available. Since the research produced massive data, the researcher collapsed codes that had similarities in content, topics, and themes, and thereafter summarized all the codes to create the primary codes for discussion in the research.

The data analysis process for this research was undertaken in four stages that built upon each other: 1) provided a review of documents that described the official account of land appropriation; 2) understanding the participants perspectives on past, present, and future Maasai land appropriation; 3) analyzed stories and compared to the official
account of land appropriation; and, 4) discussed the findings from the analysis of future
land appropriation policies (both for the Maasai-intrinsic, and others instrumental).

A textual database for this analysis was developed from the semi-structured
interviews, and document reviews. The researcher used both inductive and deductive
approaches to understanding the content and context of the data, and how the data was
related to the research project. The analysis process began by examining the themes and
topics with the most references in the word frequency counts. If the words were
extensive, the researcher looked for themes and patterns in the data. As the analysis
proceeded, the researcher looked for similarities and differences between what was said
by the participants and drew conclusions from that. The researcher viewed and reviewed
the codes as the analysis progresses.

The researcher also looked for themes and topics that were not frequently mentioned.
The analysis of the data was a continual iterative process seeking the deeper meaning of
the topic with the goal of understanding the data as it relates to the research questions.
Qualitative data analysis involves working with data; organizing it; breaking it into
manageable units; synthesizing it; searching for patterns; discovering what is important
and deciding what answers the research question.

One of the principles of qualitative research is that the analysis does not wait until
the end of the project. It was a part of the ongoing research. As noted, above the
development of field notes and memo coding is one way to begin to reflect on the data
being gathered. It also led to refining the probes used during further interviews. The
researcher used inductive analysis to develop critical themes as grounded in the data (Patton, 1990).

Both primary and secondary data was used to develop a portrait of facts, intentions, perceptions, and beliefs to understand factors that have contributed to Maasai land appropriation and acquisition in Kenya, their impacts, and to develop possible policy recommendations to address continued land loss. The information, particularly from the interviews, was necessary because it “permitted a distinction to the mode between “rhetoric” provided in the policy documents and the “reality” of an agent’s perspective on a particular issue (Green & Houlihan, 2994, p.389). Coding was both used to organize and to analyze data.

For qualitative data to be analyzable, it must first be grouped into the meaningful patterns and or themes that the researcher observed. This process was the core of qualitative data analysis. The researcher used content analysis (Allen & Reser, 1990), and thematic analysis (Taylor-Powell and Renner, 2003) to interpret meaning from the content of the text data and, hence, adhere to the naturalistic paradigm. The objective of content analysis was to enable the researcher to code the data for certain words or content, identifying their patterns, and interpreting their meanings. Thematic analysis on the other hand involved grouping the data into themes that helped answer the research question(s).

The researcher coded the data for certain words or content from word and frequency counts that helped in identifying their patterns and interpreting their meanings. The tool used by the researcher was www.writeword.org/uk/word-count-aspn to find phrase and
word frequency counts on all transcripts. This was done by grouping all transcripts for each research question. Each set of transcribed data was further subjected to the same tool to furtherUnearth more phrases and words which were later collapsed to create codes for emergent themes and topics. This was done by labeling words, phrases, and sections of text that related to the research questions of interest. The steps in the data analysis process were simultaneously and repeatedly done as a reflection and action process to facilitate accuracy in the coding exercise. The researcher coded the data related to his assumptions (deductive) and coded inductively as new themes emerged. It is important to note that qualitative data analysis is an ongoing, fluid, and cyclical process that happened throughout the data collection stage of the research, and carried over to the data coding and analysis stages.

While analyzing the data, the researcher was guided by the following questions: 1) what patterns or common themes and topics emerged around specific items in the data, and how did these patterns (or lack thereof) help to shed light on the broader study question; 2) are there any deviations from these patterns? If, yes, what factors could explain these atypical responses; what interesting stories emerge from the data? How can these stories help to shed light on the broader study question; 4) do any of the patterns or emergent themes suggest that additional data needs to be collected, and do any of the study questions need to be revised; and 5) do the patterns that emerge support the findings of other corresponding qualitative analyses that have been conducted.

For internalization and contextualization of emerging themes and topics, the researcher used both ontological and epistemological questions to enhance the coding
process. Ontological questions were meant to understand the overall nature of what things were, and what exists (answering the questions of what is about Maasai land appropriation and acquisition and the nature of existence of the phenomenon).

Epistemological questions, on the other hand, were concerned with the nature of knowledge, and the processes of how to know whether something was right or wrong to understand the phenomenon of Maasai land appropriation and acquisition. This helped the researcher understand what was true, and how to determine the truths about Maasai land appropriation and acquisition (See Table 3.3).

**Table 3.3**

*Ontological and epistemological questions*

<table>
<thead>
<tr>
<th>Type of Research Question</th>
<th>Meaning</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ontological question</td>
<td>Studying the nature of participants’ realities and the lived lives</td>
<td>What is it like being a Maasai in the current Kenyan political dispensation?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>What are the lived experiences of the Maasai regarding land ownership, control and access?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>What is the nature of the legal and policy landscape in relation to Maasai land?</td>
</tr>
<tr>
<td>Epistemological question</td>
<td>Knowing and understanding of the phenomenon of Maasai land appropriation and acquisition in Narok and Kajiado counties</td>
<td>What factors do the Maasai know as contributing to Maasai land appropriation and acquisition?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>How does Maasai land appropriation affect the wellbeing of the Maasai in Narok and Kajiado counties?</td>
</tr>
</tbody>
</table>

All qualitative data analysis involves the same four essential steps: 1) raw data management (data cleaning); 2) data reduction (chunking, coding); 3) data interpretation
(coding, clustering), and 4) data representation (telling the story, making sense of the data for others).

**Data reduction**

The research produced massive amounts of data, but not all the data were useful for this particular research. Fifty-six pages of transcribed data emerged after all the data were transcribed. The researcher had to undergo a data reduction process to identify, and focus on what was meaningful. Data reduction was not something separate from analysis; it was part of the analysis. The researcher’s decisions about which data chunks to code and which to pull out, which evolving story to tell were all analytic choices. Data reduction is a form of analysis that sharpens, sorts, focuses, discards, and organizes data in such a way that “final” conclusions was drawn and verified. The transcription of the data emerged with massive data that the researcher coded as emerging patterns and themes and topics. The themes and topics were later consolidated and coded into family trees to identify and classify the data repeatedly into emerging patterns.

The researcher repeatedly analyzed the transcribed data to determine similarities in the research participants’ responses to the interview questions and grouped them together. Contrasting responses were also recorded for further coding as the data analysis progressed. At the data reduction stage, the researcher removed all identifiers to enable objectivity at the coding stage. This process allowed for the reducing and transformation of the raw data into a simplified format that could be understood in the context of the research questions. The researcher undertook a rigorous process of analyzing each question to identify emerging words and phrases from each of the research participants.
Data coding

Codes are tags or labels for assigning units of meaning to the descriptive or inferential information compiled during a study. Codes usually are attached to “chunks” of varying size words, phrases, sentences, or whole paragraphs, connected or unconnected to a particular setting. Coding is an analytical process in which data, often from interview transcripts or questionnaires, are categorized to facilitate analysis. It is a set of rules that translate answers into numbers or phrases and vice-versa. Coding involved the assigning of names or other symbols to answers so that responses can be put into a limited number of categories or classes. There was an initial coding of the data, but the coding of the data was repeatedly reviewed as a means to ensure the codes reflects the word or words being coded.

For this research, the researcher coded the emerging themes and topics being guided by the research questions. The Specific themes or topic were also looked at repeatedly in both original coding and document analysis, and in the coding of individual nodes. The analysis portion of the coding was related to how the ideas that emerged from the nodes were interpreted. Codes were grouped together as common themes that aided in the analysis of the data. This was achieved through the use of nodes. It also allowed the researcher to group the data together to determine a pattern or hierarchy of information that was useful in understanding the data. The researcher used the table below to show what he meant about the coding process (See Table 3.4).
Table 3.4

Summary of the codes in relation to research questions

<table>
<thead>
<tr>
<th>Research Question</th>
<th>Codes</th>
</tr>
</thead>
<tbody>
<tr>
<td>What do you know about Maasai land appropriation in the past</td>
<td>1.10-1.15</td>
</tr>
<tr>
<td>What is your understanding of the current events going on now regarding Maasai</td>
<td>2.10-2.15</td>
</tr>
<tr>
<td>land appropriation?</td>
<td></td>
</tr>
<tr>
<td>What do you think needs to be done about Maasai land appropriation in future?</td>
<td>3.10-3.15</td>
</tr>
<tr>
<td>What implications does the Maasai land appropriation case have in addressing</td>
<td>4.10-4.14</td>
</tr>
<tr>
<td>global land appropriation?</td>
<td></td>
</tr>
</tbody>
</table>

The essence of coding

The essence of coding was to enable the researcher to reduce the data but not lose meaning of the data; capturing significant ideas or themes and topic; understand the phenomenon; developing the constructs by developing categories and themes, and developing theory. The coding process also required the researcher to develop coding strategies or methods. The researcher developed a strategy that involved coding, sorting, synthesizing, and theorizing. The components of the strategy included data reduction; conceptual labeling and categorization; finding relationships between categories; selection of core categories and checking conceptual density; and outlining key concepts. Each word or phrase was assigned a code to enable the researcher to identify the frequency and consistency of emerging themes (See Figure 3.1).
Memoing

Memoing is the act of recording reflective notes about what the researcher is learning from the data. Since memos were the researcher’s notes during the data analysis process, the researcher did not code the memos but used memos to reflect and confirm his interpretation about the emerging coding process.

Memos provided critical methods for following the process of organizing the data. The memos provided the opportunity for reflecting on the data, identifying themes and
topics, and formulating new questions. This reflective process allowed the researcher to better understand the data, and how it was related to the research questions. It provided a deep level of insight into the data. The memos allowed the researcher to capture his thoughts as soon as possible after an interview. The researcher used field notes to reflect on his thoughts over time as the interviews proceeded. These notes allowed the researcher to explore his perceptions of the interviews that have been completed. The coding of the memos was critical to the process of the study. These were the memos written about the specific codes that were identified. This was also useful in reflecting on specific codes of interests.

The data from the memos was very helpful when the researcher began to see a theme or pattern within the data and the codes. Very detailed memos were written on codes of specific interest. The coding of memos allowed very deep reflection on the data. The personal memos were used to address the researcher’s issues of bias and were a way of checking to ensure the codes, topics, and themes that emerging from the data and not his biases. The researcher was aware of his personal feelings about this topic, and these memos helped to ensure they did not unduly influence the study (see Figure 3.1 for the steps in data coding).

The researcher also used memos to record the data that emerged from the analysis but was not relevant to the research questions. The data was recorded on different sheets of paper where the researcher kept on checking whether during the continuous process of analysis any of the data may have a place in the final data analysis.
Data synthesis

Data synthesis is the process of making sense of all the data that has been collected from all the sources so as not only report the facts but to identify valid insights from the study. During the data synthesis process, the researcher kept in mind that data analysis, synthesis, and interpretation were not discrete processes, but they build and inform each other.

Ethics and procedures

Validity and reliability

Yin (1989) described the necessity for the creation of case study designs which provide construct validity, internal validity, external validity, and reliability. Construct validity deals with the use of instruments and measures that accurately operationalize the constructs of interest in a study. Because most instruments and measures are not necessarily as accurate as desired, common strategy is to use multiple measures of the same construct as part of the same study (p. 40). The insurance of dependable results or reliability was described by Merriam (1988) in her reference to Lincoln and Guba (1985, p. 288) who suggest thinking about dependability or consistency of results when considering reliability. In this case, the desired outcome was that readers agree that given the same set of data and circumstances the findings described make sense.

Techniques used to assure reliability include detailing the investigator’s position in the research process, utilizing triangulation in data gathering, and creating an audit trail in detail as it emerged during the data collection period. The researcher ran words and
phrases frequencies for all the emerging themes to validate them. Other reliability factors involved the description in the first chapter of the researcher’s assumptions and the detailed choice of sampling method described in this chapter. A thorough research of relevant literature is also incorporated to ground this study.

Regarding internal validity, Merriam (1988) noted that there are six basic strategies that ensure internal validity. These include triangulation, member checks, and long-term observation at the research site or repeated observations of the same phenomenon, participatory modes of research, and consideration of researcher bias. This research study used member checks, word and phrase frequencies. Triangulation results from the use of multiple data collection methods including interview, and document collection, and analysis. Participant input and researcher bias were considered in the research design and analysis. External validity produces results that may be generalized by the reader or user according to Merriam (1988). The reader generalizes as the findings apply to their needs or as they recognize themselves.

**Trustworthiness**

To accomplish trustworthiness, the researcher was open about his biases and presuppositions that helped develop a coherent research design. The criteria for judging the quality of qualitative research are credibility, transferability, dependability, and confirmability (Creswell, 2013; Lincoln & Guba, 1994). Lincoln and Guba emphasized trustworthiness and authenticity as being balanced, fair and conscientious in all phases of the research. This means taking into account multiple perspectives, multiple interests, and multiple realities. To ensure trustworthiness, the researcher demonstrated that an accurate
picture of the phenomenon under scrutiny was being presented. Trustworthiness was assured through member validation (the researcher provided a summary of the analysis of the participants to validate and make comments); searched for alternative explanations (sought to identify and explain cases that contradicted his interpretations); triangulation (combined his findings with those from other sources); and reflexivity (took a personal reflection action process).

Transferability and validity

Transferability is concerned with the extent to which the findings of one study can be applied to other situations. Validity, on the other hand, means that the research findings indeed represent the phenomenon the researcher is claiming to measure. It was the researcher’s responsibility to ensure there is sufficient contextual data about the field sites was given to enable readers to make the relevant transfer (Shenton, 2004). According to Lincoln and Guba (1994) and Denzin and Lincoln (2005) the concept of validity in qualitative research is controversial. For purposes of this study, validity is used to denote quality, trustworthiness, and authenticity of the data. To ensure the validity of the data, the researcher used triangulation and expert opinion.

Methodological limitation

The research had several methodological limitations that affected the outcomes of the research. Key among the limitation was the role of the researcher in the inquiry of Maasai land appropriation. The researcher being a founder of Maa Civil Society Forum whose main intentions for formation was to research, document, and disseminate information on processes that historically contributed to Maasai land appropriation, and
to seek opportunities for redress was beneficial to the research. These previous roles however, may have created biases that must be taken into consideration.

Since the research had no risks involved, the participants’ views may have led to biases in their personal political views, and the views of the general Maasai community and alienate the views of those that are either not Maasai or have not been involved in matters related to Maasai land appropriation. The need to translate the transcribed data from Maa to English, and bearing that there are words and statement that do not mean the exact expression or meaning in Maa, the researcher may have translated the transcribed data according to his own understanding of both languages, and therefore cause some bias.
CHAPTER FOUR: RESEARCH FINDINGS

Introduction

The purpose of this qualitative case study was to identify and analyze common themes among the Maasai concerning land appropriation in Narok and Kajiado counties in Kenya. This case study was both intrinsic (how the Maasai understood the situation of land appropriation and acquisition), and instrumental (what can others learn from the situation of the Maasai). This chapter presents the results of the participant’s responses to the interview questions. Chapter four includes the research questions, data analysis procedures, interview results with key word analysis, and theme identification.

Data analysis

The data analysis for this was conducted in stages that built upon one another. Microsoft Word macros and Write Word (www.writeword.org/uk/word-count.asp) were the tools that allowed the researcher to develop a textual data base. This permitted the researcher to conduct word frequency counts and to sort the data based on words or phrases, to develop a code book, and to generate the emergent themes and topics.

The first step in the process was to use Microsoft Word to format the data into data tables including participant ID information and utterance sequence number (See Table 4.1).
Table 4.1
Sample of data table from the interviews

<table>
<thead>
<tr>
<th>Participant</th>
<th>Theme Code</th>
<th>Question/Participant Response</th>
<th>Sequence #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interviewer</td>
<td>—</td>
<td>What are Maasai beliefs about land ownership? What do you know about Maasai land appropriation in the past?</td>
<td>—</td>
</tr>
<tr>
<td>Shaa</td>
<td>1.10</td>
<td>Land among the Maasai community is sacred and must be used in respect to religious belief. People used the land on communal system and it is owned by all members of the community. Have been working on land issues in Narok and Nakuru county. The agreements have impacted much on the Maasai community. The agreements have affected the Maasai economic activities forcing others to adopt other economic activities such as trade.</td>
<td>1, 2, 3</td>
</tr>
<tr>
<td>Rahab</td>
<td>1.10</td>
<td>Maasai belief that land is life as it provides water, grass, plants, air for their survival and that of their livestock and wildlife. In addition, land provides sacred places (for rituals, worship, ceremonies, meetings and plants (because it carries and provides for their livelihood system). I have previously worked among the Maasai in Tanzania, but I am now a member of Narok County Natural Resources Network. The settlers did not consult the community leadership structure during the signing of the agreements but rather used the divide and rule mechanism and convince Olonana who was a medicine man sign the agreement on behalf of the Laikipia Maasai.</td>
<td>21, 23, 24</td>
</tr>
</tbody>
</table>

The first column provides the unique participant ID, and the second column is used is used the last step of the process of coding the themes. The actual utterances of the researcher and the participants are in column three. A chronological sequence number is in column four. The sequence number allows the researcher to return to the original sequence of the comments if the table base is sorted. The researcher’s interview questions
were typed in bold to make them easily visible. Transcribing the interviews into table format allowed the researcher to move directly into Word for analysis, and to download the participants’ comments into Write Word.

Key word identification was the next step in the process. The Word text data base was downloaded into Write Word and a frequency word count was conducted. Once the count was conducted the transcription was reviewed for key phrases such as “Group Ranches” or “Maasai community” so these could be grouped. The next step was to examine the frequency count and look for similar words such as “unfair” and “unjust” and to cluster these words. Clusters of similar words also helped to condense the data, and aided in synthesizing and abstracting the data (See Table 4.2).

**Table 4.2**  
*Keyword(s)/word grouping frequency count*

<table>
<thead>
<tr>
<th>Keyword(s)/Word and Phrases Grouping</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maasai/Maa</td>
<td>63</td>
</tr>
<tr>
<td>Land</td>
<td>56</td>
</tr>
<tr>
<td>Land—sacred/supernatural</td>
<td>11</td>
</tr>
<tr>
<td>Land—Gift of God/not owned/communal</td>
<td>9</td>
</tr>
<tr>
<td>Land—identity/who we are</td>
<td>4</td>
</tr>
<tr>
<td>Land provides/supports</td>
<td>11</td>
</tr>
<tr>
<td>Water, air, grass</td>
<td>8</td>
</tr>
<tr>
<td>Food</td>
<td>7</td>
</tr>
<tr>
<td>Livestock</td>
<td>13</td>
</tr>
<tr>
<td>Survival</td>
<td>6</td>
</tr>
<tr>
<td>Customs/culture/rituals</td>
<td>13</td>
</tr>
<tr>
<td>Community/Maasai community</td>
<td>19</td>
</tr>
<tr>
<td>Land rights/right to property</td>
<td>11</td>
</tr>
<tr>
<td>Rights</td>
<td>6</td>
</tr>
<tr>
<td>Agreements/Acts/Treaties</td>
<td>29</td>
</tr>
</tbody>
</table>
The next step was to identify the emergent themes and topics. This was done by reading the participant’s responses several times, and examining the frequency counts and making memos about possible themes. Once a theme was identified the key word and sequence numbers permitted the researcher to return to specific of the interviews. Once an emergent theme was identified, it was assigned a code number (See Table 4.3).

### Table 4.3
*Sample emergent topics from keyword(s) analysis*

<table>
<thead>
<tr>
<th>Code</th>
<th>Emergent Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.10</td>
<td>The land is sacred (and supports Maasai way of life)?</td>
</tr>
<tr>
<td>1.11</td>
<td>The role and importance of the Agreements, Acts, Treaties and</td>
</tr>
</tbody>
</table>

```
Results

Table 4.4
Emergent topics for word/phrase frequency count

<table>
<thead>
<tr>
<th>Code</th>
<th>Emergent Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.10</td>
<td>The land is sacred (and supports Maasai way of life)?</td>
</tr>
<tr>
<td>1.11</td>
<td>The role and importance of the Agreements, Acts, Treaties and Conventions</td>
</tr>
<tr>
<td>1.12</td>
<td>The role of the British, Colonial, and European governments</td>
</tr>
<tr>
<td>1.13</td>
<td>The role of the Kenyan government</td>
</tr>
<tr>
<td>1.14</td>
<td>The role of the Maasai</td>
</tr>
<tr>
<td>1.15</td>
<td>The process of land appropriation was unfair</td>
</tr>
<tr>
<td>1.16</td>
<td>The consequences/outcomes for the Maasai</td>
</tr>
<tr>
<td>1.17</td>
<td>High levels of illiteracy</td>
</tr>
<tr>
<td>1.18</td>
<td>Tourism and Conservation</td>
</tr>
<tr>
<td>1.19</td>
<td>Globalization and international investments</td>
</tr>
<tr>
<td>1.20</td>
<td>Group Ranches</td>
</tr>
<tr>
<td>1.21</td>
<td>Land sales</td>
</tr>
</tbody>
</table>

Emergent Theme (4.4) —— While the Maasai belief that land is sacred, the role played by agreements, treaties, decrees, and laws by the colonial and Kenyan governments’ unfairly appropriated Maasai land which has had negative outcomes on the lives of the Maasai.
At the completion of the analysis of all the research questions, the researcher (investigator) identified metaphors. Metaphores served as a device to compare things for similarities, and it provided a way to achieve more integration among the diverse pieces of data generated from the interviews. The metaphors also served as a data condensing device by taking the particulars of the themes and making a single generality of them. This last step served as a centering device. The researcher had to step back from the data and ask. “What is going on here?” It also permitted the researcher to move beyond description to a more inferential and analytical level with the data.

The results are presented in the following sections (see Table 4.2). The results are organized by the research questions.

**Research Question 1: What do you know about Maasai land appropriation in the past?**

*Maasai beliefs about the land and land ownership*

Using the word frequency and frequency counts (see Table 4.2) a number of keywords and phrases were identified which lead to the identification of the first theme that was related to Maasai beliefs about the land and land ownership (see Table 4.3). A number of participants described the land as sacred or as being a gift from God to the Maasai people. Along with this was a belief that the land is not owned by individuals, but is held as communal property.

“The land is a gift from God and is owned by all of us together.” (Vincent Ole Ntekerei)
“The Maasai people believe that land was given to them by God to live and make a living through their livelihood systems which is about keeping livestock.” (Clement Nachuru)

“The land belonged to all of us.” (P4)

“Land is not transferable and cannot be appropriated to individuals especially to non-Maasai. It is also believed to be sacred and must be owned communally.” (Daniel Salau)

Along with viewing the land as sacred and communally owned, the participants’ comments reflected how their beliefs about the land were intertwined with Maasai culture and customs, their way of life as pastoralists, and their survival.

“Maasai land relations are governed by their customs, traditions and culture. Apart from the area adjacent to the Maasai homestead (olokeri) which is often reserved for the exclusive use of the calves, sick animals and small stock of a given family, the rest of the pasture is open to free grazing by the community.” (Lemayian Ole Taiko)

“The Maasai people belief that land was given to them by God to live and make a living through their livelihood systems which is about keeping livestock. Their nomadic way of life, and culture makes them use the land for long without owning it individually. They have a great attachment to land in that they believe that land has some supernatural powers, so if one is cursed on the land, the land will swallow them. Land is a plate (enaraa) which God gave to the Maasai for all to use communally and no one had authority over ownership or owned it privately.” (Clement Nachuru)

“Maasai belief that land is life as it provides water, grass, plants, air for their survival and that of their livestock and wildlife. In addition, land provides sacred places for rituals, worship, ceremonies, and meetings and plants because it carries and provides for their livelihood system.” (Rehab Kenana)

“The Maasai had no monetary value for their land, it was not there for sale or anything else other than to provide pasture for their livestock. Land was considered a safety net for the family, children and livestock. It was the source
of our peace, and provided food for all the Maasai, and therefore no one had the right to own land individually. That is why the Maasai protected land and livestock regardless of which clan one belonged to. Land and livestock was the common denominator that defined the Maasai as a people. Land gave us identity and it is life for us and our livestock.” (Moses Ole Marima)

From the comments above it is evident that the land and natural resources formed the basis of Maasai unity and identity, and it also reflected their custom of communal use of the land. It is also very clear that one did not privately own a specific parcel of land.

In summary, the comments reflect the Maasai belief that the land is sacred, that the land is life as it provides water, grass, plants and air for their survival and that of their livestock and wildlife. In addition, the land provides sacred places for rituals, worship, ceremonies and meetings as well as providing for their livelihood. The comments reflect the strong interconnection between the Maasai’s beliefs about the land, their lifestyle, their culture and customs, and their identity.

**Maasai agreements and the role of the British government**

The next two topics (see Table 4.4–1.11) role of the agreements and (see 4.4–1.12) the role of the British government are intertwined, were also discussed together by the participants and are therefore discussed together in the results. The agreements that the participants are referring to are the Maasai Agreements of 1904 and 1911, as well as the Lancaster independence conference of 1962. Under the terms of these two agreements of 1904 and 1911, the Maasai ceded their territory in the central Rift Valley to move to two reserves, one to the north on the newly constructed Kenya-Uganda railway, and the other to the south of it. The time the Maasai signed these agreements was just after a period of
inter-clan civil wars and a bad drought. How the Maasai came to sign these agreements will be discussed later as a part of theme 1.14.

The inclusion criteria to participate in this study required personal experience with land appropriation thus the participants were knowledgeable about the history and context of land politics in Kenya. The process of land appropriation from the Maasai in Kenya is complex, and in an attempt to better understand this process this analysis has been broken down using the keyword/phrase frequency word count (see Table 4.2) and themes outline in (see Table 4.3). The discussion of these results begins with the agreements and the British government’s role, follows with the presentation of the Kenyan government’s role, and last the role of the Maasai.

The participant’s comments describe the role of the British government in obtaining Maasai land. They describe a “top-down” process, and make no mention that the Maasai had any role in drafting the agreements. Their feelings about this process are evident in their choice of words.

“The Agreements all have to do with the Maasai ceding their land to allow white settlers space in the fertile highlands to settle and establish modern agriculture and husbandry. Both agreements led to loss of large swaths of land by the Maasai.” (Clement Nachuru)

“The agreements were treacherous and coined to bring down the Maasai supremacy and to disposes the Maasai of their best pastures” (Daniel Salau).

“The Maasai describe the moves to the Southern Reserve as a deliberate move by the Imperial regime to send them to “Ngatet” to go and die from “Oltikana” (East Coast Fever) (Moses Ole Marima)

“The British colonial government decided to move certain sections of Maasai out of areas that were wanted for settlement by people (largely farmers) of
European descent including Boers from South Africa. This began a long process of land alienation that continued through the 20th century, but different forms at different times and was of varying severity.” (Dr. Lotte Hughes)

“Maasai were moved from the Laikipia Highlands to Narok and Trans Mara (Cis Mara) after the settlers were allocated land along the railway line.” (Lemayian Ole Taiko)

“My personal opinion is that the Maasai had come to the realization that the British were out to dispossess and disenfranchise them, and they (British) were not very good at keeping their word.” (Michael Tiampati)

“The agreements ushered in a long period of untold suffering for the Maasai which are still being felt to date.” (Vincent Ole Ntekerei)

The participant’s perspective on the British role in Maasai land appropriation was negative. The tone of many of them reflected the anger they felt about the way the British managed the development of the agreements and the way they moved the Maasai. The comments also note the breaking-up of the Maasai territory, and the move from what the Maasai perceived as productive, fertile land to land of poorer quality. The participants also expressed their views on the legality of the agreements and held the view that the agreements were illegal and they should be contested in courts both in Kenya and the United Kingdom.

“The 1911 agreement was illegal, null and void and unacceptable to the Maasai people. Unlike the 1904 agreement which might be said to have been ratified by compliance, the 1911 “Treaty” never received the approval of the tribe and had to be implemented by means of government orchestrated violence with the inevitable loss in human life and property. The losses in cattle, men, women and children who died while enroute to the Southern Reserve escaping from Laikipia was a gross violation of human rights; an act of genocide and a crime against humanity.” (Moses Ole Marima)
“The Maasai had a strong delegation at the conference who were united in one accord; to revert back the land to the Maasai. Their effort to have this commitment anchored in the newly crafted constitution was thwarted consequently forcing the delegation to storm out of the talks. They never appended their signature the constitution to be. The Maasai lost in the relocation and land distribution plan. Whereas the outgoing British government paid for the land transfer fund, the land never went to its original owners. Instead, it went largely to the Kikuyu community where the first president hailed from.” (Daniel Salau)

While most of the participants raised their concerns about the roles that, and importance off the agreements, Acts and Treaties in Maasai land appropriation, one participant expressed his concern about how the Maasai wasted an opportunity to get their grievances heard during the Lancaster Conference to discuss Kenyan independence in 1962. In his view, P4 stated that:

“The Maasai representatives should have never walked out of the deliberations. They should have been more tactful. Even among the Maasai traditions, you don’t walk out in protest if your point of view is not taken. Their absence from the final recommendations may have cost the Maasai tracks of land. Having allowed the Lancaster Conference to conclude without their presence was shortsighted, and they should have stayed put and caused trouble within the discussion room, and delayed conclusions of the meeting. The outcomes were therefore disastrous and allowed post-colonization of the Maasai people and taking over of their lands. This include by the independence government, where the political elites who were mostly not Maasai took over the land that was supposed to be returned to the Maasai.” (P4)

Further, the participants expressed that Maasai land appropriation was sanctioned by the Kenya Land Commission commonly referred as the Carter Commission of 1933-1934. The commission was to review the terms of the 1930 Native Lands Trust
Ordinance and seek ways to service Africans interests in land as well as settle grievances from past transactions in land.

“This was the first attempt to put a policy in place to justify rather than to correct the previous anomaly. It only served the purpose to legitimize the appropriation of the Maasai territory. The process was neither representative nor was it participatory neither consultative.” (Daniel Salau)

“It is worth noting that the Kenya Land Commission (commonly referred to as the Carter Commission) report in its conclusion underscored that; “The main fault in the traditional (Maasai pastoral) system is the combination of the communal range with unrestricted individual ownership. Neither the community nor the individual have regard to the effects on the land of their actions’. This is contrary to the reality as nomadic and transhumant pastoralism are founded on the basis of sound ecological management and preservation of nature through intricate regulatory frameworks that have for centuries ensured the survival of nature and near pristine conditions of the rangelands. The report failed to acknowledge the fact that the noted effects to the environment were a direct consequence of reduced space as a result of dispossession by the colonial authorities to create space for the settler community. Pastoralism is founded on three key pillars i.e. land and natural resources, livestock herds, and traditional governance; when one of this pillars is threatened then the whole pastoralism system becomes perilous. Therefore, whereas some of the observations were practical from a modern perspective, however sight was lost on the causative aspects of land and ecological degradation and the reduced space due to takeover of the vital drought reserves by the colonial authorities.” (Michael Tiampati)

In summary, prior to the arrival of the British the Maasai had established an effective social organization to manage large livestock herds on their land. They cooperated among themselves, and kept non-Maasai people off their land. As noted in the comments above the contracts or agreements with the British marked the beginning of the breakdown of
Maasai systems. The agreements and other enacted land laws continued to undermine the Maasai society.

*The role of the Kenya government*

The next topic that emerged from research question data analysis was the role of the Kenyan government in Maasai land and the processes of land appropriation (Table 4.4–1.13, and 4.4–1.15). These two themes are used together because all land processes and legislation were sanctioned by the government. From the participants’ perspective, the Kenyan government has contributed to land grabbing of Maasai land. The participants indicated that the Government of Kenya has been the greatest culprit in regard to the appropriation of Maasai land and hold the view that that pastoralism is not an economic and production system worthy of practice in the modern world. There was the view that privatization and individualization of all land in the country ostensibly was to place such parcels in productive use and form collateral for Bank Loans.

“The government is doing very little in communicating land issues to the Maasai. However, the NGOs and the NLC have been partnering to discuss and sensitize the Maasai on this land related issues particularly on communal land issues or sometimes on historical land injustice but very little for there is no government will.” (Jackson Shaa)

“The government is not only sleeping on its job by not protecting the Maasai from Massive land loses, it is a facilitator in the process. Government officials are becoming catalysts of land selling.” (Lemayian Ole Taiko)

“Current, land in Kenya is control by the government and they make decision on land through National Land Commission since inauguration 2010 constitution.” (Julius Lemanken)
From the participants’ responses, the government has been variously accused of being the major catalyst of Maasai land appropriation. The culture of corruption and impunity in the government and among the political elites being facilitated by rich people from outside the two counties accelerated the pace at which Maasai land was being lost to outsiders. While the participants were aware of all the directives about processes of land management, there was a general agreement that the processes used to appropriate Maasai land were corrupt and illegitimate.

“When I worked for the Ministry of Lands in Narok and Kajiado, I witnessed land being transferred from the Maasai by the special land board which was illegal. I was sometimes forced to write blank title deeds in the middle of the night which the District Land Registrar and the chairman the Land Control Board who was either the District Commissioner or the District officer sold to senior government officials and politicians. That is how the Maasai from Iloodoariak and Mosiro lost their land. Maps were drawn in the office of the District Surveyor without even visiting the land. All the title deeds from such transactions were latter used to acquire loans. I am sure all those that got the land do not even know the physical locations of the land they hold title to. My experience was very bitter but I had to do what I was told to do because I was threatened that there will be consequences if I did not do it, or even if I told anybody about it.” (P1)

“Much power is vested in the National Land Commission but with the new bill in Parliament the role of the cabinet secretary is increasing for the government prefer the Ministry of land than the NLC.” (Jackson Shaa)

“The last 10 years is generally characterized by continued misappropriation of land, unabated corruption in the land ministry/offices and increased influx of immigrants into Maasai land. There has been lack of deliberate effort in form of political goodwill to correct or sow this trend. However, the last 10 years also provided a much better legal framework than ever before including the 2010 constitution and the national land policy.” (Daniel Salau)
The processes that are used to acquire and transfer land were equally expressed by the participants as corrupt and have contributed to Maasai land appropriation and acquisition. The participants expressed their view that since independence in 1963, the country’s leadership has contributed to Maasai land appropriation through legislating laws that did not recognize Indigenous Maasai land tenure, and abetting to corruption.

“Previous and current presidencies and regimes continue to use their powers and the gullibility of the Maasai community to misappropriate Maasai land. They use the same land to trap and woo the Maasai community to vote for them. The Maasai do not have a major role in the appropriation of land; however, in some instances.” (Clement Nachuru)

“Mostly though corrupt deals where money changes hands between a few leaders and investors or land grabbers.” (John Kisimirr)

Overall, the participant’s perspective about the role of the government in Maasai land appropriation and acquisition is that of a facilitator for the past and present land losses. The government, through the enactment of laws and the use of presidential decrees on matters related to land, has led to untold loss of land through the enforcement of the laws and adherence to the decrees. Corruption by land officials in collaboration with land brokers, Maasai elites, and rich people from outside of Narok and Kajiado Counties was also cited as the major conduit for land losses. In summary, the independent Kenya government actively contributed the appropriation and privatization of land that the colonial government had started. The government also continued with land reforms that did not recognize pastoralism which is the Maasai way of life. As noted above, all aspects of land tenure were brought under the Registered Land Act of 1963. The
formalization of land rights was adopted the Kenya government to achieve both political
and economic goals.

*The role of the Maasai*

According to the participant’s views per the analysis (See Table 4.4-1.14), the
Maasai had a minimal and passive role in the appropriation and alienation of their land
either by the government or by non-indigenous people in Kajiado and Narok Counties.
The participants also raised issues about the decision making processes on matters related
to land. The participants also commented about the various activities that the Maasai have
undertaken and the roles they have played to address the issue of land appropriation.

“The settlers did not consult the community leadership structure during the
signing of the agreements but rather used divide and rule mechanism and
convince Olonana who was a medicine man sign the agreement on behalf of the
Laikipia Maasai. As a result, this raised suspicion and feeling of betrayal by
Olonana leading to conflicts, mistrust and polarized tribe.” (Rahab Kenana)

“Maasai attempts to go to the Colonial Court of Appeal were thwarted through a
combination of strategies that included intimidation, manipulation and non-
cooperation. Therefore, hearing was totally unfair to the Maasai.” (Julius
Lemankan)

Participants expressed their view that the Maasai have continually protested about
land that was appropriated and illegally acquired in the past. The participants also
described the various roles that they are currently playing in addressing issues about land
appropriation.

“The Maasai protested and refused to sign the Constitutional draft like Dr.
Tameno, Dr. Likimani and others were persecuted while the ones who signed
like Ole Tipis, J. Keen, Ole Sompisha, were rewarded handsomely with cabinet
position and trucks of land.” (Lemayan Ole Taiko)
“I have worked with NGOs that work on land rights in Narok and Kajiado Counties for several years.” (P4)

“I have been involved with research and advocacy in Kajiado, I am also a founder member of Maa Civil Society Forum which is involved in advocacy and land rights.” (Daniel Salau)

“I have participated in Maasai land related issues in Kenya for many years. Currently, as a member of the Maasai Council of Elders I and the other council members are aggressively involved in raising awareness about land related issues especially in Narok County.” (Moses Ole Marima)

Some participants have had the opportunity to participate in various national land related forums to represent the interests of the Maasai. They have also been involved in organizing processions in Kenya to demand redress of land related issues.

“I am a member of the National Land Commission which is a Constitutional body responsible for all matters related to land. Being a Maasai I am responsible for overseeing all matters related to land in Narok County at the Commission.” (Clement Nachuru)

“As a founder member of Maa Civil Society Forum and the National Coordinator for Pastoralists Development Network of Kenya, I have participated in various activities that address Maasai land issues. I have been active as the media liaison person as well as organizing several peaceful demonstrations by various Maasai groups.” (Michael Tiampati)

The primary role of the Maasai according to the participants has mainly been fighting back to regain the land that was appropriated from them, and raising the awareness about land related issues through advocacy and through the use of the courts. The participants explained the challenges that they faced in the past and are currently facing as most of the laws about land in Kenya are guided by title ownerships. Since all the appropriated land has been titled, the Maasai have to either occupy unoccupied land,
ask for adverse possession of the land, or mitigate in the courts which is a long and expensive process.

While this is the case, the participant’s also raised issues about the Maasai elites and leaders colluding with government officials and land agents and prospective land buyers to appropriate land from the Maasai.

“After independence, some Maasai leaders sold out their people in exchange of power and riches. It also gave rival communities a chance to take over the land that was left by the colonialists.” (John Kisimirr)

In summary, the Maasai have contested all the agreements and laws that have contributed to Maasai land appropriation through the local, courts, demonstration, and occupying land. This has led to conflicts between the Maasai and the land grabbers as well as the government. While many Maasai people were against the manner and nature of land appropriation processes, the Kenyan law on land has been an inhibiting factor.

Since land has been used as a political factor, the participants also raised issues about how their local elites have been enticed to engage in land appropriation in return for political gains. The government has been instrumental in appointing some Maasai leaders to government positions, and supporting certain individuals to win election so that they can be used in plans to appropriate Maasai land.

**Consequences and outcomes for the Maasai**

There was consensus among all the participants that past land appropriation has had devastating effects and outcomes for the Maasai in Kenya (See Table 4.4–1.16). The dispossession of land did not only reduce the amount of land that the Maasai owned, it
had also led to numerous conflicts among the Maasai themselves and between the Maasai and other non-Maasai who occupied the alienated land.

According to the participants, the agreements of 1904 and 1911 had devastating effects which included loss of life for both human and livestock, separated families and disintegrated the social fabric of the Maasai in general. To date the Maasai are still lamenting about the tragedy of having been forced to move from some of the best land to drier areas that could not support their livelihoods. The non-consultative manner in which laws related to the land, and lack of communication by the government about these decisions related to land appropriation further led Maasai land loss to the government and to individuals without the consent of the Maasai.

“The agreements have affected the Maasai economic activities forcing others to adopt other economic activities such as trade and cultivation.” (Jackson Shaa)

“The agreements, laws and decrees in Kenya have had tragic impacts among the Maasai. Social Impact: it separated the various Maasai clans/nations but pushing some to the South and others (Samburu) to the north of the country. It also put a rift among the various nations that sided with Lenana, the man who signed the agreements. Economic: It exacerbated the continuous fall of the Maa nation by reducing grazing lands. It was the beginning of the end.” (John Kisimirr)

The participants also raised issues about how the agreements, laws, and decrees have immensely affected the Indigenous Maasai way of life by reducing the movements of livestock and people to seasonal grazing areas, hence making them vulnerable to droughts and hunger.

“The freedom of movement the Maasai people as well the loss of community organization, and territorial controls was affected by the agreements.” (Julius Lemankan)
“All land that was officially gazzated as Trust Land in Maasai land was appropriated by the presidents especially the former president Daniel Arap Moi who used land as a political tool. The Maasai have lost all livestock marketing holding grounds, urban centers, and forests which were sub-divided without the consent of the local communities and titles issued to politicians who sold out the land to others or used the titles to get loans. A good example in Narok is the Mau forest where the then President Arap Moi was allocated thousands of acres of land in the forest.” (Moses Ole Marima)

“The agreements ushered in a long period of untold suffering for the Maasai which are still being felt to date. The sacred sites and traditional venues were equally taken over thereby denying the Maasai the right to exercise their traditional, cultural and religious rights. The human population reduced drastically due to such epidemics and anthrax that wiped out a large proportion of both livestock and people. The political and military prowess was compromised and the two agreements marked the beginning of the weakening and vulnerability of the Maasai as people whose consequences are evident to this day in the Maasai have no claim of Nairobi and the outlying areas, they lack a claim to Laikipia and outlying areas, they lack claim to Eldoret/Ilwusinkishu (Wuasi Ngishu), and outlying areas, they lack claim to Nyahururu/Enaiuruur, Nakuru, Elburgon/Olpurkel, Oldama Orropil (Eldama Ravine), and parts within Kajiado and Narok that are in the hands of non-Maasai because they lack the economic and political clout. These factors are further compounded by persistent encroachment of Maasai land by migrants from other areas with burgeoning populations and the fact that lack of economic opportunities and threats of climate change is driving the Maasai to sell their lands. That is further exposing them to social-cultural-economic and political domination by migrant tribes within their lands.” (Michael Tiampati)

According to the participants, the consequences for the Maasai were devastating and are still being experienced to date. The movements that resulted from the 1904 and 1911 agreements resulted in the Maasai losing the whole of the best grazing areas for their livestock, and this led to human and livestock to deaths related to diseases in the new areas that they were forced to move to. Their livestock herds were decimated by
droughts, hence affecting their economic viability. The movement also created inter-
Maasai clan conflicts because the Maasai who were moved from Laikipia had to occupy 
land that the other Maasai from the southern rangelands inhabited.

The participants further expressed that the laws that were used by both the colonial 
and post-independence regimes did not recognize pastoralism which was the Maasai way 
of life that had not only supported their economy. In addition, this was the best land use 
that supported and sustained their environment, and also supported cultural events that 
were conducted on the basis of weather patterns. The Maasai were equally dispersed 
without due consideration of social attachments, and many families were separated, 
traditional ceremonies disrupted, and their general traditional and cultural system was 
decimated.

**Research Question 2: What is your understanding of the current events going on 
now regarding Maasai land appropriation?**

**Table 4.5**

*Emergent topics for word/phrase frequency count*

<table>
<thead>
<tr>
<th>Codes</th>
<th>Emergent Topics</th>
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<tr>
<td>2.10</td>
<td>Land sales</td>
</tr>
<tr>
<td>2.11</td>
<td>Subdivision of Group Ranches</td>
</tr>
<tr>
<td>2.12</td>
<td>Corrupt government officials and, land brokers, and committees</td>
</tr>
<tr>
<td>2.13</td>
<td>The role of the National Land Commission</td>
</tr>
<tr>
<td>2.14</td>
<td>The role of the County Government</td>
</tr>
<tr>
<td>2.15</td>
<td>The County Land Boards</td>
</tr>
<tr>
<td>2.16</td>
<td>High levels of illiteracy</td>
</tr>
</tbody>
</table>
**Emergent Theme (4.5)** — The National Land Commission, and the County Land Boards needs to be active in protecting the illiterate Maasai from corrupt government officials, Group Ranch committees, and land brokers.

Using the word frequency count (See Table 4.5) a number of keywords and phrases were identified which lead to the identification of the themes that was related to the current events going on now regarding Maasai land appropriation. The research participants described how land sales, sub-division of Group Ranches, corrupt committee and government officials, the role of National and County governments, the land boards, and high levels of illiteracy are currently contributing to massive Maasai land appropriation in Kajiado and Narok Counties.

Embedded in the whole phenomenon is the intertwining of laws, policies, and government directives on how land issues should be addressed. The research participants were able to pinpoint specific cases where the government land officials, and Group Ranch officials were involved in outright illegitimate and corrupt practices that facilitated transfer of land from the legitimate owners (the Maasai) to wealthy and politically correct non Maasai both in Kajiado and Narok Counties.

**Land sales**

The phenomenon of rampant and indiscriminate land sales both in Narok and Kajiado Counties featured in all the interviewees’ responses (see code 2.10).

“The uncontrolled sale of land in Kajiado and Narok has left many families destitute. There are no mechanisms to guide land sales, once the land is subdivided into individual title ownership.” (Daniel Salau)
The above statement was supported by P3 who lives in Kajiado County with her two co-wives who emotionally narrated how her husband moved to Ngong town and all they could see were vehicles coming to plant beacons on their land. She stated that:

“Our husband moved to Ngong town and all we know of him is he was always drunk in company of other women in town. He used to send food home by taxi and occasionally would come with strangers to give them goats. These strangers would come and walk all over the land planting land beacons on our land. It was not long before we started seeing strangers coming to build homes on our land. I did not know how big the land was but all I have now is only two acres where I have my house. All the land was sold.” (P3)

In his remarks about land sales, Lemayian Ole Taiko lamented that not only individual parcels of land are being sold. According to him, Group Ranch committees are selling community land:

“The Elangata Wuas Group Ranch committee has been selling and leasing community land without the consent of the members of the Group Ranch. Almost all the shopping centers have been sold out to non-Maasai.” (Lemayian Ole Taiko)

According to the research participants, land sales in Maasai land has led to massive land loses and destitution and was driven by several factors.

“This was driven by several factors. One there was a perception that individual landowners will be able to develop their land and improve their livelihoods as was seen among the few Maasai who had individual ranches. Secondly, the money economy was introduced through loans that were advanced to the land owners by the Agricultural Finance Corporation (AFC) to buy steers. The third factor that led to massive land sales was the idea of “Maendeleo” (meaning development). The Maasai wanted to live like the “others’, drive cars, build better houses, eat and drink like other communities.” (Michael Tiampati)
The participants also elaborated the impact land sales have had on women and children who are the most affected by land sales by men who are the only ones that registered as title holders.

“Since women are not allocated land, men never consult women, and family members when they sale land. Many of them move to big towns, marry women in the towns, and to support them they sale land in total disregard of the families they have left back in the villages.” (Rahab Kenana)

Participants who have participated over a long time in land related issues and have witnessed how land sales have contributed to massive loss of land by the Maasai in Narok and Kajiado Counties, expressed despair if the current trend will be allowed to continue.

“The Maasai are a dying people, they have sold all their land from Kitengela to Namanga in Kajiado, and now after Group Ranches have been subdivided in Narok, all the land along Narok-Mulot road as well as Narok –Maasai Mara road is being sold like chicken. Soon the Maasai will have nothing.” (Moses Ole Marima)

According to the participants, the precursor to the initial land sales in Kajiado and Narok was driven by loans that were advanced to individual land owners who used their titles to acquire loans to buy steers from the Agricultural Finance Corporation (AFC). Due to the diminishing grazing land, persistent drought, and reduced mobility of the livestock in search of pasture, many borrowers were not able to repay back their loans. This prompted some to voluntarily sell their land to repay the loans while others had their land sold by the Corporation to recover the loans.
**Subdivision of Group Ranches**

Arising from the neoclassical economic theory prevailing at the time; and with the support of multi-lateral donors the Kenya Government advocated for the formation of Group Ranches through the enactment of the Group Ranches (Group Representative) Act of 1968 (see code 2.11). According to the participants, the Group Ranch the system which latter led to individualization of land was alien to the Maasai, and has contributed to continued land appropriation among the Maasai.

“Group Representative Act was supposed to model the modern ranching enterprise which was practiced by the white ranchers. The idea was noble, but it was lost to elite capture. The members of the groups who were more educated and aware of the law, took advantage of the ignorant members to fleece them of their land and business of keeping livestock. In many of the groups, management is a big impediment to their development. Many of the officials are illiterate and could not understand many technical issues on running of the ranches as it were intended.” (Clement Nachuru)

“The group ranch model was a system where a group of people jointly held title to land, maintain agreed herd sizes own livestock individually but herd them together. Group Ranches was the idea of the World Bank and implemented in collaboration with the Kenya Government. The aim of the project was to regulate traditional pastoral practices of herding cattle across the arid land and to control the herd size. In addition, the Government intent was to ensure boundary maintenance, sendentarize the Maasai to make them aware of the scarcity and value of land, and encourage them to make necessary investments to improve the land. In development of group ranches the principles applied in high potential lands (highlands) also apply to the rangelands which flopped. The project was undertaken with the consultation of educated Maasai tied to the national political system. The government project brought about further loss of land and traditional way of life of mobility and flexibility. In the process of the sub-division of land some large pieces of land were set aside for individuals Maasai leaders and government officials, there was migration of farming
communities in areas with good climatic conditions for farming into Mau Narok, Enoosupukia, Nairagie Enkare, Melili and many other high potential areas in Narok. According to me, Group Ranches idea radically transformed Maasai social and political organization and traditional livestock management strategies. The role of traditional leadership was of managing natural resources was replaced by the Group Ranches committees which had a new level of territorial administrative organization and new method of decision making supported by law. This incapacitated the role traditional leadership. In addition, the Group Ranches as a new model did not consider equity in the registration of the whole community.” (Rahab Kenana)

The subdivision of Group Ranches started in Kajiado and later on Narok County and due to the involvement of government officials and the fact that most of the Group Ranch officials were mostly illiterate, some of the processes of subdivision have taken as along as twenty years to be completed. The participants gave examples of Group Ranches that subdivision has been going on for many years.

“Elang’ata Wuas Group Ranch was dissolved by members in 1990s and the process of subdividing and allocating members’ individual parcels of land has been doing on for several years. An elected committee is in charge of this process. This process of land subdivision has not only been marred by illegal alienation, acquisition and sale of individual and public land, land extortion, forceful relocation and disinheritance, said the letter to the National Land Commission, but it goes contrary to all laws of natural justices, the Constitution and all International legal statutes on human rights. These malpractices besides being illegal have a profound long lasting and disproportionate impact on vulnerable groups of our community such as the poor, women, widows, orphans and persons with disabilities. The documents also told the National Land Commission that the community’s attempts to seek redress at the county level have failed to bear fruit. The role of government’s institutions at the county lever have significantly perpetrated these land injustices by failing to honestly and adequately address them on a number of occasions, and in according to the law. The residents are recommending that a thorough audit of Elangata Wuas
land subdivision be carried out and all land sales in the area be stopped.”
(Lemayian Ole Taiko)

The participants also pointed out that the Group Ranch registration processes were segregative and neglected the interests of women, youth, children and the poor members of the community who because of their status were not registered in many Group Ranches.

“Only fathers and sons who were eighteen years and above were registered, excluding and discriminating against women and girls who are the integral part of the community.” (Rahab Kenana)

The sentiments of segregation of women and youth by the Group Ranch committees were also echoed by P1 who is a widow from Kipeto. In her response, she stated that:

“I and my children are landless because the committee refused to register me as a member of the Group Ranch because I am a woman. My sons were not of age by the time the registration was going on so they could not also be registered. I do not know what happened to my late husband’s share because he was a registered member. I did not know where to go for help because all the leaders including the chief did nothing to help me.” (P1)

In conclusion, the participants expressed that the last 10 years were generally characterized by continued misappropriation of land, unabated corruption in the land ministry/offices and increased influx of immigrants into Maasai land. There has been lack of deliberate effort in form of political goodwill to correct or sow this trend. However, the last 10 years also provided a much better legal framework than ever before including the 2010 constitution and the national land policy.

According to the participants, the subdivisions of the group ranches were also fueled by political statements calling for individualization of the ranches. The most notable
statements were issued by the former President Daniel Moi in the 1980s. The former President “stressed the need for individuals to develop their own pieces of land.” Noting the unviability of group ranch operations, he expressed the fear that group ranches may in future spark trouble because registered members were inviting their friends to reside in the group ranches. He advised Maasai leaders to begin land adjudication to enable each family to develop its own farm. Given that presidential pronouncement in Kenya are viewed to be decrees, government officials enforced them by quoting the president’s speeches.

The conversion of the Maasai’s communal property to private property had several effects on the Maasai. First, the Maasai traditional leaders and elders of the community were denied their usual authority and roles in decision making. This pattern of decision making was associated with social cohesion among the Maasai. Their exclusion lead to the disintegration of the Maasai sociopolitical unit and to a disruption of their way of life. Second, it adversely affected the harmony the Maasai enjoyed with the natural environment. Third, the selling and subdivision of the land also led to the loss of forage areas critical to the Maasai's survival as well as the survival of their livestock. The small parcels of land the Maasai received could not support their livestock, especially during periods of drought.

During the past 30 years, group ranches have been subdivided into family holdings frequently through corrupt processes, and frequently those who benefited from the subdivision were not Maasai. Those who benefited were outsiders such as government officials or were from the elite class. The creation of family-based parcels or ranches with
title deeds was justified in neoliberal economic terms as providing “security” or tenure for the title holders. This facilitated access to credit (loans) with the land serving as collateral. This led to other problems as many of the Maasai were illiterate and/or did not understand the financial aspects of a loan using the land as collateral. The end result, through corruption and land sales, was anything but security as the loans taken out often lead to foreclosure.

**Corrupt government officials, land brokers, and committees**

According to the research participants, corruption has been expressed as a phenomenon that has clearly pushed for the dispossession is the subdivision of Group Ranches in Kajiado and Narok Counties which has not only led to illegal allocation of non-deserving non-indigenous communities, but has introduced a discriminatory system where corrupt group leaders have been used by government officials to sell community land (see code 2.13). The process of land subdivision has not only been marred by illegal alienation, acquisition and sale of individual and public land, land extortion, forceful relocation and disinheriance, but has created landlessness among many families in Kajiado and Narok Counties.

“When I worked for the Ministry of Lands in Narok and Kajiado, I witnessed land being transferred from the Maasai by the special land board which was illegal. I was sometimes forced to write blank title deeds in the middle of the night which the District Land Registrar and the chairman the Land Control Board who was either the District Commissioner or the District Officer sold to senior government officials and politicians. That is how the Maasai from Iloodoariak and Mosiro lost their land. Maps were drawn in the office of the District Surveyor without even visiting the land. All the title deeds from such transactions were latter used to acquire loans. I am sure all those that got the
land do not even know the physical locations of the land they hold title to. My experience was very bitter but I had to do what I was told to do because I was threatened that there will be consequences if I did not do it, or even if I told anybody about it.” (P1)

“The government has been very corrupt. The government officials collude with land brokers, and use government official to subdivide, sell and issue titles to underserving people through illegal means.” (Moses Ole Marima)

“I worked in the government and have seen a lot of illegal land deals being transacted by government officials.” (P1)

The participants also highlighted that not only was corruption of land deals inherent in government offices, it is also evident in Group Ranches where Group Ranch officials conspire with potential land prospectors to get land allocated to underserving outsiders and allocating themselves large tracks of land at the expense of other members of the community.

“In Elangata Wuas Group Ranch, the committee members have taken upon themselves to allocate their families and friends several pieces of land. They have also allocated land to non-members of the Group Ranch. At the same time, they have allocated themselves several plots in all urban areas. Over and above, they have set aside several pieces of land that they are selling to non-members. This is corruption of the highest order.” (Lemayian Ole Taiko)

**The roles of the National Land Commission, County Government, and the County Land Boards**

For purposes of discussing results for research question 2, the researcher collapsed codes 2.12, 2.13, and 2.14 (See Table 4.5), since the roles of the County Land Boards, the County Government, and the role of the National Land Commission are all dependent on legal instruments as per the Kenyan Constitution and are subject to the National Land Commission mandate in administering land related issues.
The National Land Commission of Kenya is an independent government commission whose establishment was provided for by the Constitution of Kenya to, amongst other things, manage public land on behalf of the national and county governments, initiate investigations into present or historical land injustices and recommend appropriate redress, and monitor and have oversight responsibilities over land use planning throughout the country. It was officially established under The National Land Commission Act, 2012. Under the Constitution, county governments are in charge of county planning, land survey and mapping within their jurisdictions. This role is executed in consultation with the National Land Commission.

The participants expressed concerned regarding how decisions related to land after the National Land Commission and the County Land Boards were formed. There were mixed feelings as to how the two will manage and streamline matters of land in the two counties.

“The National and County Governments have an interest in land and the County Assemblies, the National Land Commission, the senate and parliament as well as the Ministry of Lands. These the key actors on matters community land from a policy and legal framework perspective. The other key actors are; private corporates, quasi-government institutions-parastatals, Vision 2030 secretariat, the local leadership/MPs and Senators, County Land Management Boards, the community and NGO actors.” (Michael Tiampati)

According to the participants, decision making on matters relating to land have been confusing, not participatory, and where the community were the rightful decision makers, their decisions were manipulated by the Ministry of Land officials.

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“Currently the main decision making bodies on Maasai land are the community as identified through membership to the former Group Ranches, Trust Lands, the County Land Management Boards, and the County Executive in charge of Land, the National Land Commission and the Ministry of Lands.” (Daniel Salau)

“The lack of a community land law makes this hazy, however, the setting according to the constitution is such that there is a ward land committee comprising of individuals from the community who address land issues at that level, then there is the constituency land committee representing the community and county land management board who are key in decision making regarding community land. However, the existence of these bodies is not clear—the County Land Executive in liaison with the County Land Management Board and the National Land Commission have the prerogative to communicate to the Maasai on any matters touching land appropriation.” (Moses Ole Marima)

The decision making processes on matters related to land was also raised with participants concerned about the lack of involvement of the local communities.

“We do not understand how decisions about our land are made. They are made in boardrooms with very little community participation. Where the community is consulted, the government has prerogative to ignore their suggestions.” (Daniel Salau)

“It is hard to say who makes decisions because there are a lot of players who work with the government officers to make decisions. Mainly the government, the land owners, land brokers, and the people with money to buy land have the power.” (P1)

“The NLC can also play a critical role, as well as friendly county governments, like Kajiado County and its governor, who has now placed a moratorium on land sales. The Brokers and corrupt Members of the County Assembly, are however, major stumbling block.” (P4)

“They are made in boardrooms with very little community participation. Where the community is consulted, the government has prerogative to ignore their suggestions.” (Daniel Salau)
In summary, the participants expressed their concerns about how decisions about land were made and hope that with the involvement of the National Land Commission and the County Land Boards, all land related will be streamlined to reduce the corruption and illegal land appropriation. While there are high hopes about the new bodies and the role they will play in land management, there seem to be concerned about the role of the Ministry of Lands who will still be the body that will issue land titles.

**High levels of illiteracy**

The participants identified lack of education and the understanding on the value, and importance of land has deprived many Maasai of their decision making ability on matters related to land sale, who makes the decisions, how the decisions are made, and who implements the decisions (See Table 4.5–2.16).

“When you look at the majority of people who have sold land in Kajiado and Narok, you will realize that almost all are illiterate and do not know the value of land and therefore do not have the negotiating power. The do not have any control of the process, and the pricing is left to the land brokers.” (Dr. Clement Nachuru)

“Most decisions are made in board rooms by government officials, and the land brokers. The Maasai are mostly spectators and only wait to be told the worth of their land according to the whims of the broker or buyers. The few Maasai who have known the value of the land have become co-perpetrators with the buyers and play a big role in fleecing the poor and illiterate majority.” (Daniel Salau)

“Since I did not go to school, I do not know the law and do not know where to go to seek help to be registered. My children too were young and were in primary school. The furthest I went is to the chief who was not willing to help, and kept on referring me back to the committee.” (P1)
“With lack of education and deficient business skills, many Maasai land owners were sweet talked to sell their land by greedy prospecting buyers through local brokers.” (Michael Tiampati)

In summary, the participants acknowledged that while the Maasai themselves due to high levels of illiteracy and little knowledge of the cash economy, have voluntarily sold their land, corrupt government officials and land brokers played a big role in working as the go between with potential land merchants and either individual land owners or Group Ranch Representatives. Local politicians have also been accused of either abetting the vice of illegal land appropriation or not taking steps to stop it.

The participants equally expressed the need for the National Land Commission, and the County Land Boards to work together to reduce the rampant corruption among government officials, Group Ranch committees and the land brokers.

Research Question 3: What do you think needs to be done about Maasai land appropriation in future?

Table 4.6
Emergent topics for word/phrase frequency count

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<th>Code</th>
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<td>3.10</td>
<td>Passing the Community Land Bill</td>
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<tr>
<td>3.11</td>
<td>Government should follow the Kenyan Constitution</td>
</tr>
<tr>
<td>3.13</td>
<td>Pass a law for joint family title of all individual owned land</td>
</tr>
<tr>
<td>3.14</td>
<td>Put to a stop to all land sales</td>
</tr>
<tr>
<td>3.15</td>
<td>Implement recommendation of previous land commission Reports</td>
</tr>
</tbody>
</table>

Emergent Theme (4.6) — The government needs to be more active in protecting the land by implementing and enforcing relevant legislation and reports of past land related commissions.
In their responses to research question three, about what need to be done about Maasai land appropriation in the future, the researcher collapsed themes and phrases and arrived to a final list of codes (See Table 4.6–3.10-3.16). The researcher combined themes 3.10 (passing of the Community Land Bill), 3.11 (the government should follow the Kenyan Constitution), 3.12 (empowering the National Land Commission), and 3.12 (pass a law for joint family title for all individual owned land). The reason for combining the themes is because all the themes are hinged on the Kenyan National Constitution and are governed by laws enshrined in the constitution.

The roles of the Government, the Constitution, the National Land Commission, and County Land Boards

In their responses, the participants expressed understanding of the role the Kenyan Constitution and the National Land Commission plays in addressing issues of Maasai land appropriation and alienation.

“To respect the constitution and allow the Maasai to participate in decision making regarding control and use of their land. It should also recognize the Maasai land rights and protect from farther discrimination on land issues. The government should give the Maasai right to possess documents of their land that shows the community ownership of the piece of land.” (Jackson Shaa)

“The government to pass the community land bill 2013 and ensure it does not contravene the 2010 constitution. It should also pass benefit sharing bill to allow those communities affected by the projects to give direct benefit to the affected community.” (Moses Ole Marima)

“The government should respect the Constitution and immediately stop the special boards that are used to sell land, and at the same time the government needs to adopt the Community Land Bill as drafted by the Kenyan civil society who collected views from all over the country.” (Rahab Kenana)
“There is need to change the policy of land title holding so that all members of the family are included as joint title holders. This will stop the men from selling land.” (Moses Ole Marima)

“Put a stop to all land transactions and do an inventory of various lands categories in the counties. Put measures that discourage careless selling of land without major reasons, civic education to the people about the value of their land and more some if they hold on to it for future better gains.” (Clement Nachuru)

The participants also raised concerns about what the Maasai and local Non Profit Organizations should do in order to address Maasai land appropriation. In their views, it came out clearly that their roles can influence the way decisions are made but the leadership needs to unite the people in order to focus on ways of addressing the phenomenon.

“The NGOs should strongly advocate for respect of community land, ensure the government legislate good laws that govern community land including community participation in decision making. The NGOs should also build capacity of community leaders and local people on land related issues.” (Fredrick Kamakei)

“The Maasai should unite, respect traditional institutions, and allow their wives to be registered as co-holders of land titles.” (Rahab Kenana)

“The Civil society should not be reactive but proactive in that they should continually create awareness.” (John Kisimirr)

“The community should stop selling and or leasing out land inappropriately. They should also endeavor to elect leaders who have their land appropriation interests at heart as is apparent that land appropriation in Kenya lies in political power and in the hands of political elites.” (Fredrick Kamakei)

“The Maasai NGOs need to set up a fund to support all the cases that the Maasai have in courts, buy back and to return all land that was taken away, then protect the land they have now.” (Julius Lemanken)
The issues around what needs to be done were an emotive issue for all the participants. They expressed anger and bitterness that the land has continued to be appropriated with some of them personal commitments on what they will personally do to address the issue.

“I will personally work to discourage selling of land, claim for past injustices for appropriate compensation since the land taken has benefitted the wrong people after independence.” (Clement Nachuru)

“As part of my job, I will continue with dissemination information that relates to land.” (Michael Tiampati)

“I will take keen interest and aspire to stop land selling. They should be guardians of public land that is prone to grabbing, I will safeguard public lands, advocate against land selling and lobby for favorable land policy.” (Daniel Salau)

“I will support any legal action directed in the efforts to recover the Maasai land as well as working with other like-minded people to sustain pressure to demand compensation and putting to a top land sales.” (P4)

“The Maasai have faced many challenges any time they stand up and address land issues. Some people have been arrested and even some killed. There is a lot of intimidation from the government, and I will keep talking to people and use the Maasai Council of Elders as a platform to address issues related to land.” (Moses Ole Marima)

In summary, the participants’ comments allude to deeper questions about indigenous people's right to their ancestral land. The comments indicate a need for a closer look at the role of the government in Maasai land appropriation. The construct of land appropriation needs to be carefully studied as a sphere of local and global governance within the past and current context of land politics.
What needs to be done about Maasai land appropriation?

The participants also raised concerns about what the Maasai and local Non Profit Organizations should do in order to address Maasai land appropriation. In their views, it came out clearly that their roles can influence the way decisions are made but the leadership needs to unite the people in order to focus on ways of addressing the phenomenon.

“The NGOs should strongly advocate for respect of community land, ensure the government legislate good laws that govern community land including community participation in decision making. The NGOs should also build capacity of community leaders and local people on land related issues.” (Fredrick Kamakei)

“The Maasai should unite, respect traditional institutions, and allow their wives to be registered as co-holders of land titles.” (Rahab Kenana)

“The Civil society should not be reactive but proactive in that they should continually create awareness.” (John Kisimirr)

“The community should stop selling and or leasing out land inappropriately. They should also endeavor to elect leaders who have their land appropriation interests at heart as is apparent that land appropriation in Kenya lies in political power and in the hands of political elites.” (Fredrick Kamakei)

“The Maasai NGOs need to set up a fund to support all the cases that the Maasai have in courts, buy back and to return all land that was taken away, then protect the land they have now.” (Julius Lemanken)

The issues around what needs to be done was an emotive issue for all the participants. They expressed anger and bitterness that the land has continued to be appropriated with some of them personal commitments on what they will personally do to address the issue.
“I will personally work to discourage selling of land, claim for past injustices for appropriate compensation since the land taken has benefitted the wrong people after independence.” (Clement Nachuru)

“As part of my job, I will continue with dissemination information that relates to land.” (Michael Tiampati)

“I will take keen interest and aspire to stop land selling. They should be guardians of public land that is prone to grabbing, I will safeguard public lands, advocate against land selling and lobby for favorable land policy.” (Daniel Salau)

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In summary the research participants expressed their understanding that the best remedies to address the issues related to Maasai land appropriation are the Kenyan Constitution, laws related to land, their unity and advocating to the involvement of the local communities in decision making processes that relate to land. They also expressed the importance of unity of the Maasai people in all processes that involve land, and the commitment of all individuals to take action in whichever role they are currently playing to create the awareness, do advocacy and litigation for land related cases.
**Research Question 4: What implications does the Maasai land appropriation case have in addressing global land appropriation?**

**Table 4.7**

*Emergent topics for word/phrase frequency count*

<table>
<thead>
<tr>
<th>Code</th>
<th>Emergent Topics</th>
</tr>
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<tbody>
<tr>
<td>4.10</td>
<td>Appropriation of land from the Maasai is still a problem</td>
</tr>
<tr>
<td>4.11</td>
<td>Globalization and development are associated with current land appropriation</td>
</tr>
<tr>
<td>4.12</td>
<td>Leadership issues and land appropriation</td>
</tr>
<tr>
<td>4.13</td>
<td>Land appropriation as a human rights issue</td>
</tr>
<tr>
<td>4.14</td>
<td>Tourism and Conservation</td>
</tr>
</tbody>
</table>

**Emergent Theme (4.7)** — The implications for other such cases around the world are that issues of land appropriation and lengthy and e co leadership to resolve conflicts on human rights, conservation, and other impacts of globalization.

According to the participants, continued land appropriation in Narok and Kajiado Counties is still a problem (See Table 4.7–4.10).

**Current trends about Maasai land appropriation**

In their responses, the participants expressed their concern that there is still massive land appropriation through individual sales and or government supported projects.

“The Maasai are still losing land even as some of us are advocating for a stop to the land sales. A good example is the recent directive by the cabinet that over 17,000 Acres of land in Mau be set aside for the settlement of non Maasai squatters.” (Moses Ole Marima)

“The land brokers who sold land in Kajiado have now shifted to the newly subdivided Group Ranches in Narok. We have seen an increase of private surveyors in Narok town whose offices are used by cartels to sell land in Narok.” (Fredrick Kamakei) “There is a crisis of land appropriation in most Sub-Saharan African countries. Land is being taken away in order to set up new
plantations, factories or conservation. This is especially in Maasai land where grazing land is considered idle land.” (John Kisimirr)

“It is very sad that we recently witnessed a policeman and a student die in Mbirikani Group Ranch in Loitoktok when students demonstrated against an illegal lease agreement of land to unknown people.” (P4)

In summary, the departure of the British and the establishment of an independent Kenya did not end the appropriation of Maasai land. Land reform activities continued. Currently pastoral lands are being lost through acts of state appropriation, the progressive encroachment of farmers, or by outside interests.

**Globalization**

According to the participants, globalization, leadership, land appropriation as a human right’s issue, the need for policies that respond to land appropriation, and tourism and conservation were key areas that needed to be addressed (See Table 4.7–4.11). The participants associated globalization with the advent of colonization of Africa. The impact of globalization was first felt by the pastoralists after the Berlin Conference of 1884-1885 when the African continent was partitioned by the European colonial powers of France, Germany, Great Britain, and Portugal. The colonial powers superimposed their domains on the African continent by drawing boundaries that ended up dividing some African communities into several countries under different European masters.

In particular, they repeatedly mentioned how the Maasai as a tribe were placed in Kenya and Tanzania, as well as further reclassified as different people groups in Kenya. The participants cited examples where the Ilchamus and the Samburu were officially classified as Maasai yet according to the Maasai they are one and the same people group.
“Globalization has influenced everything in Kenya.” (Jackson Shaa)

“Recent shift by Kenya government to increase power projection as a result of economic growth and foreign investments is the issue driving land appropriation in Naivasha. The World Bank is funding KenGen geothermal power in Naivasha, and China is funding a new railway line from Mombasa which is displacing hundreds of people.” (John Kisimirr)

“Globalization has brought in new dynamics and characteristics, and with the influence of the so called development partners like organized religions, development initiatives aimed at establishing schools, and donor driven interventions aimed at modernizing the Maasai, the Maasai model has since started to collapse due to the influence of the modernizing society and the emergence of new structures that are not in tandem with the Maasai settlement patterns and hence their culture.” (Moses Ole Marima)

“These big companies should consult the local people and compensate them adequately for any land lost.” (Rahab Kenana)

“Globalization has influenced everything in Kenya, especially on the construction of the standard gauge railway across Kajiado by China. This has implications on land loss and compensation and subsequent.” (Fredrick Kamakei)

“Multinationals are working with governments which alienate Indigenous peoples out of their lands. However, multilaterals like the WB have tight safeguard’s that protect Indigenous Peoples from being relocated, unlike, other countries like China, Qatar and many others which do not have any safeguards, and their due diligence is weak or non-existent. Governments therefore find it easier to borrow from these countries like China and not the WB anymore, as they do not have safeguards policies. Loans by the World Bank are “safer for Indigenous Peoples” as they come with safeguards than loans from China, which have no human rights based approaches or safeguards. It is basically “large scale, neo-colonial land appropriation’, through perceived development.” (P4)
Leadership and land appropriation

Regarding leadership and land appropriation (See Table 4.7–4.12), the participants were very candid in their contributions regarding how leadership among the Maasai has influenced Maasai land appropriation in Narok and Kajiado Counties. Since most leaders are Maasai elites, the participants expressed the role both the elites and the leaders have been compromised by corrupt government officials, land prospectors, and brokers to appropriate Maasai land.

“It is very unfortunate that our political leaders have sought political leadership positions by giving away the best land in Narok and Kajiado. I can remember how the them Member of Parliament for Kajiado Stanley Oloitiptip had given away Amboseli National Park, and the boundary between Kajiado, Nairobi, and Machakos which was traditionally the Mombasa railway. The Maasai lost a lot of land that is still in contention and a cause of conflict between Machakos, Makueni, and Kajiado Counties.” (Moses Ole Marima)

“I think the most affected people in how leaders have contributed to land appropriation is in Narok. First Ole Ntimama signed of the Mau forest to appease the then President Daniel Arap Moi. Then the then Paramount Chief Lerionka Ole Ntutu helped to extend the boundaries of several Group Ranches that bordered the Mau Forest causing annexation of land in the Mau which was subsequently allocated to mostly influential political leaders. This land was later sold out to communities from outside Narok County.” (P4)

“The current leadership dispensation in Narok and Kajiado Counties is a tragedy for the Maasai. The political leaders have been compromised to a point that the Maasai have no political bargaining power. See what happened, a Kikuyu constituency has been hived of Kajiado North in Kajiado, and one for the Kalenjin in Narok. Unfortunately, given the current political dispensation, the Kikuyu and Kalenjin are sponsoring electoral candidates in both Counties to front their agenda not the Maasai Agenda.” (Moses Ole Marima)
In summary, at the global scale land is becoming a scarce resource. Addressing global land availability is made even more complex by the process of economic globalization. The participants noted the flows of transnational capital into Kenya from such places as China and the World Bank which has led to new displacement of the Maasai. These displacements have sometimes led to significant social impacts. It is also no surprise that the land grabs associated with economic globalization have benefited the Kenyan government, local elites, and businesses.

The participants’ comments point to the fact that the appropriation of land, or land grabbing, should not just be an examination of the specific acts of land grabbing, but should instead examine many processes, including globalization, that are associated with it. This includes economic globalization combined with the looming global land scarcity and the complexity of future pathways of land use change. The role of the Kenyan government needs to be more closely studied because as noted in the participants’ comments state officials were often calculating partners in land deals, and acted in ways to maximize their returns on what they considered marginal lands or marginal communities. Again as noted in this study, actors within Kenya exploited others whenever they could, and acted against each other to engage in land appropriation. Economic globalization seems to be providing additional incentives to obtain land.

**Land appropriation as a human right**

According to the participants, land is considered a human right (See Table 4.7–4.13). Human rights are indivisible, interrelated and interdependent, and land is a cross-cutting issue. While access to land most obviously affects the underlying rights to housing, food,
and water, there are additional rights within the international framework that are impacted. For the Maasai Peoples of Kenya, land is much more than an economic asset, it serves as a foundation that provides social status throughout the community as well as cultural and religious identity.

“Successive regimes have continually tramped on human rights of the Maasai regarding land. The appropriation of land from the Maasai, first by the Europeans colonialists to make room for white settlers, and then by the independent Kenyan government, through culturally insensitive laws and land policies, raises tremendous issues of social injustice.” (Michael Tiampati)

“The Maasai have been treated like second class citizens when it comes to issues of land. They have been deprived of their pasture land, salt licks for their livestock, which is a violation of human rights.” (Fredrick Kamakei)

“The laws in Kenya are selective; the Maasai are not protected by the law when it comes to matters related to land. The law in itself is used to deprive the Maasai of their land which in my view is an infringement of human rights.” (Moses Ole Marima)

In conclusion, land appropriation as a human rights issue gained global attention thanks to the Human Rights Council of the United Nations. In 2009 the Special Rapporteur on the rights to food issued a set of Minimum Principles and Measures to Address the Human Rights Challenges of Large-Scale Land acquisition (DeSchutter, 2009). The Minimum Principles are grounded in the right to self-determination; the rights to development, and the right to food. These principles also insist that any sale or transfer of land be a transparent process that includes full participation of the potentially affected local communities. As noted by the participants in this study the process of Maasai land

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6 Committee on Economic Social and Cultural Rights (CESCR), General Comment 14, The right to the highest attainable standard of health (Art. 12), 27 (Nov. 8, 2000).
appropriation has not been transparent and the local Maasai communities have not been included. The problem of right to food associate with land appropriation was noted earlier.

Tourism and conservation

The last theme that emerged from research question four was tourism and conservation (See Table 4.7–4.14). According to the research participants, large tracks of Maasai land have been curved out and converted into either game parks, game reserves, or forests. This has led to the reduction of pasture land and denied the Maasai access to dry seasons grazing areas. The creation of conservancies around the Maasai Mara Game Reserve was also cited as an issue that has contributed to loss of grazing land for local communities.

“I was among the local Maasai elders who decided that the Maasai should conserve the Mau forest as a dry season grazing area as well as a source of water. I was also among the people that set up the Maasai Mara Game Reserve to act as a source of money to help the Maasai develop. All these that we set aside has now left us. Mau has been grabbed and the Maasai no longer benefit from money coming from Maasai Mara.” (Moses Ole Marima)

“Since Maasai Mara is considered the 8th Wonder of the World, many private conservancies have been established around the Game Reserve. The conservancies lease the land with very little money over periods of over fifteen years. During this period, the Maasai are not allowed to graze their livestock on the leased land. As the land for grazing continued to diminish coupled with persistent droughts which decimated livestock, many Maasai found themselves disparate and the only commodity they had was land. In order to meet their daily needs in life many families sold their land albeit without knowing its value hence they got exploited by the buyers and the land brokers. The cash economy compelled many land owners to sell their land.” (Michael Tiampati)
The participants from Narok in particular raised the issue about the creation of private conservancies around Maasai Mara which according to them has deprived many families of their livelihoods.

“This conservancy model approach involves leasing of land from land owners around the Maasai Mara Game Reserve from land owners in the previously community owned group ranches of Siana, Olkinyei, Koyiaki, Olchoro-Oirowua and Lemek. Behind the creation of conservancies are local Maasai politicians and elites with connections to global ecotourism organizations who use their connections to seek funding to support their ventures. While the land leases have slowed down the sale of land to outsiders and allowed for free movement of the wildlife within the conservancies, it has created direct competition with community livelihoods especially pastoralism.” (Fredrick Kamakei)

“From what I am observing and hearing from the local communities in the Mara, conservancy leases has introduced regulations that exclude grazing, agriculture, fencing and other livelihood activities including permanent settlement by land owners within the designated conservancy area. I have observed internally displaced families.” (John Kisimirr)

In summary, the participants explained that land appropriation in Narok and Kajiado County still continues despite the efforts of a few individuals and NGOs that are working to put to a stop to continued land loss by the Maasai. This continued loss of land was mainly associated with globalization, poor leadership among the Maasai, tourism, and conservation.

Metaphors

Metaphors serve as a strategy to portray complex realities, and can add depth of meaning towards understanding a phenomenon. The goal of this study was to identify overarching metaphors that reflect the central themes of the text, and that further explain
the relationships among the themes associated with each research question. Two overarching metaphors were identified: disassembling and loss.

**Disassembling.** The comments from the study participants indicated that Maasai land appropriation had been an issue since the colonial period. From their comments, it was clear that their conception of land was an integral component of their identity, their way of life, and of their sense of sovereignty. The Maasai were an entity located within a territory. The appropriation of their land lead to the disassembling of their land, their system of land tenure, their way of life, their rituals, their families, their culture, and their patterns of governance.

The land is understood by the Maasai to connote ancestral heritage. The understanding of land as described by the study participants is situated within their worldview that land, water, and other aspects of nature are intertwined. These were described as not just economic resources, but as a part of their life. The participants described an interwoven triad of the Maasai world, the natural world, and the spiritual world. This interwoven understanding of land by the Maasai influences their actions and relationships with nature generally and their land in particular. Their worldview of land is that of a communal property given to them by God to be used wisely and held in trust for future generations.

The appropriation of Maasai land disassembled the Maasai worldview by removing them from their ancestral lands. In the process, it also disassembled tribes, families, villages, their way of life, their culture and governance structure. It also created structural holes and thus the processes of unity within the Maasai nation were also disassembled.
The disassembling of Maasai land lead to multiple diverse spatiotemporal groupings of the Maasai in new settings that were not part of their ancestral lands.

The concept of disassembling captures the visual impression of a landscape that was once continuous and whole and is now broken apart. In a broader context, it reflects a picture of ancestral pastoral lands that were disassembled through acts of government appropriation and progressive encroachment of farmers or other outside interests, and through the privatization of land.

**Loss.** Closely related to the metaphor of disassembling is the metaphor of loss. Land is a critical resource which underpins the lives of the Maasai. Land acts as a symbolic, economic and political resource that the study participants noted as forming an important part of their daily lives and those of their communities. The participants commented on numerous ways their lives had been disrupted by the loss of their land. This left them both sad and upset since the appropriated land reflected the life they once had which was now lost. One example of this loss was pastoralism which is a key part of Maasai culture. The cultural tenet of social connectedness among the Maasai is associated through their pastoral way of life.

When the land is lost, communal management of livestock by the men and the emotional bonds between women and children living in close quarters in the manyattas ends, thus reducing social connectedness. Quite evident in the participants’ comments was their strong sense of the distinct Maasai culture and their strong identity with ancestral homelands. They viewed their land as a substance endowed with sacred meanings that defined their existence and identity.
The participants also noted that losing their land affected their capacity to raise their livestock, feed their families, their connection with wildlife, and to engage in meaningful economic activities that evolve from being in possession of their land and not relegated to a smaller area of poor quality land. Thus, they lost the ability to maintain a decent standard of living. The traditional social roles of men and women were also disrupted. Several of the participants also noted that the loss of their lands was associated with the loss of water that was essential for their livestock.

Livestock production is a major component of the Maasai economy, and several of the participants described the link between the land and livestock loss. Livestock are the living bank for the Maasai as they provide direct cash income. Livestock are also closely linked to the social and cultural lives of the Maasai community. The loss of livestock means the loss of varying degrees of sustainable production and the stability of their domestic economy. Also associated with the loss of livestock is food security, agricultural production and the ability to meet social/cultural obligations.

The loss as expressed by the participants also displayed a sense of desperation, hopelessness, and uncertainty. Since land supports livestock which is their main source livelihood, the lesser the land the fewer the livestock and hence the increase of family vulnerability. According to the participants, the composition of the herd is closely linked to production and reproduction potential, hence the more females one has in a herd, the more long-term security a herd owner and his family have because they provide milk and future calves. This according to the participants has been interrupted due to land loss and
limited movement of the livestock in search of pasture. Without enough land, the cattle will die, and subsequently Maasai culture as well.

According to the participants, the implications of Maasai land appropriation has drawn lesson that can used to address global land grabs. The participants expressed that since most of the lands being appropriated is mostly for development, large scale agriculture, tourism, and conservation which is a global phenomenon, governments and investors should avoid situations where land appropriation infringes the rights of local communities.

**Limitations of the study**

This dissertation used a case study design to examine the Maasai speaking communities in Kajiado and Narok Counties, the study examined the nature of land appropriation and the type of processes used as well as the principal actors who have been involved in the processes of appropriating the land and those seeking to redress land appropriation in Kenya. The study had the following limitations:

1. The period covered was comprehensive, and since most of those involved with the first and second Maasai moves in 1904 and 1911 have died, availability of first-hand narratives was limited to reports and second-hand information, this was subject to misrepresentation of the facts.
2. Existing books, journals, magazines and reports about Maa land appropriation and acquisition were limited. They were also biased towards general perspectives of the Maasai culture, and other aspects that relate to changes affecting the Maasai, or biased towards the Kenyan government.
3. Sampling bias was also another limitation because information is only available from those who have participated in land appropriation processes either through advocacy or litigation.
4. The researcher is not a legal expert (attorney) but has access to legal statutes related to the study area that were examined and analyzed.

5. The researcher did not return to Kenya to collect data. The phone was used to conduct the interviews.

6. The time difference between the researcher and the research participants limited the time the researcher had for each participant. There is between 7 to 8 hour differences which meant that the researcher had to wait until ten o’clock in the night to call Kenya. The researcher was only able to interview participants during the early morning hours before the participants start their daily chores.

7. The ability to obtain government records that reflect fraudulently acquired or grabbed land was very difficult.

**Study verification strategy**

To address the study limitations, the researcher developed a verification strategy.

The strategy involved the use of case studies; using people from different sectors; use of historical work on Maasai land appropriation, and verification calls that were made to research participants.

**Conclusion**

In conclusion the chapter, it has become clear in this study that many factors contributed to Maasai land appropriation and alienation in Narok and Kajiado counties; treaties and agreements; laws and decrees; high levels of illiteracy; land sales; corruption and impunity; globalization and conservation and, tourism. The government colonial and Kenyan, has been accused of being the major catalyst of Maasai land appropriation. The culture of corruption and impunity in the government and among the political elites being facilitated by rich people from outside the two counties accelerated the pace at which Maasai land is being lost to outsiders.
While the Maasai themselves due to high levels of illiteracy, and without knowledge of the cash economy have voluntarily sold their land, corrupt government officials and land brokers played a major role in working as a go between potential land merchants, and either individual land owners or Group Ranch Representatives. Local politicians have also been accused of either abetting to the vice of illegal land or not taking steps to stop it.

Land among the Maasai is considered sacred, a gift from God and was meant for the use of all without individual ownership. The Maasai also believe that land is life as it provides water, grass, plants and air which people and livestock need for survival. Land also provides for sacred places where the Maasai use for communicating with God (Enkai) and performing other important rituals and rites of passage. Since land was meant for all the people, the Maasai have a set of rules that are used to govern and manage the land. The Maasai have no monetary value for their land as land was never meant to be sold. It was preserved as a safety net for children, family, livestock and the whole community. Land was considered the source of peace, and provided for food for all the people. Land and livestock defined the Maasai as a people, gave them identity, prestige, and they defended it from encroachment from other non-Maasai tribes. According to the Maasai, land is not transferable and cannot be appropriated to individuals especially to non-Maasai. It is also believed to be sacred and must be owned communally. It is both for the rich and poor to be held in custody for the future generations.

According to the research findings, the arrival of the British in the early 1900s and the subsequent signing of the infamous Maasai agreements in 1904 and 1911 ushered in a
long period of untold suffering for the Maasai which is still being felt to date. The sacred sites and traditional venues were equally taken over thereby denying the Maasai the right to exercise their traditional, cultural and religious rights. The human population was drastically reduced due to epidemics such as anthrax that wiped out a large proportion of both livestock and people. The Maasai political and military prowess was compromised, and the two agreements marked the beginning of the weakening and vulnerability of the Maasai as people.

Further evidence of how the agreements and treaties contributed to Maasai land appropriation during the Kenyan independence negotiations, commonly known as the Lancaster Conference, was also presented. While it was common knowledge to all that attended this conference that the Maasai had a genuine clam to the land lost to the white settlers. The conspiracy between the British and the KANU delegation led by Jomo Kenyatta to deny the Maasai the return of their land, forced the Maasai delegation to walk out of the conference in protest.

The retention of colonial laws that relate to land after independence, facilitated further land appropriation from the Maasai. The introduction of Group Ranches, which later were sub-divided into individually owned parcels of land, led to extensive sale of land by the Maasai. The land sale was being facilitated by government officials, and land brokers who were financed by rich individuals from other regions and also politicians.

High levels of illiteracy among the majority of Maasai individual land owners was also a significant contributor to land sales among the Maasai in Narok and Kajiado. Lack of a background in formal employment by a majority of the Maasai population limited
them from accessing outside employment. This also contributed to poor animal husbandry skills to manage their livestock in the smaller parcels of land that they individually owned.

The factors mentioned above are further compounded by the persistent encroachment of Maasai land by migrants from other areas with burgeoning populations, and the fact that a lack of economic opportunities and threats of climate change is driving the Maasai to sell their lands. That is further exposing them to social-cultural-economic and political domination by migrant tribes within their own lands.
CHAPTER FIVE: DISCUSSION

Introduction

The purpose of this chapter is to interpret and describe the significance of the research findings in light of what is already known about Maasai land appropriation and alienation, and to provide a new understanding and new insights about the phenomenon. The research questions sought to understand; 1) common Maasai beliefs about land ownership; 2) current events and activities that are related to Maasai land appropriation and acquisition, key actors and the roles they are playing regarding Maasai land appropriation; 3) views, suggestions, and recommendations about addressing Maasai land appropriation and acquisition; and, 4) how lessons learned from Maasai land appropriation can be used to address global land appropriation.

This discussion is guided by the themes and topics that emerged after the data were analyzed. This approach enabled both the research participants, and the researcher to contextualize all responses to the real lived experiences of everyday life of the Maasai, and how the phenomenon of land appropriation and acquisition is affecting the Maasai, how they are responding, and how their responses are contributing to mechanisms that mitigate the impacts of the loss of land. It allowed for the expression of the true emotional experiences of the participants that led to the unearthing of the pains, bitterness, and the struggles that the Maasai underwent due to the impact of land appropriation and acquisition. The narratives helped demonstrate strong connections between the land, the people and how they feel about the continued loss of their land. It
brought about their regrets, and aspirations on issues related to land, and how they will, in future, respond to effects of land appropriation.

**Background**

For the Maasai people of Kenya, land goes beyond being an economic asset, it serves to provide social capital in the form of social status among the community, and to cultural and religious identity. The historical dispossession of land by colonial powers through legal regimes and the infamous 1904 and 1911 Maasai agreements, and subsequent post-independence land related laws led to severe losses of land by the Maasai.

The Maasai knew the extent of its lands and any encroachment by outsiders was repulsed by force of arms. To obtain more land, the Maasai raided their neighbors and pushed them out of their land. Historical examples are in the Uasin Nkishu region where the Maasai forced the Kalenjin to move northwards in order to occupy the rich plain of Uasin Nkishu. Many areas had, and still bear, Maasai names (Lotte, 2006). There is evidence that, just like the colonial settlers, other communities, like the Kalenjin, Kisii, Kikuyu, and Luhya, came into the picture long after the Maasai. Places such as Nakuru (Nakuro in Maa), Uasin Gishu, Eldoret, Molo and elsewhere, were all part of the expansive Maasai land by 1890. The names the community gave to certain areas signified broad and specific unique geographical formations therein.

The land occupied by the Maasai stretched from Mt Kilimanjaro, right across the Anglo-German boundary (Kenya-Tanzanian border) to Laikipia and Baringo (Lotte, 2006). Inhabiting such vast territory, the Maasai were able to fashion its livestock
economy around “rational grazing”. This entailed migrating in tandem with changes in climatic conditions so that they would be in the lowlands during wet seasons and move to higher grounds in times of drought. The Maasai overran the vast majority of the rich plains of the Rift Valley with little or no resistance from their African neighbors (Lotte, 2006).

Being pastoralists, the Maasai held their land under communal tenure (Migot-Athola et al., 1991, Galaty, 2013). This communal property regime created pastoral rights of access and control which provided a framework for the Maasai to exploit available resources across various ecological zones, thereby reducing their levels of vulnerability (Niamir-Fuller, 2005; Nori, 2007). This customary form of tenure which was characteristically communal, ambiguous, and with negotiable boundaries provides a sustainable economic system for the Maasai.

Traditionally, as noted by the study participants, the Maasai consider land to belong to God and therefore human beings can only claim temporary ownership as a basis for survival. Further, land to the Maasai can only be claimed collectively either by a family (Olmarei), clan (Olgilata), sub-nation/section (Olosho) or the entire Maa-Nation. There were clear boundaries that were marked by natural features like valleys, rivers, ridges, and mountains, and trees.

The land and natural resources form the basis of Maasai unity that is demonstrated by the communal utilization of the bush pharmacy (herbs to treat many diseases), trees, honey, grasses, and water. Privatization of land and natural resources was an alien concept that the Maasai were hesitant to adopt as land forms the platform that bridges the
gap between man and God. Maasai belief that land is life as it provides water, grass, plants, air for their survival and that of their livestock and wildlife. Also, the land provides sacred places (for rituals, worship, ceremonies, meetings, and plants) because it carried and provided for their livelihood system, and hence the proverb “Meishooroyu olayioni o enkop” (meaning it is only a son or land that can never be given away).

According to the research participants, the traditional understanding of land is an important ingredient in the determination of the most appropriate reform actions to be implemented in the future. The study participants discussed land as an ancestral heritage, and were clear about the important relationship between the land, their culture and way-of-life. They were equally clear about the devastating impact of the loss of their land for the Maasai. This study’s findings related to the importance and impact of the loss of ancestral land by indigenous people is similar to other studies (Ahmed, Booth, Njagi & Stephanou, 2014; Anaafo, 2015; Caromody & Taylor, 2016, and Little, McPeak, Barrett & Kristjanson, 2011). In addition, other studies and reviews asserted that traditional culture and language are associated with the health and well-being of indigenous people, and also noted a connection between spiritual ties to ancestral land and health.

Some studies found that Indigenous peoples’ relationship with the land helps to maintain the balance that is necessary for health. The belief that the land is alive and contributes to positive emotional and physical health was also found (McIvor, Napoleon & Dickie, 2009). The land was found to be a source of traditional medicine and traditional foods that supported health (Milburn, 2004; Waldram, 2000). Food insecurity and poor nutrition are now a problem for the Maasai, and this was tied to the issue of land
grabbing or the poor quality of the land the Maasai now occupy (Fenton, Hatfield & McIntyre, 2012; Pilla & Dantas, 2016; Galvin, Beeton, Boone & BurnSilver, 2015). The study participants responses to research questions two and three described the long process of disassembling the Maasai land.

In Africa, like elsewhere in the world, at the dawn of the 18th century, the British used deception and, more importantly, their military strength to alienate land to British settlers at the expense of the local populations (Vambe, 1972). The arrival of the colonialists in Africa in the late 1800s and beginning of 1900s ushered in a new and devastating century-long governance and economic systems which were not in tandem with the indigenous systems. This from the advent of colonialism to-date has made the colonial history one that is characterized with the infringement of the rights of the Native communities in Kenya. According to Klopp and Lumumba (2016, p.4), “The Colonial Land Administration system as set up in the early 1900s largely to expropriate and manage land for a privileged, politically powerful foreign minority within the conquest of territory. The highly centralized, opaque and bureaucratic system that was born in this political context was never created for the transparent public of regulation of land for broad, inclusive societal interests”. They further argued that “The Colonial land tenure system thus entrenched inequality of rights and access to land between “settlers” and “natives” and gave opaque administrative structures linked to the most powerful office (Governor and the Commissioner of Lands) enormous discretionary power to manipulate land rights” (p. 5) blatantly.
Kenya was officially declared a British Protectorate on June 15th, 1895, and the
declaration marked the beginning of a massive land take-over from the natives to create
settlements for the British settlers (Syagga, 2011). With the Declaration of Protectorate,
the stage was set for the systematic expropriation and exploitation of native lands. Keen
to predicate their actions on the law the unsolicited protectors imposed the Common Law
on the Protectorate and made laws that purported to legitimize their illegal dealings.
According to Brennan,

“The common law itself (with its feudal doctrine of tenure) took from
indigenous inhabitants any right to occupy their traditional land, exposed them
to deprivation of the religious, cultural and economic sustenance which the land
provides, vested the land effectively in control of the imperial authorities
without any right to compensation, and made the indigenous inhabitants
intruders in their homes and mendicants for a place to live. Judged by any
civilized standards, such a law was unjust and its claim to be part of the
common law must be questioned.” (1993, p. 219)

The Land Acquisition Act of India (1894) was extended to Kenya and used to
appropriate all the land situated within one mile of either side of the Uganda Railway for
the construction of the railway as well as the compulsory acquisition of land for
government buildings in 1897 by the Commissioner of the Protectorate (Okoth-Ogendo,
1991). In 1902, all land within the protectorate was declared Crown land whether or not
the land was reserved for the natives or occupied by the same which in effect made all

According to Okoth-Ogendo (1991), Crown land was defined as all public lands
within the East African Protectorate that for the time being were subject to the control of
His Majesty by virtue of any agreements or treaties, and all lands that had been or may have been acquired by His Majesty under the Land Acquisition Act of 1894.

The Crown Lands Ordinance No. 21 of 1902 gave powers to the Commissioner to identify and sell free hold land to desiring European settlers without giving due cognizance to customary and indigenous land tenure systems (Kanchorry, 2006). Further, in 1915 the Land Ordinance empowered the Commissioner to give the European settlers freehold leases of up to 999 years without due consideration of the Africans natives who inhabited the same lands. According to Mortensen (2004), by 1914 nearly five million acres (two million hectares) of land had been taken away from Kenyan Africans, mostly from the Kikuyu, Maasai and Nandi communities (Okoth-Ogendo, 1991).

Legal segregation through fixing of boundaries of the Native Reserves and the White Highlands as recommended by the Report of the Kenya Land Commission (1934) effectively removed the Africans natives from the White Highlands and gave the European settlers assurance of permanency on their new settlements (Syagga, 2011). By restricting the movement of the Indigenous communities and denying them, access to their natural habitat amounted to clear infringement of their rights by the Imperial regime. The Crown Ordinance, which regulated how government land was to be distributed, gave powers to the Governor and without consultation to distribute the land through auctions to individuals and corporations for development (Okoth-Ogendo, 1991).

The removal of the Natives from their ancestral land in the East African Protectorate to create room for European settlement was the driving force behind the Africans
struggles for independence as well as the beginning of land related conflicts in what later came to be known as Kenya after the attainment of independence in 1963 and thereafter.

The first Maasai land alienation was made possible by two Treaties commonly referred to as the Maasai agreements of 1904 and 1911. The British having found the Maasai weakened by inter-clan war and both human and livestock diseases, used the opportunity to convince the Maasai to sign agreements to move from their traditional lands to give room for European settlement in 1904 and 1911 (Sena, 1986). This argument was further supported by Saibul and Carr (1981) who argued that the British tricked the Maasai after civil wars and droughts weakened them. They claimed that the Maasai Laibon (Oloiboni) Olonana, had signed an agreement in 1904 and 1911 with His Majesty’s Commission for the East African Protectorate, giving away Kenya to the British. Under the terms of those two agreements, the Maasai ceded their territory in the central Rift Valley to move to two reserves, one to the north of the newly constructed Kenya-Uganda railway, and the other south of it (Kantai, 2005) to create room for European settlers. Economic and social factors supported the agreement. As noted by the participants the Rift Valley settlement was excellent, productive and this attracted the settlers for economic reasons. The area was suitable for ranching and was close to the railway. From a social perspective, the agreements helped the British by giving them a social control tool to manage the Maasai (Galaty, 2013).

Notably, Maasai oral narratives say that by this time in 1890 Mbatiany, the Maasai Oloiboni (the ritual expert) had died leaving his succession in dispute between his two sons, Senteu and Olonana. The two brothers were divided among two rivaling sections of
the Maasai. The community endured calamities such as East Coast fever, rinderpest, drought, and famine. The settlers saw the opportunity to penetrate the region. On their own the British Colonial Administration misinterpreted and regarded Olonana as being a hereditary “Chief” of the Maasai people and gave him the requisite support. He was elevated and assumed to be the administrative chief of the Maasai. It will be noted, “Oloiboni” was just a traditional medicine man. He neither had administrative roles nor responsibilities.

Hence, on 15th August 1904, the Maasai were cunningly induced into signing an agreement with the colonial administration. It is held that Olonana represented the Maasai State as a sovereign power and Governor Sir. Donald Stewart was acting on behalf of Her Majesty the Queen, and representing the British Colonial Administration. In accordance with the terms and conditions of the Agreements, it is held that the Maasai decided of their “…own free will…that it is for our best interests to remove our own people, flocks, and herds into definite reservations away from the railway line and away from any land that may be thrown open to European settlement under this agreement.

According to Keiwua (2002) the British who came, saw, and coveted the land and disrupted communal land ownership. A hasty study of the Maasai was undertaken with equally hasty conclusions made. The rights of the Maasai to own their land had been watered down to mere grazing rights:

“Elliot could not in fairness call the Maasai wanderers. Between the Maasai on their land, and the British who had wandered all the way from little England, who was a wanderer.” (Keiwua, 2002)
A common perspective that is held by the Maasai today is that the British manipulated and forced the Maasai into signing the agreements. According to Hughes (2006a), the Agreements between the Maasai and the British settlers were that the Maasai shall keep the land in the reserves for as long as the Maasai existed as a race. Hughes (2006), argued that the agreements were not done in good faith which led the Maasai to file a court case in 1913 challenging the legality of the agreements.

Emanating from the injustices of the above-stated treaties, certain elders led by Murket Ole Nchoko (whose name the British misspelled as being Ol Ole Njogo) felt aggrieved and decided to confront the injustice by filing a suit to challenge the move by the British Colonial Administration. The parties brought a suit for the breach of the 1904 agreement on the ground that the agreement was a civil contract, which was still subsisting, and the agreement of 1911 not having been made with Maasai elders capable of executing decisions that are binding on the whole tribe. Damages were also claimed in tort for the wrongful confiscation of some of the herds of cattle.

I do agree with the claimants in the case that, this was not a treaty in the real sense as there was no way the British Colonial Administration could enter into such an agreement with its subjects. According to the participants, the capacity of Olonana as a medicine man was also questioned as he had no authority to enter into an agreement on behalf of the Maasai community. Additionally, I concur with the participant that the agreement was unilateral as there was no way the Maasai elders, being illiterate could possess the same bargaining power in an agreement of such magnitude with an enlightened British Governor. The aggrieved parties claimed the 1911 agreement was void for the following
five reasons: 1) the plaintiffs and other Maasai had never consented to it or authorized the
Maasai defendants or anyone to agree to it on their behalf; 2) the defendants had no
authority to alienate the interests of minors and unborn children of the Laikipia Maasai in
Laikipia district; 3) it was not for the benefit of the Maasai generally nor of the Maasai of
Laikipia; 4) the government was also in a fiduciary position to the Maasai (that is, they
were trustees, as a result of the 1904 agreement and later declarations of the Secretary of
State) and had thereby gained financially; and, 5) the Maasai, particularly the signatories,
had not been imparted with independent legal advice before signing it.

According to Morgan (1960), the British forced Lenana (Olonana) a Maasai
medicine man to sign an agreement that was to move the Maasai from their land in the
North of the Rift Valley to create room for what came to be called the White Highlands.
In the real sense, this was not an agreement but a way to forcefully evict the Maasai
(Hughes, 2006a). Demand for more land for new settlers in the new British protectorate
further made the British abrogate the first agreement that had guaranteed the Maasai of
no further moves, and once again forced Lenana on his death bed to sign another
agreement in 1911. The Maasai contested the moves first by filing a case in 1913 which
they lost on a technicality, and later in 1932 in a memorandum presented during the then
Kenya Land Commission (Hughes, 2006b).

In relation to the Maasai agreements, I argue that the Maasai moves had
psychological, social, and economic impacts on the general lives of the Maasai
community. The Maasai lamented that land that they were to move to in the Southern
Reserve was cold and infested with East Coast Fever (ECF) which killed thousands of
their livestock in thousands. The death of the livestock rendered many families poor and dependent on the goodwill of the local Maasai who lived in the Reserve. The climate was cold, and many people died out of pneumonia as they crossed the Mau ranges towards the warmer southern slopes of the Mau and the Loita plains where most of the Purko settled. The community social fabric which provided for social support mechanism was severed, traditional, and religious rites which were collectively performed could no longer be held at the shrines.

These moves from the pristine plains of Laikipia had a very negative psychological impact on the Maasai people as a whole, demoralized them, and rendered them vulnerable. The Maasai, as well as the study participants describe the moves to the Southern Reserve as a deliberate move by the Imperial regime to send them to Ngatet to go and die from Oltikana (East Coast Fever), Olodua (Rinderpest), and Entidiyai (Malaria). Lack of medical and veterinary services contributed to the loss of life to the Maasai population as well as their livestock and weakened the Maasai economy and strength to fight back or resist further European aggression. Other researchers have also described the numerous difficulties and negative outcomes faced by the Maasai, and other pastoralists groups (Davis D’Odorico & Rulli, 2014; Lawson, Muller, Gishelli, et al., (2014); Catley, Lind & Scoones, 2013; Mwang’ombe, Nyariki, & Thompson, 2009 & Selllen, 1996. Thus, it is clear that losing ancestral land can carry with it a variety of economic, social, health and cultural consequences.

I further argue that there was a deliberate attempt to purportedly enter into “Treaties,” “Agreements,” and/or “Contracts” between the colonialists and their subjects.
The irony of it all was the fact that, the colonial authorities would enter (whenever it was convenient to them) into a “treaty” with a particular tribe and when the situation arose, the agreement would be interpreted to mean that the colonialists executed the treaty not with a native tribe but between themselves on one hand, and with a foreign state on the other. Essentially, in such a situation, the breach of the agreement would only be determined by an appropriate jurisdiction, the International Court of Justice so to speak.

The Kenya Land Commission of 1933-1934

I conclude that further Maasai land appropriation was sanctioned by the Kenya Land Commission commonly referred as the Carter Commission of 1933-1934. The commission was to review the terms of the 1930 Native Lands Trust Ordinance and seek ways to service Africans interests in land as well as settle grievances from past transactions in the land (Wachira, 2008). The authorities crafted and introduced further laws on the assumption that problems in the reserves were “due to overpopulation, bad land use, and defective tenure arrangements. The recommendations in the report included the intention to force the Maasai to lease out their land to other communities, especially the cultivators of land in order to “bring tsetse-infested areas into cultivation” and to reduce overcrowding in densely populated areas. The report also recommended the replacement of African “native” land tenure with private ownership of property (Kieya, 2007).

I suggest that The British Government pretended to secure special protection for the Maasai; to continue enjoying the same rights under the 1904/11 agreements in respect of which the land they were removed to shall not be alienated to non-Maasai without their
consent or of their institutions. The safeguard was in relation to land transfers and land acquisition and intended to be attained by some unalterable provision in the new constitution.

I further conclude that the safeguard was missed in relation to land transfers because the control of land transactions was vested in a board whose chairperson was a government representative with all other members being the appointees of the Government. Appeals from the Board were to a government appeals board presided over by another government official who was also not a representative of the people whose interest is supposed to be safeguarded. The promised safeguard in the form of controlled land transactions has turned out to be the conduit by which a great deal of the land of the Maasai has ended in the ownership of persons who are themselves not Maasai.

The net effects of these twin pacts were devastating in that they sounded the death knell for the Maasai by dismantling their land or space that is a key foundation of their existence and reliance on in pastoralism. The agreements also catalyzed a systematic reduction of Maasai herds thereby exposing the same to threats such as droughts, famines, epidemics and reduced pastures, minerals and water which characterized the Kajiado and Narok Reserves where the Maasai were moved to (Galaty, 2013; Nyariki, Mwang’gombe & Thompson, 2009).

There was reduced ability of the Maasai to produce and maintain large herds subjected the people to hunger and despondency thereby exposing them to threats related to hunger. The people were also confined to a small area that affected their movements and subsequently they faced the threats of overcrowding and the related social and health
risks (Little, McPeak, Bareli, et al., 2011). The takeover of the land that they relied on for herbal medication subjected them to further ill health. To date, the Maasai, including the participants in the study, are lamenting about the effects of the Agreements.

The problem of the colonial dispossession was expressed well in a memorandum by the Maa Civil Society Forum presented to the Kenya Government and the British High Commission in Nairobi on August the 14th 2004 (MCSF, 2004). On August 2004, to mark the 100th year since the signing of the treaties through the auspices of Maa Civil Society Forum, the Maasai organized processions in Nairobi, Narok, Nakuru, Kajiado and Laikipia to draw to the attention of the Kenya Government through a memorandum indicated there was need to redress the Maasai claim for restitution and compensation for the losses. The procession of Maasai men and women took the memorandum to the British High Commission, but they were denied audience with the British High Commissioner.

A second procession to deliver the memorandum was violently dispersed by the Police terming the march illegal. Thirteen men were arrested, several injured and personal effects lost during the forceful dispersion of the Maasai by the Police. The first procession took the Government by surprise and the memorandums were delivered to some government offices without any intimidation. This time coincided when the Maasai were experiencing severe drought which forced them to seek pasture in areas that had grass which happen to be located in the historical Maasai territories, was but owned by white settlers.
The government issued a statement citing incitement by Maasai Indigenous Civil Society Organizations and instructed that the Maasai be dealt with mercilessly. The order was implemented, and the first casualty of the government order became Ntinai Ole Moyiare who was shot on the back and killed under unexplained circumstances by guards from the Oldaiga farm under the supervision of the police. When the Maasai wanted to know why they were being killed, the government responded by arresting 267 men, women and children in Laikipia and arraigning them in courts in Nanyuki, Nyeri, and Nyahururu on fictitious charges (MCSF, 2005).

Testimonies from the arrested people narrated incidences of overcrowding in prison cells, denial of food and water and physical body injuries. While the offenses committed were trespass and malicious damage to property which usually attract court fines of between Kshs. 2,000 to Kshs. 5,000, the Maasai were denied bail, and when accepted they were allowed bonds of Ksh. 100,000. During the same period, a Maasai lawyer who was leading the research on leases and treaties the late Marima Ole Sempeta (RIP) was shot dead under unexplained circumstances. To date, the government has yet to institute and inquiry into the death. The government initiated investigations on the activities of many Maasai CSOs with plans to deregister them.

This threat was real in that the government had introduced the NGO coordinating act which was meant to control the activities of CSOs which do not subscribe to the aspirations of the ruling elites. Later on, the government could not sustain the cases, and all the arrested were set free (MCSF, 2005).
The Kenya Constitution Conference of 1962 (Lancaster Conference)

Kenya Constitutional Conference in London during 1962 on the eve of Kenya’s independence ended in bitter failure (Hughes, 2006). The Kenyan delegation to the conference was made up political parties and the Maasai (spelled Masai) and representatives from the then Northern Frontier District. The Maasai delegation was comprised of the following; Mr. J.K. Ole Sein; Mr. P. Ole Lemein; Dr. Likimani; Mr. Partasio Ole Nampaso; Mr. J. Ole Tameno; Mr. J.K. Ole Tipis; Mr. J. Keen; J.L.N. Ole Konchellah; Mr. J.L.N. Rurumban (Observer) and Mr. R.L. McEwen who was the Legal Advisor).

During the deliberations for independence at the Lancaster conference in London, the Maasai delegation demands put the following as a condition for their engagement, a) wanted the ownership of the land they vacated to be recognized and to have the first claim on the lands when the Europeans left; b) wished to enjoy security of tenure in the areas which they lived then, in both the north and southern Reserves; c) claimed that certain areas within their Reserve had been alienated in contravention of the Agreements; and, d) requested that some means be found to unite the Maasai with their kin who lived in the Northern and Southern Reserves (Colonial Office, 1963). In response to the Maasai demands, the Secretary of State stated that:

“The Imperial government had no obligation to ensure that the Maasai would continue the same rights as they did enjoy under the Agreements, but Maasai lands will not be alienated to non-Maasai without their consent, and could not be taken away from them by the government with an exception of when the land was intended for public use and mining. The Maasai delegation agreed that the Maasai should continue to enjoy security of tenure in their reserves but did not
accept that they had no claims in respect to the land that the Maasai had vacated within the Agreement.” (Colonial Office, 1963, p.121)

The statement from the Colonial Office was not received well by the Maasai delegation, and as reported by some of the living attendees, the Maasai protested by walking out of the conference. The walkout may have given other parties interested in the issues of land an opportunity at the expense of the Maasai.

The results of the Lancaster Conference deliberation have elicited different opinions among the Maasai, especially those that have been involved in researching Maasai claims. Such differences were evident in comments from the participants in the research. On attainment of independence in 1963, colonial property laws and policies were entrenched in the law through the Registered Land Act (RLA) of 1963 (Wachira, 2008). This statute recognized only individual land tenure, to the frustration of groups among them the Maasai whose way of life was incompatible with this regime. Although the aim of individualization of land tenure was to spur economic growth, the policy ignored indigenous peoples’ needs and the contribution they might have made to such. According to Moiko (2004), early government engagements with pastoralists in Kenya came as part of pacification processes aimed at “establishing” law, order and security in the colony.

According to Boone, land politics and policy in Africa have been around the debate over whose rights are to be recognized by the state, and this has led to many disputes arising from the processes that the state has used to allocate land (Boone, 2012). In the regulation of land ownership and land use, governments employ law and policy instruments which when inappropriately enacted and implemented have caused conflicts, discrimination, inequality, and poverty. Boone (2007) further argued that African
governments have used laws, policies and decrees to “consolidate the power of the central state, promote national integration, accelerate the expansion of commercial agriculture, and demobilize rural populations who entered the political arena at the time of the nationalist struggle” (p. 3).

The individual land tenure system sanctified by the Registered Land Act was favored by the state on the basis that Kenya’s largely agricultural economy was dependent on it (Wachira, 2008). The imposed process of individualization of land, especially among the pastoralists such as the Maasai included, was imposed and spurred more tension and dispossession within the community. The retention and entrenchment of the colonial laws and policies relative to land rights by the independent Kenyan government legitimized the disposessions of the original owners of the lands (Koissaba, 2015). This argument was further supported by Wachira (2008, p.28) who stated that “The independent government justified the retention of colonial land laws on the grounds that the independent Constitution had provisions which tied the hands of the government.”

The pictures below are pictures of Maasai demonstrating against the Agreements, and the arrests for demonstrating.
Figure 5.1
Maasai demonstrate on August 13th, 2004 against the contentious, fraudulent Maasai Agreements and Treaties of 1904/11.

Figure 5.2
Many Maasai land rights advocates have been arrested and incarcerated by the Kenya government. (Picture courtesy of Michael Ole Tiampati.)
**Group Ranches (Representative) Act of 1968**

In response to the research questions, the study participants provided numerous comments, most of them negative, about the Group Ranches. Kenya’s Mission and Land Consolidation and Registration stated that it was impossible, and based on social, economic and practical grounds to provide individual deeds to the Maasai who moved seasonally with their livestock in search of pasture (Asiema & Situma, 1994). Instead, the report recommended the establishment of Group Ranches (Republic of Kenya, 1966), and the government accepted this proposal. The result was the enactment of the Land Group Representative Act of 1968. The result was supposed to permit groups of pastoralists to register for blocks of land with fixed boundaries. As will be described later in this section this did not occur as since non-Maasai also obtained land. The outcome was the further disassembling of Maasai land. An additional effect of this was the disassembling of the Maasai’s traditional land tenure system, and instituted in its place was private land tenure system. This also led to the loss of Maasai’s way of life, culture and rituals, and to other negative outcomes noted by the participants.

According to Mwangi (2007); Fratkin and Mearns (2003), although sound in theory, from the outset the Group Ranch system, suffered from the rampant embezzlement of funds and low rates of compliance with the de-stocking imperative (Mwangi 2007; Fratkin and Mearns 2003). Greed for land by the elite Maasai and with support from some government officials, who colluded with group ranch committees led to either illegally leased or allocated individual parcels of land to the rich and politically corrupt individuals. As a result of these social ills, some group ranches opted to subdivide the
land into individual holdings, this process which was equally corrupt, segregative and alienated women and poor members of the group ranches (Galaty 1999, 2013).

The abuse of power by the presidents and their appointees saw more land appropriated through Group Ranches and Trust Lands which led to massive subdivision and individualization of land; a process which only benefited the political elites and the wealthy.

According to Kituyi (1998), some Maasai elites who were aware of the benefits of land privatization took advantage of the illiterate majority of the Maasai and either registered members of their families in various Group Ranches or as used their position to become members of the Group Ranch Committees. Since most of the Group Ranch boundaries were based on sub-clans (Iloshon), they had settlements in various group ranches in the sub-clan to which they belonged, therefore registered in as many group ranches as they had homesteads.

Wachira (2008, p. 100) further argued that “the subdivisions were also fueled by political statements calling for individualization of the ranches. The most notable statements were issued by the former President Daniel Moi in the 1980s. The former President “stressed the need for individuals to develop their own pieces of land. Noting the unviability of group ranch operations, he expressed the fear that group ranches may in future spark trouble because registered members were inviting their friends to reside in the group ranches. He advised Maasai leaders to begin land adjudication to enable each family to develop its farm” (MCSF, 2005). Given that presidential pronouncements in
Kenya are viewed to be decrees, government officials enforced them by quoting the president’s speeches.

I suggest that the process of lumping communities under one Group Ranch as well as allocating certain individuals, who were mainly the elites, and those in government positions was an act shrouded with mistrust, dispossession and alienation, it also created conflict related to land ownership and rights to pasture land. Key among the challenges has been the registration process that entirely depended on the management committee, and this process excluded women. I would argue that the sub-division of group ranches into equal individual parcels did not have guidelines other than the declaration from the Commissioner of Lands approving resolutions made at an annual general meeting. According to Tobiko (1989), it only required 60% of the registered members to pass a resolution to register and sub-divide the land.

I believe that the Maasai people have been victims of historical, economic and political marginalization. Their pastoral economy has not been fully mainstreamed into the national economy despite its great potential (Koissaba, 2014). They have been subjected to acute land loss and misuse, right from the dawn of colonialism in East Africa. Whereas during the colonial era their lands were routinely appropriated because their nomadic and pastoral lifestyle did not require the cool lands better suited for agriculture. In independent Kenya, the Maasai have become victims of the much touted “willing-seller-willing-buyer” capitalist theory (Koissaba, 2014). The combined result has been massive loss of ancestral land, virtually rendering the affected people destitute.
At the root of this serious plight has been widespread ignorance amongst the affected communities regarding their land rights, and the obligations they have to ensure good land tenure and environmental management. The continued loss of land has created a Maasai population that is either landless or squatters on land that has either been sold out by the Maasai themselves without due consideration of the impacts the sales have on their lives and livelihoods, other land that has been illegally and corruptly allocated to non-residents, and land that the government has alienated as Trust Land, Game Reserves, Forest Reserves or National Parks (Olanya, 2013).

I conclude that ineffectiveness of legal processes coupled with corruption in the government legal systems has created a legitimization crisis where the courts have made rulings in disregard of primary evidence from Maasai communities who have inhabited such lands like, Iloodoariak, Mosiro, Kamorora, Shompole and Olkiramatian. The court decisions have not duly considered Maasai arguments of land ownership, and have gone by the principle of “registered land title” as opposed to the processes that were used to get the land titles have instead in many instances these were obtained through corrupting land officials by the interested parties to legitimize land ownership, government policies and presidential decrees.

After 50 years of independence, land grievances have continued to be the primary cause of ethnic strife that has resulted in clashes that have led to loss of life and property mainly in the Rift Valley, Coast and North Eastern parts of Kenya (IRIN, 2013). Since the advent of the multiparty system, incidents of ethnic violence have peaked during the election years of 1992, 1997, 2002 and 2007. 1997 saw a spate of clashes in the Likoni
division of Mombasa District. In Likia, where most land belonged to Kikuyus in the early 1990s, local Kalenjin politicians reminded people of their past ownership of the land. In 1992, the so-called “Kalenjin Warriors” began burning Kikuyu houses and grabbing land (IRIN, 2013).

According to the United Nations Office for the Coordination of Humanitarian Affairs, land-related grievances were among the underlying causes of the violence that followed Kenya’s disputed presidential election results in 2007 (IRIN, 2013). Most recent incidences in Baringo, Mpeketoni, Tana River and Marsabit are said to be related to historical injustices on land as well as resource conflicts that are ethnic based. To illustrate the devastating effects that the Group Ranches have had on the Maasai, the following two case studies were used in this study (MCSF 2005).

Case studies

Case Study 1: Iloodoariak Group Ranch

Iloodoariak (the Maasai word for a place of “red waters”) is land situated about 80 Kilometers from the southern part of Nairobi in Kajiado District within the Rift Valley Province. It is approximately 146, 682 Hectares. Since time immemorial the land has been occupied and managed by and it is occupied by over 6, 000 indigenous Maasai inhabitants of the Keekonyokie clan who are the ordinary residents of the area, they practice traditional pastoralist activities centered on livestock. By Section 114 of the Constitution of Kenya, the Iloodoariak was vested in Olkejuado County Council as a
Trustee. The County Council was to hold the land in question for the benefit of the persons who were ordinary residents thereon.

By the declaration notices Numbers LA/LDO/1/8 dated 22nd November 1978 and LND/MOS/56/4 dated 11th July 1986 the government declared Iloodoariak and Mosiro respectively land an adjudication sections within the meaning of Section 5 of the Land Adjudication Act (Cap. 284). It was meant for purposes of ascertainment, recording and registering of pre-existing customary rights and interests of those ordinary residents in the said area. Such residents were to be issued title deeds. As the primary users and occupiers of the land, the Maasai were entitled to expect significant consultation with the adjudication team and positive results from the whole process.

The process of adjudication at Iloodoariak proceeded until 1989 when it was pronounced complete. The adjudication register was published for inspection and objections invited within the sixty (60) days of its completion of the register. Consequently, 459 objections were lodged and determined by 1990. Soon thereafter, those recorded as owners of the parcels of land in the section were registered as absolute proprietors of the land and hence issued with the title deeds in respect of the provisions requirements of the Registered Land Act (Cap. 300).

However, the adjudication process was marred with greed, abuse of office, acts of arbitrariness, corruption exhibited by the officials from the Ministry of Land and Settlement who were ostensibly facilitating the adjudication process (MCSF 2005). In the course of the alleged adjudication process, available evidence indicates that many of the Government officials were recorded as the owners of the land in this area. (MCSF 2005).
Further, a great deal of the land was demarcated to people, friends, and relatives of these officials who are not ordinarily residents. This did not happen for free or by accident. The non-residents made hefty payments to these Government officials and Land Adjudication Committee members. According to a report by Mainyioto Pastoralists Development Organization (MPIDO) which is a Non Profit from the local community, the outcome of land adjudication and subsequent subdivision had the following outcomes (MPIDO, 20011):

1. 362 persons who were (still are) non—neither residents nor members of any of the existing group ranches of this area—were nonetheless recorded as owners of the land in the section. They were allotted land and issued with the title deeds. A significant number of these non-residents were and still are highly placed politicians, adjudication officials, other senior government and local officials and their relatives, friends, businesspeople and associates who had no connection with the area. These people were providing bribes in order to lubricate the process. The officials took advantage of the ignorance and the illiteracy level bestowed by the members of this community.

2. Over 2,000 legitimate and indigenous Maasai families and inhabitants were deliberately and through fraudulent means left out of the adjudication process and were declared to be squatters on the land allotted to other people (MCSF 2005). These residents were not aware of the demarcation and recording taking place. The community was not made aware of these matters. The same was never effectively communicated to them as required by section 14 of the Land Adjudication Act.

The Maasai residents Iloodoariak from Kajiado district undoubtedly lived on this ancestral land from generation to generation. Their case is to protect the land being taken away through unfair, arbitrary and gross abuse of power perpetrated by Government officials. The rightful and laid down land adjudication procedures were not applied. There was neither publication nor any notices to this effect. These acts of omission and
commission were deliberate with the intention of frustrating any efforts to launch or lodge of appeal cases with Minister of Lands and Settlement nor the high court as required by the primary Land Adjudication Act.

**Case Study 2: Elangata Wuas Group Ranch**

According to the participants, Elangata Wuas Group Ranch is a good example of how Group Ranches have been a conduit of Maasai land appropriation. Elangata Wuas Group Ranch lies in the jurisdiction of the Kajiado County, Kajiado Central Division, and Iloodokilani Location in Kajiado West Constituency. The Group Ranch covers a total of 69,474 Ha with 489 registered members. The Group Ranch borders Torosei and Lolngosua Group Ranches to the South, Oldonyo Onyokie and Olkeri Group Ranches to the West, Kilonito Group Ranch to the North and Ildamat, Nkoile and Enkaroni Group Ranches to the East.

The Group Ranch was dissolved by the Group Ranch members through an Annual General Meeting resolution in the year 1990. Two Group Ranch subdivision committees have been in place. According to a report submitted to the National Land Commission by the community, the current Group Ranch office bearers have broken all the rules, and have illegally allocated land to non-members. They have allocated extra land parcels to themselves, relatives and friends, sold public lands and allocated the same to individuals, disinherited the poor, widows and orphans. These officials have also turned to be land brokers and are manipulating gullible group ranch members to sell their land to them at a price that is below market prices for onward sale to third parties for a premium (Taiko Lemayian et al., 2013).
An elected committee is in charge of this process. This process of land subdivision has not only been marred by illegal alienation, acquisition and sale of individual and public land, land extortion, forceful relocation and disinheritance, said the letter to the National Land Commission, but it goes contrary to all laws of natural justices, the Constitution of Kenya, and all International legal statutes on human rights (Taiko Lemayian et al., 2013). These malpractices besides being illegal have a profound long lasting and disproportionate impact on vulnerable groups of our community such as the poor, women, widows, orphans and persons with disabilities. The documents also told the National Land Commission that the community’s attempts to seek redress at the County level have failed to bear fruit (Taiko Lemayian et al., 2013). The role of government’s institutions at the County level have significantly perpetrated these land injustices by failing to honestly and adequately address them on a number of occasions, and in accordance with the law.

The residents are recommending that a thorough audit of Elangata Wuas land subdivision be carried out, and all land sales in the area are stopped. The members further suggested that a new group should be constituted from the Annual General Meeting under the supervision of the National Land Commission, and the County’s authorized institutions (Taiko Lemayian et al., 2013). Their mandate, Terms of Reference (TOR) and timelines not exceeding one year should be drawn by the National Land Commission or any other delegated authority. Further recommendations from the aggrieved members were:

1. All Elangata Wuas land transactions should be stopped forthwith with immediate effect pending an audit of illegal land allocation and sales.
2. All public utility land issued to individuals should be nullified while titles of the said lands transferred to the county government as dictated by law.

3. All land parcels allocated un-procedurally to non-members of the group ranch should be nullified.

4. All the extra land parcels that the Group Ranch Officials allocated to their relatives, cronies and themselves should be nullified. In the event that they have sold the extra parcels, then the ones in their custody automatically are forfeited.

5. All books of accounts for the committee should be audited by the relevant authorities to unearth all financial impropriety and those found culpable should be held to account.

6. All direct transfers of land suctioned by the said committee to third parties un-procedurally be nullified.

7. All legitimate Group Ranch members who were maliciously denied parcels of land for both political reasons or having been members of the previous committee should be identified and given their rightful parcel of land.

8. All civil servants who collaborated with the group ranch officials in this land scam should be investigated and necessary disciplinary measures instituted (Taiko Lemayian et al., 2013).

Narok County has also had its fair share of elite capture in matters related to land where those who are in political positions have had the opportunity to allocate themselves relatives, and friends land in Group Ranches and urban centers. In Narok, it has been reported that in the then Narok North Constituency, where “clashes” in October 1993 left over thirty-five dead, and at least thirty thousand displaced (GOK, 1995), the clamor for the growth of the Kikuyu vote by the then opposition was the only way to gain political mileage. In response to that, the ruling party that was patronized in Narok by William Ole Ntimama had a genuine response to protect the Maasai from political domination by immigrant communities rallied the Maasai to reject any settlement of non-Maasai in Narok (Koissaba, B.R. Ole, 2013).
As it stands now in Narok, the principle of tyranny of numbers will determine the nature of political dispensation the Maasai will face in the next general election that will be held in 2017. Given the increase of immigrant communities into Narok County and the current political dispensation, the Maasai will face a herculean task of safeguarding their political clout in Narok. With the deliberate government strategy to import voters from Bomet which is predominantly Kalenjin, and the Kikuyu from Nakuru, there is a great danger that if the Maasai go into the next election divided, and they will lose their political leadership in Narok (Moitalel Ole Kenta, 2015).

Equally, in Narok County, Group Ranches became a conduit for appropriating and acquiring Maasai land. Numerous cases of legitimized land acquisitions have been experienced. The most glaring of such situations are the group ranches bordering the Mau Forest which is the largest water tower that feeds the Mara River whose waters flow to Lake Victoria which is the greatest lake in Africa (Moitalel Ole Kenta, 2015).

According to Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (ROK, 2004), the sizes of most of the Group Ranches allocated were inflated significantly and the difference sold to unsuspecting non-Indigenous settlers. The report whose recommendations are yet to be implemented, noted that the Nkaroni Group Ranch that registered the initial size as 1,597.5 hectares and whose current size is estimated at approximately 9,000 hectares (Moitalel Ole Kenta, 2015). Others include the Enaikishomi Group Ranch and the Sisiyian Farm. The extension of the boundaries in the Group Ranches has created a cyclical conflict between the Maasai and
the migrant community who bought the land through corrupt politicians and government
Ministry of Land officials (Moitalel Ole Kenta, 2015).

In total disregard of the law, the non-residents and illegal beneficiaries of the land
were issued with land titles of the illegally acquired land by the Ministry of Lands
(Moitalel Ole Kenta, 2015). This rendered the Indigenous and rightful owners of the land
legally trespassers on the land of their birth as the law recognizes the sanctity of the title,
therefore the title holder is recognized as the legal owner of the land in which they hold the
title.

Protracted legal battles ensued but given the political clout of the illegal allottees, and
their positions in former and current governments, the courts have continuously ruled
against the Maasai due to the prevailing laws on land that recognize the sanctity of the
land titles, and not for Indigenous land ownership (Koissaba, B.R. Ole 2014). The
legitimacy of “willing buyer, willing seller” seems paradoxical because most land
transactions are often dubious. Group Ranch officials and their assigned brokers often
illegally approach prospective landholders and purchase at far lesser prices than market
prices, or the directly transfer of the title deeds to third parties and buyers with or without
the consent of the landowner. According to the research participant, this not only
alienates the land from the community members but denies the government lots of
revenue.

In summary, the Group Ranches were an artificial creation that failed to consider the
Maasai culture and way-of-life. Instead, the Group Ranches were created to support the
government’s plan for “development” with no input from the Maasai or any consideration
of their needs. The disassembling of the land into Group Ranches also contradicted the forms of productive land-use systems that underpin Maasai pastoral mobility (Lesorogol, 2008). Furthermore, the creation of the ranches and issuance of individual title deeds introduced a new alien concept of land tenure as well as the perception of land as a commodity to be bought and sold.

From 1968 to 1990 much of the academic scholarship related to land was based on Hardin’s (1968) *Tragedy of the Commons* that portrays the users of a common-pool-resource as pasture open to all-as being trapped in a tragedy of overuse and destruction. Many thought that the all common-pool resources were “owned” by no one. Thus, it was thought that the government officials had to impose new rules or policies, such as privatization of the land through titling, to prevent the destruction by users, such as the Maasai, who could not do anything other than destroy the resources on which their own future depended. For the most part, academic and policy debate on common property resource did not accept the view point that under certain conditions groups of individuals could sustainably a commonly held property. After the publication of Ostrom’s (1990) *Governing the Commons* that viewpoint changed. Ostrom’s text described how common property can be successfully managed by communities without the intervention of the state, and without having to privatize a common-pool resource. Since the publication of the book extensive research has clearly demonstrated that a group/community can successfully sustain long long-term use of common-pool resources (Ostrom, 2009). For years the Maasai demonstrated that they can self-organize as they have modulated herd size and distribution in a way that prevented degradation of their pastures (Galaty, 2013).
Unfortunately, to this day, the tragedy of the commons has polarized the policies and actions of Kenya’s government. The Maasai perspective has yet to be accommodated within Kenya’s mainstream development paradigm or in their thinking and policies.

**The Trust Land (Amendment) Act of 1968**

Trust Land is land that is declared to be as such as defined in Section 114 of the Constitution of Kenya. Under both the former Constitution and the Trust Land Act (Chapter 288 Laws of Kenya), neither the government nor the County Councils owned Trust Lands. The local County Councils simply held lands on behalf of the local communities (ROK, 2009). The constitution defined control of Trust Land as follows:

“All trust land shall vest in the county council within whose area of jurisdiction it is situated. (Constitution of Kenya, Section 115(1)). Each County Council shall hold the Trust land vested in it for the benefit of the persons ordinarily resident on that land and shall give effect to such rights, interests or other benefits in respect of the land as may, under the African customary law for the time being in force, and applicable thereto, be vested in any tribe, group, family or individual.” (Constitution of Kenya, Section 115(2)) (ROK, 1998)

This implied that as long as the land remained un-adjudicated and unregistered, it belonged to the communities, groups, and families in the area in accordance with African Customary Law. The community ceased ownership of the land once the land was registered under any of the land registration statutes; hence Trust Land is transferred into private land. Corruption at the County Councils has seen councilors use the right provided in the constitution to register land in either their names, friends, or other institutions to disfranchise communities of land, hence dispossessing of the Maasai.
Through such deals, the Maasai community has lost most of the land in urban centers, forest reserves, and livestock holding grounds (Koissaba, B.R. Ole 2014).

The power to alienate Trust Land was with the Commissioner of Lands who was a direct representative of the President. Total disregard for African Customary Law and the lack of recognition of pastoralism by the government and County Councils denied the community the rights to be consulted. I conclude that this resulted in irregular alienation of Trust Land to individuals or companies with total disregard for the needs of residents. Indeed, there was no law that required the government or state to take the local people’s interests first or to give priority to residents if such land should be alienated. The processes disregarded the principles of prior informed consent by the local communities and abetted progressive land losses by the local communities. These allocations were done with total disregard for the rights of local communities in the process of planning ownership of land.

**High levels of illiteracy**

High levels of illiteracy among the majority of Maasai individual land owners was also another significant contributor to land sales among the Maasai in Narok and Kajiado. Lack of formal employment large number of the Maasai population limited them from accessing employment. This has also contributed to poor animal husbandry skills to manage their livestock in the smaller parcels of land that they individually owned. In his argument, Galaty (1992) posits that:
“Those without any education were three times as likely to sell land as those with education, while those without employment experience were twice as likely to sell land as those with such experience.” (p. 32)

Lack of education on the value and the importance of land has deprived many Maasai of their decision-making on matters related to land sale, who makes the decisions, how the decisions are made, and who implemented the decisions. Most decisions are made in boardrooms by government officials and the land brokers. The Maasai are mostly spectators and only wait to be told the worth of their land by the broker or buyers. The few Maasai who knew the value of the land have become co-perpetrators with the buyers played role in fleecing the poor and illiterate majority (Koissaba, B.R. Ole, 2014).

While illiteracy has contributed to loss of land by the Maasai, I argue that some individuals have sold their land and invested in education for their children. Many poor families that have learned the value of education but have no other income options sold their land to pay for the education of their children. Others have sold some portions of their land to invest in other revenue generating ventures that became a source of income for the families. There is some evidence of investment diversification by a few Maasai people who has disinvested in livestock and ventured into other revenue streams (Koissaba, B.R. Ole 2014). However, children in Maasai pastoralists households are the least likely to attend school, compared to neighboring farmers and business owners (Hedges, Mulder, Gishelli, et al., 2014). The study participants also noted that low levels of literacy and lack of education are problems for the Maasai.
Land Sales

Literature has associated continued land sales with the continued massive land loss by the Maasai. According to Moiko (2004), the subdivision, and titling of Group Ranches into individual land ownership fast-tracked massive land sales by the local Maasai to non-locals. Several factors drove this. First there was a perception that individual landowners would be able to develop their land and improve their livelihoods as was seen among the few Maasai who had individual ranches. Second, the money economy was introduced through loans that were advanced to the land owners by the Agricultural Finance Corporation (AFC) to buy steers. The third factor that led to massive land sales was the idea of “Maendeleo” (meaning development). The Maasai wanted to live like the “others’, drive cars, build better houses, eat and drink like other communities. With lack of education and deficient business skills, many Maasai landowners were sweet-talked into selling their land by prospecting buyers through local brokers (Koissaba, B.R.Ole 2014).

As the land for grazing continued to diminish coupled with persistent droughts which decimated livestock, many Maasai found themselves disparate and the only commodity they had was land. To meet their daily needs in life, many families sold their land albeit without knowing its value and were exploited by the buyers and the land brokers. The cash economy compelled many landowners to sell their land (Koissaba, B.R. Ole, 2014).

I view the driver for individualization of land to be the establishment of conducive conditions for security, production, and land management. This led to massive land loss
that has created destitution and landlessness among the Maasai in Kajiado and Narok. According to Galaty (1992), over 40% of the Maasai who were allocated land during the time period of his study had already sold their land in two Group Ranches to non-locals. Demand for land for prospecting purposes by non-Maasai and population pressure in other parts of Kenya added additional pressure to the demand for purchasing land in Maasai areas.

Arguably, the precursor to the initial land sales in Kajiado and Narok was driven by loans that were advanced to individual land owners who used their titles to acquire loans to buy steers from the Agricultural Finance Corporation (AFC). Due to the diminishing grazing land, persistent drought, and reduced mobility of the livestock in search of pasture, many borrowers were not able to repay their loans. This prompted some to voluntarily sell their land to repay the loans while others had their land sold by the Corporation to recover the loans (Koissaba, B.R. Ole 2014)

**Conservation and tourism**

According to Markakis (2004) concern about the preservation of forests, valuable species of flora and fauna, and wildlife has triggered another major intrusion for the Maasai and other pastoralist zones (Markakis, 2004). Under the National Parks Ordinance of 1945, the Kajiado Maasai lost access to two areas bordering the district to Nairobi National Park and Tsavo National Park. This Ordinance also established a game reserve in Amboseli (3248 square kilometers), and game conservation areas at Kitengela (583 square kilometers) and West Chyulu (368 square kilometers), restricting the use of these areas by the Maasai (Grandin, 1986). Subsequent areas of Maasai Mara were also
alienated. Beginning in a moderate way under colonialism, the designation of animal sanctuaries, controlled hunting areas, game parks and reserves, nature reserves, protected forests and “wildlife corridors” spread significantly after independence (Markakis, 2004). Most of the land that was alienated from the seemingly “idle” land as perceived by the policy makers who were ignorant of the pastoralist way of land use management practices.

Ecotourism and conservation have been identified as one of the leading global land grab processes. (Zoomers, 2010). Recent studies indicate an emergence of a new conservation model in the Maasai Mara area in Narok County (Bedelian, 2012). This model conservancy approach involves leasing of land from property owners around the Maasai Mara Game Reserve from land owners in the previously community-owned group ranches of Siana, Olkinyei, Koyiaki, Olchoro-Oirowua, and Lemek. Behind the creation of the conservancies are local Maasai politicians and elites with connections to global ecotourism organizations who use their connections to seek funding to support their ventures. I argue that while the land leases have slowed down the sale of land to outsiders and allowed for free movement of the wildlife within the conservancies, it has created direct competition with community livelihoods especially pastoralism (Bedelian, 2012).

The Conservancy leases have introduced regulations that exclude grazing, agriculture, fencing and other subsistence activities including permanent settlement by landowners within the designated conservancy areas. The conservancies have excluded women and youth who have not been allocated land within the conservancy area thus
impacting negatively on average household incomes. According to Thomson et al.,
(2009), the average annual incomes for those that have leased land to the conservancies is
$2,626, and they have no rights to engage in any other livelihoods activities within the
leased parcels of land. Strict regulations with exorbitant fines are charged to any person
found grazing within the designated conservancy areas regardless of the circumstances
(Thomson et al., 2009).

I believe that this has created conservation refugees or otherwise called internally
displaced families, which has contributed negatively to aspects of infrastructure
development especially education because of the family mobility. Maasai Mara has the
highest illiteracy rates in Narok County despite the lucrative business being carried out
by both local and international tourist organizations (Thomson et al., 2009). The creation
of conservancies has created displacements that have disappropriate effects on the
pastoralists Maasai and especially women and children due to the loss of livelihoods and
family roles.

The displacement of provides room for Conservancies has exposed women and girls
to high risks of exploitation such as sexual violence, high school dropout rates and
prostitutions. This has also led to loss of access resources and livelihoods, increased
vulnerability and greater insecurity (Thomson et al., 2009). The zoning of the land has
increased pressure on the remaining land which has resulted in overgrazing, and human-
wildlife conflicts have become a common phenomenon (Thomson et al., 2009).

Neo-conservation also brought in an opaque system of accountability where local
communities who leased their land to Conservancies are not privy to the annual incomes
made by the project. It appears that the Conservancies are running their businesses in a
non-transparent manner where their records of accounts have continually shown that the
conservancies are continuously running at a loss. I believe this is a deliberate way of
exploiting the Maasai by the management of the Conservancies by taking advantage of
the high illiteracy level of the local communities.

While the case as presented above points to a gloomy situation, I also posit that
despite the losses of land to conservation, there are enormous benefits, and that a few
individual Maasai have benefited from wildlife tourism revenues from the protected
areas. This is a result of the growth in the Community Based Natural Resource
Management (CBNRM), and community-managed ecotourism. While there is a counter-
argument regarding whether the Maasai benefit, there is evidence of a considerable
number of Maasai who have gained socio-economically from the creation of parks and
reserves in their former territories, and thus this is not an overwhelmingly negative
picture of loss. One might say they have lost their land, however, for example in the case
of the Maasai Mara (initially “given” to government by Maasai elders who wanted to see
it set aside for wildlife) it is managed by a Maasai-dominated county council.

What they have done with the huge revenues is another matter, of course, as little has
trickled down to the communities (Koissaba B.R. Ole 2014). Figure 5.3 below is a map
showing the Maasai Mara Game Reserve and the newly created conservancies in the
Maasai Mara region of Narok County.
Figure 5.3
Maasai Mara National Reserve and Conservancy areas. (Source: Bedelian, C. (2012). The Land Deal Politics Initiative.)

Legitimized corruption and impunity

Based on the results of this study, legitimacy of national laws is seen by the participants from the context of how the laws have ultimately subordinated the law of morality in such a way that they have been used to disfranchise communities of their natural rights to ownership and control of their land. Legitimacy was used to describe both what is perceived to be the rights of governments to make legally binding decisions on behalf of the citizens according to the inherent national legal statutes, and the degree
to which such decisions conform to recognized natural principles or accepted rules and standards of natural justice.

The participants also viewed as legal rules and standards that everyone ought to follow, whether because they reflected cultural and traditional practices, the law of the cosmos, or the will of God, or because they were democratically approved or simply enacted according to established procedures (Habermas, 1996). Based on this, I argue that legitimacy is subjective and found in the belief and perceptions of individuals and groups towards the actions and behaviors of others (Habermas, 1996). I further argue that the laws and other legal instruments used to appropriate Maasai land created a legitimization crisis in that there now exists evidence of a decline in the confidence of administrative functions, institutions, or leadership by the Maasai who view local legal instruments as instruments of dispossession (Habermas, 1973).

According to Habermas (1996), it is assumed that any legal system has a higher level of legitimacy over and above individual legal norms. This became the force that drove Kenyan policy processes, where laws were enacted with an objective of creating and facilitating nationhood. In reference to the works of Ralf Dreir, Habermas states that:

“First, the legal system must, by and large, be socially effective and, second, by and large ethically justified. The legal validity of individual norms requires that they are enacted in accordance with a constitution satisfying the criteria mentioned above. In addition, norms individually display first, a minimum ethical justification or the potential for such.” (Habermas, 1996, p. 30)

Kenya’s political systems have used the tyranny of numbers both in Parliament and in the Senate, and in the name of democracy to legitimate their existence and land appropriation, even where freedom of choice is infringed, and the rights of all citizens are
not protected. In my arguments, I posit the use of quasi-democratic systems for choosing and replacing the government, and passing laws has variously been manipulated to favor certain communities by virtue of their numbers.

Regarding the use of national legislation, I argue that the laws disregarded the interests of the Maasai. The laws are morally, and legally illegitimate from the Maasai context for they lacked adequate consultation, and were deliberately enacted with the primary goal of appropriating of Maasai land. Such laws derive their legitimacy from legislative processes based on State sovereignty, however, their inability to secure the rights and political autonomy of its citizens (subjects) denies it the legitimacy as it deprived individuals as well as whole communities the rights to own land and practice traditionally accepted land use systems.

I contend that despite the illegality and corruption inherent in the Ministry of Lands, the fact that land grabbers who are known to have acquired land in Narok and Kajiado have not been prosecuted, and the land titles nullified. This is an indicator that the law has legitimised the ownership of land that was acquired through corruption. From the perspective of the Maasai, the lack of taking legal action against the perpetrators of such acts is legitimizing corruption and impunity.

Globalization

Globalization is a human historical process where competing ideologies which form the basis for global economic and political systems compete for dominance in resource ownership, access and control (Groody, 2007). Globalization both as a political and economic system has had its fair share of both positive and negative impacts on the lives
and livelihoods of pastoralists communities in East Africa and especially the Maasai. Land alienation through forceful acquisition, treaties and legislations introduced privatization of land which was alien to the Maasai and occasioned massive dispossession of land and other natural resources and not creating an enabling environment.

The impact of globalization was first felt by the pastoralists after the Berlin Conference of 1884-1885 when the African continent was partitioned by the European colonial powers of France, Germany, Great Britain, and Portugal. The colonial powers superimposed their domains on the African continent by drawing boundaries resulted in dividing some African communities into several countries under different European masters (Muler & Blij, 2003). This was the case for the Maasai of East Africa who were placed under the British in Kenya and under the Germans in Tanzania. Sindiga (1984) agreed with most observers that before the advent of the colonial government the lifestyle of most pastoral groups was spatially designed to provide a stable ecological foundation for their economy.

Western culture in the guise of globalization has continued to impact negatively on other global cultures. Since the advent of colonization of Africa in the early 19th century, globalization forces in the name of modernization and development have gradually affected the social structure of the Maasai and its culture, beliefs, values and family structure. According to Mittelmann (2000), globalization is characterized by economism (a tendency to over-emphasize material factors to the neglect of the political and cultural aspects of globalization), state-centricity (tendency to focus more on nation states at the expense of individual cultures within the state), and overemphasis within area studies on
particularities and detailed descriptions about the transformations in a given locale without also grasping the linkages to evolving global structures.

According to Rozman (2005), modernity is connected to the idea of modernization. Modernization suggests updating something or bringing something into line with what is seen as present day fashions and needs (Rozman, 2005). The end of the Second World War was followed by decolonization in Asia, Africa, and the Middle East. The underdeveloped nations began to adopt the notion of development in order to be like the (technologically) developed countries of the West (Rozman, 2005). This process was identified with economic growth. However, this process did not involve economic growth only, but it also carried many other phenomena like social, cultural and political change (Gandolfo, 2009). It was a complicated process of change that influenced a wide scope of life both of the individual and society (Nyangira, 1975). This development led to the establishment of institutions in the underdeveloped countries that were meant to propel modernity (Nyangira, 1975).

Modernization theories regarded cultures of non-industrialized societies in the South as obstacles to development. This is because of their kinship institutions that, according to the modernists, seem to hinder individual enterprise and capitalism. They were perceived to be traditional and barbaric, and as something to be discarded so as to realize development (Ntuli, 2002).

According to World Conservation Union (2005), the advent of Structural Adjustment Programs (SAPs) that emphasized free trade liberalization and investment as well as high interest rates to attract foreign investment. The privatization of government-held
enterprises led to the proliferation of private sector conservation entities increasingly recognized as an important form of governance for protected areas which continued to attract donor support, like The Global Environment Facility’s funding for private sector initiatives. Such initiatives reached areas in Maasai land that were deemed to be of high potential in conservation and tourism. The outcome of such projects has had both positive and negative impacts among the Maasai people in Kajiado and Narok where tourism and conservation are the leading income earner (Thomson et al., 2009).

According to Bedelian (2012); Oxfam (2012); Thomson (2009) Galaty (1999); and Grandin (1986), the Maasai just like the rest of the communities in Africa, were introduced to modern conventions such as schools, large-scale agriculture, Western medicine, business, formal employment and a wage-based economy, and in the recent, advanced telecommunication and cyberspace. With such institutions, modernity has profoundly penetrated the Maasai community and presented the modern values of life which have become the ultimate ideals of “civilized” society. The colonial and post-independence government have propagated these ideals and exerted pressure on the conservative communities like the Maasai to let go of their “primitive” traditions and instead embrace modernity (Naimodu, 2012). It is, therefore, my contention that globalization has contributed to the erosion of the Maasai culture, and resulted in changes within community structures hence impacting family life.

According to Robinson and Green (2011), globalization has restructured economic, political and social relationships at the local level. They argued that technological and social changes have ushered in new avenues for sharing collective interests. The Maasai
culture that thrived on the collective responsibility, ownership, and control of resources was eroded as individual land owners could, sale their land at will without consulting other members of the community.

I propose that private investments in agriculture meant to alleviate poverty and food insecurity failed to deliver benefits to the local communities. Large tracks of land leased to multi-nationals for commercial agricultural purposes in Narok reduced the grazing areas for the pastoralists, but the land was not sold or leased for its full value (Oxfam, 2012). Most of the crops produced was mainly sold to big millers through middlemen, and the highly mechanized operations provided minimal work opportunities for the local community. The increases levels of poverty arose from capital flight and created food deserts for the local inhabitants who have to travel far distances for food and other basic requirements.

I argue that unintended consequences arising from such ventures are health hazards ranging from aerial sprays used to control weeds and diseases in the farms, land degradation, decreased household incomes, human-wildlife conflicts, and decreased pasture for livestock. While no research has been done to confirm the impacts of the chemicals on the health of communities and their livestock, reports from the local communities indicate high levels of upper respiratory tract infections in human, and stillbirths in their livestock during the planting seasons (Koissaba, B.R.Ole 2014). The clearing of the land for cultivation has also created indiscriminate destruction of ground cover which increased incidences of soil erosion and destruction of vital genetic species that local communities use for medicinal purposes.
The global extractive industry has also contributed to Maasai land appropriation. The discovery of high-potential geothermal and oil in the Rift Valley, led the government to give concessions to various multinational corporations to prospect for oil and gas. One glaring example is the extraction of Soda ash in Lake Magadi.

The Magadi Soda Company, which is now part of the giant Tata Group after it was acquired from Brunner Mond Group of United Kingdom, is Africa’s leading soda ash company and presumably the lowest cost producer in the world (Hughes, 2008). The Magadi concession area covers about 206 square miles and has its history dating back to 1911 when the Maasai Agreements and Treaties were enacted. The Magadi Concession area was carved out of land traditionally occupied by the Maasai, and has since been out-of-bounds to the Indigenous communities. This has denied the local community access to pasture, watering points and salt licks for their livestock. Despite massive opportunities for employment creation, the local communities have obtained few jobs in this industry due to their low levels of education. Protests by the Maasai started in earnest in 1950 and subsequently in 1962 during the Lancaster independence conference and later in 2003 when hundreds of Maasai were arrested for blocking the railway line used to transport the soda. These protests have not yielded any meaningful results (Tiampati, 2005). Below is a map of the Magadi Concession area and the adjacent Maasai Group Ranches where the land was alienated.
The current discoveries of vast amounts of geothermal and oil in Narok and Kajiado where multinationals are obtaining concessions from the government without the consultation of the local communities is a further threat to further loss of land by the Maasai. According to Koissaba (2015), the government has adopted a system of seeking international aid in the name of development, grants prospecting rights to local and international companies, and subsequently gives concession rights for exploitation of the natural resources without prior and informed consent of the local communities.

With globalization came urbanization and the establishment of local business centers in the heart of Maasai land. Because the Maasai were not very keen on running
businesses, other non-Maasai communities established strong economic bases in Narok and Kajiado. The population of other migrant communities increased drastically in areas closer to Nairobi and along the Namanga-Nairobi highway with several small business centers established. Equally in Narok, the migrant community, which was mostly agriculturalist, leased land to grow crops. Later they established small shopping centers to sell their commodities to the local Maasai who were predominantly pastoralists. As time went by, many local Maasai ended up selling their land to the immigrant business people. I believe that due to their friendly nature and welcoming attitude, many Maasai adopted some immigrant communities where to date you will hear them being referred to such names like Olkokoyoi lani, or Olkisii lai (meaning my Kikuyu, or my Kisii).

**New legal regimes related to land in Kenya**

Kenyans have for the last 50 years yearned to get a new constitution to replace the independence Constitution that has seen hundreds of changes and amendments made to it by the first Jomo Kenyatta (1964-1978), and Daniel Arap Moi (1978-2002). The main bone of contention for the demand for a new constitutional dispensation was mass human rights violations, inequalities, land dispossession, and abuse of power by the executive (Wachira, 2008). Overall, the land issue in Kenya has impacted on all spheres of national development and the lack of a national guideline about how land can be used for production as well as settlement has contributed to a greater extent to increased levels of poverty.

According to Wachira (2008), the current Kenyan legal framework has the potential to redress the Maasai land claims if it is progressively interpreted in keeping with
international standards. The Constitution makes provision for rights whose enjoyment demands recognition and protection of group rights as well key clauses that protect the rights of individuals and marginalized groups (ROK, 2010). As drafted, Kenya’s new Constitution gives the National Land Commission (NLC) the mandate to manage public land on behalf of national and county governments, among other functions (Section 67) (ROK, 2010). The incorporation of the National Land Policy in the Constitution and the enactment of laws on land by parliament is seen as an opportunity that will eradicate legal roadblocks that have hindered the implementation of recommendations made by the Njonjo Land Commission (ROK, 2002), and the Ndungu Report (ROK, 2004). The commissions were formed to investigate issues related to the legal structure of land laws and historical injustices on land appropriation. Another constitutional provision that provides an opportunity for the Maasai to seek redress is the Land Court which is enshrined in the Constitution (ROK, 2010).

The Land Court will be expected to adjudicate cases related to land disputes arising from claims filed by the communities that have grievances related to land ownership. Since the new constitution took effect in 2010, the Maasai community has filed several cases in various courts in Kenya some which have been decided in their favor, but most are yet to be concluded. While the promulgation of the Constitution of Kenya 2010 is regarded as the most significant achievement in governance in Kenya since independence in 1963, full implementation of the letter and spirit of the constitution is crucial to realize the promise of a democratically stable and prosperous future for all Kenyans, however
deep-seated interests pose threats and challenges to the implementation of the Constitution.

Major challenges are evident in how some political elites want to maintain the status quo, reverse gains and manipulate the pace and nature of changes recommended in the new constitutional order. This is evident in recent actions and decisions by the president and parliament. There seems to be a reversal of gains in the areas of human rights, freedom of expression, and freedom of association where the Kenyan parliamentarians are working on amendments to muzzle freedom of the press and the contact of Non-profit organizations (Ogemba, 2013).

According to the report of the Truth, Justice, and Reconciliation Commission (ROK, 2013), the regime of the first president Jomo Kenyatta was riddled with land grabbing which was perpetrated by him for his benefit and members of his family. The report stated that between 1964 and 1966, one-sixth of the settlers’ lands that were intended for the settlement of formerly displaced communities and the other landless Kenyans were cheaply sold to the then President Kenyatta, his wife Ngina and his children. The report further elaborates how Kenyatta’s successor Daniel Arap Moi was also a beneficiary of the process of land acquisition from the European settlers.

I contend that the legitimacy of “willing buyer, willing seller” seems paradoxical because most land transactions are often dubious in nature. Group Ranch officials and their assigned brokers often illegally approached prospective landholders and purchased land at far lower prices than market prices or they directly transferred the title deeds to third parties and buyers with or without the consent of the landowner. This not only
alienates the land from the community members but denies the government appropriate
of revenue.

With the new constitution, key land law reforms came into place inspired by the
National Land Policy of 2009 (ROK, 2009), and the preceding years of constitutional
struggle. These reforms aimed to decentralize several decision-making levels around land
and thus render them more transparent and accountable to the public through consultative
and participatory processes. Regarding the Maasai case, the processes also aimed to
redress historical injustices in order to reverse the trends towards land inequality and
increasingly violent contestation around land. These objectives are expressed in Chapter
5 of the Constitution that states:

Land in Kenya shall be held, used and managed in a manner that is equitable,
efficient, productive and sustainable, and in accordance with the following
principles: a) equitable access to land; b) security of land rights; c) sustainable
and productive management of land resources; d) transparent and cost effective
administration of land; e) sound conservation and protection of ecologically
sensitive areas; f) elimination of gender discrimination in law, customs, and
practices related to land and property in land; g) and encouragement of
communities to settle land disputes through recognized local community
initiatives consistent with this Constitution. (ROK, 2010)

Chapter 5 of the Constitution also elaborates the duties of the National Land
Commission. This role that is mainly to administer land for both national and country
government. The National Land Commission is supposed to take over roles that were
primarily held by the Ministry of Lands. These roles include: a) managing land on behalf
of the National and county governments; b) make recommendations on land policies to
the national government; c) advise the national government about a comprehensive
registrations of titles in Kenya; d) conduct research related to land and natural resources, and make recommendations to relevant authorities; e) and to encourage and facilitate the use of traditional land disputes resolution mechanisms. In his remarks in Parliament of February 2012 regarding the new constitution, the then Minister for Lands James Orengo stated:

“Under the new Constitutional order, it was believed that the entire land law regime should undergo a fundamental transformation so that the historical problems we have suffered in the land sector are dealt with comprehensively, and with some elements of finality.” (James Orengo)

In its advisory opinion regarding the roles and responsibilities of the National Land Commission in 2012, the Supreme Court in Kenya stated that:

“Apprehensions of social, economic, and political mischief associated with Kenyan land history, were a vital factor in the land reforms. This explains the concerns to institute a public entry with a land-resource mandate, independent of the head central government. It also explains the desire to decentralize the land management system, and to establish checks and balances in the regard.” (Supreme Court of Kenya)

The Supreme Court’s advice and the opinion of Orengo’s views are the views of many Kenyan communities who have long been harboring land related grievances, but have not had the opportunity for avenues for redress.

The Community Land Bill, which is awaiting the approval by Parliament and Presidential accent is the other hope that land related issues will be addressed. The Community Land Bill of 2015 offers a perfect opportunity to correct injustices, and there has been growing hope by the community for a better administration framework of community land in Narok and Kajiado counties. Once the law receives Presidential
accent, it is anticipated that this bill will provide for the recognition, protection and registration of community land and acknowledgment and documentation of customary land use. As drafted, the law provides a legal avenue that will protect community land from further alienation, appropriation, and annexation.

Major challenges are evident in how some political elites want to maintain the status quo, reverse gains, and manipulate the pace and nature of changes recommended in the new constitutional order. As is evident by recent actions and decisions by the president and parliament, there seem to be a reversal of gains in the areas of human rights, freedom of expression, and freedom of association where the Kenyan parliamentarians are working on amendments to muzzle freedom of the press and the contact of Non-profit organizations (Ogemba, 2013). This is a challenge for the Maasai quest for justice and rights on their land given the fact that the political elite are beneficiaries of the land that the Maasai lay claim.

Another key area that will determine whether the injustices meted upon the Maasai by post-colonial governments is the independence of the judicial systems. The past has seen the interference of the judiciary by the executive branch that resulted in the infringements of the rights of many citizens some whom were detained without trial, fired from government jobs, and some disappearances after court appearances. The fear that is eminent is that those that have vested interests in the land claims may once again see the wheels of justice being manipulated to favor the political elites. It is, therefore, a wait and see situation given the bitter rivalry that exists between pro-land reform advocates and the political elites who want to maintain the status quo.
It is important to note that Kajiado County has put in place measures to address historical and contemporary issues about land appropriation by developing a land management plan that hopefully will address the intrigues of the land brokers, local political elites who use the land equation for their personal gains, and the National Government which drives its agenda on migrating communities to Kajiado and Narok for numbers in every election. While the Maasai of Kajiado County have yet to realize the effectiveness of the county policy on land, there is imminent fear that the policy will not see the light of the day due to the influence of the political elites, land grabbers and land prospectors in Kajiado County (Kajiado County, 2014).

**Summary and the way forward**

The depth, scale and pace of land appropriation from the Maasai, and globally, is of concern. There is an increased interest in land as an economic asset by governments, private investors and transnational corporations. There is a demand for agricultural commodities, space for growing populations, agrofuels and raw materials (trees, minerals, etc.). There is also the “green economy” wherein land is appropriated for alleged environmental ends such as the establishment of natural reserves, game parks, or carbon trade schemes. In addition to these economic factors, states have played a major role in facilitating land appropriation through national legislation or corrupt practices. If this pattern is not reversed, land appropriation, or land grabbing, will deprive the Maasai, as well as other global rural populations, of their access to and control over their land and its resources. This will deepen the existing patterns of inequality, discrimination, social and cultural instability, and peace of rural societies such as the Maasai.
In moving forward, the state and international policy responses to land appropriation, or land grabbing, needs careful attention. Many of these policy instruments neglect to address the underlying economic and political drivers to obtain land. The notable exception is the Minimum Principles formulated by the Special Rapporteur (DeSchutter, 2009). The current complex nature of land appropriation cuts across local, national and international actors, norms and governing institutions. Thus, it is unlikely that a single institution or policy would be able to regulate land appropriation in a comprehensive manner.

One answer to this dilemma is to make the right to land operational in an international human rights treaty. Some international human rights treaty law already exists that recognizes the right to land for indigenous and tribal people. The ILO Convention 169 and the UN Declaration of the Rights of Indigenous Peoples both provide a comprehensive treatment of indigenous land issues. Both instruments contain multiple provisions requiring governments to recognize indigenous peoples’ rights, under pre-colonial customary law, to own the natural resources and land they have traditionally used and occupied. There has also been some action in international human rights advocacy groups that for people and communities land is essential for the enjoyment of economic, health, social, political and cultural rights (DeSchutter, 2009, 2010; Gelbspan & Nagarai, 2012). Thus far a human rights approach to land appropriation, or land grabbing, has not been specifically described in the international human rights framework that would apply to all people not just indigenous populations. Relying on other human rights, such as health or food, to resolve land grabbing issues is a risky approach.
Globalization and global land grabbing make it necessary to pay attention to the international dimensions of the human right to land.

International legal approaches might also offer a way forward for Kenyan indigenous peoples, such as the Maasai, to gain leverage against the Kenyan government. However, with no mechanism to enforce the final decisions and recommendations of international tribunals, the state would control implementation. The Kenyan government is likely to be a reluctant partner to the negotiations proposed above, and would probably not ratify a human rights treaty related to the right to land. A more promising solution may be to continue to work for a negotiated agreement between the Maasai and the Kenyan government.

Good governance and land rights are excellent goals, but as the results of this study found these goals are not implemented in a vacuum. To understand land appropriation, or land grabbing, we need to understand the nature of the state, the motivations of the various actors, the capacity of the government and the political cultures that will shape the path from policy to implementation. As the participants in this study noted the focus should not just be on the land or on a specific act of land grabbing, but rather focus on the many processes such as narratives of legitimation, the state’s development policy, the role of the courts, the partnerships, foreign capital involvement, patterns of power within the state, and the motivations of the various state and non-state actors. The results of this study provided a better understanding of Kenya’s political ecology related to land appropriation by illustrating, through the participants’ comments, the role of the state in
shaping land deals, and provided some new understandings about the relationships among the concepts of territory, sovereignty, authority and people.

The participants describe territory as both a physical manifestation of the land as well as having abstract and symbolic meanings. The participants, and the review of literature, described a very complex history of land deals involving their ancestral lands. They also described the histories of state developmentalism and environmental actions related to tourism. The participants’ comments described land appropriation in different ways, but all highlighted the role of the state and various actors involved in negotiating and acquiring the land.

The concept of sovereignty was addressed indirectly by the participants as they focused on the ability of the Maasai to control their own fate through the retention of their land. With the loss of their land they lost control of their economic situation (herding livestock) and food production. The loss of their ancestral land lead to displacement of the Maasai community to multiple locations so their ability to govern themselves was disrupted. The participants also discussed what happened when local-level elites exercised access control to the land. The review of literature on sovereignty focused on sovereign rulers and the political relationships within the state. Thus when examining sovereignty associated with land appropriation one is dealing with complex interrelationships between property and control and autonomy, land appropriation and sovereign power, and fragmented sovereignty when land is ceded to outsiders.

The participants also discussed aspects of authority in terms of decision-making power in relationship to various components of land appropriation. At present in Kenya
there are an increasing number of actors who authorize land deals. They noted that
authority took many different forms and that there were multiple, and overlapping arenas
in which political and economic elites operated in Kenya, and how this has complicated
attempts to organize land claims.

Perhaps the most important contribution of this study was the focus on the people,
the Maasai, who had to deal with the outcomes of a series of appropriations of their
ancestral land. For the Maasai, the land was more than a physical resource or an area for
commerce. The land was life, livelihood and culture. Their identity was constituted
through the relationships on and with the land. Some of the articles reviewed argued that
the Maasai, and other pastoralists, were unproductive or lazy and therefore land
appropriation was common sense. What was not described in these articles, but was
described by the participants was that the loss of land lead to marginalization, reduced
productivity, poverty, a loss of a sense of belonging, and a loss of a sense of well-being.
Studies of land appropriation, or land grabbing need to use a holistic perspective to fully
examine the outcomes of land loss by people.

Therefore, as a way forward, in future research and policy development I
recommend unbundling the four concepts of territory, sovereignty, authority and people,
to better understand the implications of land appropriation or land grabbing. We need
research that leads to a relational understanding of power in which a host of actors (state
government officials, local elites, investors, as well as indigenous people and
communities) play a role in land appropriation politics and its outcomes.
The Maasai lag behind in education, and their educational rates are below the majority of the Kenyan population. Thus another action is to increase the number of children who complete secondary education. This includes increasing the number of girls in school. Financial support for education for the Maasai should be given priority, and the Maasai should have access to provincial and national schools. In addition, models of education delivery that do not constrain pastoral mobility are important to pursue.

The Maasai need to become more politically empowered. There is a need for Maasai political representation to influence the policy making process. This requires addressing the stereotypes that have impeded Maasai pastoralist voices for years. The pastoralists have been described as environmentally destructive agents of the land, uneducated, and disinterested in development. These descriptions tend to decrease the importance of their political input. This has also fostered the longstanding intervention to transform pastoralism through outside intervention “for their own good” because they are not capable of managing the land (the tragedy of the commons). Without the Maasai receiving increased responsibility and authority over their own development agenda, new forms of misguided external interventions are likely. The Maasai are attempting to cope with the common-pool resource dilemmas described in “Governing the Commons” (Ostrom, 1990). As Ostrom noted “humans have a more complex motivational structure and more capacity to solve social dilemmas than posited in earlier rational-choice theory” (p. 435). The core goal of Kenyan public policy should be to facilitate the development of the Maasai as individuals and as a community. They do not need to be hindering their actions to develop sustainable outcomes.
Recommendations

Recommendations from this study are three-fold. One recommendation that addresses future research, two recommendation directed to the County government and the Maasai, and thee recommendation directed to the national government.

Recommendations for future research

The objective of the study was to critically analyze factors that contributed to Maasai land appropriation. This limited the study in several areas, first: the study did not look examine the impacts of land appropriation on the total well-being of the Maasai in Narok and Kajiado counties, neither did it desegregate data to find out who among the study population was most affected and the degree of these effects. The study also did not also go into an in-depth analysis of the key players and their particular roles in the phenomenon since the goal was to analyze the factors that contributed to Maasai land appropriation.

Future studies need to identify and describe the social, political, economic, and spiritual impacts that the Maasai of Narok and Kajiado experienced over time due to land appropriation. I also recommend that there is a need to explore the severity of land appropriation among Maasai women and children as they are the most vulnerable groups in society. Another recommendation is to study the role education has had either in contributing or stopping land appropriation in Kajiado and Narok counties. Finally, I recommend that a study is carried out on the impact of Christianity which has taken over from Maasai traditional practices, has thus contributed either to abetting land
appropriation or has it helped to stop and mitigate the effects of Maasai land appropriation.

**Recommendations for the Maasai and County governments**

Since there are several Maasai NGOs in both Narok and Kajiado counties, I recommend that they use case studies to demonstrate the risks confronting Maasai land from a social, economic, ecological and political perspective, and play the role of community watch leaders to intervene if and when concerns arise. I also recommend that a partnership between the NGOs and County Governments needs to be strengthened in order to play complementary roles in safeguarding community land. Another recommendation is strengthening through funding and application of democratic processes of the local County Land Boards to ensure representation and transparency in all land transactions.

To avoid exclusion of women and children, I recommend that County Land Boards enact legislation that requires that all family members be adequately consulted before any land sale transaction is approved. It is also recommended that both Narok and Kajiado counties establish a land fund and bank to purchase land from disparate community members who are genuinely pressed by livelihood needs and need to sell their land to meet them.

Since the previous land management regimes in both Narok and Kajiado were shrouded with corruption, I recommend that an inventory of all land that has been claimed to have been illegally appropriated be established and investigation conducted to authenticate all transactions. To avert the undoing of the previous regimes where land
records were reported missing, I recommend the digitization of all land records in Kajiado and Narok counties. In the quest to address illegal historical and contemporary land loses, I recommend that the Maasai consult local, regional, and international legal instruments in to institute litigation for reparation and compensation.

It is also recommended the County Land Board play a role in ensuring that existing Group Ranches do not exclude women especially widows and children. To develop a formidable force to address future land appropriation, I recommend that the Maasai political leaders seek opportunities to create a united political front free from political, clannism, age group and County influence that will spearhead the issues that relate to land appropriation. I further recommend the formation of men, women, and youth groups at the village level that become whistleblowers of any injustice meted upon the Maasai either by local politicians or external forces.

To achieve this, these recommendations, the Maasai need to revive traditional approaches like Ilamala to educate Maasai and punish truant members of the community. To strengthen the traditional institutions, I recommend that the Maasai age groups structure be used not as tool for dividing the community but used as was intended as a cultural, leadership succession plan. These means passing the baton of succession to the new generation while the older generation resumes advisory roles. However, the younger generation must consult with the elders.

Regarding recommendations to the County government, I propose that the County governments of Narok and Kajiado use transparent, representative, and democratic systems to appoint members to the County Land Boards. I recommend that a professional
human resources company be retained to advertise, and short list the candidates for the positions. After short listing, the applicants should be subjected to public vetting before being appointed to the positions, and they should be representative of the face of the County. I further recommend that the County government enact laws to protect pastoralist land from being subdivided into uneconomic acreage that will not support family livelihoods. To ensure that all family members are involved in all land transactions, I recommend that the County government enacts laws that require that all family members be signatories and joint title holders.

I also propose that the County government facilitate and financially support the establishment of Iloshon-based land and natural resource cooperatives that buy land and manage them as business ventures with the profits used to buy any land that is offered for sale within the County. This land banking system will be able to repossess land that was illegally acquired or sold below the market rates and hold it on behalf of the Maasai community. Finally, I recommend that the County government expand its social services programs extension programs that are targeted on issues related to land.

**Recommendations for the National Government**

Due to vested interests in the land sector that threatens to weaken the Constitutional provisions of the National Land Commission, I recommend that the Government, in particular the President and Parliament, implement as required by the law the roles of the National Land Commission by adequate funding, cease the interference of the work of the Commission, and provide security of tenure for all officials.
I also recommend that since the Community Land Bill of February 2015 was developed after a participatory process and in consultation with all communities by the Task Force, the Bill be approved by Parliament, this embodies the interests of most Kenyans who have been affected by issues related to land. To facilitate the County Land Boards, I recommend that the National government provide adequate funding, knowledge, and skills to permit the County Land Boards to function effectively.

Regarding historical land claims, I recommend that the National government implements recommendations of the various commissions that were formed to investigate land related grievances. In addition, there is need for the government to address the injustices meted on the Maasai people in connection with their lands and territories. These remedies that will address the following: 1) acknowledging the injustices committed by all concerned; 2) restituting all illegally expropriated Maasai land; 3) adequately compensating the Maasai for all loss suffered and sufficiently developing lands presently occupied by them to make them as ideal and habitable as the lands from whence they were removed; and, 4) reversing and annulling all processes of Land adjudication, subdivision of Group Ranches and registration.

Finally, since multinationals enter into agreements that appropriate huge land from indigenous communities for infrastructure development and conservation, I recommend that adequate community involvement of the affected by the government through processes that allow for the use of the principles of Free Prior and Informed Consent before such projects are implemented.
In conclusion, the key lessons from the case study of the Maasai in Narok and Kajiado indicate that there is evidence to suggest that the privatization of land into individual land holdings has had negative effects on the sustainable use of resources, access to loans, disparities between rich and poor, wealth creation, and the ability of the Maasai to earn a living through pastoralism. Secondly, the example of the Maasai in Narok and Kajiado suggests that, contrary to the commonly held development wisdom that private property is a cornerstone of successful economic development, formal property rights are not a one-size-fits-all reform suitable in all contexts.

Globally, this research provided in-depth information about how global land grabs by multinationals to do infrastructure development, large scale agriculture, and creation of conservation projects have displaced thousands of people. These communities whose lands have been appropriated suffer long term negative consequences.
REFERENCES


World Bank (2014). Linking land policy with climate change: A Multi-dimensional landscape approach to territorial development with a focus on the Europe and Central Asia (ECA) Region.


Appendix A: IRB Approval

Dear Dr. Small,

The Clemson University Institutional Review Board (IRB) validated the protocol identified above using exempt review procedures and a determination was made on February 19, 2016 that the proposed activities involving human participants qualify as Exempt under category B2 based on federal regulations 45 CFR 46. You initially submitted an expedited application, but the IRB determined that it qualified for exemption. The approved recruitment/consent script is attached. Your protocol will expire on September 30, 2016. This approval is based on U.S. human subjects’ protections regulations (45 CFR 46) and Clemson University human subjects’ protection policies. We are not aware of any regulations that may be in place for the country you are planning to conduct research in that would conflict with this approval. However, you should become familiar with all pertinent information about local human subjects protection regulations and requirements when conducting research in countries other than the United States. We encourage you to discuss with your local contacts any possible human subjects research requirements that are specific to your research site, to comply with those requirements, and to inform this office of those requirements so we can better help other researchers prepare for international research in the future.

The expiration date indicated above was based on the completion date you entered on the IRB application. If an extension is necessary, the PI should submit an Exempt Protocol Extension Request form, http://www.clemson.edu/research/compliance/irb/forms.html, at least three weeks before the expiration date. Please refer to our website for more information on the extension procedures, http://www.clemson.edu/research/compliance/irb/guidance/reviewprocess.html.

No change in this approved research protocol can be initiated without the IRB’s approval. This includes any proposed revisions or amendments to the protocol or consent form. Any unanticipated problems involving risk to subjects, any complications, and/or any adverse events must be reported to the Office of Research Compliance immediately. All team members are required to review the IRB policies on Responsibilities of Principal Investigators and the
Responsibilities of Research Team Members available at http://www.clemson.edu/research/compliance/irb/regulations.html.

The Clemson University IRB is committed to facilitating ethical research and protecting the rights of human subjects. Please contact us if you have any questions and use the IRB number and title in all communications regarding this study.

Sincerely,

Nalinee
Appendix B: Letter of Consent

My name is **Ben R. Ole Koissaba**, and I am a student at Clemson University.

I am conducting research about factors that contribute to Maasai land appropriation in Narok and Kajiado Counties in Kenya, and I am interested in your experiences as a research participant. The purpose of the research is to identify and critically analyze factors that have contributed to Maasai land appropriation. Your participation will involve three informal phone interview that will last about ten minutes and 1 hour. This research has no known risks since the information that the research is seeking to obtain from you has been in the public domain, and your role as it relates to land issues affecting the Maasai is equally known to all that have been involved in the processes. This research will benefit the academic community as well as the Maasai because it helps us to understand both local and global factors that are contributing to land appropriation in the developing world.

Since the research has no risks involved, I will publish your name and contributions towards the research.

In case you have any concerns, you can reach me on the following:
Cell phone: + 1 206 445 5542 or email: bkoissa@g.clemson.edu or bkoissaba@gmail.com

Once again thank you for accepting to participate in the research.
Appendix C: Interview Questions

The researcher will make an initial contact with the research participants by telephone to request for their permission and time availability (ideal time for the interview). Before the beginning of each interview, the researcher will greet the participant, introduce himself and explain the purpose of his study as well as the researcher’s interest in interviewing them. He will ask them for their consent and once accepted, will arrange an appropriate time to do the interview. All conversations during the interviews will be conducted in Maasai and English. Before the interview, the researcher will inform all research participants that since they volunteered to take part in the research, their names and contributions will be published in the final dissertation. Additionally, all the research participants will be informed that the interviews will be recorded.

SECTION 1. Social Demographic

First I would like to get some information about you.

Please, could you tell me about yourself?

Name ____________________________ Age ___________ Gender __________

Where were you born?
Village ____________________________ County ____________________________

Where are you living at the moment?
Place ____________________________ Village ____________ Town ____________

Have you ever been to school?   ☐ Yes   ☐ No

How long have you been living in Narok/Kajiado County? ____________________________

Current job title ____________________________

Previous work/employment related to land use and/ or land appropriation ____________________________

What else do you do for a living? ____________________________

Memberships in NGOs or groups related to land use, land appropriation, human rights: ____________________________
SECTION 2. Interview questions for all the participants

RQ 1. What do you know about Maasai land appropriation in the past?

First I would like to know about Maasai beliefs about land ownership

a) What were the beliefs about land ownership among the Maasai?
b) I would like you to tell about your past activities related to land appropriation in (name of county). Please begin with your earliest activities.
c) Are you familiar with the Maasai Agreements of 1904 and 1911? If yes, what impact do you think this agreements had on the Maasai? In your opinion, what were the 1) social impacts; b) economic impacts?
d) Are you familiar with the Maasai case of 1913? If yes, what is your opinion about the case?
e) Are you familiar with the Kenya Land Commission report of 1932? If yes what is your opinion about the report?
f) Are you aware of the Lancaster Conference deliberations? If yes what is your opinion about its outcomes?
g) Are you aware of the Group Representative Act? If yes, what is your opinion about how it impacted on the general wellbeing of the Maasai?
h) Are you aware of the new Kenyan constitution of 2010 and its provisions on the rights to land?

RQ 2. What is your understanding of the current events going on now regarding Maasai land appropriation?

Guiding questions

a) What can you say about recent (last 10 years) government related activities to Maasai appropriation in your county?
b) In your opinion what has been the impact of government activities on Maasai land appropriation?
c) Have you participated in any activity that is related to Maasai land appropriation? If yes what activities have you been involved and why?
d) Who is currently involved in decision making about Maasai land appropriation?
e) How are the decisions about Maasai land appropriation being communicated to the Maasai?
f) What are the power dynamics that are currently leading to Maasai land appropriation? Who are the key players? What role does the Maasai play?
g) How are the decisions contributing to Maasai land appropriation made?
h) What is the impact of decisions made about land ownership, control and access had on the Maasai people?
RQ 3. What do you think needs to be done about Maasai land appropriation in future?

Guiding questions

a) You have told me a great about land use and land appropriation in your county. What do you think the Kenyan national government and the county government needs to do in future about Maasai land appropriation?

b) What policy changes, or new policies would you recommend the national and county government to adopt?

c) What do you think NGOs need to do in future about Maasai land appropriation?

d) What do you think the Maasai people should do in future about land appropriation?

e) What are the outcomes of Maasai the responses to Maasai land appropriation?

f) At a personal level, what actions do you plan to take in response to Maasai land appropriation?

Instrumental questions

RQ 4. What implications does the Maasai land appropriation case have in addressing global land appropriation?

Guiding questions

a) Are you familiar with any reports from multinational development partners about land appropriation in developing countries? If yes what is your opinion about the approaches and outcomes of their development plans and land appropriation?

b) In your opinion, what are the most important lessons learned from Maasai land appropriation?

c) To what extent have land acquisition political issues been influenced by issues related to globalization?

d) Have global land policies of different overseas development agencies (World Bank, EU) or countries (China) contributed to facilitating/encouraging or blocking/discouraging Maasai land acquisition?

e) What do you believe are the most important lessons learned from the history of land appropriation from the Maasai people?

Validation Questions

Thank you for accepting to take part in this research. After my analysis, the following themes emerged.

What is your opinion or suggestions about the themes?

The researcher validated the research outcomes through phone interviews to seven selected participants who were selected because they were conversant with almost all the research questions. The researcher went through all the emergent themes with each participant.