

**Investigating Justice Systems in Land Conflict
Resolution: A Case Study of Kinondoni
Municipality, Tanzania**

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Investigating Justice Systems in Land Conflict Resolution: A Case Study of Kinondoni Municipality, Tanzania

by

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Abstract

The continued existence and progress of man depends on land and people with different interests having competing demands over land resulting in land disputes and conflicts. Dispute over land are therefore seen to be an integral part of human interaction. However, prolonged land conflicts have negative impact on all aspects of social and economic developments. Inefficient mechanisms of dealing with these conflicts can result in disastrous effects.

In many countries, especially in Africa, land conflicts are resolved through formal and informal justice institutions, each of them having its own mechanism of dealing with land conflicts. Formal institutions are those that are established by legislation while informal institutions are those local institutions that are recognised by the local communities but are not supported by legislation. In conflict management, the choice of the appropriate process depends on the particular circumstances and the context within which the conflict occurs. Disputants are left to choose between the 'best practiced' and 'preferred' conflict resolution mechanism. In developing countries some of the systems to deal with these conflicts are insufficient and ineffective and what remains unclear is why these systems are unable to deliver particularly in terms of resolving urban conflicts.

The aim of this study therefore is to examine the different justice systems available for resolving land conflicts and analyse why disputants prefer a particular system. The study is based on a case study approach. A combination of qualitative and quantitative methods including interviews, household surveys, observations and literature survey were used to collect and analyse data on the types of conflicts and how these conflicts were resolved. The study reveals some inefficiency in both the formal and informal justice systems. The effect is that many of land disputes are not resolved or settled but has evolved into other types of conflicts. Furthermore, the study revealed that disputants prefer to use the informal justice systems to the established 'best practiced' systems, because of its flexibility for negotiations. However, disputants are somehow coerced to use the formal systems because the preferred system is not recognised by law. In this regard, there is the need for alternative justice systems with flexible mechanisms to adapt to the preferences of the modern and dynamic societies.

*Dedicated to my
Dad:
Joseph Amukwei Quaye
&
Mum:
Felicia Vera Abena Serwaa Quaye*

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List of acronyms

ADR	Alternative Dispute Resolution
ADRM	Alternative Dispute Resolution Mechanisms
ADRS	Alternative Dispute Resolution Systems
CLT	Customary Land Tribunal
DLHT	District Land and Housing Tribunal
MLHS	Ministry of Lands, Housing and Human Settlements
URT	United Republic of Tanzania
VLC	Village Land Council
TSH	Tanzanian Shilling
USD	United States Dollar
WT	Ward Tribunal
WSD	Written Statement of Defence

1. Introduction

1.1. Background

Land conflicts have been an area of concern largely due to the failure to resolve many of the conflicts which are emerging in both formal and informal areas. The conflicts occur between different classes such as individuals and local institutions, communities and government as well as communities and individual persons.

Man's most valuable resource is land upon which his continued existence and progress depends on (Dale *et al.*, 1988). Competing demands over land can stimulate disagreements especially when the object contested for and the parties involved belong to different groups and have different interests (Wehrmann, 2008). These demands over natural resources often lead directly to conflicts (Huggins, 2000). Prolonged conflicts and disputes therefore have negative impact from a number of perspectives; economic, social, spatial as well as ecological development (Hoffman, 2003). Inefficient means of dealing with land conflicts can result in disastrous effects on individuals, groups and even the entire nation causing people lack of access to land and sometimes loss of life.

Conflicts are an integral part of human interaction and one must learn to manage them and come up with innovative and creative ideas to resolve them. Formal, informal and alternative justice systems exist and people seek for any of these systems to resolve their land conflicts. Each System has its own way of managing conflicts. However in conflict management, the choice of the appropriate process depends on the particular circumstances and the context of the conflict.

These justice systems have their own strengths and weaknesses in resolving land conflicts. Formal justice systems such as the court of law are noted to be inefficient and unable to satisfy the needs of the populace in urban as well as the peri-areas particularly in developing countries (Odametey, 2007). Informal system such as the customary on the other hand also has its flaws. An alternative to these two systems is the Modern Alternative Dispute Resolution (ADR) system which remains as an alternative and not as a replacement to the formal courts or the customary justice system. This is because "*while it works most of the time it cannot work all of the time*" (Boege, 2006). In this regard, these justice systems could be enhanced and developed to support and complement each other in order to achieve an effective justice system.

National Land Policy of 1995, the Land Act and Village Act of 1999 for the United Republic of Tanzania (URT) make provision for the settlement of disputes. The Land Dispute Courts Act, 2002 subject to Sections 167 of the Land Act, 1999 and Village Land Act, 1999 sets up a number of courts, to specifically deal with disputes or complaints concerning land.

This study investigates the preferred justice system by disputants. Kinondoni Municipality in Dar es Salaam, Tanzania is chosen as a case study area. The area is notable of increasing land conflicts.

Tanzania had a land tenure legislation, Land Act and Village land act, to replace the colonial Land Ordinance 1923 after Cabinet's approval of the National Land Policy in 1995. The Land Act covers fundamental principles and land rights on general land in all urban areas of the country. The Village Land Act, on the other hand, deals strictly with land within village areas. This includes the systems for management and administration of village land, as well as land dispute settlement at village level. The Tanzanian Government set up a separate dispute resolution courts under the Land Disputes Courts Act 2002 to guidance on land dispute resolution. The Act established the Village Land Council (VLC), the Ward Tribunal (WT), the District Land and Housing Tribunal (DLHT), the Land Division of the High Court and the Court of Appeal.

1.2. Research Problem

Conflicts which are related to land rights issues in Tanzania is not a new phenomenon (Odgaard, 2006). However, some of the conflicts have changed in nature and have been on the increase and becoming more complex and violent. Existing mechanisms to deal with the conflicts, have therefore become insufficient and costly (Huber *et al.*, 2008).

Tanzania is currently challenged with a high incidence of tenure insecurity and has a long way to go in terms of dispute resolution of land conflicts (Kombe, 2009). The choice of a decision method does not matter but the procedure in solving conflicts is very critical. Parties in disputes base their choices of the preferred system on their perception of the odds of success and choices change over time. These choices may be made explicitly or not, but they are always based on the perceived odds of advancing one's interests.

The established courts are seen to be poorly resourced and have tended to adopt a court-type of proceedings. This has resulted in long periods to settle disputes and also has become expensive for those involved in the conflicts. What remains unclear is why these systems are unable to deliver particularly in terms of resolving urban conflicts. Investigations into users' preference for the various mechanisms for resolving conflicts will help in this way.

This research, however, focuses on investigating the different existing justice systems for resolving land conflicts in Tanzania, the preferred systems by people, and whether people have the option to choose these systems or are coerced to choose a particular type of system to resolve their conflicts. The type of land conflicts received by these systems and the mechanisms used to resolve the conflicts will be the main area to be investigated.

1.3. Scope of Research

A case study approach is adopted and focused on the existing justice systems for land conflict resolution in the Kinondoni Municipality.

1.4. Research objectives and Questions

1.4.1. Research Objectives

The main objective of the research is to investigate the preferred justice system by people in different types of conflicts.

The specific objectives are to:

- 1) Identify and understand the existing justice systems and their conflict solution mechanisms
- 2) Identify the parties in dispute and why they prefer a particular system to have their conflicts resolved.

1.4.2. Research Questions

In order to operationalise the research objectives, the following research questions have been formulated as shown in table 1-1.

Table 1-1: Research Objectives and Research Questions

Objective	Research Question
1. to identify and understand the existing justice systems and their conflict solution mechanisms.	1. which types of justice systems are available? 2. what type of land conflicts exist and how are they resolved/managed?
2. to identify the parties in dispute and why they prefer a particular system to have their conflicts resolved	3. who are the parties and why do they prefer a particular system to have their conflicts resolved?

1.5. Research Approach

The Approach employed in this research has been summarized in figure 1-1 below. The analysis of available literature on concepts of conflict resolution mechanisms help in identifying the research problem. Appropriate research objectives were devised after knowing the research problem and questions were formulated.

The research approach is a combination of qualitative and quantitative methods with more emphasis on the qualitative aspects. Data was collected through structured and open ended questionnaires with decision makers, researchers and operational managers. The different institutions involved in resolving land conflicts and parties in conflicts (disputants) were the main target for in-depth interview. Data were sought from the relevant government agencies, tribunals and an NGO. Site inspections of conflict areas were conducted. The units of analysis are the behaviour of disputants as well as the mechanisms that are employed in land conflict resolution. Interpretative and statistical analysis was done on the data collected. This helped explain the preference for a particular justice system. Based on the research findings, conclusions were drawn and recommendations proposed.

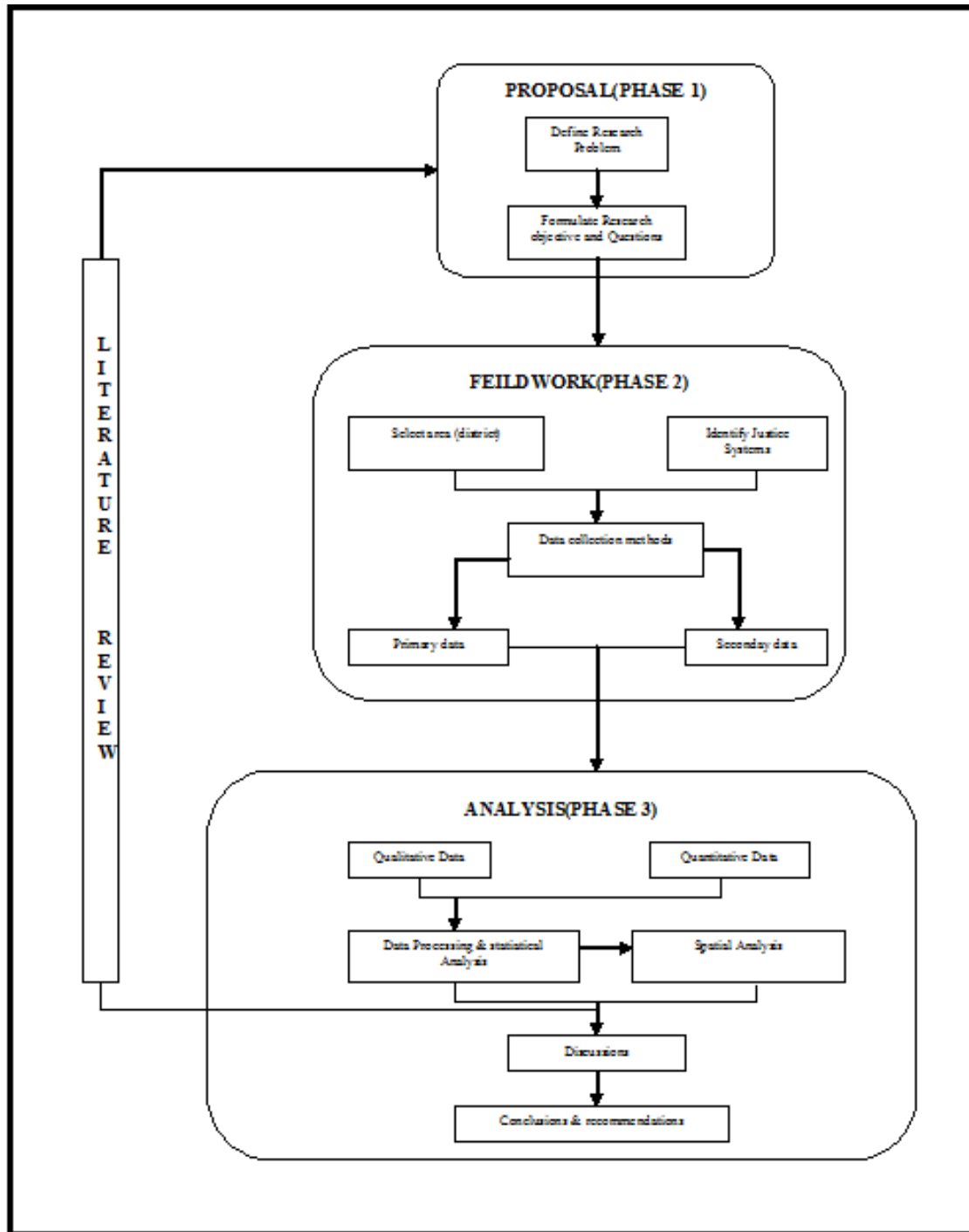


Figure 1-2: Research Approach

1.6. Significance of study

The outcome of the study will be a contribution towards the achievement of understanding better the preferred system with regard to people and conflict type in the resolution of land conflicts.

The study determines

- the type of system that seems to be most appropriate to quickly solve a particular type of land conflict
- which people prefer which systems to solve certain types of conflicts for them
- how long an average conflict mechanism takes to solve a particular conflict.

The above will help the Tanzania government and other governments to put in place appropriate measures so that conflicts can be resolved within a reasonable time.

1.7. Organisation of study

This research study is structured into six main chapters. Chapter one is the introductory part and covers the background, the significance, scope of the study, research questions as well as the structure of the thesis. Chapter two covers the concepts on which the study is based. Chapter three gives an overview of land conflicts and justice systems in Tanzania. Chapter four describes the methodology for the research showing how data were collected and the study area. Chapter five covers the data analysis and discussion of findings. Chapter six has the conclusions and recommendations.

1.8. Limitations/challenges of study

The case study approach adopted by the researcher impelled her to make generalization on the findings in the study area. This was due to the limited time for the data collection and also communication with key persons of the tribunals as well as community members at the ward level. The major challenge was a language barrier. Due to that, progress of work became very slow and as the time for the research was fixed it could not be extended. Not only that, the translators sometimes found it quite difficult to explain issues from Kiswahili to English. People willingly gave information but were much more in Kiswahili.

Proceedings at the municipal and wards tribunals were heard in Kiswahili and rarely in English but recorded in English at the municipal whilst recorded in Kiswahili in case files and registers at the wards. It therefore became difficult to translate the recorded data from Kiswahili to English particularly at the ward level. Hence, less information was gathered at the limited time. There were also situations where key persons with vital information were unable to be interviewed personally by the researcher due to their tight schedules and some could not express themselves in English. Visits to the municipal and ward tribunals for any research needed official letters from the Ministry of land, Housing and Human Settlements (MLHS). The bureaucratic process stole much of the limited time. The letters were very necessary for one's acceptance to the study area. The time of the field work clashed with the host's academic activities. School was in session and students' translators who were engaged needed to attend to their school work in the course of the data collection. This distracted the whole process of data collection and many planned visits were cancelled.

2. Concepts of land conflicts resolution mechanisms

2.1. Introduction

This chapter introduces definitions and general concepts of land conflicts resolution mechanisms. The study is based on three concepts namely land conflict management, alternative dispute resolution, and customary conflict resolution.

2.2. Land Conflict Management

2.2.1. Definitions

In recent years, land conflict management has become a global concern due to the belief that land conflicts in particular have a major impact on people especially the underprivileged and the poor. Conflicts are often said to be unavoidable and in some cases beneficial but the adversarial aspects of conflict can be minimised. They however provide little benefit to any persons involved.

Barringer (1972) defines distinctly between dispute, conflict and hostilities in his conflict model. The key concept of this model is that disputes are regarded as the incompatibility of perceived interests, objectives or future positions whilst conflicts are defined as the pre-hostilities phase and hostilities are prolonged and organized conflict. A shift from one phase to the other demands tolerable accommodations. For instance the shift from dispute to conflict results from one party perceiving the situation as threatening and acting to change the situation. In summary, disputes arise from unresolved grievances and a third party is required by the parties in order to resolve them amicably. The accumulation of sources of tension is a key concept which explains the shift from grievances and disputes to conflict and without any intervention may later progress to violence and hostilities.

In line with this model, Resolve Incorporated and its International Partners (2000) define conflicts as “interactions of interdependent people who see their goals as incompatible and who believe the ‘other’ people are interfering with their efforts to satisfy their interests or values”. Their argument is that if parties fail to reach an agreement on an issue of grievance then one or all of them must allege that a deadlock has been reached and declare a dispute.

Wehrmann (2005) defines Land conflict as “a social fact in which at least two parties are involved, the roots of which are different interests over the property rights on land, the right to use land, to manage land, to exclude others from the land, to transfer it and to have the right to compensation.”. This simply means that it is a restriction or dispute over property rights on land. In this study conflict and dispute are used interchangeably.

Conflict management is defined as “managing issues of conflict through internal structures, policies, procedures and mechanisms with a view to avoid the impasse that results in disputes (where third parties have to be brought in for a resolution) and provides a clear process for managing the resolution

process if conflict leads to disputes” (Resolve Incorporated and International partners, 2000). Conflict management covers various different processes and mechanisms. In general, conflict management involves both conflict resolution and conflict prevention and therefore includes both preventive measures and curative measures (Wehrmann, 2005). In simple terms conflict management is referred to as a multiplicity of mechanisms and institutions for achieving tolerable accommodations (Odametey, 2007).

2.2.2. Systems Approach to Land Conflict Management

Ramírez(2002) provides a conceptual framework for understanding the concept of conflict management with emphasis on land disputes. In his view land conflict involves several and different stakeholders, disciplines and hierarchies which constitute a complex and dynamic interrelationship. Therefore in order to address these complex issues systems approach or thinking which takes a holistic view of the situation and concept mapping are the best options to address the challenge even though there are several approaches, methods and techniques in conflict management. In support of this, Wehrmann(2005) argues that “land conflicts can only be resolved and avoided in the long term if addressed with an integral and system oriented approach”.

The systems thinking approach is described as a useful tool for learning about complex situations and for interdisciplinary research in that it embraces multiple dimensions, hierarchies, actors and perspectives (Churchman, 1971). It also addresses overall patterns and relationships rather than reducing issues to smaller parts. It guides the way we perceive a situation and it is part of the stock of ideas by which we interpret the world around us (Checkland *et al.*, 1990).

Ludwig von Bertalanffy (1968) proposed the general systems theory in the 1940’s and was furthered by Ross Asbby as a reaction against reductionism and an attempt to revive the unity of science which is basically an interdisciplinary scientific field that focuses on complexity in general and in systems as a whole . According to Santander (2006) “general systems theory arises from the necessity to actually unify or integrate knowledge and to view the phenomena in a comprehensive fashion as such it was necessary to develop a concrete theory which could be used in all fields of scientific research”. The general systems theory also makes reference to a collection of concepts, principles, tools, problems, methods and techniques associated with the systems (Klir, 1996)

The concept suggests that “it is necessary to study not only parts and processes in isolation, but also to solve the decisive problems found in the organization and order to unify them, resulting from dynamic interaction of parts and making the behaviour of parts different when studied in isolation or within the whole. Thus the main objective of the general systems theory is the formulation and deviation of those universal principles which are valid for ‘systems’ in general” (Ludwig Von Bertalanffy, 1968).

With regard to the above, it is believed that effective land conflict management can only be achieved if all the different stakeholders, hierarchies, disciplines, actors and interests in the conflict are taken into consideration in a systems thinking approach. Any measure or action which does not look at all the issues as a whole will only yield temporally results which cannot stand the test of time. Wehrmann (2006) identifies other core elements of land conflict management which include the establishment of

a state under the rule of law, functioning constitutional and regulative institutions, good governance as well as psychotherapeutic methods. Wehrmann contents that these must be combined as required and adapted to specific situations in order to ensure long lasting results. In her opinion land management includes conflict prevention as well as conflict resolution.

2.2.3. Psychotherapeutic Measures in Land Conflict Management

Conflicts, irrespective of the type, have some consequences for the parties involved. One of such consequences which can hardly be avoided is the psychological effects on the parties. This arises from the fear of losing in one way or the other. It is believed that in land conflicts psychical effects are aggravated and are sometimes the main sources of the conflict itself. Wehrmann (2006) stresses the fact that the core reasons for land conflicts are the profit maximization or the fear of existence or demand to survive a multitude of actors rather than functional deficits in the land administration and land management systems. In other words, the primary reasons for land conflicts are people's psychical desires and fears as well as their emotional and material needs. It is therefore important that land conflict management and resolution also include methods that will take care of psychical fears and desires of those breaking the law and those profiting from loopholes.

In most developing countries especially in Africa, there is a high dependence on land for both economic and spiritual survival. Conflicts over land are therefore very emotional and usually lead to major psychological effects on the parties involved. Secondly the material desire for wealth and the emotional desire for status are both psychological in nature especially in African societies and additionally contribute to the violation of regulations which lead to land conflicts. In order to arrive at an outcome or settlement which is acceptable and satisfactory to both parties in land conflict management, the application of psychological therapies and methods are very important (Wehrmann, 2005).

Wehrmann further points out that land conflicts like any other type of conflict often end up in vicious circles when the parties stick to their positions and refuse to compromise. This situation unconsciously pushes each of the parties to represent increasingly extreme positions without any regard for the interests of the opposing party. Under such circumstances reality is disguised and the other party is held responsible for all the negative developments and consequences. In such situations, it is necessary that both conflicting parties change their perception of the other in order to pave a way for dialogue and resolution. This change of perception can usually be achieved through psychological approaches or mediation.

Based on the above, the need for psychotherapeutic measures or approaches in land conflict management cannot be overemphasized. There is the need to apply emotional and psychological therapies where necessary in order to achieve a long lasting resolution.

2.2.4. A Conceptual Map of Land Conflict Management

Ramirez (2002) believes that a conceptual map is very important in land conflict management. In his view a conceptual map is often used in interdisciplinary research to organize and display groups of concepts and their linkages. It serves as a guide and also locates the concepts along categories gleaned

from models and concepts in the literature. Ramirez emphasizes that a conceptual map helps to signal which concepts and categories are common and which ones are content specific. Readers are therefore able to locate concepts and categories that have played a role in each particular circumstance. The conceptual map is therefore a systems thinking tool that encourages the user to appreciate the dynamics across the major categories of concepts.

Based on these opinions Ramirez developed the conceptual map of land conflict management shown in figure 2-1 below. According to him the conceptual map was assembled from a number of existing models in literature. This is because no single model that specifically addresses the issue of land tenure and conflict management and resolution was found in the literature. The major categories reflect common categories across different sources of conflict literature but with some modifications. All the concepts interact in a systematic and ongoing manner and are organized along a gradient. Those at the top refer to the more generic categories while those at the bottom tend to be location specific.

The concepts are in two main parts; the substance of a conflict and the process for managing conflicts. Under the first category, the concepts include sources of grievances, levels and phases of conflicts, stakeholders, legal frameworks, institutional/organizational frameworks, legacy (history) and livelihoods. The second category includes conflict management choices, mediation frameworks, BATNA (Best Alternative to a Negotiated Agreement) and ADR (Alternative Dispute Resolution) or ACM (Alternative Conflict Management) concepts. In this category the BATNA is considered as a key concept and “the better your BATNA, the greater your power”. The notion is that stakeholders enter into negotiation when it is seen as the best alternative to what they could expect to obtain “away from the bargaining table”. Stakeholders therefore focus on how to increase their power in negotiation. In other words power in negotiation also stems from having alternatives.

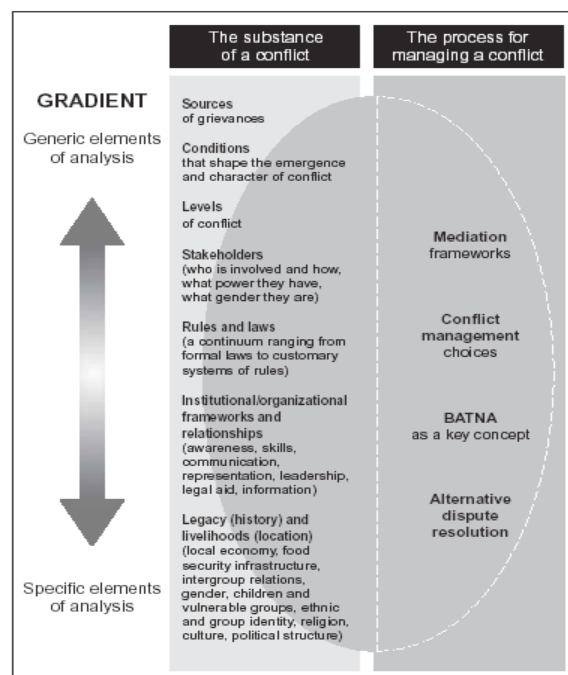


Figure 2-1: A conceptual map of conflict management
(Source: Ramirez 2002)

2.2.5. Land Conflict Management Guidelines

There are various and different processes as well as mechanisms in conflict management. Generally, conflict management involves both conflict resolution and conflict prevention and therefore includes both preventive measures and curative measures (Wehrmann, 2005). The resources available such as time, skills, technical or legal capacity and finance may determine the approach to conflict management. Conflicts and disputes place parties in opposition to each other and if they are not avoided, a form of power play often comes into effect. This can be handled either proactively in an attempt to get the “upper hand” or defensively and reactively. Neither option necessarily gives much attention to the interests of the parties. An effective conflict management system encourages all parties to consider their interests first and in an equitable way. This provides the opportunity for reaching mutual understanding.

Hoffman (2003) identifies avoidance, power, rights and consensus approaches as the four main approaches to dispute resolution. Avoidance approach is where one or both parties avoid resolving or even recognizing the conflict issue at hand. A power approach is where the parties determine who is more powerful through a focus on each party’s ability to coerce the other into agreeing on an outcome. Power based approach is aggressive with the result of withholding benefits. A rights approach is where the focus is on a common or independent standard of justice and fairness in determining which party is right. Right based approaches are litigious in nature and need to be adjudicated by the court or by arbitration. A consensus approach which is based on interests in that the focus is endeavouring to reach a compromise that is based on the interests of all parties concerned. Interest based approaches allow for mediation, negotiation and consensus building. Customary mechanisms can be used here depending on the circumstances. It must however be mentioned here that a consensus based approach is not always feasible or even appropriate.

Hoffman, however, categorises dispute resolution methods into four main groups known as adjudicative, arbitative, negotiated or mediated and hybrid forms. “The extent to which the parties have control over two key factors (process and content) determines the category of the dispute”. Table 2-1 shows a comparative overview of dispute resolution methods based on generally accepted criteria. Figure 2-2 summarizes the guidelines and steps for selecting an appropriate dispute resolution method in order to achieve effective conflict management and dispute resolution. It must be emphasized that conflicts need to be analyzed before any intervention or resolution method is adapted.

Table 2-1: Comparative Overview of Categories of Dispute Resolution Methods

Methods/ criteria	Adjudicative Method	Arbitrative Method	Negotiation Facilitation Method	Hybrid Forms	Customary Mechanisms
Cost	Generally higher	Generally high	Generally lower	Generally lower	Generally lower
Speed	Generally slow	Generally slow	Generally faster	Generally faster	Generally slower
Finality	Result subject to appeal or review	Result subject to review	Result final if successful	Result final if successful	Result final if successful
Flexibility of results (no. of possible outcomes)	Two outcomes, win or lose	Two outcomes, win or lose	Plurality of possible outcomes	Depends on the method used	Depends on the method used
Equitability	High (product of due process plus application of legal principles)	Potentially High depends on the Arbitrator and process used	Objectively variable Subjectively high if bargaining positions are comparable	Depends on the exact method	Potentially High depends on the process used
Relationship Effect	Generally destructive	Generally adverse	Generally positive	Depends on the stage at which dispute is settled	Generally positive but also depends on the stage at which dispute is settled
Human factors	Adversarial, Traumatic and Public	Private but still adversarial	Less traumatic	Depends on the stage at which dispute is settled	Public (within the community) Less adversarial
Public image (Reputation)	Can be adverse even if successful (win)	Same results as litigation if results are publicized otherwise negligible	Effects can be positive even if parties compromise (publicized or not)	Effects better than litigation but depends on method used and publicity	Depends on method but generally better than court proceedings.

(Source: Hoffman 2003)

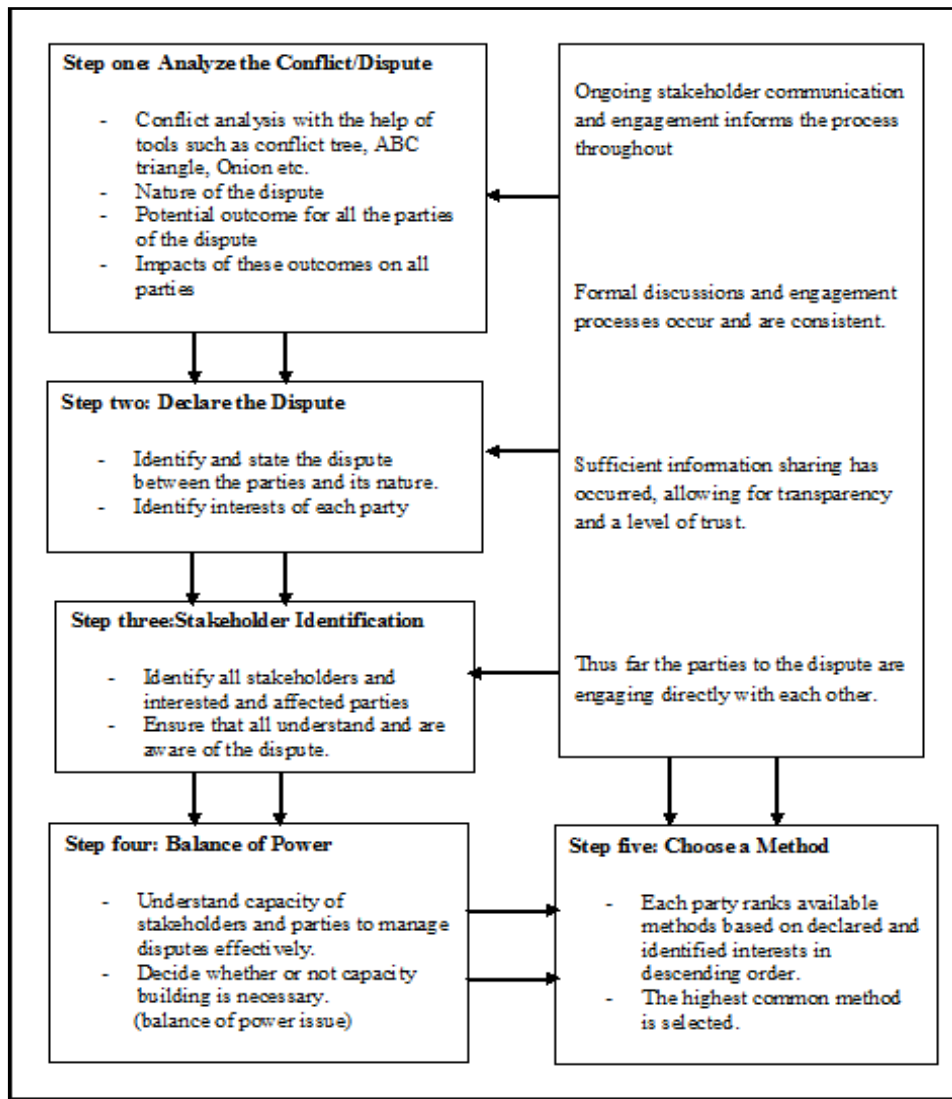


Figure 2-2: Guidelines and Steps for Selecting an Appropriate Dispute Resolution Method
(Source: Hoffman 2003(modified))

Conflict analysis is “a practical process of examining and understanding the reality of the conflict from a variety of perspectives (Fisher *et al.*, 2000)”. They emphasise that the main aim of the analysis is fivefold:

- To understand the background and history of the situation as well as current events.
- To identify all the relevant groups involved, not just the main or obvious ones.
- To understand the perspectives of all these groups and to know more about how they relate to each other
- To identify the factors and trends that underpin conflicts and
- To learn from failures as well as successes.

In their view, conflict analysis can be done with the help of a number of simple, practical and adaptable tools and techniques such as the ABC triangle, the onion, the conflict tree, conflict mapping and many more. Some of these are shown in Figure2-3. Conflict analysis is not a one-time exercise but

it must be an ongoing process as the situation is developing so that the necessary actions can be adapted to the changing factors, dynamics and circumstances.

The ABC triangle: This analysis is based on the premise that conflicts have three major components. These are the context or situation, the behaviour of those involved and their attitudes. These three factors influence each other. A separate ABC triangle is drawn for each party and the key issues related to their attitudes, behaviour and the context from the viewpoint of each party is listed and compared noting similarities and differences.

Conflict Onion: This tool is based on the analogy of an onion and its layers. The outer layer represents the positions that are taken by the parties publicly. Underlying these is their interests whilst at the core are the most important needs they require to be satisfied as shown in figure 2-3. Again this analysis must be carried out for each of the parties involved. The point is to show graphically the possibility of peeling away as many as possible of the layers that build up as a result of conflict, instability and mistrust in order to try to meet the underlying needs that form the basis of people's individual and group actions (Fisher, Ury et al., 2000).

Conflict Tree: Fisher et al.,(2000) point out that this tool is best used within groups, that is, collectively rather than as an individual exercise. The conflict tree helps an organization, group or community to identify the issues that each of them considers as important and then categorize them into three namely: core problems which is represented as the trunk of the tree, the causes represented as the roots and the effects that have resulted from this problem represented as the branches and the leaves in figure 2-3. After this categorization the group can then identify the most important issue to address.

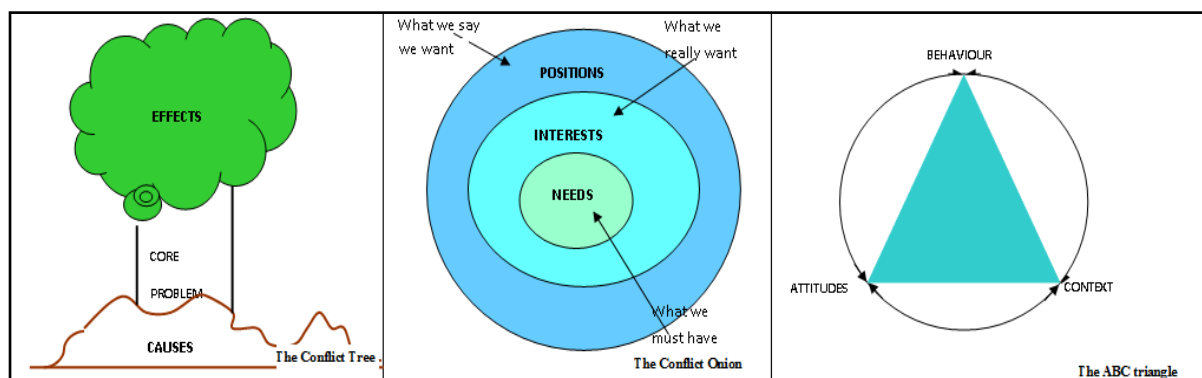


Figure 2-3: Conflict analysis tools

(Source: Fisher et al. 2000)

2.2.6. Land Conflict Resolution and Land Administration/management

Wehrmann (2008) recognises the fact that conflict resolution often needs to be accompanied by technical tools. These tools ranges from securing property rights and land administration over land use planning and land adjustment to state land recovery and the recognition of customary land tenure and administration.

According to Wehrmann, Land administration and management is as one of the two main technical tools for land conflict resolution. These include:

- **Clarifying, legalising and securing property rights: the key to any kind of land conflict resolution.** This is a crucial step in resolving any land conflict by analysing the types of property right, be it documented formal rights or perceived rights, on the dispute land. These rights are to be made transparent, documented neutrally and objectively evaluated, appraised and secured. This will serve as a fair basis for the parties in dispute to discuss solutions including compensation of one of them if necessary. In informal settlements where there is a risk of being evicted additional measures may be taken. They are the registration of the entire informal settlement as common property or trust land, a moratorium to stop forced evictions, the distribution of occupancy licences to the settlers and a step-wise increase in tenure security from intermediate to freehold after 5-10 years.
- **Surveying and land registration: to solve boundary conflicts and to protect against illegal expropriation.** Wehrmann admonishes the fact that though surveying, titling, and registration are not a panacea for land conflicts as they create costs that are not affordable for the poor, certain land conflicts need survey and entry into the land registry or cadastre. Wehrmann further states that ‘especially in case of boundary conflicts between neighbours, clans and administrative units surveying should accompany the boundary-setting’. Land registration is considered generally important for conflict prevention and it is noticed that multiple sales of land, state concessions on private land and sales of another’s land mostly occurs when land is not registered. In this regard surveying and registration should follow the dispute settlement of such conflicts so as to secure the agreement and prevent a renewal of the conflicts (ibid).
- **Land readjustment: an alternative to evictions.** Land readjustment can help in the process of redistribution if there are competing or overlapping interests on the same piece of land. Land sharing and land pooling are tools to prevent evictions. Land sharing is a compromise between parties so that one (landlord) does not evict the other (squatter) on his private land but to release part of the land to him which still leaves part of the property for use. Land pooling, generally from state lands where occupied lands are vacated by squatters to gain land for public purpose or protection against disaster, is suitable for in-situ upgrading and can be combined with the legislation of informal settlements.
- **Land use planning: to mediate between conflicting land uses.** Land use planning is also a tool which can be used in conflict resolution as well as conflict prevention and only works if the conflicting parties are involved. Examples are involvement of customary land administrators or representatives of informal planned settlements in the renewal of existing formal land use plans, participatory planning in a neighbourhood, etc.
- **Proper state land management: to recover state assets.** “Recovery of state assets is a curative measure aiming to regain lost land”. Other measures such as land inventory, ethical codes for public officials etc are rather preventive tools (Wehrmann, 2008).

Others are: recognising customary land tenure and administration to settle land conflicts due to legal pluralism and irregular customary land administration; and public and private investment in the housing market to reduce demand for informal land acquisition and to avoid forced evictions.

2.3. Alternative Dispute Resolution Systems(ADRS)

2.3.1. Definition of ADRS

Alternative Dispute Resolution Systems (ADRS), or Alternative Dispute Resolution Mechanisms (ADRM) as they are sometimes referred to, are currently extremely popular in justice sector reform programs throughout the developing world. ADRS have officially been introduced in India, Bangladesh and various Latin American and African states in recent years (Panel Reform International, 2001). They are primarily seen as a method for relieving the crisis of overburdened state courts facing impossible backlogs of unresolved cases. The goals of ADR have been described among others as relieving court congestion, reducing undue cost and delays, enhancing community involvement in the dispute resolution process, facilitating access to justice and providing a more effective resolution of dispute. More positively they are also advocated as offering a cheaper faster and more accessible form of justice for ordinary citizens, particularly the rural and urban poor who do not have access to state justice either because of lack of resources, social exclusion or lack of physical access (distance).

ADR is defined as a “ term generally used to refer to informal dispute resolution processes in which parties meet with a professional third party who helps them to resolve their dispute in a way that is less formal and often more consensual than is done in the courts”(Sprangler, 2003). According to Fisher et al.,(2000), ADR represents several dispute resolution processes and techniques which while believed by some to be outside the traditional mainstream of state jurisprudence, have gained acceptance among both the general public and the legal profession. The term “alternative” is used basically because ADR is seen as an extra legal supplement to state sponsored dispute resolution. As explained by Crook (2002) , it presents another opinion on how disputes can be resolved outside of the official judicial means. Ramirez (2002) describes ADR as a ‘win-win’ alternative which is an example of joint decision making approach to dealing with social conflicts.

Daniels and Walker (1997) are of the view that ADR embraces value differences and strategic behaviours of parties and also focuses on their positions and interests. In their opinion, one of the main characteristics of the concept is that it is ordinarily voluntary and parties must willingly agree to resolve the conflict by a particular process. They are also of the view that ADR encompasses several processes such as mediation, arbitration, negotiation, conciliation, facilitation, ombudsman and many more.

According to Lederach (1997), ADR provides an avenue for situations where customary systems cannot provide answers on their own but where both parties are reluctant to use formal external approaches. He observes that ADR follows a set of principles that suggest that more respect will be given to customary rules even if the customary mediation system is not being used, and to social networks and cultural norms that are important in a society. Thus ADR is culture specific whereby it is paramount to work within oral or cultural norms of communication and social behaviour.

Hendrickson (1997) emphasizes that ADR is about reconciling traditional and modern law. It focuses attention on the differences between positions and interests. According to him whilst position is something a party has to decide upon, interests are made up of needs, desires and concerns that

motivate people. It is generally believed that negotiation works best where interests are involved as there is always room to explore alternatives, especially when particular needs and interests may be shared among the parties. ADR approaches therefore place emphasis on finding options that are acceptable to both parties. It is also less intrusive, less costly in monetary and social terms than any sort of third party decision making.

One of the major issues with the concept of ADR is that it is used in a variety of broad and often confusing ways. Some define it narrowly as an “alternative to court litigation” which involves resolving disputes through the assistance of a neutral and impartial third party (Brown *et al.*, 1998). ADR is normally distinguished from “arbitration” where the arbitration is formal and binding, a kind of legally recognized adjudication. Thus the term emphasizes on the voluntary and the informal nature as well as the search for settlement instead of adjudication. Others, particularly advocates for justice reform, use the term to refer to all “non state justice systems”, that is all systems not enforced by the state. The report of the Penal Reform International (2001) however identifies “informal justice” with “non- state” thereby confusing two separate ways of differentiating a dispute settlement procedure which are state/non-state and formal/informal.

The rationale here is that not all state supported or state enforced systems are formal in the sense of using institutional codes and procedures, nor do they all involve binding or imposed settlements. In the same way not all non-state systems are informal for instance many traditional or customary courts in Africa are outside the state framework but at the same time are highly formalized and regarded as binding. Nyamu (2003) prefers the term ‘non-formal’ to all institutions which apply codes or settlement practices other than the technical legal rules of the state system for example customary law and popular or community norms. These institutions may or may not be state sponsored or even state created. It is therefore better according to Crook (2005), to dispense with the state/non-state distinction as a definition and rather concentrate on the kind of formality and its aims particularly the difference between mediation and agreed settlement on the one hand and binding adjudication on the other. Thus “customary ADR is justifiably considered as a form of ADR on the basis of the procedures they use and the kind of settlements they seek, which are based on values different from those applied in the state courts” (ibid).

2.3.2. General Characteristics of ADR

ADR is believed to have many characteristics and good qualities. ADR as a method of resolving conflicts in general and land conflicts in particular has several advantages. Alden Wily (2003) identifies the basic characteristics or features of ADR as emphasis on participatory facilitative forms of conflict resolution and complete confidentiality of the process, neutrality on the part of the facilitator, voluntary participation of the parties, preservation of the rights of parties to resort to other available avenues if ADR fails and coordination between all stakeholders in the resolution of the conflict. In addition to these primary features, the following characteristics in comparison to litigation (conflict resolution through the courts) are also obvious according to (UNITAR, 2006):

Process: Whilst litigation is a public process which takes place in courts (public premises) and proceedings are open to the general public except where it is held in camera, ADR is private and does not take place in a public place. It avoids adverse publicity of the parties and only persons connected

with the dispute are permitted to be present during proceedings. Unconnected persons in exceptional cases can be permitted by the parties to be present at the hearing.

Formality and flexibility: Legal proceedings are usually conducted in accordance with the procedures prescribed in the laws of the country. They are very formal and inflexible and every minor omission may render the outcome as unacceptable. In most ADR however the parties have the right to decide on which procedure to adopt and can prescribe their own procedure. The procedures are therefore usually informal and flexible.

Selection of adjudicators: Whilst parties in litigation have no say in the selection of the judge who is appointed by the state and may not even know the judge before whom the case may be fixed for decision, in ADR, the arbitrator or mediator is not appointed by state but by the parties to the dispute. The only requirement is that both parties have confidence in the person and accept the person appointed. Usually such persons are not changed in the middle of proceedings. They start the process and end the proceedings.

Qualification: The qualification of judges in litigation procedures are prescribed by the state. They are usually, qualified lawyers with practical experience in legal practice for some number of years. They decide on all kinds of cases coming before them. In ADR, the parties have a right to prescribe any qualification, technical or otherwise, which they consider appropriate depending on the nature of the dispute.

Choice of venue: Litigation has to be initiated in the court of law. In every country and in every city the courts have a definite place of working. They are located at definite places in the country. They cannot move from one place to another. An aggrieved person has to go to the place where the courts having jurisdiction over him are located in order to have his dispute resolved. In ADR however, there is no fixed venue. The parties have a right to decide the venue for resolution. They can select any place which is convenient for them and the venue can be changed in the course of proceedings with the consent of the arbitrator and all parties involved.

Possibility of appeal: The decisions given by courts are generally appeal able before the superior courts. If a decision is given by a lower court an appeal against it can be initiated in a higher court and this can be expensive and time consuming process. In most ADR processes, there is no distinct hierarchical order for appeal; in fact most do not give room for appeal at all. For instance the arbitration laws of most countries provide that an award given by an arbitral tribunal is final and binding. No further appeal shall lie against the award of the arbitrators except in very limited circumstances and on specific grounds. In Ghana for instance, “customary arbitration” is regarded as binding if it meets the agreed criteria and can therefore be treated as res-judicata (a matter already settled in court which cannot be raised again), if one party tries to challenge the decision in court.

Nature of decision: The laws of many countries especially those who follow common law system provide that a decision given by the court is binding on subordinate courts. Thus these courts are

bound to follow and apply the same interpretation of law in similar cases pending before them. On the other hand the decision of an ADR proceeding is binding only in the case in which it is given and on the parties involved in that case. It does not constitute a precedent and is not generally published.

2.3.3. Different Methods/Approaches of ADRS

Herrera *et al* (2006) classify conflict resolution strategies or methods into two main groups, consensual and non-consensual methods. Strategies that require the intervention of a recognized formal or informal third party, in charge of taking a final decision, are considered non-consensual (formal methods). The final resolution in these methods depends entirely on the third party and the validity and enforcement depends on his or her authority, power and legitimacy. Adjudication and arbitration are examples of this category. The main strength of non-consensual methods is that the rules that regulate the conflict are clearly stated from the beginning.

On the other hand, consensual methods use a consensus building approach that involves community consultation, negotiation, facilitation, conciliation or mediation. The methods work by bringing all the stakeholders into the process as early as possible to work towards an agreement. Consensus-building procedures can be effective in resolving major multiparty, multi-agency, and multi-government conflicts. Herrera *et al* (2006) emphasise that consensus building in conflict resolution is more sustainable where legal frameworks support community decision making and the management of land resources. This means that there must be policies and enforceable regulations in support of consensus building in conflict resolution, accompanied by laws that protect the community's rights to resolve the conflict.

Consensual methods are most commonly adopted in ADR procedures. Some identified platforms are the Mini Trial, Dispute Resolution Boards, Traditional Courts (applying customary law), Religious Courts, Informal Settlements by State Officials, State Sponsored Non- Court modes of settlement as well as Court Annexed ADR systems agreement (Odametey, 2007).

Alternative dispute resolution mechanisms or methods are considered to be alternatives to arbitration and litigation because they are not adjudicatory or judicial in nature. It is therefore argued that in ADR mechanisms, there is no person or body or authority which hears and decides the dispute between the parties. The methods attempt an agreement between the parties through persuasion, convincing and telling both parties the strengths and weaknesses in their respective approaches. They explain to each party what they stand to gain and what they stand to lose if they agree to the mutually agreed solution to the dispute. They are mostly in the nature of bringing a mutually agreed solution by the parties to the dispute. The main characteristic of these approaches is that none of them has the objective of reaching a win-lose position. The purpose is to help stakeholders understand each other's position and find together a possible resolution to the conflict. This strategy makes stakeholders responsible for the resolution of their own conflicts

The methods of negotiation, facilitation and conciliation are very common in ADR procedures as said earlier and are sometimes considered similar and interrelated. The methods are now discussed in more detail as shown in figure 2-4 below. In the figure, S1 and S2 represent the parties and M, the third party (mediator or arbitrator).

The Process of Negotiation

Negotiation is described as “a conflict resolution method freely chosen by the stakeholders, in which they manage to meet and personally find a joint solution to their conflict” (Herrera *et al*, (2006). Thus Negotiation is done directly between the parties with or more often without a facilitator. Negotiations are typically private and controlled by the parties themselves. The decision making authority lies directly with the parties as well as the content, structure, timing and outcome.

In negotiation, the desired objective is the agreement, which may or may not be enforceable under formal and or customary law. If an agreement cannot be reached, the parties will need to move to another form of conflict resolution involving a third party. Negotiations are usually faster and less expensive than other methods that require third party involvement. To be successful, the negotiation process must lead to an agreement that is considered truly legitimate by all parties. This is because if one or more stakeholders feel that their needs and interests are not protected by the agreement, they will not be interested in respecting it. Negotiation can be difficult if there is a serious imbalance of power.

In figure 2-4, S1 and S2 represent the parties and their respective powers, there is no third party mediation (M). Negotiation would probably be inefficient if the power of the stakeholders is not balanced (*ibid*). The mediator in a negotiation process is only an observer. He or she may be responsible for ensuring that the parties agree to come to the negotiation table but during the process itself, he or she is not responsible for the process or outcome of the negotiation.

The Process of Facilitation/Moderation

“Facilitation is the intervention of a neutral third party whose duty is to assist the stakeholders before and possibly during the conflict resolution process. According to Herrera *et al* (2006), the facilitator promotes communication between the actors, but under no circumstances is he allowed to influence the decision”. Facilitation is also referred to as moderation. A facilitator’s focus is on revealing motivations, clarifying issues, moving towards consensus, and evaluating the process. The main difference between a conciliator and a facilitator is that the conciliator needs to address the substance and content of the conflict issues and work on possible solutions while the facilitator steers clear of decisions on substance and content and works on the process instead. Again whilst the conciliator has to re-open channels of communication between the stakeholders and sometimes even create them, the facilitator uses networks that are already in existence and develops these into the most appropriate tool for conflict resolution (*ibid*).

Most of the facilitator’s role needs to be developed before the conflict resolution process takes place. The main duty of the facilitator is to give the stakeholders all the support they need to find a common starting point for the dialogue. He or she could also help in the analysis of the situation and have separate sessions with each of them to prepare them for mediation. Thus the facilitator merely hosts the parties and encourages them to continue negotiating in a neutral welcoming environment Shamir (2003). Figure 2-4 shows the role of the facilitator (M) and is simply to help and facilitate a dialogue that already exists between the parties.

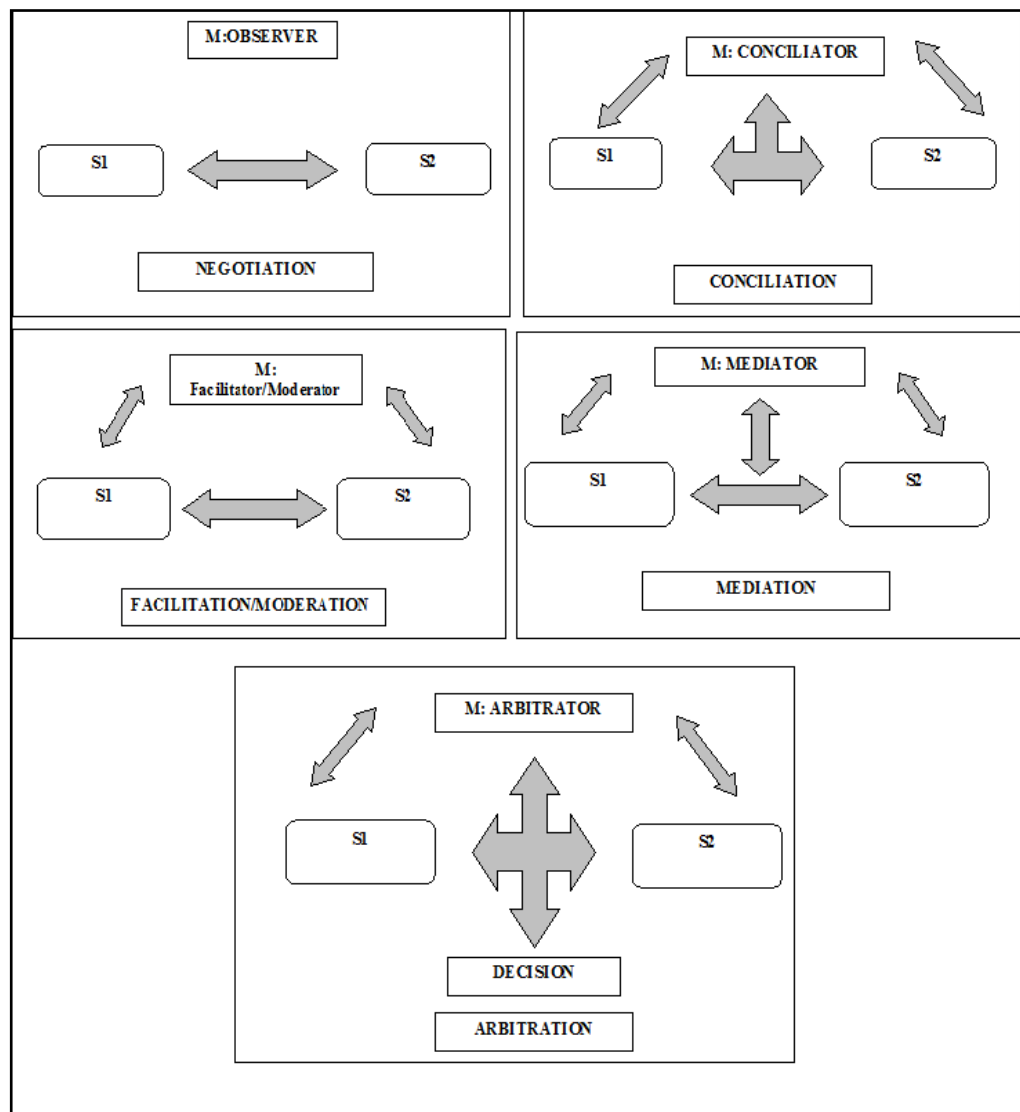


Figure 2-4: Common processes in ADR mechanism
(Source: odametey 2007)

The Process of Conciliation

Herrera et al (2006) define conciliation as “where a neutral party tries to engage the stakeholders separately in a network to promote communication and help them to jointly choose a conflict resolution method”. The process of conciliation is based on negotiations between the parties. The conciliator tries to resolve the dispute on mutually acceptable terms between the parties. He negotiates the dispute with parties separately. If no settlement is reached, the process is said to have failed. In conciliation the number of conciliators is not limited. They can be one or more since they do not give any decision but only try to resolve the dispute by mutual consent and agreement between the parties unlike in arbitration where the number of arbitrators must be odd so that in the case of a difference in opinion, the decision will be given by the majority of arbitrators or the presiding arbitrator.

Conciliation is normally used when there is no communication between the parties and none of them can envisage the possibility of an agreement. The conciliator may be brought in by one of the parties or a third party interested in the resolution of the conflict. The process of conciliation is dependent on the agreement of the parties (UNITAR 2006). The parties may have many options and if one option is

not acceptable, other options can be chosen. The process is dependent on the principle of give and take. The parties can increase or decrease their demands or requirements depending on the circumstances or stage of negotiations. Again the conciliation process is a process of negotiations, mutual understanding and agreement, a hostile attitude between the parties is generally non-existent. Their relationship remains cordial and respectful. It must be noted that conciliation takes place before the conflict resolution process.

The conciliator's role is very delicate. He or she will have to listen to both parties, clarify what lies behind their sometimes radical points of view and make them understand that there are other legitimate interpretations of reality. Timing, knowledge of the context and deep respect for the cultures of each stakeholder are extremely important in the conciliator. In Figure 2-4, the parties have the option of communicating with the mediator, who is in charge of opening and maintaining a channel of dialogue between the parties.

The Process of Mediation

Mediation is defined by Shamir (2003) as “a process that employs a neutral or impartial person or persons to facilitate negotiation between parties to a dispute in an effort to reach a mutually accepted resolution” Herrera et al (2006) describe it as “the intervention of a neutral third party (who may have previously acted as conciliator or facilitator) with no decision making power, whose duty it is to follow the entire negotiation process, improve communication between the parties, and help them reach the most appropriate resolution”. The objective of the intervention is to assist the parties in voluntarily reaching an acceptable resolution of the conflict. Mediation can be said to be a process which is similar to negotiation and facilitation. It actually builds on these processes.

As already pointed out, mediation is an assisted and facilitated negotiation carried out by a third party. Mediators are usually hired, appointed or volunteer to help in managing the process. They should have no power to render a decision. They only have control over the process but not over its outcome. The mediator has multiple role and these include helping the parties think in new and innovative ways, to avoid the pitfalls of adopting rigid positions instead of looking after their interests, to smooth discussions when animosity between the parties render the discussions futile and in general to steer the process away from negative outcomes and possible breakdown towards joint gains.

Mediation has become a very important and viable alternative to adjudication and arbitration in the legal system. It is used extensively in labour disputes, family, business and commercial disputes. Mediation is a voluntary process. The parties must agree to the process and have the power to control the content and outcome. The parties and or the mediator have the freedom to leave the process at any time. In some countries however, there are laws of mandatory mediation as a way to encourage the parties to the dispute to use the mediation process as a preferred way to resolve disputes. According to Herrera et al (2006), “For example in some contexts, certain labour conflicts or family law conflicts require a mediation attempt before going to court. When a contentious land reform is implemented, compelling mediation first for boundary conflicts or claim conflicts may relieve the court of a large number of potential cases that the court has neither the expertise nor the capacity or time to solve. Mediation might also be required when systematic registration occurs and boundaries are conflicting”

Unlike the process of facilitation, the mediator plays a more active role, he does not only facilitates the process but also designs the process and assists the parties to get to the root of their conflict, to

understand their interests and reach a resolution agreed by all concerned. In figure 2-4, the mediator (M) has the most significant role in the mediation process. He has the power to intervene in every stage of the process, from the beginning when he may have to act as the conciliator through the dialogue to the final decision. Mediation just like the other methods of ADR has the advantage of being flexible, informal, confidential, non binding in nature, makes savings on resources and ensures maintenance and often improvement of the relationship.

Thus mediation has a special advantage when the parties have an ongoing relationship that must continue after the dispute is resolved. This is due to the fact that the agreement is always by consent and as such the parties have no reason to feel that they are the losers. It is therefore useful in family relations, land disputes between neighbours and in labour relations amongst others.

The Process of Arbitration

Arbitration is one of the most commonly adopted methods for the resolution of disputes. It can be a very simple method but can also be complicated. It can be adopted in simple as well as complex cases. Arbitration is a very informal procedure for the resolution of disputes but in some cases can also be a rigid, cumbersome and lengthy procedure. David (1985) defines Arbitration as “a device whereby the settlement of a question which is of interest for two or more persons is entrusted to one or more other persons”. He points out that, the arbitrator or arbitrators derive their powers from a private agreement, not from the authorities of a state, and are required to proceed and decide the case on the basis of such an agreement.

In arbitration the adjudicator, called arbitrator(s) hears the parties and gives his decision on the dispute. Arbitration as one of the methods of ADR has all the advantages of ADR. It renders justice very fast. The parties need not waste a lot of time, energy and man hours. Again Arbitration is less expensive; the parties have a choice in the selection and appointment of the arbitrator and can also hold the hearing at any place convenient to them. Herrera et al (2006) describes arbitration as “a process in which a qualified third party listens to the facts and arguments presented by the stakeholders or their representatives and renders a decision”. Arbitrators are usually substantially trained in legal matters and their decisions may or may not be binding, depending on previous agreements between the parties. It should be kept in mind that arbitration is litigious in nature even if its formality depends on the choice of the parties and cases may even be presented through legal representatives. UNITAR (2006) looks at two types of arbitration. They are Ad hoc Arbitration and Institutional Arbitration. Ad hoc Arbitration is where the rules and procedures of the arbitration are decided by the parties when a dispute arises. This has the advantage of greater flexibility and lower costs. Institutional Arbitration is where the parties use the rules and procedures of an existing arbitration. Advantages of this type include less risk for any of the parties involved and less administrative work for the parties.

For arbitration to be effective, the structural and functional aspects of the administrative bodies involved in the resolution of the conflict must ensure equity and efficiency. They should be transparent, accessible and inexpensive to use. In addition the rules concerning evidence should be flexible enough to allow for oral testimony and conflicting written records. In cultures where customary law and formal law co-exist, arbitration of land conflicts may occur in between these two systems, in local land administration offices with local land administrators as arbitrators. The advantage of having local land administrators as arbitrators is that they generally have the required local and legal knowledge, speak the local language and have a professional link to land

administration. It can therefore be concluded that arbitration as a conflict resolution method, represents the borderline between formal and alternative conflict resolution strategies.

The aim of arbitration is, among others; to streamline or avoid the litigation process, provide for a final result, reduce the costs associated with presenting a case in a civil court and provide a flexible method. As already mentioned there are other methods apart from arbitration which are equally effective and efficacious in dispute resolution, depending on the circumstances of the case. Most of the methods discussed above are recognized in international circles. These other methods are however not substitutes to arbitration but rather a prelude to arbitration. They are usually tried first for resolution of a dispute and if they are unsuccessful, then the dispute is referred to arbitration. In effect arbitration is the last and final resort for the resolution of every dispute that remains unresolved by any other method of ADR. In figure 2-4, (M) acts as the arbitrator(s). His role is to adjudicate and come out with a decision. He is required to listen to both parties, study the evidence and documents if any and also cross examines the parties and their witnesses in order to come out with a decision. He controls the process, content and outcome of the conflict.

ADRS may be designed to meet a wide range of different goals. Some of these goals are directly related to improving the administration of justice and the settlement of particular disputes. Some however are related to other development objectives such as economic restructuring or management of tensions and conflicts in communities.

It is argued that lack of authority and enforceability of decisions as well as contradictions in norms and national laws constitute major drawbacks to the ADR concept. Odametey (2007) is of the view that these issues can be easily addressed because customary systems for instance are usually dynamic and with some effort and assistance from the state they can serve as positive components of the legal reform in most developing countries. The objective of promoting ADR is not to use it as a replacement for the court system but as a viable alternative (ibid)

2.4. Customary Conflict Resolution

The customary conflict resolution system which is sometimes referred to as the indigenous justice system can be generally described as a form of arbitration with a conciliatory character built into it. The arbitrators are the customary elders and the main objective is to maintain harmony, cohesiveness and unity in the community. Even though it employs methods such as conciliation, mediation and facilitation, and the final objective is to achieve a satisfactory settlement, it differs from other ADR options in that a decision is declared by the arbitrators at the end of proceedings and this decision is binding on the parties even though they can appeal to the decision in a higher customary court. Another peculiar characteristic of the system which differentiates it from other ADR systems and the state courts is the application of some psychological measures in dispute resolution. Apart from the material issues, they also deal with the spiritual implications, emotions and non verbal communication through practices such as purification, pacification or making reparations. These are referred to as healing effects and are considered important for the mental and spiritual rehabilitation of victims as well as perpetrators.

2.4.1. The Origin and Description of the Customary Conflict Resolution System

Each community resolved their conflicts in one way or the other before the emergence of nation or state system and the court system. In such conflict resolution processes, the victim as well as the offender or their representatives were present. The community as a whole was seen as a secondary victim and played its role in the transformation and reconciliation process. After the emergence of the state and the court system, some communities especially in Africa and Asia still preserved their right to resolve their conflicts with little or no interference from the state. All kinds of conflicts ranging from interpersonal, tribal, land and family disputes can and are resolved through customary mechanisms.

The customary conflict resolution processes are typically based on consensus building where discussions are open and where information is shared and clarity sought. Community authorities such as elders are often the mediators. Alternatives to elders are the chiefs, women's organizations, local institutions and professional associations. Customary conflict and dispute resolution mechanisms use local players and traditional community based judicial and legal decision making mechanisms to manage and resolve conflicts. This is achieved through internal or local structures without resort to state infrastructure such as courts or police. The mechanism is applicable within or between communities on issues such as land ownership rights, communal grazing, water access and usage, fishing rights and other issues of day to day living.

Hoffman (2003) notifies that an elder's guidance usually means no loss of face and the process is built on principles of unity, on shared responsibility and involvement and on dialogue between the parties in conflict. The chief and elders constitute the court and as such may interpret evidence, impose judgment, and manage reconciliation. Direct confrontation is usually carefully avoided and although the process may be time consuming, violence and high costs are often effectively avoided. Indigenous conflict mitigation mechanisms can effectively address smaller or local disputes, preventing escalation into larger conflicts.

Crook(2002) resolution of disputes especially land related disputes, arising from customary land tenure is usually done through customary conflict resolution or indigenous dispute settlement system. Under this system it has often been the responsibility of the traditional authorities to resolve conflicts in the community. Success of achieving an amicable solution depends to a greater extent on the trust and loyalty of the people for their traditional authorities and the settlement procedure. There are times when the decisions are either not accepted, ignored or are not enforceable. There are also times when the disputes are withdrawn and taken further to higher traditional institutional structures or the state courts to find lasting solutions.

The traditional justice system which is also referred to as the customary conflict resolution mechanism has provided an alternative to the formal courts over the years. The system use traditional structures and cultural principles to develop and apply their system of justice and social control that seeks to curb anti social behaviour and create a more positive and supportive environment for the community to function effectively.

2.4.2. The Essential Features of the Traditional/Customary Justice System

Traditional societies in most African countries hold (used to hold) the right to political, economic and social self-determination including a wide range of autonomy and the maintenance and strengthening of their own system of justice. It is obvious that there is no singular model of the indigenous justice system that will suit the circumstances of all communities. The structure therefore varies from community to community. The system usually makes use of ADR methods such as arbitration, mediation, reconciliation, facilitation etc. There are however a number of essential features which is common in most customary justice systems. Owusu-Yeboah (2005) points out some features which include the following;

Panel of adjudicators - disputes are usually heard by a panel of adjudicators who are predominantly male. The adjudicators are people regarded as the repository as well as custodians of traditional wisdom, knowledge tenets, cultural norms and values which they bring to bear on the delivery of justice in the community. The advantage in the composition of the panel is that since they are all members of the community, they could be privy to the facts of the dispute long before it officially comes to their attention. They may also be aware of the origins and underlying causes of the dispute. Such information could prove vital in handling the dispute objectively and with much understanding of the issues.

Cost of adjudication – The cost of adjudication is very minimal. For example in Ghana the person who lodges the complaint at the chief's palace is made to pay a token fee whilst the other party is also asked to pay the same fee. At the conclusion of the case the guilty party forfeits the amount paid whilst the innocent party gets a refund of his money. Monetary considerations are however not so important and can be waived by the panel. Additionally, the traditional courts are located within the community and parties need not incur travel costs. Also, individuals are not represented by councils and so no costs are incurred for retaining council.

Conciliatory overtures of the system- The non adversarial and conciliatory character inherent in the traditional justice system is quite evident. It succeeds in maintaining harmony, cohesiveness and unity in the community. The structure of traditional societies depicts a network of relationships intricately woven into the fabric of the society, with individuals identifying one kind of relationship with some other member of the community. Conflicts within such a society therefore have the potential of disintegrating families and undermining the very foundations upon which the society exist. Much care therefore is taken, in resolving conflicts in such societies, to move from an adversarial posture to one of conciliation and re-union.

Enforcement of the court's ruling – In most rural areas the verdict of the customary court is not contested. The parties are made to give their word (swear an oath) in the presence of the audience that they will abide by the ruling and keep peace in the community. This is the singular most compelling and constraining mechanism for the enforcement of the decision. Traditionally it is a grave offence to break an oath.

The resolution process- Settlement is usually initiated by the person who considers himself to be the victim. He approaches the leaders of the local institution (chief and elders) and makes a complaint. The local authority invites the offending party and seeks to persuade him or her to apologize or pay compensation. The objective is to achieve reconciliation among the people in the community. In Ghana for instance, for a minor case the offender may be pardoned but if the offence is grievous or repeated he may be asked to provide drinks to pacify the other party or in more serious cases a sheep.

2.4.3. The Strengths and Limitations of the Customary Justice System

The strengths of the customary justice system are in many ways similar to the advantages of ADR. It however has some peculiar strengths over other ADR mechanisms. Boege (2006) is of the view that the traditional or customary approaches to conflict management and peace building have five major strengths.

One of the strengths is that the customary justice system fits into situations of state inefficiencies or collapse. Thus in situations where there is the absence of or limited access to modern state based institutions and mechanisms for the control of violence and regulation of conflicts, people take recourse to pre-state customary ways. This is however only an option if custom has not been destroyed but has survived previous processes of state building and modernization and is still alive. Thus the customary system ensures that violence is terminated and an atmosphere of peace exists.

Secondly, the customary approaches are not state-centric and because of that they are credited with legitimacy by the communities in which they operate. Thus instead of imposing western models of the state and the nation on societies to which these models are alien, existing indigenous forms of control of violence and conflict regulation which have been proven to be efficient can be relied upon. This is especially crucial in societies where the state is weak because it has no legitimacy in the eyes of the people. In such societies, the people are more loyal to 'their' group rather than the state such that legitimacy rests with the leaders of that group and not with state authorities. They do not obey the rules of the state but the rules of their group. In such situations reference to these institutional authorities and institutions will enhance the legitimacy of any measures taken with the goal of conflict resolution.

Also traditional approaches to conflict resolution can also be said to be process oriented and take the time factor into consideration. Though this is also an advantage, it must be emphasized that the acknowledgement of different concepts of time depending on cultural contexts is of major significance for success or failure in the peace building processes. Thus in customary conflict regulation the process can be very time consuming but it tends to be more important than solutions.

Another advantage of the customary system is that it provides for inclusive and participatory approaches. It is not only the parties to the conflict who are responsible for its solution but also everybody in the community. A solution can only be achieved by consensus. Every side has to perceive the resolution as a win-win outcome, compatible with its own interests which are not confined to material sphere but also comprise issues such as honour, prestige, and saving one's face. In most cases pursuing inclusive participatory approach at all levels of the conflict is extremely complex and time consuming but at the same time has greater chances of success. Sometimes "additional activities that supplement the actual negotiation are also very important such as praying, singing and dancing together have considerable contribution to the success of negotiations.

Perhaps the most important strength of the customary system is that it focuses on the psycho-social and spiritual dimensions of conflicts. Conflict management and peace building is not only about negotiations, political solutions and material reconstruction but also about reconciling mental issues and spiritual healing. The customary system has a lot to offer in this regard. Apart from dealing with the material issues, reason and talk, they also deal with the spiritual implications, feelings and non verbal communication. Customary practices of purification and healing carried out by customary priests, healers and other authorities are of utmost importance for the mental and spiritual rehabilitation of victims and perpetrators. Thus the system takes into account the fact that conflict resolution and peace building is not only an issue of reason, rationality and talk but also of effects, emotions, imaginations and of the spirit.

Despite the above advantages, the customary justice system has its limitations. Boege (2006) acknowledges the fact that the customary conflict resolution system has a number of weaknesses. Firstly, they do not necessarily put an end to violence in the long term. Every settlement achieved is under the provision that it might be revoked in the near future. Settlements are therefore only temporary and can be renegotiated in future.

Secondly the system may contradict universal standards of human rights and democracy. For instance where a council of elders consisting of only old men serves as the panel for conflict resolution between parties, by modern democratic standards this may be problematic because the youth and women are excluded from the decision making process even though they become the subjects of these decisions. In the same way the treatment of perpetrators according to customary rules can contradict universal human rights standards. These features may themselves lead to conflicts.

Customary justice systems are also said to be geared towards the preservation of the status quo or the preservation of the good old order. Boege (2006) argues that they only work in the framework of that order. As a result modernizing influences from both within and outside the community, the system is usually faced with pressure to adapt and combine modern institutions and instruments of conflict resolution. Although the system is capable of change, the change is characterized by relatively slow pace. It must be noted here that this preservation of order and the status quo is not only true in the customary system but also evident in state law.

The system has a limited sphere of applicability. They are confined to relatively small communities. They may therefore clash with each other and with modern external systems of conflict regulation. This can also be described as an advantage in that the system is very specific. Again the impacts of the modernizing powers of capitalism such as urbanization and privatization have severely undermined traditional societal structures and customs such that it is difficult or even impossible to apply customary approaches in some cases. At the same time it cannot be concluded that urbanization automatically leads to the breakdown of traditional structures since it depends on the specific conditions on a case by case basis

Customary conflict resolution approaches are also open to abuse and there are many examples of traditional authorities abusing their powers for their own benefits and to the detriment of the weak members of the community. It must be mentioned here that this situation is not peculiar to the customary system since there are also abuses and corruption in the state court system. It is however necessary that a provision is made for controls and sanctions to curb such practices.

2.4.4. Innovations in the Customary Justice System

Traditional justice systems are generally preservative in nature and geared towards the preservation of the status quo or the good old order. This conservative character does not fit into modernizing influences from either within the community or from outside the community. The youth and the elite in the community may want changes in the system in accordance with modern trends at the same time the impacts of western culture and values also influences the system. Given these pressures from within and without, traditional systems of justice have been forced to adapt and modern institutions and instruments of conflict regulation have been developed. The traditional justice system is therefore not static as some believe and has undergone some changes over the years. According to Boege (2006) “although the system is characterized by a relatively slow pace of change, experience shows that custom is adaptable indeed and that positive mutual accommodation of traditional and modern approaches can be successfully achieved”.

In order to make the system functional and appealing as well as applicable in today’s world some innovations have been introduced. For instance “oral tradition” where no written records of proceedings were made and which used to be the accepted procedure probably because no member of the panel of adjudicators could read or write is gradually giving way to written records of proceedings. Again some democratic standards are being introduced in that women and the youth are represented on the adjudication panels. This was previously considered as a taboo and even though the change is slow and difficult, people have come to accept that it is the only way to preserve the institution.

The use of technology to facilitate the process is another innovative idea. Audio and video recording tapes as well as computers are all used to ensure effectiveness. According to Owusu-Yeboah (2005), “The proceedings of the court sessions in the Asantehene’s court are videotaped to provide a back-up to the written records of the proceedings”. The training of elders and community leaders in the skills of mediation is another major innovation which is being proposed by several NGOs who are interested in conflict resolution. The last but not the least innovation is community consultation is based on the idea that in conflict resolution it is important to have knowledge of the whole community’s opinions, requirements and needs. This involves information gathering from all members in the community.

2.4.5. Current Status and Relevance of the System

Given the disintegration of traditional societal structures in many regions of the world, the potential of traditional approaches for conflict prevention and peace building is limited. Traditional approaches are only applicable in specific circumstances and in confined niches (and even then, they alone most probably will not suffice). Nevertheless, it would be a mistake to ignore that potential and not to make use of it wherever possible. As observed by Boege (2006), “traditional approaches might give wider insights for conflict transformation processes more generally. Traditional conflict resolution surely is not a panacea for all ills, but an approach that so far has been underestimated by actors who were brought up and taught to think in a western mindset”.

Currently the system is characterized by lack of uniformity. In most countries where customary conflict resolution exists, its mandate is limited to the hearing of civil cases. The main challenge of the system currently is the extent to which the traditional system could be empowered to assume wider responsibility in addressing much more complex issues in the community. The emphasis is not a way back to the ‘good old times’ of traditional conflict resolution, but a way forward to mutual positive

accommodation of traditional approaches on the one hand and western state-based and civil society approaches on the other.

The conventional western perception which equates an absence of state-induced order to a complete absence of order is much too narrow. This commonly held western view fails to take into account the actual situation on the ground in many regions of the global South. Beyond the state there is a host of actors and institutions, customary ways and means of maintaining order, controlling violence and resolving conflicts. The western perception of the weakness or fragility of state institutions as a problem and an obstacle to the maintenance of order is far too short-sighted. As pointed out by Boege (2000) “one has to challenge the thinking which assumes that all societies have to progress through “western” stages of state and society development and that weak incomplete states have to be developed into ‘proper’ western-style states. Instead one has to analyze the ‘actually existing states’ in terms of “hybridity” of political order”.

Positive mutual accommodation of state and non-state traditional (and civil society) mechanisms and institutions is a promising way to make use of hybridity.

2.5. Conclusion

The above discussions clearly reveal that conflicts have existed in all cultures, religions and societies since times immemorial, as long as humans have walked on the earth. Because conflicts are an integral part of human interaction, one must learn to manage them, to deal with them in a way that will prevent escalation and destruction and come up with innovative and creative ideas to resolve them. Dealing with conflicts, “conflict management”, is a very important process in every community. Conflict management is said to consist of both conflict prevention and conflict resolution processes. The field is characterized by diversity and complexity and has matured as a multi disciplinary field involving psychology, sociology, social studies, law, business, anthropology, political sciences and international relations. The choice of the appropriate process depends on the particular circumstances and the context of the conflict.

Basically there are three main categories or options for conflict management and resolution. These are the formal option, the customary option and alternative methods. Whilst the formal methods are usually state sponsored and apply strict rules and procedures of law, the customary approaches are based on customs and traditions of a particular society. They are mostly independent from the state authorities and may even contradict modern laws of the state. Alternative methods usually referred to as ADR methods are based on consensus building and apply methods such as facilitation, conciliation mediation and many more. These methods usually serve as a bridge between the formal and customary methods. Each of these three approaches has their strengths and weaknesses. The customary system is sometimes described as a form of ADR. This is because it shares some common features and advantages with ADR and some of the ideas and processes in ADR have its origin in the customary system. Despite these similarities the customary system has some peculiar characteristics which make it different from the modern day ADR processes.

Due to the introduction of modern external values in most developing countries and the increased urbanization and migration, traditional societal structures and customs have been severely undermined and most people who have been exposed to these modern cultures are reluctant to resort to customary systems of conflict resolution. Secondly the introduction of the state and state institutions of conflict resolution with the full support of the state further undermines the authority of customary systems of justice and contributes to the neglect of customary structures. Also, these state institutions are not physically and financially accessible to disadvantaged people especially the poor and those in remote areas.

ADR systems aim at eliminating the weaknesses in the formal system whilst at the same time incorporating the strengths of the customary system. They make room for state support and also respect customary rules and beliefs of the societies in which they operate. The greatest advantage is that “ADR is an alternative”. It is not a replacement to the state courts or the customary justice system (Odametey, 2007). It remains an alternative because while it works most of the time it cannot work all of the time” (Boege, 2006).

3. Land Conflicts and Justice Systems

3.1. Introduction

This chapter discusses the nature of land conflicts in Tanzania and the mechanisms for resolving these conflicts. The chapter elaborates more on the causes of land conflicts, the justices systems and the mechanisms for the settlement of land disputes. The conflicts and the resolution mechanisms are categorised based on three phases: pre-colonial, colonial and post independence periods.

3.2. Overview of land conflicts and its resolution mechanisms in Tanzania

Three phases of land dispute resolution mechanisms have so far evolved in Tanzania. These were during the pre-colonial period, colonial period and after independence.

3.2.1. Pre-colonial Period

In the pre-colonial times, lands were vested in groups such as families and clans and the heads were responsible for the lands on behalf of the all kin. Families in different societies worked together on the same land and shared produce equally among themselves. The community as a whole jointly decided on what to produce and on which land.

The major activities that were practiced by people were agriculture and pastoralism. Pastoralist never claimed ownership of land though they had a greater attachment to the land due to their nomadic nature in search for pasture and water for their animals. On the contrary, agriculturalists fought amongst themselves though the number of disputes was a few (Rutaitika, 2008). The main disputes usually erupted: where one claimed another man's farmland on which he had been in possession for many years; or where after clearing a virgin land or bush another wants to share the land with him in its use. Such disputes were settled amicably than through confrontation.

Conflicts were resolved through non-statutory means. In the non-statutory dispute resolution mechanism, the elders, clan leaders and village committees acted as 'mediators' responsible for resolving land disputes. These mediators made decisions and whenever rights were conferred to one to use, the person was reminded of the fact that land belonged to the community and everyone had access to it (Makaramba, 1996).

3.2.2. Colonial Period

During colonial times there were two systems for administrating justice. In the early 1890's when the colonial period started, the German's established a system of administration in Tanganyika. An Imperial Decree was passed in 1895 which declared all lands as 'crown lands' and were vested in the German empire. The concept of a 'right of occupancy' was introduced by this decree whereby ownership of land had to be proven by documentary evidences. Only settlers and immigrants could enjoy granted rights of occupancy and state guarantees of tenure security because they could provide documentary evidences. They however had legal rights over their land including the right to sell or lease out their lands.

On the other hand, permissive rights of occupancy were given to the indigenous people on lands that had been taken by the imperial state. Whenever there were disputes between the indigenous and the settlers, the government was always in favour of the settlers because they had documentary evidences to proof their cases. They were recognized as legal owners of the land. In 1914, when the German era ended, about 1.3million acres of fertile lands had been converted from customary ownership to settler interests (DILAPS, 2007).

During the British rule, the Land Ordinance Cap 113 was enacted in 1923 to declare all lands in Tanganyika as 'public lands' and therefore the Governor was empowered to grant Right of Occupancies with terms not exceeding 99years. This enactment clearly stated that no occupation or use of land shall be valid without the consent of the Governor. This implied that customary titles were not recognized. Land dispute during this colonial period was normally resolved through the formal court of law where the Land Ordinance was applied. The law that was used during a proceeding depended on the parties involved. The Governor had the right to empower specific persons such as the chiefs, headsmen and other persons to resolve disputes in the native court. The indigenes had to tend their cases in their native courts and customary laws were applied. In situations where there were disputes between the indigenes and the settlers, cases were resolved in the formal courts. In many cases the indigenes lost due to the fact that they had no written evidences to present.

3.2.3. Post Independence Period

After the independence in 1963, the Magistrate Act 1963 was enacted. This law unified systems of resolving dispute into one administrative justice system. The government of Tangayika inherited the colonial laws and the President became the trustee for all the lands. The lands continued to be public and owned by the state.

The government abolished the system of chiefs and other local leaders in settling land disputes through the African Chiefs Ordinance (Repeal) Act 1963, Cap 517. Afterwards the Land Settlement of Disputes Act No. 25 of 1963 was enacted to deal with disputes related to alienated lands in the colonial period (Njunwens, 2007) . An Ad hoc Commission of inquiry was instituted by this Act to investigate and study the existing land disputes and give its recommendations. In many of the disputes, the settlers had to compensate the natives for the alienated lands (ibid)

In 1965, feudalism was abolished and all landlords of feudal societies were compensated for their unexhausted developments on their lands. The Customary Leasehold (Enfranchisement) Act, 1968 which was enacted afterwards provided for Customary Land Tribunals (CLT) to resolve land disputes in the country. The Minister of Lands handled the appeals from these tribunals since they were not allowed in the normal courts.

The 'Operation Wijiwi', a rural modernisation campaign launched by the government of Tanzania to relocate people to new government-designated areas, was introduced in the early 1970's and people were forcibly relocated without being compensated. The operation was meant for the purpose of implementing the policy of villagisation, a process which had no force of law and it was implemented as a matter of Government policy. The villagisation process meant expropriation of customary land ownership, thus extinguishing deemed Right of Occupancy. Some people were not satisfied with the whole reallocation process such that they decided to go to the court of law to seek redress (Mrase, 2005). Those affected never made complaints until in the 1990's where they decided to present them at

the court of law. The claims for compensation were prohibited through the enactment of the Rural Land Tenure (Established Villages) Act, 1992. Fortunately, some areas that were affected under the operation and prohibited from compensation payments were declared by the court of law as unconstitutional and compensation payments were made to prevent further disputes (Makaramba, 1996). Disputes relating to conflicting title holdings, customary and granted title, were on the increase particularly in areas that were declared planning areas. Both title holdings were legally recognised and so the courts failed to establish logical justifications for their decisions.

A Commission of Inquiry into land matters was appointed by the president to listen to the grievances of the people in relation to land and make its recommendations to a new land policy and tenure. It was revealed by the Commission that by law the Judiciary was the only body that had the mandate to resolve land disputes but practically the executive organ of the government were involved in solving the disputes. Investigations revealed that the executive solved 60 to 70 percent whilst the judiciary solved 30 to 40 percent of land dispute cases. This resulted in complaints moving from one office to the other since there was no clear dispute settlement machinery. The Judiciary was inaccessible to a large number of the people and accused of being slow in resolving conflicts and out to be independent and impartial bodies for dispute resolution (Mbesi, 2002). Many were not satisfied with the decisions by the judiciary. Such cases mostly remained unresolved.

The Commission placed in its recommendation that a new land policy should be formulated as well as a Land Act to establish an independent dispute settlement machinery to deal with land disputes. In 1995, a new land policy was formulated to implement the commission's recommendation and one of the fundamental principles was to establish an independent, expeditious and just system for the adjudication of land disputed which will hear and determine cases without undue delay. In 1999 the Land and Village Land Acts (No. 4 & 5) were enacted to make provision for the establishment of the courts vested with exclusive jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land. The following courts were established: the Court of Appeal, High Court (Land Division), the District Land and Housing Tribunal, Ward Tribunals and Village Land Council. In 2002, the Courts (Land Disputes Settlement) Act came in place to further describe the formulation, functions and the procedure through which land disputes could be handled.

3.3. Nature of Land Disputes

3.3.1. Ownership

This happens when two or more people claim the ownership over the same piece of land each claiming to be the rightful owner. This leads to land disputes between parties concerned.

3.3.2. Encroachment

This is where one party takes a portion or whole of the land belonging to another and the latter later realizes that his/her land has been taken. Upon realization that his/her land has been encroached, then there arises a land dispute between the parties.

3.3.3. Trespass

Trespassing is entering one's land without his permission. In most cases trespass arises out of boundary encroachment due to unclear boundaries of the individual farms and villages and greediness

of some people. Trespass, is quite often seasonal in nature for rural lands. In some incidences, due to unclear boundary marks one trespass into another's land.

3.3.4. Conflict between customary and statutory laws on land

There are several instances where one can find the existence of two types of rights to hold land namely statutory right of occupancy and customary right of occupancy on the same piece of land particularly in peri-urban area. Both holders may be legally recognized but in most cases statutory right of occupancy override customary right of occupancy. Whatever side that is favoured, the other side that the decision is made against is aggrieved leading into disputes between the parties.

3.4. Causes of Land Disputes

The main causes of land disputes can be attributed to many factors of which the following are prominent in Tanzania.

3.4.1. Population increase

Increase in population increases the demand for land although land is fixed in supply. With the fixed supply of land and the high demands for independent use, people compete for land and these results in conflicts. Emergence of monopolist element in ownership of land among landholders can also result into land crisis. This is because some will be holding big pieces of land while others do not. The ownership can be due to economic position or inheritance.

3.4.2. Delays and low compensation payments

Most conflicts related are to land payment of compensation. Section 3(i)(g) of the Land Act 1999 states that whenever land is acquired, the acquiring body has to pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or affected by the acquisition. The law recognizes full, fair and adequate compensation but practically, things do not work out right. There are some problems of the law. The land acquisition and compensation Act 1967(No. 47) still determines how compensation must be paid though the situations in 1967 are not the same in recent years. The country still relies on the Act and even though compensation processes is fully adhered to, compensation is not forthcoming. The aggrieved party always claims compensation payments are low and do not reflect the true value of the land and unexhausted improvements. This leads to disputes between acquiring body and the land owners(Shivji, 1999). Compensation payments are always delayed there has not been a situation where compensation has been fully paid.

3.4.3. Maladministration

DILAPS (2007) defines maladministration as a situation where land administrators do not play their roles well and cause disputes. Land disputes arise due to the irresponsible actions such as poor record keeping, unnecessary bureaucratic and double allocation. There is lack of a land register to show who owns what and where. A project on formalization was started by Ministry of Lands and the Central Government with funds from the World Bank and transferred to local authorities and Municipal to establish a data base to assist information on who owns what and where as a step to facilitate property and land rights.

Double allocations came about due to the overlapping of administrative powers of the authorities responsible for land allocations. Before the year 2000, different authorities in Dar es Salaam were involved in allocation of same lands to different people. The Ministry of Lands and Human Settlement, Dar es Salaam City council and the municipal had the mandate to allocate lands until in 2000 when the mandate to do so was given to the municipalities. Double allocations constitute majority of the cases presented to the Presidential Committee of Inquiry during their time in solving land conflicts(Rutaitika, 2008)

3.4.4. Invasion in conflicting land use

This occurs when individuals with power politically or economically enter into undeveloped plots of other people. Invasion usually occurs when there is increase in the demand for land. Some people decides to invade lands which have been left vacant by their original owners or demarcated for social services such as schools, hospitals, playgrounds, and open spaces.

Conflicting land use is whereby pastoralists and agriculturalists want to use the same land particularly in the rural areas. Livestock destroy crops and this brings about disputes between two communities. Also with different land uses in an area disputes are bound to happen.

3.4.5. Increase in land values

Most sources of land conflicts have to do with value of land. Before 1995, land had no value and only an exhausted improvement on the land i.e. crops, buildings, structures etc but not the land itself. In 1995 the land policy declared land to have value (value at market price). In acquiring land one has to be compensated on what is on the land and the land itself depending on its location and its economic value. This is now recognized by both policy and law in Tanzania. In the planning point of view, economic value of land increases especially in urban prime areas where an area is identified as an investment area. Land increase in value due to a number of reasons which include accessibility, technological and economic changes. These causes increase in the value/price of land and demands for land. Hence causing land disputes.

3.4.6. Unclear boundaries

Unclear boundaries are another cause of conflicts particularly in the unplanned areas. Unsurveyed plots normally do not have clear boundaries and may lead to land disputes. In such areas, people indicate these boundaries with landmarks such as stones and growing trees. After some time, these marks get destroyed or transferred and it results in boundary disputes. In planned areas, some people claim ownership of portions they have encroached.

3.4.7. Others

Other causes investigated by the Committee of Inquiry were lack of adequate knowledge on land laws, forgery of land ownership documents and inheritance misunderstanding. Some people bought lands and never registered the transaction knowing that land could be transacted like any other economic good. Some sellers tend to sell the same piece of land to another person or claims ownership of the property after sometime. This is where buyers did not know the consequences of not changing the names on the documents.

Some Title Deeds and offers presented to the committee of enquiry were found to be fake. Disputes related to this were between the owners with genuine land ownership documents and those with fake

ones. The committee realised that it was due to the fact that ownership records were poorly kept and gave room for some officials to temper with genuine records or even replace documents with fake ones (Rutaitika, 2008) .

Many Tanzanians have no culture of preparing wills before they die. Members of the deceased person claim right of ownership on the same piece of land which leads to inheritance disputes amongst them. In some tribes women are not entitled to own land and this contradicts with Section 3(2) of the Lands Act which provides that the right of every woman to acquire hold, use and deal with land shall to the same extent and subject to the same restriction be treated as a right of any man. Men continue to grab lands from the women and never leave them to enjoy the possession of their lands.

3.5. Land disputes resolution systems

Land disputes can be resolved through formal and informal methods. It can be through legal disputes settlement machineries or Alternative Dispute Resolution Mechanisms (ADR). In Tanzania, there is land settlement machinery based on which specialised courts have been established to settle disputes at the national, district, ward and village levels. These courts are legally recognised and have established procedures. Practically there are other informal justice systems but they are not recognised by the set up of the machinery.

The Land Disputes Courts Act of 2002 Act No. 2 establishes the various courts for the settlement of land disputes. The Act provides for the composition, functions and the procedures through which disputes could be settled. Every dispute or complaint should be instituted in any of the courts having jurisdiction to determine land disputes in a given area. The various courts are described in detail as follows:

3.5.1. Village Land Council (VLC)

Part III of the Land Disputes Courts Act, 2002 (Act No.2) provides for the functions and powers of the VLC. According to the Act, the council shall consist of seven members of whom three must be women. Each member is nominated by the village council and approved by the village assembly. Subject to section 61 of the Village Land Act, 1999, the functions of the council are to receive complaints from parties in respect of land, convene meetings for hearing disputes from parties and mediate between and assist parties to arrive at a mutually acceptable settlement on any matter concerning land within its jurisdiction. Where the parties are not satisfied with the decision of the council, the dispute in question can be referred to the WT.

The total administrative functions of the VLC as well as the WT, is the responsibility of a registrar appointed under section 23 of the Local Government (District Authorities) Act, 1982. The registrar shall be the Chief Executive of all the VLC and WT, responsible for estimates and expenditures, and advises local authorities on any matter regarding the functions of the VLCs and WTs in their respective areas of jurisdiction

3.5.2. Ward Tribunal (WT)

The Ward Tribunal Act, 1985 establishes a ward tribunal as a court and has the jurisdiction and powers in relation to the area of the district council in which it is established. Part IV of the Land Disputes Courts Act of 2002 (Act No. 2) provides for the jurisdiction, powers and procedure of the WT. The

WT may consist of not less than four and not more than eight members of whom three must be women and they are elected by the Ward Committee as provided under section 4 of the Ward Tribunals Act of 1985.

In all matters of mediation, the tribunal should consist of three members at least one of whom is a woman. The chairperson to the tribunal should select all three members including a convenor who will preside at the meeting of the tribunal. The jurisdiction of the WT in its proceedings of civil nature relating to land is limited to the disputed land or property valued at three million shillings (equivalent to 2,145USD as at October, 2009). The WT is to record the order of mediation immediately after the settlement of a dispute.

The primary function of each tribunal is to secure peace and harmony in the area for which it is established by mediating between and assisting parties to arrive at mutually acceptance solution on any matter concerning land within its jurisdiction. The WT has the jurisdiction to enquire into and determine disputes arising under the Land Act, 1999 and the Village Land Act, 1999. In performing its functions it has to consider any customary principles of mediation, natural justice in so far any customary principles of mediation do not apply and any principles and practices of mediation in which members have received any training.

The procedure to be followed in the tribunal is that a person shall make a complaint to the secretary of the tribunal either orally or written. Where the complaint is received orally the secretary shall immediately put it in writing and produce a copy for the complainant. The Secretary shall then cause it to be submitted to the Chairman of the WT who shall immediately select three members of the Tribunal to mediate. Advocates are not allowed to appear and act for any party in the WT.

Notwithstanding the provisions of section 23 of the Ward Tribunals Act, the WT in proceedings of civil nature relating to land has powers to the following:

- i. Order the recovery of possessing of land;
- ii. Order the specific performance of any contract;
- iii. Make order in the nature of an injunction both mandatory and prohibitive;
- iv. Award any amount claimed;
- v. Order the payment of any cost and expenses incurred by a successful party or his witness; and
- vi. Make any other, which the justice of the case may require.

Where a party to the dispute fails to comply with the order of the Tribunal, the WT shall refer the matter to the District Land and Housing Tribunal for enforcement. A person who is aggrieved by an order or decision of the WT may appeal to the DLHT within forty five (45) days after the date or the decision or order against which the decision is brought. The DLHT may for good and sufficient cause extend the time for filing an appeal either before or after the expiration of the 45days. Where an appeal is made to the DLHT within the stated period or any extension of the time granted, the DLHT shall hear and determine it. The Minister for Lands may make rules prescribing the procedure for appeals from the WT to the DLHT.

3.5.3. District Land and Housing Tribunal (DLHT)

Part V of the Land Disputes Courts Act of 2002 describes the establishment, composition, proceedings, jurisdiction and powers of the DLHT. Subject to section 167 and section 62 of the Land Act of 1999 and the Village Land Act of 1999 respectively, the minister is to establish in each district, region, or zones as the case may be a court known as District Land and Housing Tribunal to exercise jurisdiction within the area established. The DLHT should comprise of one chairman¹ and not less than 2 assessors² and not more than 7 assessors of whom, three (3) of whom shall be women for each established DLHT. The two assessors are required to give their opinion, though the chairman may not be bound by their opinions and he may give reasons in the judgement for differing from their opinions before the chairman reaches a judgment.

The proceedings of the Tribunal is to be held in public and a party to the proceeding may appear in person, by an advocate, a relative or authorised officer of a body corporate. Notwithstanding the absence of one or both of the assessors who were present at the commencement of a proceedings, the Chairman and one of the assessors (if any) may continue and conclude the proceedings. The court can be held in any place within its local limits of jurisdiction and a party to the proceeding may appear in person or by advocate or any relative or member of the household or authorized officer of body corporate.

The jurisdiction of the DLHT in its proceedings is limited to proceedings for recovery of possession of immovable property in which the value of the property does not exceed Fifty (50) million (equivalent to 35,715USD as at October, 2009) shillings and where the subject matter is capable of being estimated at a money value in which the value of the subject matter do not exceed forty (40) (equivalent to 28,572USD as at October, 2009) million shillings.

The DLHT is given the powers to execute its own orders and decrees. The Tribunal in hearing an appeal against any decision of the WT should sit with not less than two assessors and consider the records relevant to the decision, receive additional evidence if any and make some inquiries as it may be deemed necessary. A party to any proceeding appealed against, may appear personally or by an advocate, a relative or authorised officer of corporate body. The DLHT after hearing the appeal may

- i. Confirm the decision, or
- ii. Reverse, or vary in any matter the decision or
- iii. Quash any proceedings; or
- iv. Order the matter to be dealt with again by the WT as it may deem appropriate by giving an order or direction as to how any defect in the earlier decision may be rectified.

¹ According to Sec(25) of the Land Disputes Court Act,2002, the “Chairman” must be a legally qualified person and hold office for a term of 3years and may be eligible for re-appointment

² An “assessor”, according the Land Disputes Court Act,2002, must be ordinary resident of the district, not a member of the National Assembly, District council, village council, VLC, a mentally fit person, never been convicted of any criminal offence involving violence dishonesty or moral turpitude, and one who is a citizen of the United Republic of Tanzania.

The DLHT after making the decision on the appeal shall immediately record the decision and the reason thereof. The Chairman may direct that the language of the Tribunal be in English or Kiswahili except that the record and judgement of the Tribunal shall be in English.

3.5.4. The High Court (Land Division)

Section 37 of the Land Disputes Courts Act of 2002 empowers the High Court to determine all land disputes of national interest of which the Minister may by notice published in the Gazette, the recovery of possession of immovable property valued not less than fifty million shillings or where the subject matter is estimated at money value exceeds forty million shillings. The High Court's mandate also extends to all disputes relating to land under any written law in respect of which jurisdiction is not limited to any particular court or Tribunal and also appeals from the DLHT.

A person, who is aggrieved by the decision or order of the DLHT, may within sixty (60) days after the date of decision or order appeal to the High Court. Extension of the time for filing an appeal, before or after the period of sixty days has expired, may be granted by the Court for good and sufficient cause. Appeals to the High court shall be heard by a Judge and two (2) assessors in a sitting (section 39 of Act No. 2). Parties to the dispute may appear in person or by an advocate or other representatives in accordance with the Civil Procedure Code.

The High court may call for and inspect the record of proceedings of the DLHT through the Registrar of the High Court and examine the records or registers for the purposes as to the correctness, legality and propriety of any decision or order of the DLHT. Where the Registrar of the court in any case after making the inspection and examination and is of the opinion that the decision or order is of illegal or improper or procedure irregular may forward the record back to the High Court to consider whether or not to exercise its powers of revision (section 44 of Act No. 2)

A decision or order of the WT or DLHT shall not be reversed or altered on appeal on account of any error, omission or irregularity of the proceedings before or during the hearing of the decision or order or on account of improper admission or rejection of any evidence unless such actions have occasioned a failure of justice. The aggrieved person by the decision of the High Court may with the leave of the High Court, and where the appeal originates from the WT require to seek a certificate from the High court, to appeal to the Court of Appeal.

3.5.5. The Court of Appeal

The Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court (Land Division). This is subject to the provisions of the Land Act 1999 and Village Land Act, 1999. Section 48 of the Land Disputes Courts Act of 2002 gives the provision that the Appellate Jurisdiction Act, 1979 shall apply to proceedings in the Court of Appeal.

3.5.6. Other Justice Systems

Other systems play important roles in dispute resolution. The Non-Governmental Organisations (NGOs) are seen to mediate disputes between persons in conflict and provide legal advice and training through specific programmes on issues relating to land within communities in both urban and rural areas. One key NGO is the Legal Resource Centre (LRC) which provides advice to the vulnerable and marginalized groups of people including the poor, homeless and landless people and communities.

There are other NGOs that also offer legal services and assist in the same manner. These, amongst a few, are the Lawyers for Human Rights and the Centre for Rural Studies, Tanzania media women Association (TAMWA), Tanzania women lawyers Association (TAWLA) and HAKIARDHI (Land Rights Research and Resource Institute). They also encourage people by advertising through print and electronic media to make people aware of their rights.

University based law clinics and institutes for instance, the Centre for Applied Legal studies at the University of the Witwatersrand also assist or represent communities in land issues and advice in the development of the land policy. The National Land Committee also (NLC) assists poor rural blacks across eight provinces to access land rights and development resources. It serves as a network with eight affiliated land rights Organisations and other often works in close association with LRC (Rutaitika, 2008). Other persons such as state officials, Mtaa leaders and land experts in one way or the other resolve land conflict.

3.6. Conclusion

There are many different types of land disputes in Tanzania, the prominent ones being ownership disputes, encroachment, trespass and conflict between customary and statutory laws on land. These conflicts are caused by population increase; delays and low compensation payments, maladministration; invasion and conflicting land use; increase in land values; and others such as adequate knowledge on land laws, forgery of land ownership documents and inheritance misunderstanding.

Tanzania has so far had three phases of land dispute resolution mechanisms to deal with the various land disputes since pre colonial times. In these periods, different systems of administrative justice have been adopted for resolving the land conflicts. Currently, there is a land disputes settlement machinery of which various courts is set up to deal specifically with land disputes. These courts are established at the village, ward, district and national levels. Various Acts have been enacted to describe the establishment, composition, proceedings, jurisdiction and powers of the various courts.

Systems set up to settle land disputes must be properly established with clear defined tasks, procedures and jurisdiction. Third parties in resolution of such disputes should be fair and not side with any party to the dispute in performing their tasks. Adequate Information should be collected from both parties in dispute before reaching any decision, order or judgment. Institutions aside the ones set up the government should be encouraged in performing their roles in supporting the vulnerable and especially in the development of the Land policy of the country.

The next chapter described the study context and the methodology employed in the study.

4. Research Methodology

4.1. Introduction

This chapter first describes the research approach used for the study. It justifies why the case study approach was adopted for the study. Subsequently, the setting of the case study in Kinondoni municipality is discussed, including the location and accessibility, population, ethnic composition and labour force and the land tenure system. Further, the chapter discusses the data collection techniques employed in the study.

4.2. Study approach

A case study approach was employed for the research as the research aimed at the preferred justice system by people involved in land conflicts.

A case study approach was adapted for this research to enable the employment of variety of evidence such as interviews, artefact, direct observations, discussions and documents. This is because it has been identified as the best strategy if the research questions are explanatory, when the research is on contemporary issue and when behavioural events within the research are explanatory (Yin, 1994). The approach also has the advantage of getting closer to the phenomenon to be studied and have an in-depth insight, exposure to its deep structure and enable a right description (Cavaye, 1996). A combination of quantitative and qualitative research methods were adopted in the data collection method. The combination of the quantitative and qualitative approach “combines the rigor and precision of experimental (or quasi experimental) designs and quantitative data with the depth understanding of qualitative methods and data” (Rudestam *et al.*, 2002). The quantitative techniques will enable the quantification of the phenomenon in numerical terms and the qualitative extract meaning and understanding of the phenomenon being studied. Both when employed will give a better understanding about the phenomenon instead of depending on only one.

This research involved the investigation of the existing approaches, opinions, behaviours and experiences from the informants. The qualitative approach relied on data gathering techniques which were participant observation, interviews and documents analysis. These techniques were the main tools for data gathering in this study and as such the qualitative method was the most applicable in this research. Quantitative analysis was done using a statistical method to clarify some aspects of the study and to look at relationships and patterns which can be expressed with numbers or described as patterns of behaviour. Hamrnersley, M., *et al.* (1983) are of the opinion that what is involved in the combination of the two methods “is not the combination of different kinds of data per se, but rather an attempt to relate different sorts of data in such a way as to counteract various possible threats to the validity of their analysis”.

Relevant data, both primary and secondary, concerning the location of conflict lands, the parties involved, the conflict resolution process were collected from the tribunals, the Ministry of Lands, housing and Human Settlements Development as well as some residents of the district. Documents and relevant available materials were also obtained from the library of Ardhi University. Field Observations were done and analysis of existing literature on conflict resolution gives insight about the

existing practices and the concepts of the process in making decisions. A GIS tool, Arc Map was used to visualize the conflict zones of the municipality based on the DLFT records on land disputes from the various wards.

4.3. Study Area

Kinondoni Municipality is the case study area Kinondoni Municipality was selected for the study because it is one of the areas that have predominant land conflicts. It was also chosen for the reason that all the various conflict resolution mechanisms can be identified in the area. Furthermore, Kinondoni municipality is one of the municipalities that have fast development. Land conflicts in Kinondoni municipality is attributed to a number of factors including unplanned and unsurveyed lands in the areas; urban and peri-urban nature characterized by high and rapid urbanization; high population growth; and high rate of rural-urban migration as well as severe land use competitions. These factors together, have led to exceeding pressure on land and inevitably resulted in numerous disputes and violent clashes over land ownership and land use. Many of these land conflicts eventually end up in the established tribunals.

The study is focused on the Kinondoni District Land and Housing Tribunal and four ward tribunals namely, Kawe, Kunduchi, Ubungu and Bunju as shown in Figure 4-1.

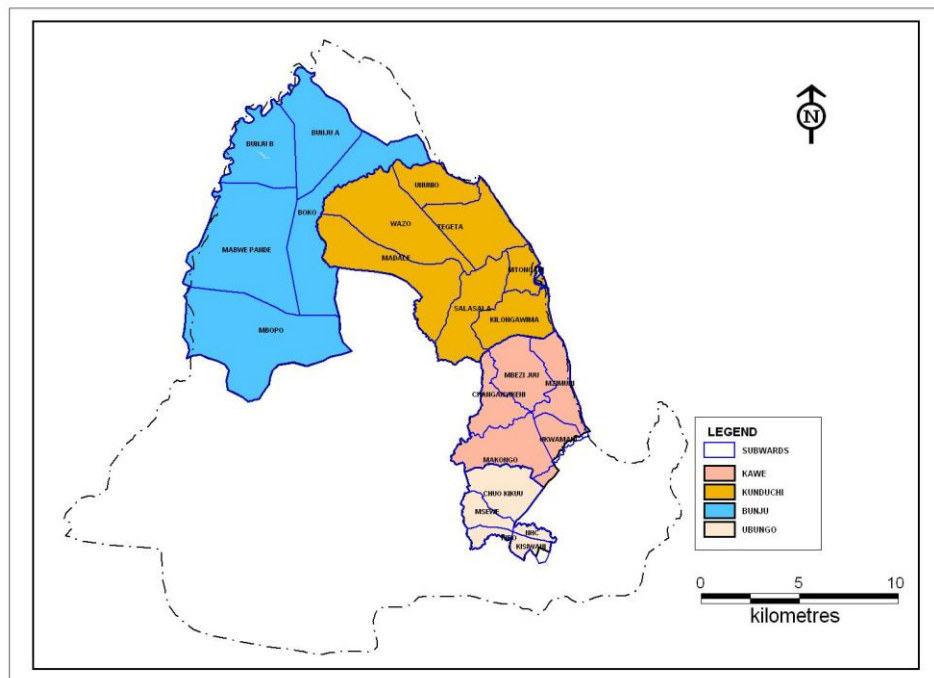


Figure 4-1: A map of Kinondoni Municipal with Kawe, Kunduchi, Bunju and Ubungu wards

4.3.1. Location and Accessibility

Kinondoni Municipal is the northernmost of the three districts in Dar es Salaam, Tanzania, located on Latitude: 6° 45' 0 S and Longitude: 39° 10' 0 E. It is bounded to the east by the Indian Ocean and to the north and west by the Pwani Region. It covers a land mass of 531 km². Administratively, Kinondoni municipality is divided into 4 divisions with twenty seven (27) wards. It is further sub divided into sub wards commonly known as Mtaa (singular) or Mitaa (plural) in the areas.

4.3.2. Population

The Kinondoni municipality has a population of 1,088,867 with a growth rate of 4.3% (see Appendix F). Population in the municipality varies from settlement to settlement. High population areas are found in unplanned settlements while low population densities are in peripheral localities. The rapid population increase is influenced by both natural causes and immigration (birth rates and net immigration rates respectively). The population density is estimated at 2,825 persons per square kilometre. Tables 4-1 and 4-2 show distribution of population in the municipal.

Table 4-1: Population in Kinondoni Municipality

Male	549,929
Female	538,938
Total	1,088,867
No. of Householders	260,269
Average Household Size	4.2
Growth Rate * 1	4.3%

*1 Annual Average Population Growth 1988-2002(%)
(Source: Tanzania 2002 Census)

Table 4-2: Projected Population for 2003, 2005 & 2007)

	2002	2003	2005	2007
Male	547,081	570,605	620,732	675,263
Female	536,832	559,915	609,103	662,612
Total	1,083,913	1,130,520	1,229,835	1,337,875

4.3.3. Ethnic Composition and Labour Force

The original inhabitants of Kinondoni were the Zaramo and Ndengereko, but due to urbanization the district has become multi-ethnic. It is estimated that only 360,000 residents of Kinondoni municipality are employed in both private and public sectors. Out of these, 95% are employed in the private sector while the rest (5%) are employed in the public sector. The majority of the residents are involved in petty business, fisheries, livestock keeping and agriculture including horticulture. Only 3% of the working force is engaged in subsistence agriculture in the peri-urban areas. There are no big farms but small plots ranging from 2.5 acre to 6 acres. Others make small gardens around their houses in which various vegetables and root crops like cassava and sweet potatoes are grown for family food and the surplus for generating income. Employment in business operations accounts for 46%, office work 18%, agriculture 14%, elementary occupations 14% and plant operations assemblers 5% (2003 Census Results in Brief-Kinondoni District)

4.3.4. Land tenure system

Two main types of land tenure systems are recognized in Kinondoni municipality. They are the statutory and the customary. What is evolving now is the quasi-customary bearing the characteristics of both. The customary tenure exists in the peri-urban areas and villages whereas the statutory tenure is in planned urban areas. The quasi-customary are found in informal settlements.

4.4. Data Collection Method

Different data collection tools were used for the study. These include interviews based on structured and unstructured questionnaires, use of secondary source data like reports, documents and statistics related to the subject, personal observation of two tribunal proceedings, photography and field inspections. The field study was conducted from 5th October to 26th October, 2009.

4.4.1. Interviews

Unstructured questionnaires (appendix B & C) were used to conduct interviews with government officials, research fellows, legal and lands officers and key persons at the tribunals. Interviews were conducted with: the chairman of the District Land and Housing Tribunal, two chairmen and two secretaries of four ward Tribunals, research experts in the Ardhi University, the District lands Officer, the Registrar of Titles, chairperson of customer Service Improvement team (a principal Land Surveyor), mtaa leader, a lands officer and a legal officer (details in appendix A). The interviews were centred on the types and areas of conflicts in the district, the existing systems, procedures and measures taken to resolve the disputes, the frequencies of occurrences of disputes, and their opinions on justice systems in land disputes resolution

A targeted sample survey of eighty (80) people preferably users of the tribunals and other systems in each of the selected wards (as shown in Appendix A. In all only Twenty (20) of the questionnaires were administered. This was done through open and closed questions. The users or disputants were randomly selected and they were asked directly about their experiences and opinions about the current land dispute regulation system in land dispute resolution (see Appendix C for questionnaire).

4.4.2. Study of Reports, Documents and Statistics related to the Subject

Secondary data on land conflicts including reports, documents and papers were studied to support the findings of this study. Some articles, semester's works, dissertations were obtained from the Ardhi University Library for reading. Others were the statistics of cases filed at the Kinondoni DLHT for the years 2005 to 2009. The registers of records of the tribunals were examined to identify the types and numbers of disputes lodged, the parties involved, the dates the disputes were reported and lodged, the date of judgment or decision the cause of action and other information. In addition, photographs of about 1,800 records (from 2008 to 2009) from the registers of the DLHT in which land applications, Appeals and other miscellaneous applications were recorded (photos 7, 8, 9, 10).

4.4.3. Field Observation of some tribunal Proceedings and site inspections

Tribunal proceedings were observed at the DLHT as well as the Kawe ward. This was done by an initial request to the chairpersons of the Tribunals and the researcher was given an appointment to be at the tribunals to observe proceedings. The researcher was allowed to observe without participating in the discussions. Both proceedings were heard in Kiswahili but the researcher was fortunate to get interpretation from an accompanying student translator as well as some members of the tribunal.

At the DLHT, about 14 cases were heard within an hour, many of which were adjourned due to non appearance of the other parties especially the respondents and requests for postponements. The researcher had the opportunity to visit some of the dispute sites with the Kawe ward tribunal members. (See 01, 02 and 03). Again at the visit to one of the Mtaas of Ubungu, the researcher had the

opportunity to inspect some beacons on site. The beacons and sandcrete blocks were used to demarcate boundaries of the plots (Photos 04& 05).



Photo 01: WT members on site inspection



photo 02: Boundary conflict



photo3: Easement conflict (right of way)



Photo 04: A beacon on site for boundary



Photo05: Boundary protection at Ubungo



Photo 6: Case Files at DLHT

LAND APPLICATION REGISTER						
APPLICANT	RESPONSE	DATE OF APPLICATION	DATE OF DECISION	REMARKS	STATUS	REMARKS
14- LINDA MUSEKE 2008 VRS CERTEL MAFABALA TUNDA BENT	ADPT. BALKEMER 7.12.12.100 AS	7/1/08	20/1/08	Dismissed	Dismiss	
15- FRANK GEBREY 2008 VRS MORINGARIE CHIEF OFFICE OF DISTRICT MORINGARIE (MORINGARIE) MORINGARIE	EVUCTION	7/1/08	20/1/08	Application later Closed	Dismiss	
16- COSTAS MUGABE 2008 VRS TAN BICO	REGRANING FROM EVUCTION	21/1/08	20/1/08	Dismissed for want of possession	Dismiss	

Photo 7: land Applications Register

LAND APPEALS REGISTER						
APPLICANT	RESPONSE	DATE OF APPLICATION	DATE OF DECISION	REMARKS	STATUS	REMARKS
143- POLICEMAN LINDA 2008 VRS RECOVERED LAND	RECOVERY OF LAND	21/1/08	21/1/08	Granted	Dismiss	
148- ROBERTSON MAREE 2008 VRS MAREE MAREE	"	21/1/08	21/1/08	Dismissed	Dismiss	
149- MICHAEL CHUBA 2008 VRS VICTOR MAREE	RECOVERY OF LAND	21/1/08	21/1/08			
150- HUSNA HUSAIN 2008 VRS FATU MAREE	RECOVERY OF HOUSE	21/1/08	20/1/08	SETTLED	Dismiss	

Photo 8: Land Appeals Register

MISCELLANEOUS REVISION OF LAND APPLICATIONS						
APPLICANT	RESPONSE	DATE OF APPLICATION	DATE OF DECISION	REMARKS	STATUS	REMARKS
122- JESSE RUTEMBA 2008 VRS EMMANUEL BIRAC	KANNE	4/1/08	12/1/08	Dismissed	Dismiss	
123- CHRIS MAREE 2008 VRS EMMANUEL BIRAC	MAREE MAREE	5/1/08	12/1/08	Dismissed	Dismiss	
124- ERIC ESEME 2008 VRS ROBERT MAREE	BURU	9/1/08	12/1/08	Dismissed	Dismiss	
125- MAREE MAREE 2008 VRS EMMANUEL BIRAC	UBUNGU	9/1/08	12/1/08	Dismissed	Dismiss	

Photo 9: Miscellaneous Applications Register

REGISTER OF THE UBUNGO WARD TRIBUNAL						
APPLICANT	RESPONSE	DATE OF APPLICATION	DATE OF DECISION	REMARKS	STATUS	REMARKS
126- JESSE RUTEMBA 2008 VRS EMMANUEL BIRAC	KANNE	4/1/08	12/1/08	Dismissed	Dismiss	
127- CHRIS MAREE 2008 VRS EMMANUEL BIRAC	MAREE MAREE	5/1/08	12/1/08	Dismissed	Dismiss	
128- ERIC ESEME 2008 VRS ROBERT MAREE	BURU	9/1/08	12/1/08	Dismissed	Dismiss	
129- MAREE MAREE 2008 VRS EMMANUEL BIRAC	UBUNGU	9/1/08	12/1/08	Dismissed	Dismiss	

Photo 10: Register of the Ubungo Ward Tribunal



Photo 11: The Ward Executive Office, Kawe



Photo 12: The Ward Executive Office, Ubungo

4.4.4. Data validity and quality control

During the interviews and field observations, field notes were made. These information were used to verify the findings from the secondary data sources and the interviews.

4.4.5. Data processing

SPSS was used to analyse the data collected through the questionnaires, statistical figures and data captured by the camera. ArcMap, a GIS tool was used to visualise the categories of land conflict zones (based on disputes records at the DLHT from all the 27 wards in the municipality).

4.5. Limitations of data collection methods

Data in the records of the Ward Tribunals were all in Kiswahili. Also the proceedings at these tribunals were conducted in the local language and recorded in the same. At the DLHT, many of the proceedings were heard in Kiswahili but were recorded in English by the Chairman. Interviews (household and ward tribunals) were granted in Kiswahili through an interpreter. These translations were time consuming and also had impact on the quality of response received. For instance, it was difficult to differentiate between the causes of action of the disputes. Limited time did not allow the translator to interpret most of the information written in Kiswahili. Only the numbers of cases lodged and the number disposed off could be attained from the registers of the wards.

Some of the targeted disputants refused to be granted interviews for the fear that they might be attacked by the other parties to the dispute or might bring about heated debates. The researcher could not directly communicate with the disputants who were willing to share their experiences hence the limited number of interviews with the respondents.

5. Analysis and Discussion of Findings

5.1. Introduction

This chapter aims at analysing the types of justice systems in the Kinondoni municipality, the types of conflicts that occur and the reason why users like particular types of justice systems. Information obtained from the DLHT, ward tribunals, research experts, lands officers, the registrar of titles, mtaa leader, a lands officer, legal officer and debutants were analysed. The aim was to investigate how the systems work and also how these stakeholders perceive the efficiency of the justice systems for solving the various types of conflicts. Although the study was intended to address both the formal and informal justice systems, the situation on the ground revealed that informal systems (not established by law to settle land disputes) such as private mediation and arbitration centres were non-existent.

The chapter begins by analyzing the existing justice systems and the mechanisms used in dispute resolution. It outlines the pros and cons of each of the justice systems. The chapter further analyses the types of conflicts, the disputants and their preference for the justice system.

The Researcher had no option but to randomly select a sample size of 20 households at Kawe who were willing to answer the questions. In addition, the responses of some key respondents as shown in Appendix D, statistical data and records from the registers of the tribunals and the researcher's observations were used for the analysis.

5.2. General Information on Respondent

The study, as explained earlier, sought to find out the experiences and opinions of people who use the available justice system for dispute resolution and also experts who deal with the resolution of land disputes. There were interviewees who were either directly or not directly involved in the disputes. Those who were not had their close relations as parties to the disputes. The basic socio-economic characteristics of the household respondents at Kawe are shown in figures 5-1, 5-2 and 5-3.

Figures 5-1, 5-2 and 5-3 show that there were slightly more male respondents compared to women. The men constituted 55% (11) and the females were 45% (9). 75% of the respondents were or had been directly involved in land disputes whilst only 25% had not been personally involved but were aware of land disputes in which their close relations were or had been involved. This reflects the high incidence of land cases in the municipal and may be attributed to several factors including urbanization, population growth, and many others which together result in excessive pressure on land for development and other purposes.

The age of the respondents ranges between 25 years and 64 years. This means that both the young and the old are all engaged in land disputes. 65% of the respondents were within the labour force and were self-employed suggesting that probably they have the resources, money, time, and strength to pursue land issues. A higher percentage of them had been educated at the primary and secondary levels. This suggested that majority (95%) of the respondents had basic formal education. It can be inferred from

the study that the issue of land disputes is strictly not for specific persons, either the powerful or educated, but for a wide range of the citizens including venerable people such as women (see figure 5-1 to 5-3).

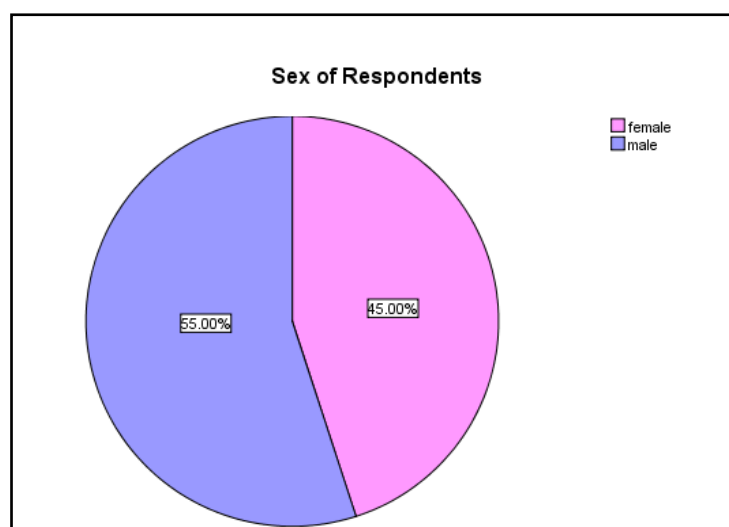


Figure 5-1: Sex distribution of household Respondents



Figure 5-2: Age distribution of household Respondents

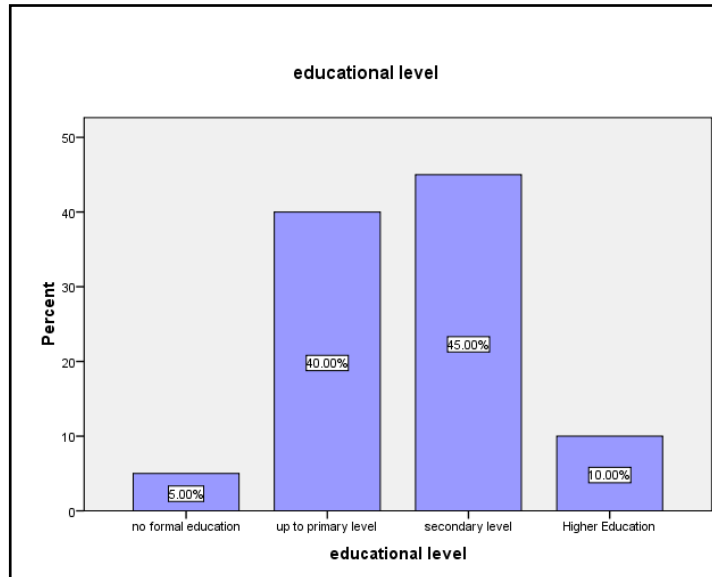


Figure 5-3: Educational level of household Respondents

5.3. Existing justice systems and mechanisms used in Land Dispute Resolution

Kinondoni Municipality like other areas in Tanzania has legally established system of courts for land disputes settlement. These courts are in hierarchical order (Figure 5-4). However, in the Kinondoni municipality, there is no area under the village system administration. The court system in this area starts at the ward tribunal level to the district land and housing tribunal and thereafter to the High Court (land division) if one does not agree with the decisions of at a lower court. Kinondoni has one District Land and Housing Tribunal which receives cases from 27 ward tribunals within the municipality. There are sub-ward committees within the wards where they mediate between disputants at the sub-ward level. Cases that fail to be resolved are taken to the ward tribunal. The sub-ward committees are the lowest level where disputing parties take their claims. A sub-ward committee in a sub-ward assists the parties to resolve their disputes at the best they can. The function of the sub-ward committee is only to assist mediation of the conflicting parties. If they fail to agree to each other, they normally take the matter to other disputes handling courts.

Currently there is no legally recognised or established Alternative Dispute Resolution (ADR) system for private mediation or arbitration. The ADR systems which could be seen as informal due to the fact that they are not amongst the specialised courts to handle disputes are practically non-existent. Institutions such as the NGOs at times mediate but mainly advice and represent disputants in settling disputes at the courts.

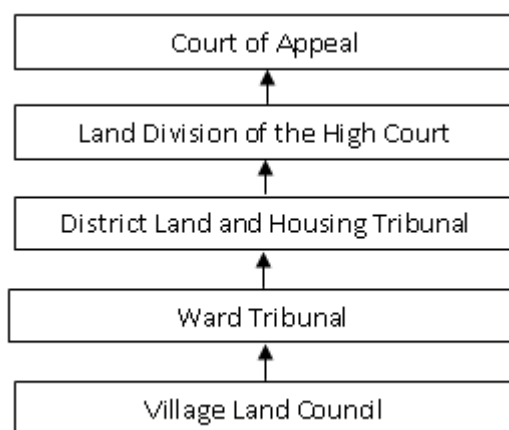


Figure 5-4: Hierarchy of courts

5.3.1. District Land and Housing Tribunal

The District Land and Housing Tribunal (DLHT) is established to receive cases where the value of the property or estimated value of the subject matter does not exceed 50million and 40million TSH respectively but exceeds 3million TSH. Aside fresh applications that were lodged at the DLHT constituting 53%, it received and also determined other miscellaneous applications from the High Court (Land Division) as well as the Ward Tribunals for execution of decisions or orders. Table 5-1 & Figure 5-5 show the distribution of disputes for the years 2005-2009 at the DLHT.

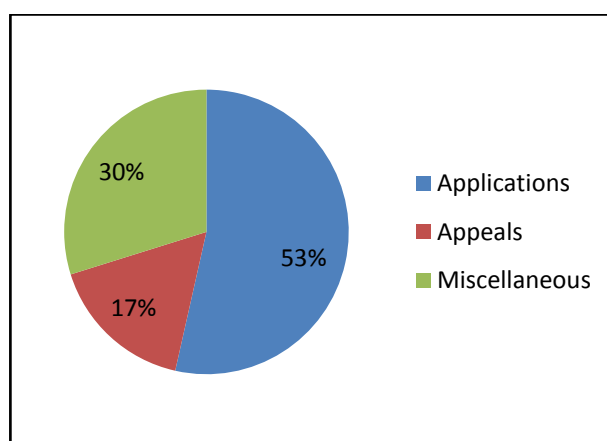


Figure 5-5: Percentage of registered Disputes

Source: Author's Compilation (2009)

Table 5-1: Summary of disputes at the DLHT (Jan.2005-Sept.2009)

As @ 23/10/09	2005	2006	2007	2008	2009	total
Applications	516	513	497	447	451	2424
Appeals	137	139	203	191	84	754
Miscellaneous	264	295	234	305	253	1351
Total	917	947	934	943	788	4529

Source: Author's Compilation (2009)

Land applications were leading in the disputes that were registered at the tribunal. It was observed that complaints are eventually lodged at the tribunal due to the fact that disputants use the ward tribunals as a stepping stone to reach to the DLHT. These disputants disregard the decisions of the ward tribunals or eventually realise that the disputes are not in the jurisdiction of the ward tribunals. Land values in the municipal are high due to the impact of urbanisation and any disputes relating to them falls within the criteria to lodge the complaints at the DLHT. Most people who are reluctant to use the Ward Tribunal because of its inherent weaknesses increase the value of their properties or give high estimates of their property so that they can avoid the problems at the ward tribunals and file their disputes at the DLHT. Another reason is that there is only one high court (land division) in the country which moves from one region to the other and very expensive to lodge a dispute there. Also, people fear to go there because of the rigidity of the processes and formalities at the high court so they tend to reduce the value of their properties so as to qualify to the district level.

Composition and Sitting of the DLHT

There are two chairmen of the tribunal and each sits with two members on the first day of the commencement of a case and particularly when they are receiving evidence from the ward tribunals. Gender is not considered of the membership of the tribunal members at the hearing. A chairman can proceed with a member or alone during subsequent hearings of the case or where the case is adjourned to another date, or where at least one witness has fully testified. The tribunal sits three (3) times in a week to hear and determine disputes. It was observed that many proceedings were postponed due to the non appearance of other disputants or pleas on the part of the disputants to adjourn the proceedings. Hearings of disputes are done in Kiswahili (in many cases) as well as in English but records are kept in English at the tribunal.

Procedure for land Disputes at DLHT

The procedure observed at the DLHT was in accordance with Part II of the Land Disputes Courts Acts, 2002(No.2 of 2002) regulations. The dispute settlement follows the following steps:

1. The applicant files an application for dispute resolution by filling in an application form (a prescribed form No. 1 of the first schedule of the regulations) indicating the name(s) and address, the location of the land, the nature of dispute, estimated value of the disputed property and the relief sought for. The applicant is required to produce more information as may be necessary or the tribunal rejects an application and record the reasons for the rejection. This is done by the applicant him/herself or a representative.
2. The tribunal then issues summons to the respondent by a Process Server (PS) informing him/her of the time, date and place at which the application will be mentioned. The task of serving the defendant(s) is upon himself or herself who has lodged the dispute. The person (applicant) may use the local leaders (mtaa chairperson), ward executive officers or most of the times court clerks or traditional brokers upon payment of their services. The service for delivery application within the city is 3,700TSH (2.60 USD). A copy of the application is attached to every summons issued.
3. After the service, the PS or the one who served the summons returns the original copy of the summons duly signed by the respondent to the tribunal and an affidavit is sworn by the PS in the prescribed form indicating the manner in which the service was done.

4. The respondent if contesting or disputing the same, files his/her Written Statement of Defence (WSD) within 21 days without any format or within 7 days of the service, files counter affidavit upon payment of the prescribed fees.
5. If the WSD contains a counter claim, the tribunal serves the applicant a copy of the claim and the applicant within 21 days is expected to file his WSD to the respondent's counter claim. The chairman only extends the time within which to file the WSD or counter claim upon good cause being shown by any party but within 14days for WSD and 7 days for filing counter affidavit.
6. The chairman fixes a hearing date for application without entertaining any further pleadings. At the commencement of the hearing, the chairman reads and explains the contents of the application to the respondent. At any hearing other documents which are not annexed to the pleadings are not received. It is expected that a party to the dispute is served with any exhibit tended in to the tribunal before the hearing of the dispute. Before the tribunal admits any copy of the document, it ensures that a copy is served to the other party and regards the authenticity of the document.
7. The respondent is required to admit the claim or part of the claim or deny. Where the party admits the claim, his words are recorded and the tribunal proceeds to make orders as it thinks fit. Where the respondent does not admit the claim or part of it, he/she is given time to frame issues with his advocate if any.
8. The tribunal hears evidences on both sides. This is done by allowing the parties or their advocates to call witnesses to produce evidence before the tribunal.
9. Where the application is left unattended by the applicant for 3 months, the tribunal may dismiss it for "want of prosecution". The applicant may withdraw the application but orders may be made as to costs, as it deems fit. If parties upon any stage of the proceeding, agrees to settle the dispute before the tribunal, the chairman enters a judgment consent or order upon the terms agreed by the parties.
10. The chairman allows every assessor present at the conclusion of hearing his/her opinion in writing (may be in Kiswahili) and finally pronounces his judgment. The judgement is written in English with regard to a brief statement of facts, findings on the issues, a decision and reasons for the decision.
11. A decree is issued immediately after the judgement. If a person is aggrieved, he/she can appeal to the High Court (Land Division)

The above procedure at the DLHT was observed in a case file: A dispute was filed on the 31st January 2007. The dispute was on double allocation by the authorities responsible for the allocation of lands in the municipal. The respondent filed his WSD on 5th April 2007 stating that the property of the subject case had been developed by the applicant unlawfully and that he had paid all rent. An advocate represented the respondent but the applicant applied on his own.

The parties appeared 14 times before the tribunal and judgment was given on the 15th January 2008. In the tribunal's judgment, the applicant succeeded but the respondent appealed to the high court (land division). The high court revised the decision of the DLHT declaring the respondent as the lawful owner of the plot. The High court therefore has the power to revise the decisions of the DLHT even after long processes of resolving the dispute.

The filings of the cases are done such that counter claims (i.e. a case within a case) are placed in the same file. The tribunal hears the application first and if there's no case or the case is dismissed then the counterclaim is opened. Normally the claim is for relieve, disturbance, damages that is incurred by the applicant who was the respondent in the previous case. The applicant can withdraw his case but cannot with the counterclaim by the respondent. All counterclaims is dismissed or granted by an order. A decree is issued immediately after the judgement.

Every document that is presented as an evidence for filing is paid for. Applications are filed with evidences known as exhibits and each exhibit is charged 500TSH (0.35 USD) that is entered or filed in the case file when filed. The application fee is determined based on the estimated value of the property. Where new evidence is presented without the knowledge of the other at any hearing, it is ignored. A copy is filed but at the hearing the party comes with the original.

The applicant pays for the services of summons to the Process Server (PS). The one who engages the services of the PS incurs the cost of the services. The PS takes an oath before discharging his services. Court brokers are also allowed to take the task of a PS. The parties bring in the government officials say the lands officers, commissioner of lands, municipal Director as witnesses to testify the validity of their documents particularly if any party tends in a certificate of right of occupancy or the disputed land is surveyed. If the disputed land is not surveyed or no proof of right of occupancy, neighbours are used as witnesses or the parties bring in their own witnesses.

The High Court does not execute the cases (Appeals) from the DLHT but rather refers them back to the DLHT for execution after the judgment is given at the high court. Orders are prepared for execution, eviction and demolition. Private companies are hired to demolish properties.

Some parties fail to appear before the tribunal themselves but are represented by advocates because they are afraid and therefore seek the guidance of an advocate³. Also they do not know the technicalities of the tribunal and the processes involved. They however engage the services of advocates though the preparation of documents is quite expensive (a minimum of 500,000TSH equivalent to 350 USD).

The study shows that though the processes are clearly laid out it is too long and more of adjudication method is used, the processes are technical and cumbersome and some disputants engaged the services of advocates to foresee the technicalities. These additional services require money which makes the process costly for many land users. Even though advocates represent disputants for the settlement of their cases, it did not reflect in the number of cases disposed off within the year. Statistical figures of

³ Interview with a legal officer

the DLHT were examined, compiled and correlated to get the total number of disputes recorded from the year 2007 to 2009 (Table:5-2). Available figures for the year 2009 were from January to September. Figure 5-6 shows the total number of disputes that were lodged and disposed of at the respective years at the Tribunal. It reflects that less than 30% of the total disputes were disposed off within a year.

Table: 5-2: Number of disputes registered and disposed off (2007-2009)

year	Disposed off				Applications				Disposed off %			
	Applic	Appeals	Misc	Total	Applic	Appeals	Misc	Total	Applic	Appeal	Misc	Total
2009*	60	51	117	228	412	138	237	787	15%	37%	49%	29%
2008	41	34	125	200	446	191	305	942	9%	18%	41%	21%
2007	50	108	104	262	443	241	245	929	11%	45%	42%	28%

* Jan. - Sept

Source: Author's Compilation (2009) from Statistical data of DLHT

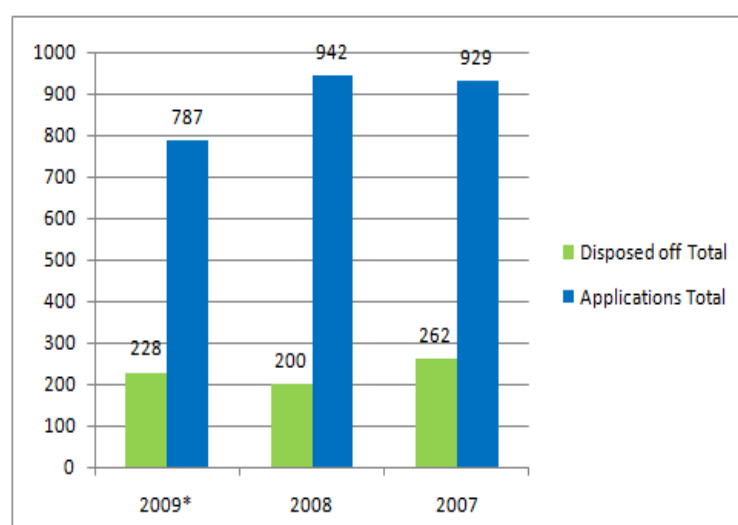


Figure 5-6: Total Disputes registered and disposed off (2007-2009)

Source: Author's Compilation (2009)

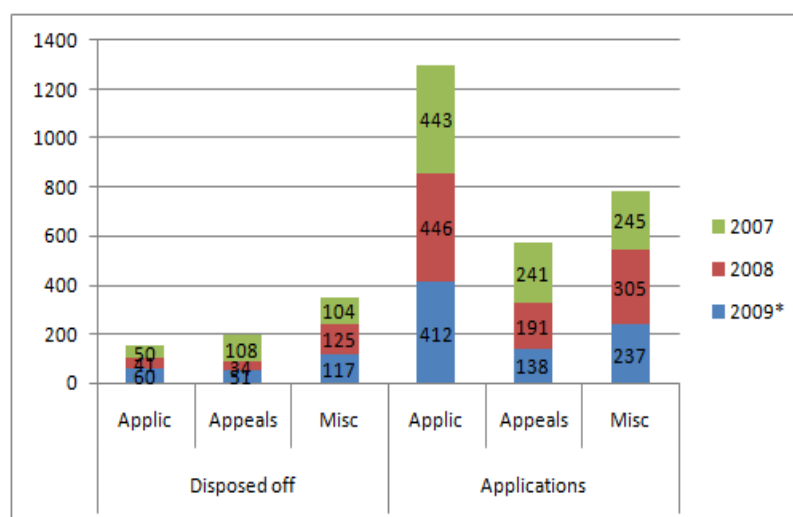


Figure 5-7: Comparison of numbers of disputes registered and disposed off

Source: Author's Compilation (2009)

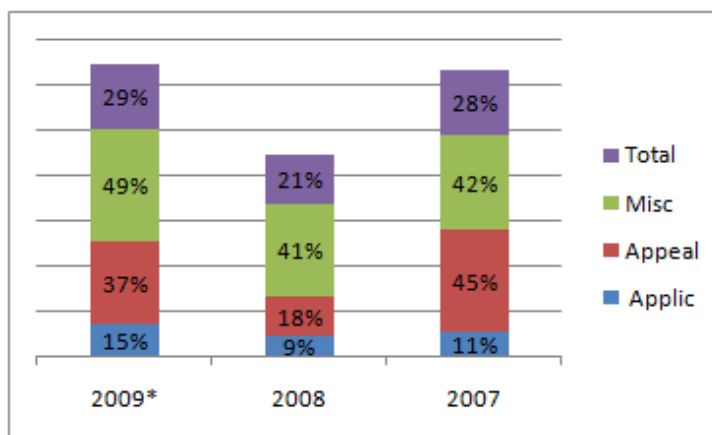


Figure 5-8: Percentages of total and yearly disposed disputes

Figure 5-7 reveals that a considerable high number of fresh applications are received every year (not less than 400 fresh disputes are filed every year). This is followed by miscellaneous applications for execution of orders and appeals especially from the 27 wards in the district. But surprisingly, more of the miscellaneous cases (over 40% each year) are disposed off than the appeals and fresh applications. This reflects the long time that is taken to settle fresh applications. It is seen that the DLHT disposes of referrals quite quickly because in the case of appeals, it examines the already recorded proceedings of the dispute and needs a short time to give its order or judgement.

Many of the cases are filed between 15,000TSH (10 USD) and 20,000TSH (15 USD). This shows that filing a case at the DLHT is not expensive and affordable by the disputants. At the high Court it is very expensive because cases are filed at 3million TSH (2,145 USD) and over.

5.3.2. The Ward Tribunals (WT)

At the ward level, four wards namely Kawe, Kunduchi, Bungu and Ubungu were examined. These wards are established by section (1) of section 8 of the Ward Tribunal Act, 1985. The primary function of each WT is to mediate between and assist parties to arrive at a mutually acceptable solution on any land conflict within its jurisdiction so as to secure peace and harmony in the area for which it is established. The Ward Tribunals do employ customary principles in mediation of land disputes. For each dispute, the disputants come before the tribunal and the mediators help them to reach an agreement. According to the interviews held with the chairpersons of the Ubungu and Kawe Ward Tribunals, after going through the mediation process a judgement day is fixed for the decision of the tribunal to determine the case and if one party not satisfied the aggrieved party makes an appeal to the DLHT. This is due to the fact that Ward Tribunals are empowered to make decision or judgment especially when mediation has failed..

When the Ward Tribunal decides on the dispute, any aggrieved party is lawfully allowed to appeal against the ruling. It was observed that though the principles of mediation were applied in these wards, they acted as arbitrators instead of mediators. In mediation, the mediator is a neutral third party “with no decision making power, whose duty it is to follow the entire negotiation process, improve communication between the parties, and help them reach the most appropriate resolution”(Herrera et al, 2006). The objective of the intervention is to assist the parties in voluntarily reaching an acceptable

resolution of the conflict. Though they are to help the parties to reach an agreement, they have control over the whole process and decide and make orders or charge fines. It is a matter of loose-win affair.

The WTs receives fresh applications on land disputes as well as all land disputes that have not been resolved by the sub-ward committees or ten cell leaders. The following figures of recorded cases in table 5-3 and 5-4 were obtained from the Kawe, Ubungo, Kunduchi and Bunju Ward Tribunals.

Table 5-3: Registered and disposed disputes (Kawe and Ubungo)

Year	Kawe			Ubungo		
	Registered oct,2009	Disposed off	registered Disposed off	registered as @ 08/10/09	Disposed off	Disposed off
2005	13	8	62%	13	4	31%
2006	165	76	46%	50	2	4%
2007	88	88	100%	50	7	14%
2008	62	60	97%	35	15	43%
2009	90	50	56%	36	13	36%
Total	418	282	67%	184	41	22%

Table 5-4: Number of recorded cases (Kunduchi and Bunju)

	Bunju(Jan. 2008 - Oct. 2009)	Kunduchi (Oct 2009)
Cases filed as at	208	106
Appeals to DLHT	10	-
Referred (court)	2	1
Pending	28	67
Cases disposed off	180 (87%)	39 (37%)

In Bunju and Kawe Ward Tribunals a higher number of recorded disputes had been disposed off unlike Ubungo and Kunduchi.

Composition and sitting of the Ward Tribunals

As stated above a ward tribunal must consist of not less than four and not more than 8 members of whom there should be women. The membership of ward tribunal is constituted by persons who hail from the ward. The tenure of office of the members is 3 years. The members are ordinary persons who have no legal background but have good reasoning capacity. An advocate is forbidden to appeal at the ward tribunal and the law does not allow that. Unlike the DLHT, gender issue is critical in the proceeding of WT. In every session of hearing at least there be must a woman and without that the judgment might be invalid. The compositions at the wards were as follows:

Table 5-5: Composition of WT members

Ward	No. of Members	No. of women
Kawe	7	2
Kunduchi	7	3
Ubungo	5	2
Bunju	8	3

Each tribunal mostly sits once a week to hear dispute cases and a day (normally on Wednesdays or Fridays) within the week is set aside for site inspections. This depends on the number of disputes lodged at the Tribunal.

Procedure at the ward Tribunals

There are no laid down procedures in the way proceedings of the Ward Tribunals should take. However, the interviews and observations show similar procedures adapted in all the wards and are summarised below:

1. Registration of the case at the WT
2. The applicant pays at least 5,000TSH (if he is capable)
3. The summons is given to the applicant to give to the Mtaa leader who then send it to the other party to require him to appear before the tribunal for the hearing of the case
4. The parties appear before the tribunal for hearing of the dispute
5. Site inspection is conducted on the land (site inspections are conducted at the expense of the parties)
6. Arrangement is made for the date for the hearing
7. The tribunal determines whether their jurisdiction allows them to handle the matter (usually not more than 3millionTSH). In case the value of the land or property is more than 3millionTSH, the application is referred to the DLHT.
8. Hearing of each party of the dispute including evidences by the witnesses
9. The Tribunal decides on the matter and gives its judgment at a date where both parties are present.
10. After elapse of 45days (the time within which one can appeal) the successful party is given a form No. 5 for enforcement of the decision
11. Enforcement of the decision is done at the DLHT

In this justice delivery system, there is no clear picture of what they should do and the procedure to be followed. They are mandated to use customary principles of mediation between the parties and cannot judge the case again. Each decision is not executed at the ward level but has to be executed at the district land and housing tribunal. They do not execute their orders but they just listen and make orders. The winner goes to the DLHT for enforcement of his or her right. The ward tribunal sits twice a week including inspection days and so cannot expect a fast mechanism due to the involvement of site inspections on the disputed lands especially unsurveyed lands. In principle, ward tribunals are not suppose to be legal entities which are imposing fines, though the law mandates them to do so and taking proceedings like the court of law but are to operate more of negotiation, dialoguing and mediating institutions.

5.3.3. Other systems for resolution of conflicts in Kinondoni

Aside the recognised courts for settlement of disputes, there were no other institutions or courts that existed in the Kinondoni Municipality. One interviewee said that “No particular people or place aside the machinery set up by the government have the authority to resolve conflicts. If it is happening then is done illegally somewhere”⁴. No one could tell of any other than the Non-Governmental Organisations who advice, represent or assists people in their pursuance of land disputes. These are mainly for the vulnerable, underprivileged and women.

One such institution was the HARKI-ARHDI. The Institute was established in 1994 soon after the National Land Policy came into being. The institute teaches their beneficiaries (many of which are in the villages) important issues from the Land Act and Village Act of 1999 empowering them to understand their rights especially on land and use of other natural resources through planned seminars and fora. The institute does not deal with or assist individual cases but that of groups, villages or hamlets. Their activities are mostly done in the villages to create awareness of land issues.

It was known from an interview granted by a senior researcher that sometimes people sought the Minister’s appeal for intervention if they are dissatisfied about compensation, unlawful eviction, and action taken by the local government. The minister does provide execution for such conflict resolutions.

According to interviews with some key persons, informal systems, defined by the researcher as any other system aside the ones legally established by law, could be seen in the villages or subwards in the urban areas. It is worth noting that there were no villages in the study area. It was revealed that it depended on peoples’ awareness of the courts Act or some were still using their customs/traditions to solve disputes. Though some interviewees knew of some informal system, the researcher was informed that they were mostly practiced in the villages especially the northern region of the country. They could be found in areas such as Kilimanjaro where there are respected elders known as “Wazee Wenye Busara”. These are people that are “full of wisdom” and have lived in the area for a long time. These elders can intervene only if they are requested to do so. It is always initiated by the aggrieved person and a few other people are also called upon to assist resolve the conflict.

Informal arrangements for resolution of conflicts are seen. Individuals such as the elderly and opinion leaders in the communities mediate conflicts which are largely between individuals. At the Mtaa level, the Mtaa leader may resolves it alone where the conflict is seen by him as a minor one and convince the parties to settle out of the committee to prevent people from incurring the cost for the sitting of the committee.

The system usually has no formal relationship with the primary courts which specifically deal with criminal issues. The DHLT have legally trained persons as chairpersons whilst at the ward tribunal people who are knowledgeable in land issues and not necessarily legal persons are appointed. In most cases records are kept in Kiswahili at the ward level whilst is done in English at the district level but proceedings are mostly held in the Kiswahili language at both levels.

⁴ Interview with the Chairman of the Ubungo Ward Tribunal

The places used for the hearing of disputes at the tribunals are cramped and very uncomfortable for both members and disputants. Interviews with key persons of the tribunal together with the researcher's observation showed that the tribunals have limited resources to perform their tasks. At the DLHT two instead of five chairpersons were at post and only one personal computer and a printer. At the ward Tribunals that were visited some had computers but no printers and always had to print orders and decisions at private places. Despite all these weaknesses, the system has survived and is still functional.

5.4. Types of land conflicts/Disputes

Theoretically the major land conflicts in Kinondoni are related to land ownership claims, encroachment, invasion of plots, trespass and conflicts between customary and statutory laws on land. The study revealed other sources of Conflicts in the Kinondoni Municipality. From the interviews, the main land disputes were on ownership claims; easements, boundary, trespass and encroachment (Table 5-6 and figure 5-9 refer)

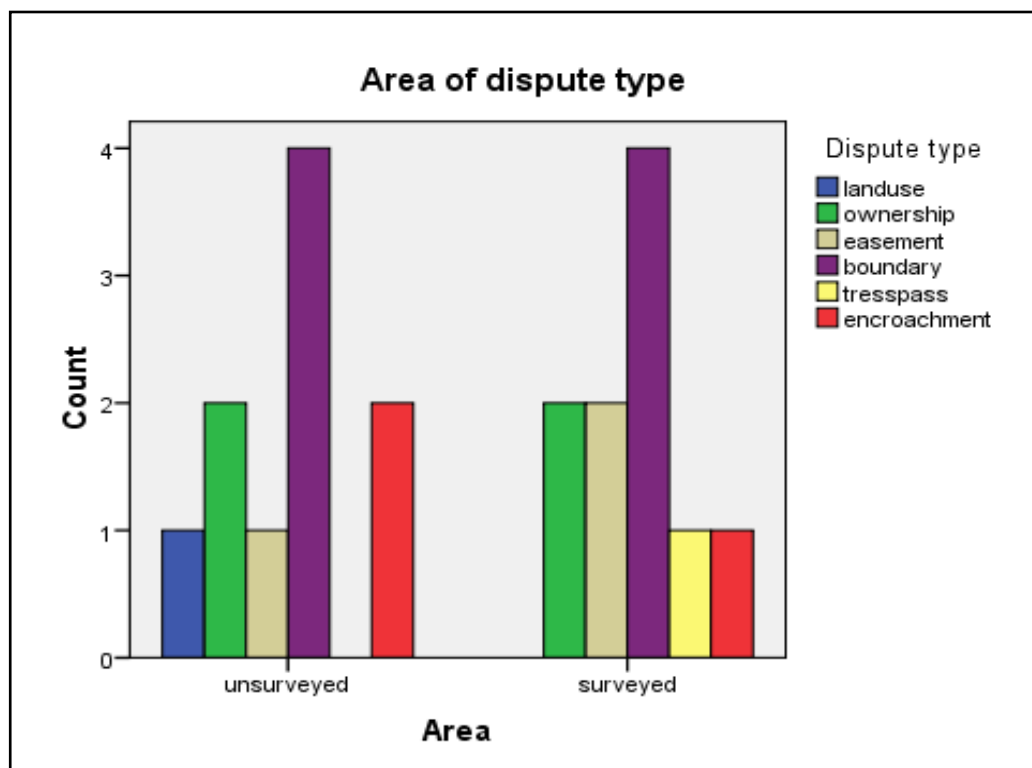


Figure 5-9: Types of Disputes on surveyed and unsurveyed lands

Table 5-6: Cross Tabulation of Dispute of surveyed and un-surveyed land

			Area * Dispute type Crosstabulation						
			Dispute type						
			landuse	ownership	easement	boundary	tresspass	encroachment	Total
Area	unsurveyed	Count	1	2	1	4	0	2	1
		% within Area	10.0%	20.0%	10.0%	40.0%	.0%	20.0%	100.0%
		% within Dispute type	100.0%	50.0%	33.3%	50.0%	.0%	66.7%	50.0%
		% of Total	5.0%	10.0%	5.0%	20.0%	.0%	10.0%	50.0%
	surveyed	Count	0	2	2	4	1	1	1
		% within Area	.0%	20.0%	20.0%	40.0%	10.0%	10.0%	100.0%
		% within Dispute type	.0%	50.0%	66.7%	50.0%	100.0%	33.3%	50.0%
		% of Total	.0%	10.0%	10.0%	20.0%	5.0%	5.0%	50.0%
	Total	Count	1	4	3	8	1	3	2
		% within Area	5.0%	20.0%	15.0%	40.0%	5.0%	15.0%	100.0%
		% within Dispute type	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
		% of Total	5.0%	20.0%	15.0%	40.0%	5.0%	15.0%	100.0%

Boundary conflicts were the leading followed by claims on land ownership by disputants having lands in both surveyed and un-surveyed lands of disputants.50% of the respondents said their lands were surveyed whilst 50% un-surveyed.

From the response of the key respondents the conflicts in the municipality were mostly of property boundaries, easements, landlord and tenant contract conflicts and double allocations in the unplanned settlements. These conflicts occur as a result of the existence of many of the un-surveyed land and there is no restriction in transferring apart from building or developing the land. This has resulted in double allocations to different people by land owners and more especially property boundary conflicts. Another important source of the conflict is lack of a land register to show who owns what and where.

In the planned and reserved areas the commonly seen conflicts were multiple allocations of lands by the allocation authority, compensation payment claims and encroachments on public areas especially road reserves. These conflicts occur due to former allocations that were made by three different authorities (Ministry of lands, Kinondoni Municipal Council and Dar City council) without any proper recordings after allocations and some greedy officials forging documents to allocate lands.

From the registers of the DLTH, land disputes were classified and recorded in three different registers namely Land applications, Land Appeals and Miscellaneous (mainly execution and revision of Land applications). Land Applications are disputes that the DLHT have and exercise original jurisdiction. That is jurisdiction of proceedings for recovery of possession of immovable property value or estimated subject matter not exceeding 50milliom TSH or 40TSH respectively. Land Appeals are disputes from the wards where aggrieved parties are not satisfied with the decisions or order of the Ward Tribunal and file the disputes at the DLHT. Miscellaneous Applications are those disputes lodged before the DLHT either to revise or to execute the ward tribunal decision (Victor, 2009) . The causes of action of disputes that were registered are seen in Figure 5-10.

In Figure 5-6,the number of disputes registered at the DLHT each year, since 2005, exceeded nine hundred (900) and the projected figure for 2009 was 1045 (December 2009). The average number of

cases filed in a month for 2009 was 86. In all, the land applications constituted 53 % for the period 2005-2009.

From the study, a total of 1731 conflicts were registered between the years 2008 and 2009. The record shows that higher number of the land application disputes were of ownership claims, evictions and injunctions. With the Land Appeals the leading were of recovery of property or land which was followed by ownership claims. Seeking orders for evictions and demolition were leading in the Miscellaneous Applications. This is shown in figure 5-10 below.

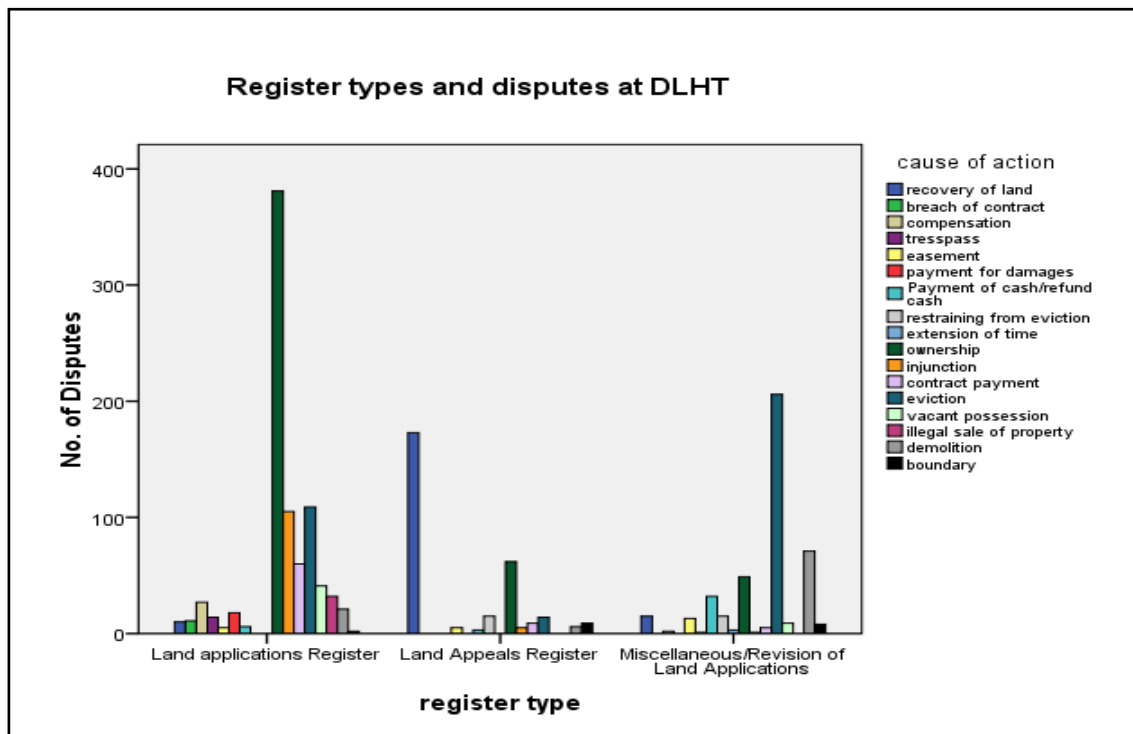


Figure 5-10: Types of Registers and Disputes in DLHT

The leading disputes, ownership claims of the land applications suggest that the value of the lands that were in disputes are high and confirm the value of disputed lands that are admitted at the DLHT. The registers lacked the recordings of plot/land sizes of the disputes cases. Though they could have been found in the case files, limited time was on the part of the research to investigate that.

5.4.1. Duration of disputes

Figure 5-11 depicts the various periods that were used to solve the disputes at the DLHT. 54% of the total disputes which had been lodged for nearly 2years (20months) were still pending and had not been disposed off. Out of the 46% that had been disposed off, 40% were handled within one 1-3 months. Only 5% were handled and disposed off within a month. For the Land Applications that were disposed off, the highest (32%) were within the period 7-12 months. Those of Land Appeals (36%) and Miscellaneous (58%) were within 4-6 months and 1-3 months respectively as shown in Figure 5-12.

As explained earlier in the procedure for handling disputes at the DHLT, the disputes that were disposed off at the tribunal were decisions and orders made (shown in Table 5-7). The DLHT hears and makes decisions and orders with the powers given to it. It dismisses disputes where the application is left unattended by an applicant for a period of 3months for want of prosecution. A dispute is at a point in time withdrawn by the applicant or the parties agree to settle the matter before the tribunal and the chairman may enter consent judgement or order upon such terms as may be agreed by the parties. Disputes are quashed, closed or struck out by the Tribunal. In total, within the period (Jan 2008 – Oct 2009) about 28% were granted orders for the execution of their land applications, appeals or miscellaneous applications. 40% were dismissed whilst others constituted 10% each as shown in Table 5-7. A detailed analysis of the duration and register type (both pending and solved cases) as well as the causes of action is shown in figures 5-13 and 5-14.

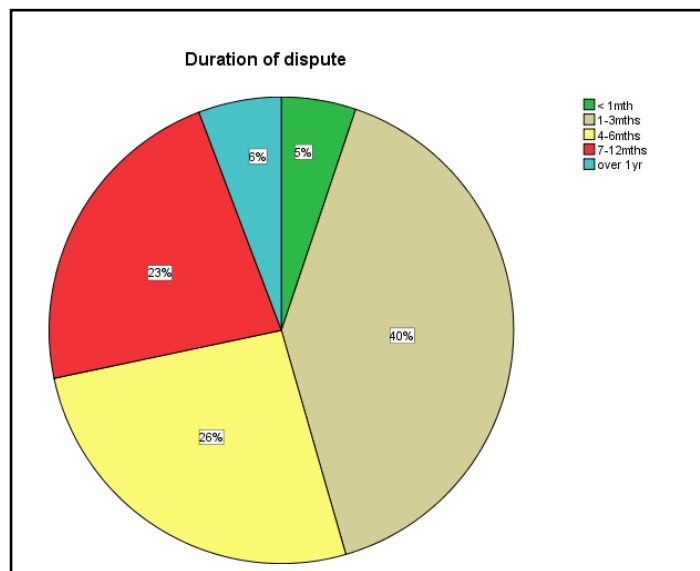


Figure 5-11: Duration of disputes disposed off in 2008-2009 at DLHT

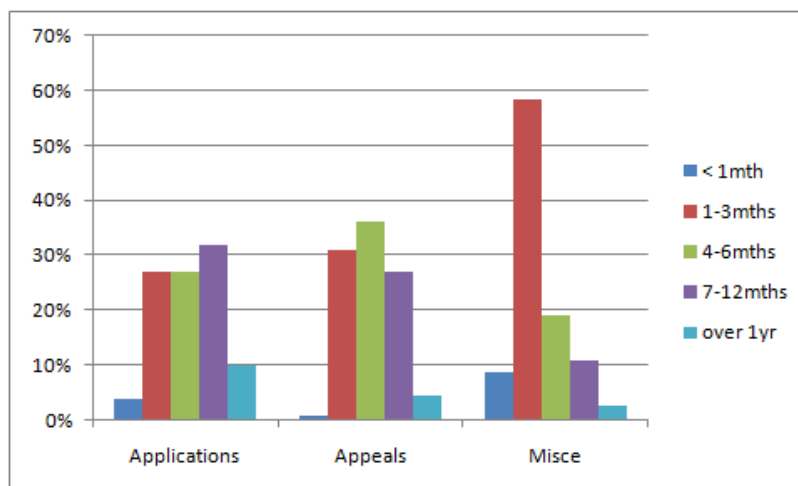


Figure 5-12: Register Type and duration of disputes at DLHT

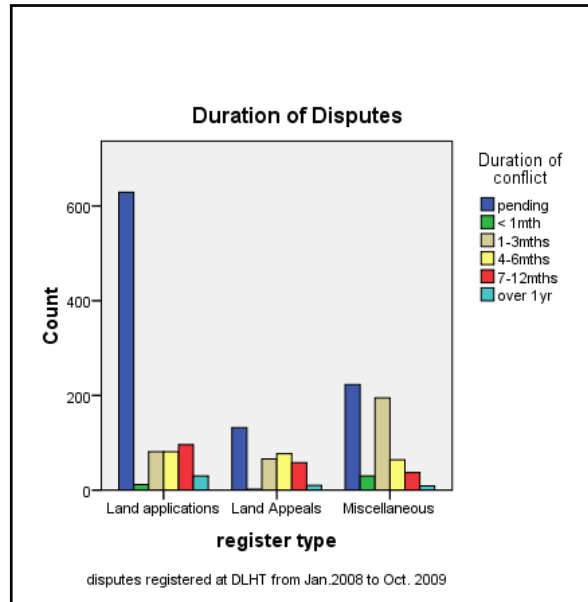


Figure 5-13: Pending and disposed disputes at DLHT

The complaints recorded at the DLHT included recovery of land, breach of contract, compensation claims, trespass, easements, payments of cash, damages or refund, restraining from eviction, demolition, sale of property/land, ownership, contract payments especially rent in arrears, eviction, vacant possession, boundary disputes and others such as issues pertaining to mortgages as shown in Figure 5-14 below.

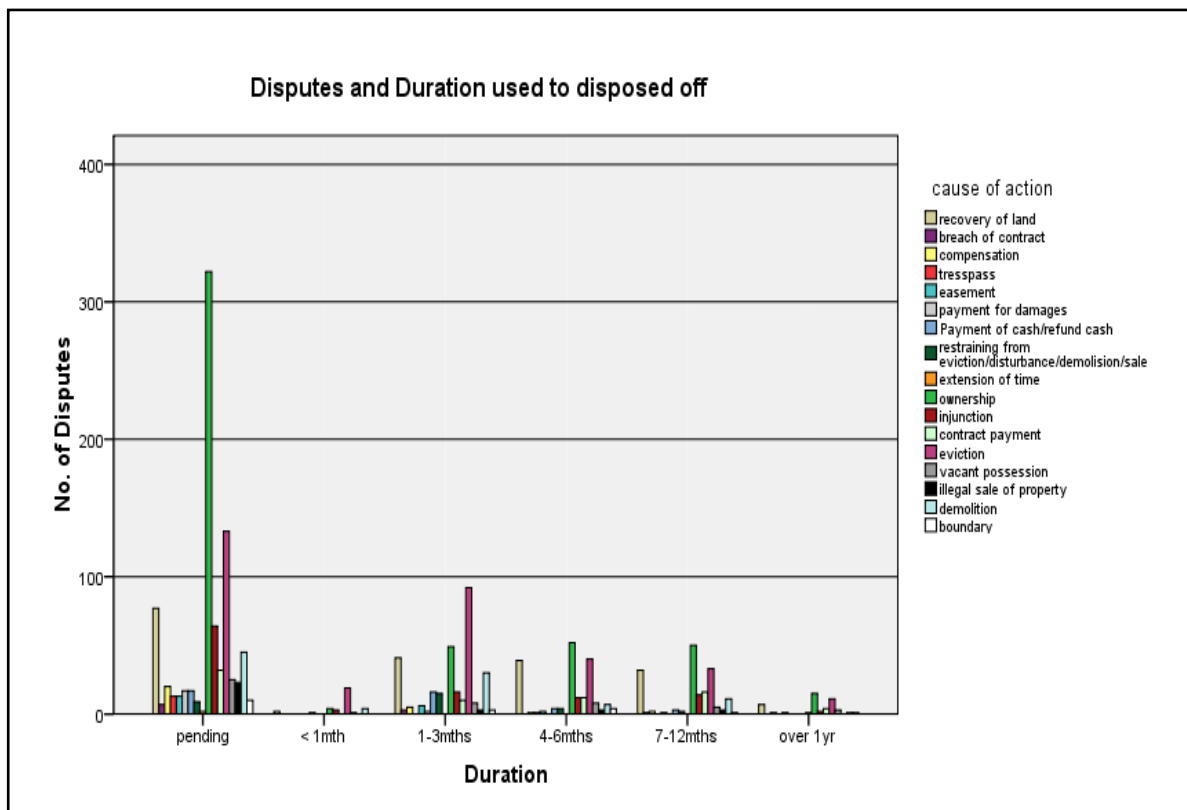


Figure 5-14: Causes of action and their duration at DLHT

Table 5-7: Decisions on disputes at DLHT

Decision type	Frequency	Percent	application		appeal		miscellaneous		Total No.
			Frequency	Percent	Frequency	Percent	Frequency	Percent	
granted	244	28.5%	54	17.3%	26	12.4%	164	49.1%	244
dismissed	350	40.8%	153	48.9%	106	50.5%	91	27.2%	350
quashed	67	7.8%	2	0.6%	47	22.4%	18	5.4%	67
closed	34	4.0%	5	1.6%	10	4.8%	19	5.7%	34
withdrawn	58	6.8%	43	13.7%	4	1.9%	11	3.3%	58
struck out	81	9.5%	39	12.5%	11	5.2%	31	9.3%	81
settled	21	2.5%	16	5.1%	5	2.4%	0	0.0%	21
no pecu. Jurisdiction	2	0.2%	1	0.3%	1	0.5%	0	0.0%	2
Total	857	100%	313	100.0%	210	100.0%	334	100.0%	857

Amongst the total complaints, the leading were ownership claims (27%), followed by eviction (18%) and recovery of land (10.8%). For the different registers, ownership claims (41%) of land applications, recovery of land/property (50%) of land appeals and eviction (36%) of miscellaneous were leading.

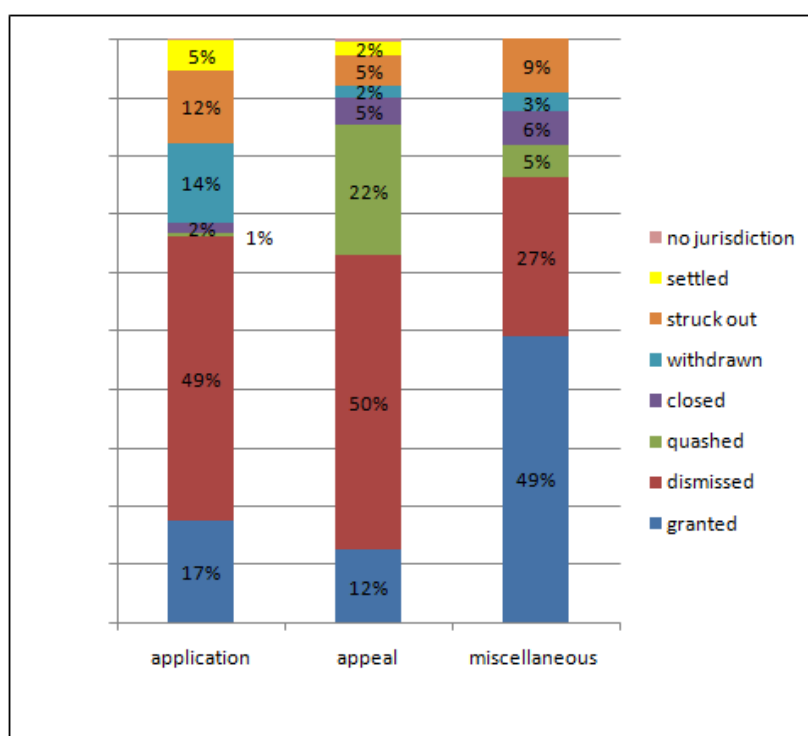

Figure 5-15: Decisions on disposed off disputes (2008-2009) at DLHT

Figure 5.15 shows the decisions that were made on the disposed disputes at the DLHT. Out of the 34% of the land applications that were disposed off, nearly half of them (49%) were dismissed whilst less than 20% were granted orders in the applicants' favour. With the disposed land appeals (61%) slightly over 50% were also dismissed whilst slightly over 10% were granted but nearly 25% were quashed.

Orders granted in favour of the disputants constituted the most (49%) amongst the miscellaneous applications (60%) that were disposed off.

The above shows that the DLHT handles and disposes off more of appeals and miscellaneous applications but many are dismissed. The DLHT also grants more orders for execution with regard to miscellaneous applications from the wards. Section 15 of the Land Disputes Courts Act, 2002 (Act No. 2 of 2002) provides that the DLHT may, where an application is left unattended by an applicant for a period of 3 months, dismiss applications for want of prosecution or make orders in respect of part of facts or claim that are admitted. The high number of disputes that were dismissed may be due to the implementation of this particular mandate given to the tribunal to dismiss any application due to the non appearance of the applicants within the stipulated period.

From the response of the disputants, 80% had their disputes still pending in the various courts. Two respondents had had their disputes in High Court and the Ward tribunal for 8 years and 5 years respectively. Amongst those that were resolved, 50% had their disputes resolved after two years. The monthly report of the DLHT to the Ministry of Lands also indicated that a total of 1215 cases were pending as at the end of September, 2009. Out of these and 67 (65 applications and 2 appeals) out of 917 (land applications (516), appeals (137) & Miscellaneous (264)) cases filed in 2005 were still pending whilst all the miscellaneous ones had been disposed off. This shows how some disputes can be pending for a long time and confirms the fact that some disputes spend a long time in the courts before they are solved or disposed off. This suggests that the disposal of a dispute depends on the mechanism used, the appearance of the parties as well as the type of conflict that is lodged.

The findings establish the fact that the Tribunals take long time in disposing of disputes particularly land applications. This is due to the long procedures involved and the pleas for postponement of hearings as well as non appearance of parties. The DLHT is quick in handling miscellaneous applications due to the fact that the disputes are already determined by the wards and it requests for the proceedings at the Ward Tribunals for execution. Such disputes are easily disposed of compared to the fresh applications.

5.4.2. Areas of disputes

Interviews with key persons revealed that many of the disputes come from Kimara, Kawe and Mbezi wards. This is confirmed by the DLHT register where these areas are amongst the leading registered cases. Some wards were notable of their own type of land disputes. For example, Mbezi beach and Msasani were known to be areas having disputes of double allocation and trespassing due to multiple allocations in the early 1990s by the three authorities (Ministry of Lands, Kinondoni Municipal Council and Dar City council).

Mandale in Kunduchi were more pronounced in land dispute relating to payment of compensation. This is a case where the government acquired land and wanted to survey and make available land plots for allocation but has failed and residents has refused to vacate the area but guarding their land preventing municipal officials to go there. The scheduled plan was to start the allocations in April 2009. There has been a new challenge after enactment of the land policy and land act. The law recognizes full, fair and adequate compensation but there are some problems of the law. The land acquisition and compensation act 1967 (No. 47) enacted in 1967 still determines how compensation must be paid though the situations in 1967 are not the same in recent years. An interviewee said that

“the Act is still being relied on and even though compensation processes are fully adhered to, compensation is not forthcoming. The aggrieved party always claims compensation is not enough and there has not been a situation where compensation has been fully paid”⁵.

Ubungo ward and unsurveyed areas were notable of boundary conflicts in connection with plot extensions, inheritance of property, easement and Landlord and tenant disputes.

Findings from the DLHT indicated that many of the miscellaneous applications from the different wards were disposed off except for Kawe, Mburahati and Sinza which had more disputes pending compared to those disposed off as indicated in Fig 5.16 and Appendix G.

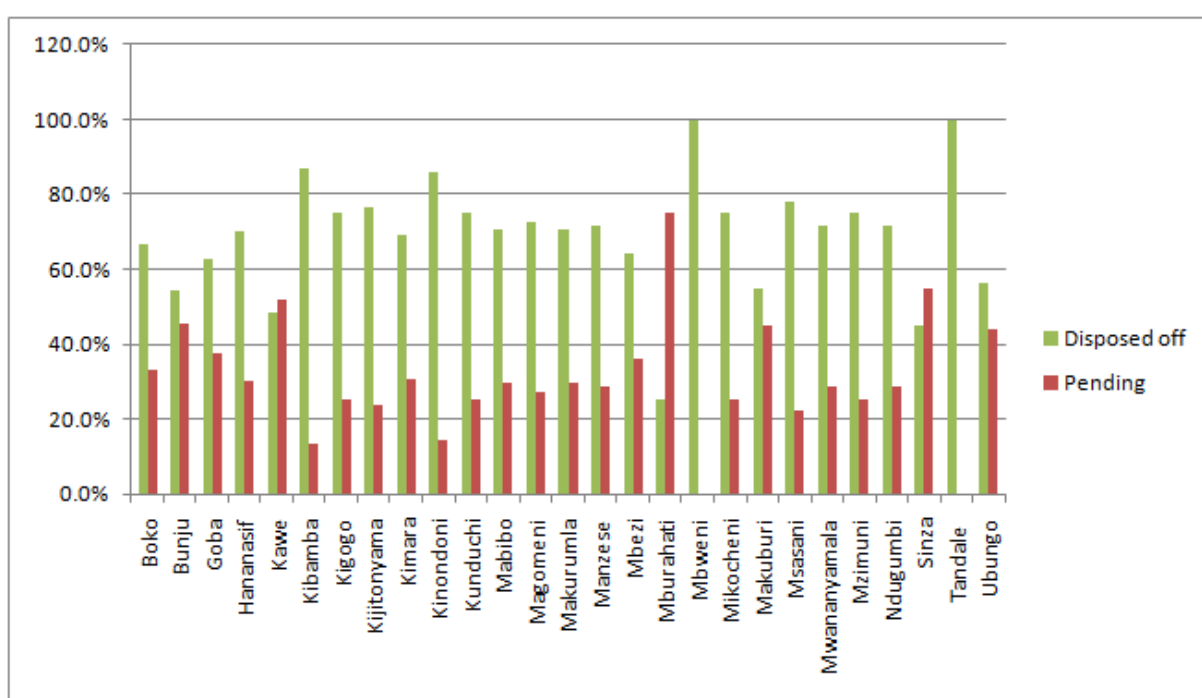


Figure 5-16: Disposed off and pending Miscellaneous Applications from Wards at the DLHT

The results show that Kimara leads in the miscellaneous applications. As said earlier miscellaneous applications are lodged at the DLHT for execution of orders or decision especially from the wards. 29 cases were registered at the DLHT from Kawe for execution of orders for the period 2008-2009 compared to 110 cases that were disposed off at the ward Tribunal. Only 14 were disposed off at the DLHT of which only 9 were granted order for execution. From the findings at the tribunal, many of the disputes were disposed off but the records does not show whether the disposed disputes were settled or appealed against since data on the areas from where Land appeals applications emanate from were lacking from the registers at the DLHT.

The wards were classified into five conflict zones (see Figure 5-17) based on the data collected from the miscellaneous applications registered with regard to numbers of demolition and execution orders of the DLHT. Classes 1 to 5 represent zones of fewer conflicts (1) to more conflicts (5). As indicated

⁵ Interview with a senior research fellow

earlier, miscellaneous applications constituted 30% of the total disputes and had 50% of its disposed off orders or revision granted. These orders were more of eviction and demolition and could attribute to the spatial development of the study area depending on the type of conflicts. This reveals the increasing nature of disputes in the peripherals of the municipal including areas like Kawe, Kunduchi, Mbezi and Bunju. The responses of the Key respondents and community residents confirm the classified zones of land conflicts.

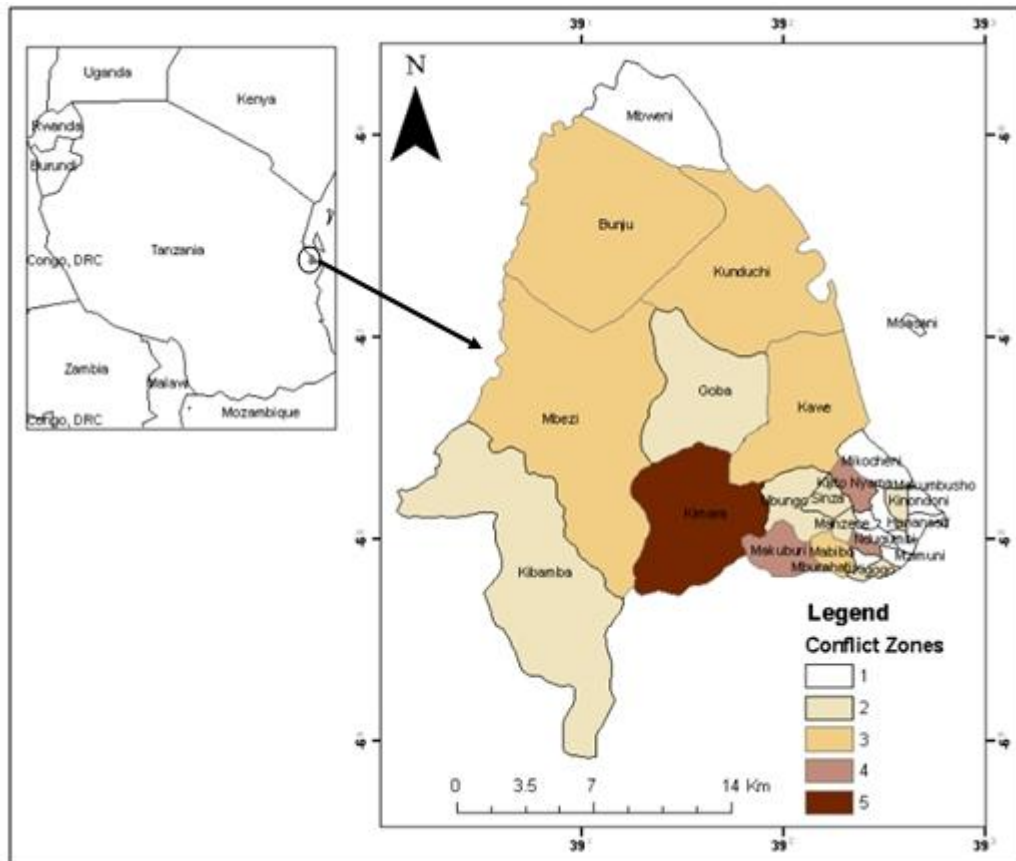


Figure 5-17: A map showing conflict zones of Kinondooni Municipality

5.5. Parties/Disputants

The findings from the field study and secondary data shows that disputes over land in Kinondooni municipality mainly occur between:

- Individual(s) and individual(s);
- Individuals and local institutions;
- Communities and government; and
- Community and individual persons.

Recently, there are a lot of conflicts between organised communities (group of people) in a certain area and the local government or central govt. Such conflicts occur when there is a development project and numbers of people were displaced and have become homeless. There is however rare cases where individuals have invaded illegally occupied land belonging to individual persons.

Sometimes, at a higher level, conflicts occur between organised residents and government primarily involving displacement/eviction of people from lands earmarked for urban or spatial development. Example is the Boko and the cement factory as well as Mkembe and the satellites settlement (Kombe, 2009). This is due to dissatisfactions of people on inadequate compensation, lack of land for settlement or disagreement on where to settle and conflicting claims of the rights on the land (government and individual claims)

Amongst many people in the informal settlements there is a strong belief that all lands are public lands and, when there is a land conflict especially in terms of public rights on the land there is a lot of “a flexibility among land owners” to say you cannot completely deny the public interest on the land and the upper hand of govt is being felt because of the public land ownership. It might not be eminent or seen clearly but when a persistence stage of conflict and solution-finding, the public takes the upper hand. That is where one sees the importance and relevancy of public landownership. There is a respect of public lands in terms of interest there is the fear that all lands are public lands.

5.5.1. Gender and dispute type

From the random selection sample of the population that responded to the questionnaire, 55% were males and 45% were females as indicated earlier. 75% of the total sample responded that they had been involved in disputes that have been resolved or were currently in the process of being resolved. Amongst the males disputants (73%), 62% were claimants whilst amongst the females (78%), only 43% were claimants. This reflects the fact that land issues are mostly considered as the responsibility of men. Recently, women have been taking active roles because women are allowed and empowered to be part of land issues. Though there is an increase in the numbers of interested women in land disputes, the findings from the respondents suggests that women are being taken to these courts by men.

5.5.2. Types of disputants and representations

From the findings of the DLHT registers for 2008 and 2009, the parties that were identified were individual(s), Municipal council and other(s), family, subward/Ward Council, registered trustees of religious bodies and societies, institutions and firms such as banks, companies, community residents, Auction marts and others, joint individuals and representatives or administrators mostly advocates. In the total records of 1731 disputes as shown in table 5-8, both applicants/claimants and respondents were found to be single individuals representing 85% and 70% respectively.

Representation by advocates was only 1.7% and 0.2% for applicants and respondents respectively. There were about 3% of registered companies, schools or banks and 6% two or more individuals who jointly filed disputes. The others were less than 1% each. An interview with a legal officer revealed that it was very expensive engaging the services of advocates and might cost not less than 500,000TSH to pursue a case. This is shown in the findings and this suggests that many disputants cannot afford the services of the advocates and so lodge their disputes themselves. This is also due to the fact that representation of advocates is not a compulsory element in filing a case at the tribunal. It might also be that the services of advocates are hired during the process when disputants deem it fit to do so.

Table 5-8: Representation of Disputants in DLHT registers

Disputants	Applicant		Respondent	
	Frequency	Percent	Frequency	Percent
individual	1526	88.2%	1233	71.2%
Auction Mart & others	0	0.0%	64	3.7%
community residents	2	0.1%	1	0.1%
two or more others	109	6.3%	312	18.0%
municipal Council/other(s)	1	0.1%	30	1.7%
advocate representation	29	1.7%	4	0.2%
company/firm/bank/school/society	51	2.9%	69	4.0%
registered trustees	10	0.6%	8	0.5%
family	0	0.0%	3	0.2%
subward/ward council	3	0.2%	7	0.4%
Total	1731	100.0%	1731	100.0%

Table 5-9 indicates that individual applicants represented themselves in persons more in Land appeals whilst advocates as applicants were for the Land applications. On the part of the respondents, disputes were lodged against individuals more and there were no representation of advocates as respondents in the land appeals and miscellaneous applications. This indicates that people like to lodge their disputes at the DLHT because the system is quite flexible and any disputant can lodge his/her dispute with or without any representation of advocates.

Table 5-9: Representation by advocate for applicants and respondents in Registers at DLHT

Register	Applicant %		Respondent %	
	Individual	Advocate	Individual	Advocate
Land applications	83.3%	2.5%	54.7%	0.4%
Land appeals	93.6%	0.3%	88.4%	0.0%
Miscellaneous	84.3%	0.9%	82.3%	0.0%

According to the chairman of the DLHT, representation of an advocate does not quickly resolve a dispute but if the parties are smart enough their cases can be resolved in time. From the register, individual applicants' disputes were more of ownership (27%) and eviction (19%). In the same dimension advocates representation of applicants were 38% of eviction and 34% of ownership disputes. It was however revealed that 76 % of cases lodged by advocates were pending whereas only 50% of disputes by individuals were pending. This confirms that there can be a source of delay which is unreasonable adjournments due to non appearance on the sides of the parties and not the

representation of advocates at the tribunal. The tribunal per se, does not give advocates to the parties but applicants can hire advocates to represent them. There are centres such as the Tanganyika Legal Society (TLS) which have been established to help people to file their case at the tribunal.

5.6. Respondents' preference for the justice systems

The main aim of this research as explained earlier to find out the preferred justice system based on the dispute or conflict type and the parties or disputants involved. This is discussed below:

5.6.1. Conflict type

Proceedings at the ward tribunals had regard to customary principles of mediation. Many disputes on boundaries and easements especially in the unsurveyed areas were lodged at the Ward Tribunals. Also more of landlord and tenant issues on rent payments and eviction were reported at the tribunals. The tribunals were more capable of settling disputes on landlord and tenants issues. With boundary conflicts it was difficult to resolve because the unsurveyed plots had no concrete landmarks and even if the plot was surveyed the parties preferred a land expert to determine the correct boundaries. The members lack the expertise and respondents were of the view that land experts be members of the tribunal.

From the field survey, only 40 % of the respondents were generally satisfied with the process of resolving conflicts in the Ward Tribunal. The others were somewhat or very unsatisfied with the WTs proceedings. Some reasons were that the ward tribunals were not trustworthy, fair, charge exorbitant charges and always favoured the rich. This suggest that though currently more disputes are lodged at the ward tribunal, it is done because some disputants have in mind that whenever there is a dispute it has to be started at the lower courts. Also people are not in trust with the tribunals because of lack of capability of personnel. This is due to the absence of advocates in the ward tribunals and so the decisions given by the ward tribunal are not very much honoured. The summonses are not honoured because of respect of law disregarding the status of the tribunal due to the fact that there is basically no contempt of court.

Sometimes the WT members find it difficult to give decisions because of the familiarization of the litigants and escape their responsibility concerning lands so as not to be blamed by one of the litigants that they have favoured the other. They push the cases to the higher level to avoid any allegations.

As indicated earlier, the DLHT receives disputes which are then categorised into land applications, appeals and miscellaneous applications. The average number of cases filed in a month at the DLHT is 80 of which 41 are fresh applications, 14 land appeals and 25 that are miscellaneous applications as shown in table 5-10 below.

Table 5-10: Average monthly disputes at DLHT

Year	Average cases per month			
	L. Application	L. Appeals	Misc	Total
2007	40	21	22	83
2008	37	6	25	68
2009	46	15	26	87
Total	41	14	25	80

Author's compilation (2009)

Many of the land applications that are lodged at the tribunal by individuals themselves indicate that the fees of the system are affordable to the disputants. It might also be attributed to the fact that disputants just want to avoid the procedure at the ward tribunals and so over estimate the value of their properties so that they can be admitted at the DLHT to resolve their disputes. This also reveals the trust the public has for the DLHT. Though a party may hire the services of advocates it is seen that many applicants are not represented by advocates. This might be due to the reason that their services are expensive and since the Tribunal does not necessarily require disputants to be represented by advocates many people personally lodge their disputes.

5.6.2. Parties

Perception of respondents

Figure 5-18 indicates the various systems where the respondents had or as at the time of the interview lodged their disputes for resolution. Majority of them started at the ten cell leader level and ended at the current systems shown in figure. Many of the disputants had their cases at the ward tribunals due to the fact though that they were aware of the dispute resolution machinery many were not aware of some clauses of the Act which permits one to lodge his or her case at the other courts. One respondent said "I know it is a procedure to start a dispute at the ward level". People lodge their disputes at the ward and eventually realises that due to the value of the disputed land or subject matter, it should have been lodged at a higher court. Some lodged their complaints outside the established system such as the primary court and the District lands office. The one who had the dispute at the primary court claimed that she lodged the complaint before the dispute settlement machinery was set up and the other claimed that the District office caused the problem (double allocation) so they were suppose to handle it.

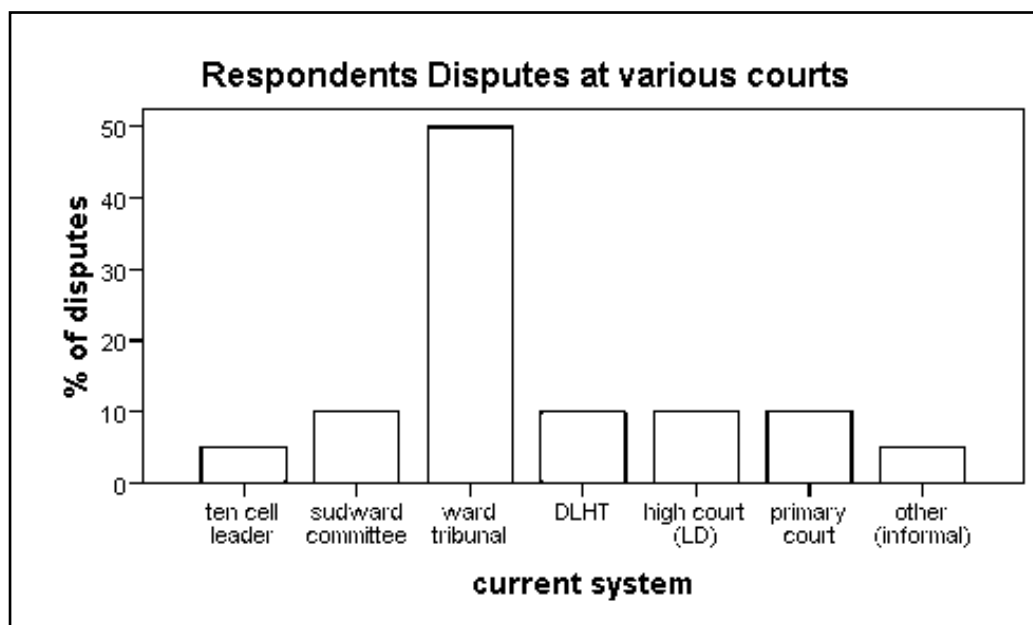


Figure 5-18: Respondents' disputes at the various Justice Systems

Preferred option for the future

Respondents were asked of which system they would prefer in future for land dispute resolution. Most of them (55%) preferred negotiations at the level of Ten-cell leader, 30% at the District Land and Housing Tribunal and 15% at the Ward tribunals. Informal and the primary courts were not mentioned. The reasons for their preference to settle disputes at the level of the Mtaa leader were that the leaders know much about the lands within their jurisdiction and can handle the disputes well. Another was that it saves time and money to resolve the dispute at that level. A disputant was of the view that "out of court reserves peace". In Figure 5-19, the respondents who preferred the DHLT were of the view that it consists of capable personnel to handle disputes. The non-preference of the other courts i.e. the primary Courts and the High court were considered by the respondent as very expensive. The analysis shows that people simply prefer more of negotiation and mediation as a mechanism at the lowest level of the land settlement machinery to resolve their disputes.

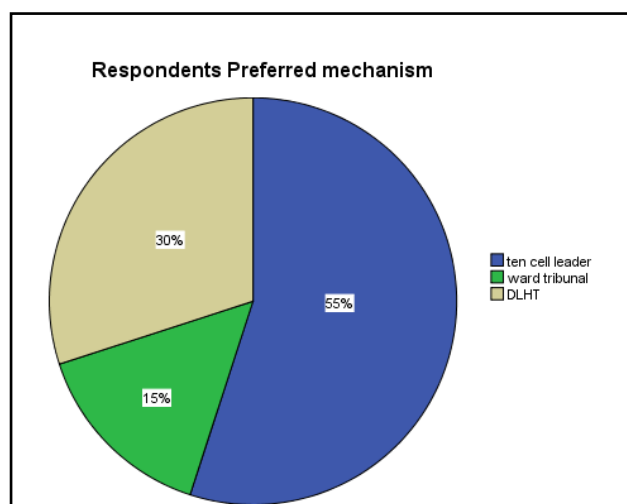


Figure 5-19: Respondents' preferred Systems for future resolution of conflict

The responses from the key respondents were of varied opinions as to the preference of the justice system for land conflict resolution. Some were of the view that there was the need for an alternative land resolution mechanism outside the court of law particularly for land conflicts, the reasons being that the ADR mechanisms are efficient and can reduce and expedite justice. Also according to them, the courts set up under the existing machinery were operating more like the primary courts and there was no possibility of the current formal institutions to resolve the numerous conflicts. According to them the functions of the ward tribunal is not to reprimand or punish but to negotiate and mediate and solve the conflict without going into the intricate aspects of punishment but in many cases they behave like small courts. They see that courts as important institutions for dispensing justice but in many cases they take a lot of time to resolve conflicts and for many conflicts they are not able to resolve them. Again the courts especially the Ward Tribunals do not command adequate respect of many people who feel dissatisfied with their cases that are not justly handled.

In the same line, some were of the opinion that land conflicts can be administratively handled. They believe that the use of technical tools can handle the land disputes efficiently and faster than the legal procedure. They recognise time allocation for solving these disputes through the legal procedure to be inadequate hence the piling up of cases at the land tribunals. They were of the view that with the administrative system, if the parties are available, responsible and ethical it takes a very short time to resolve land conflicts. It was observed that even if the existing formal systems are improved and functioning effectively, some people will still prefer the informal mechanism to settle their disputes amicably and stay out of these courts. The informal mechanisms cannot be wiped out completely.

Some of the key respondents had different opinions . One respondent said ***“It must be agreed that there is no way you can completely resolve land dispute and have no land case unless the entire sun is dead. If we are all dead then there cannot be land disputes. Land disputes are everyday increasing because people are getting aware of their lands”***. He was of the view that conflicts will always be part of man’s interactions. He was therefore of the opinion that if any alternative methods are to be established outside the formal system the problem will be the enforceability of judgements or decisions by these systems. An example was cited of the Presidential Land Dispute Settlement Committees in 2006, ad hoc committees, to deal with land disputes outside the established courts. It happened that people went there but eventually ended in the air and had to go back to the same tribunals. They were of the opinion that if there should be any alternative resolution method it must be within the existing system itself for enforcement purposes. This group were of the view that the existing machinery is good only that the resources for managing the institutions are not adequate. There is the need for enabled human resources especially land experts at the ward tribunals as well as logistics to facilitate fast delivery of cases. Again they believed that it is much better to resolve conflicts with people who know of what is happening especially at the wards.

5.7. Summary of findings

The key issues and most significant findings of the research can be summarized as follows:

1. Many of the respondents were or had been directly involved in land disputes This reflects the high incidence of land cases in the municipal and may be attributed to several factors including urbanization, population growth, and many others which together results in excessive pressure on land for development and other purposes.

2. There is a legally established system of courts for land disputes settlement machinery. This system starts at lower courts (the ward tribunal level) to higher courts (the Court of Appeal) at the national level.
3. The courts dealt with all kinds of complaint concerning land but each had its own limits depending on the conflict type, the estimated value of the disputed property or subject matter and the land tenure on the land, be it statutory or customary.
4. Land conflicts were categorized into Land Applications, Land Appeals and Miscellaneous applications at the DLHT
5. More of negotiations and mediation were used at the lower court (ward Tribunals) and more of Adjudication at the higher courts. Either processes or procedure were long, technical and cumbersome involving long processes of hearing and evidence. Hearings were mostly done in Kiswahili and recorded in both English and Kiswahili
6. Customary principles in mediation of land disputes were employed at the Ward Tribunals.
7. Execution of most judgments and orders from the wards and High courts were done at the DLHT for enforcement of rights
8. Boundary and ownership conflicts were rampant in both surveyed and unsurveyed areas.
9. Many land conflicts that were disposed off were mostly not settled (by agreement of parties) but were dismissed for want of prosecution, quashed or the tribunal in its capacity gives its order or judgment as they deemed them fit.
10. Representations of advocates at the tribunals (where they are allowed) were very few. Individuals preferred lodging their own cases. The number of land applications that were lodged at the tribunal by individuals themselves indicated that the fees of the system are affordable to the disputants. It might also be attributed to the fact that disputants just want to avoid the procedure at the ward tribunals
11. Conflict management at the courts lacked adequate technical tools to handle land disputes efficiently and faster
12. Majority of people prefer informal mechanism to settle their disputes amicably and stay out of these courts if possible.

6. Conclusions and Recommendations

6.1. Conclusions

The main objective of the research was to investigate the system that works best for people in different types of conflicts. Three sub-objectives were set from the main objective to (1) the identify and understand the existing justice systems and their conflict solution mechanisms and (2) identify the parties in dispute and why they prefer a particular system to have their conflicts resolved. Three (3) questions were therefore raised and they have been answered based by the data that were gathered during the research period.

6.1.1. Objective one: To the identify and understand the existing justice systems and their conflict solution mechanisms

The two questions raised under this objective were “*which types of justice systems are available?*” and “*what types of land conflicts exist and how are they resolved or managed?*”

It was found out that there were a number of limited options of justice systems available for land dispute resolution in the study area. Formal justice systems specifically established by the Land Disputes Court Act, 2002 to determine land disputes were ward tribunals and District Land and Housing Tribunal. The High Court (Land Division) and Court of Appeal of Tanzania were also higher courts which dealt with land dispute of national interest and appeals from all the District land Tribunals.

Other systems such as the NGOs, University based law clinics, the National Land Committee, Mtaa leader, and some state-owned agencies play active roles in one way or the other in the resolution of land conflicts. Though their decisions are not binding, they play a crucial role in the resolution of land conflicts.

All types of land conflicts ranging from non violent disputes to atrocious conflicts are found in Kinondoni. Different conflicts were found in planned and unplanned areas and also varied from the urban to the peri-urban area. In the unplanned and high density settlements the prominent ones were landlord and tenant contract conflicts, boundary conflicts, easements and double allocations. Multiple allocations of the same piece of land by allocation authorities as well as land owners, ownership claims, easements, evasion of plots, low compensation payments and trespasses were common in the planned and surveyed areas. These disputes had been categorised into three as Land Applications (new cases), Land Appeals (by aggrieved parties from the WT) and Miscellaneous Applications (orders from the WT and HC for execution or revision of applications) at the DLHT.

The DLHT and the higher courts used more of the adjudication mechanism whilst the ward tribunals used customary principles of mediation in their proceedings. These informal systems used negotiations and mediation to bring the disputants to an amicable solution.

6.1.2. Objective Two: To identify the parties in dispute and why they prefer a particular system to have their conflicts resolved.

For this objective, the question that was raised and needed to be answered was “*who are the parties in disputes and why do they prefer a particular system to have their conflicts resolved?*”

The general information of the respondents suggests that the issue of land disputes is strictly not for specific persons, either the powerful or educated, but for a wide range of people including vulnerable people such as women. The following parties were identified amongst others: Individual(s) vs. individual(s), Individuals vs. local institutions, communities vs. government, community vs. individual persons, and individual(s) vs. Brokers/Auction marts.

Many theories portray mediation as the best and most effective ADR method. The fact is that the choice of a justice system depends on the cultural, educational, financial and social background of the parties involved. The existing laws on conflict resolution in the country or area of jurisdiction of established courts cannot be overlooked. Whilst mediation may be very effective in the developed countries because people do not want to be dictated to and would rather have a decision which they consider to be their own, people in developing countries would prefer arbitration because culturally they prefer an authoritative settlement delivered by elders who they trust and respect. Most of the interviews with the residents of Kawe confirmed that. Many people preferred the DLHT to the WT where more of arbitration though adjudicatory in nature were used and for the fact that in many cases the parties were not in a position to agree in the settlement of their disputes but for a neutral party to declare the winner and loser. It can be concluded that though mediation as it is practiced in these lower courts has several strengths and advantages, the DLHT which is based on more of arbitration principles is preferred by the community as a whole. There is, however, the need for several changes and modifications in the lower courts, if it is to survive in modern society.

6.1.3. Summary

This study has shown that, in the formal justice system, people prefer to use the DLHT to the ward tribunals. Disputants' preference is basically based on the fact that the processes adopted by the DLHT are based on internationally accepted principles of justice systems including impartiality, fairness, equal justice and consensus building. Again it is believed that the members of the DLHT have the technical expertise to ensure these standards. Nevertheless, the processes are adjudicatory in nature and results in delays in resolving the conflicts. Again, due to the technicalities involved in filing a case some disputants hire the services of advocates at a higher cost.

Justice delivery at the WT, on the other hand, is based on customary norms and it aims at securing peace and harmony between parties in the Ward. The study shows that the WT justice delivery system offers several advantages including: familiarity to the public, easily accessibility, and minimal cost of lodging a dispute. Despite these advantages, many people perceived the WT system as odd and unsuitable for modern land services delivery because it is based on customary norms. As a result the elite in society as well as people who have been exposed to modern trends of civilization and international provisions for human rights and equal justice among others are unwilling to use the WT in land dispute resolution. In their opinion, the WT justice system is unfair, not trustworthy and

corrupt and therefore prefers more modern systems which are not customarily based. Others complained that though the members of the WT are knowledgeable in the customary law they lack expertise in technical aspects of land issues. Other complaints include the exorbitant fees that are charged for site inspections and where disputants have to bear undetermined costs for printing, allowances for sitting and services of summons to other parties involved in the disputes.

The study shows that many people preferred informal systems especially the Mtaa leaders to settle their disputes, though such systems are not formally recognised by law. They were of the view that these leaders live very close to them, trustworthy, resolve conflicts faster, low cost involved, have knowledge of land issues in their areas and they are satisfied with the outcomes. They also give possible negotiations among parties and many conflicts are resolved amicably.

It is clear that despite the advantages of the informal systems, they also have some limitations. They cannot be substituted for formal justice system because they are considered to be informal and in this case, they are regarded as instruments for the application of equity, rather than rule of law (Boege 2006). This means that informal systems do not implement changes or establish precedence in legal norms but can support formal systems. There is therefore the need for an improvement in the justice delivery system. The following are some recommendations for improving the justice delivery system.

6.2. Recommendations for improving justice delivery system

Based on the findings of the study the following recommendations are made:

6.2.1. Legitimacy of justice institutions

If the established conflict resolution institutions are inaccessible, costly, and unable to resolve and implement decisions over land conflicts, then there is room to question the legitimacy of their establishment and any of their actions. Accessibility of the institutions is crucial because it is important for maintaining peace and order within a community and improving efficiency of a mechanism for the resolution of conflicts (Paterson, 2001). Acceptability has impact on transparency and cost. Where institutions in charge for solving conflicts are inaccessible, users have to pay much money before accessing justice delivery. If the institutions in charge are acceptable by parties who are involved in the conflict, it improves trustworthiness. This is because achieving an amicable solution depends to a greater extent on the trust and loyalty of the people for mediators and the settlement procedure (Crook, 2002). Similarly, legitimacy means that the mediators have adequate knowledge of the existing rules or must be advised by people who have such knowledge.

These means that in areas where land delivery is based on local rules, the institutions for the land delivery must be built on the local institutional structure. These institutions should also be independent of government interference. The reason is that studies have shown that such local authorities have exhibited adequate capability to enforce their own decisions and orders. What the government can do is to legitimise their operation through the recognition of laws and provide logistics to support the operation of the institutions. This will increase access to justice for individuals or groups that are not adequately or fairly served by the formal system.

In Ghana, for instance, dispute settlement involves building the consensus of the whole relevant community, and the individuals in dispute are seen as members of groups such as families, age groups, etc. with a particular status and known position within the community. In resolving a dispute, the chief, an independent person of the government, consider a broader agreement between these groups which ensures social harmony and avoid disagreement in the future. In doing so, he is fully aware of the power, status and social position of those groups. This is because the effectiveness of the agreement, its acceptance and enforcement depends upon social sanctions, such as shame, hostility and social pressure on the parties (Odametey, 2007).

As much as there is the need for an ADR, the initial option to resort to ADR should be the decision of the parties as well as which ADR option to use. Mandatory ADR should be avoided if one party refuses to opt for ADR. This is because one of the main characteristics of ADR is its voluntary nature and any procedure which is contrary to this cannot be an ADR process. The system and its structures must be appealing so that the public will be willing to use them. In other words the system must attract the public rather than using legal frameworks to force people to use them. However, in the case of failure of ADR to resolve the dispute, the formal courts can take over and pronounce a judgment.

6.2.2. Use of low-cost conflict resolution tools

A participatory conflict resolution approach should be used in conflict resolution as well as conflict prevention and this approach only works if the conflicting parties are involved (Wehrmann, 2008). In cases like land use planning the representatives of the community members must be involved throughout the whole process. The use of sketches on maps will reduce the cost involved especially in the resolution of boundary conflicts. Also there should be state supported funds and resources for ADRs to reduce various cost implications when these systems are resolving conflicts so that the less privileged ones can also access these systems.

6.2.3. Clarity of appeals procedures

In countries where there is a hierarchical structure of transferring disputes from one court to the other, stringent measures should be in place to avoid long lasting resolution of conflicts. The various courts should have clear and defined roles and jurisdiction of powers to determine cases so as to avoid the movement of conflicts from one court to other. This will prevent the situation where many conflicts are returned or not resolved because disputants have not followed the appropriate procedure. Disputants irrespective of their location should have the options to access all the justice systems.

6.2.4. Periodic Revision of Regulations

The increasing land values, population increase and the change of ethnic values, customs and cultures due to in-migration and urbanisation prompt periodic revision of the existing regulations for restructuring and amendment of jurisdiction of powers of the various courts particularly the lower courts. This will reduce subsequent conflicts which escalate from the lower courts.

6.2.5. Training and skills for mediators

Training, credibility and neutrality of the mediators of the various systems are necessary in order to revive public interest in the justice system. Mediators need to be knowledgeable in land issues by updating themselves by training in courses on resolution of conflicts. Well resourced institutions should be established to train persons who find themselves in resolving conflicts. Apart from the

trustworthiness of the institutions, parties will only prefer systems, that have expertise in the resolution of conflicts.

6.2.6. Establishment of monitoring systems

In developing countries, especially Africa, there should be a flexible and friendly monitoring systems to periodically check all justice systems and help device a way of controlling these systems. Periodic records of all disputes that are resolved should be kept in a simple database for easy retrieval and references of land disputes.

6.2.7. Future Research work

The research was biased to the formal justice systems that had been established by the government of the United Republic of Tanzania. This was because of limited time for the field work and communication which prevented the researcher from accessing adequate data on ground. Language was a challenge to get access to data at the ward tribunals as well as from community members. Further investigations can be done on why and why not people prefer other Alternative Resolution systems in Tanzania as well as countries where ADR systems are being practiced and given absolute powers to decide and enforce their decisions.

The satisfaction level of disputants after the resolution of a conflict can also be investigated and find out the probability that resolved conflicts will not revive again. A finding of the research was that only about one-third of the cases that were reported at the DLHT every year were disposed off. A few countable cases out of the one-third were settled. Many were dismissed due to want of prosecution. Limited data could only reveal reported cases for execution of orders and decisions from the wards. This is the situation where orders were in favour of disputants. The question now is what happens to the disputes where disputants relent to lodge appeals at higher courts? Do the land conflicts die off over time or people take the law into their own hands and use physical strength or other aggressive and defensive ways to secure their lands as is currently being practised in Ghana with the use of “land guards”? These are the areas that need critical investigations.

Again investigations can be done to find out the effect of the resolution of land conflicts on spatial development of an area.

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STATUTES

The Land Disputes courts Act, 2002(Act No. 2 of 2002)

The Land Disputes Courts (The District Land and Housing Tribunal) regulations, 2003

The Land Act, 1999 (Act No. 4)

The Village Land Act, 1999 (Act No. 5)

The Land Acquisition, Act 1967

The Ward Tribunals Act, 1985

8. Appendices

Appendix A: Questionnaire for community members

Community Members

Ward _____

Interviewer: _____

1. Have you ever been involved or currently involved in any form of land conflict?

- a. Yes, I was involved in one ☐ b. currently involved ☐ c. No ☐

If 'a or b' continue from question (ii). If 'c' continue from (i)

- i. Do you know of any person involved in any land conflict? Yes ☐ No ☐

If 'no' continue from question (2), If yes who was the person? _____

- ii. With whom did you (person) have or having the conflict with? _____

- iii. What was the conflict about? _____

- iv. When did it happen (month & year)? _____

- v. where is the disputed land? _____

- vi. What is the size of the disputed land (size in acreage) _____

- vii. From whom did you (or the person) acquire the land from? _____

- viii. Is the land already surveyed? _____

- ix. Has the conflict been resolved? Resolved ☐ In process ☐ not resolved ☐

- x. Which conflict resolution system did you (or the person) use?

Mtaa leader (Ten-cell)	subward committee	ward tribunal	District land and housing tribunal	High court(LD)	Other (specify)

Why? _____

- xi. How long did it take or has it taken to go through the resolution process (months)? _____

- xii. How much has it cost you (or the person) to get the conflict resolved? _____

xiii.

- xiv. Were you (or the person) given enough room to present the case as the other party involved in the conflict did? Yes ☐ somehow ☐ No ☐

Any reasons?

- xv. Did you (or the person) had the right to petition against any decision on the dispute?

Yes ☐ Somehow ☐ No ☐

Why?

xvi. Were /Are you (or the person) satisfied with the arrangement and process?

satisfied ☐ generally ☐ somewhat ☐ very ☐ unsatisfied ☐ no opinion ☐

xvii. Were you (or the person) satisfied with the outcome?

satisfied ☐ generally ☐ somewhat ☐ very ☐ unsatisfied ☐ no opinion ☐

Why? _____

2. Which land dispute resolution system would you prefer to use should you have any land dispute?

Mtaa leader (Ten-cell)	subward committee	ward tribunal	District land and housing tribunal	High court(LD)	Other (specify)

Any reason for your option? _____

3. How often do people in this community rely on informal ways of resolving conflict?

Very often ☐ Fairly often ☐ not often ☐ don't know ☐

b. How often do people in your community rely on the formal institutions for conflict resolution?

Very often ☐ Fairly often ☐ not often ☐ don't know ☐

4. How will you judge the effectiveness of the informal land dispute resolution mechanism?

satisfied ☐ generally ☐ somewhat ☐ very ☐ unsatisfied ☐ no opinion ☐

b. How will you judge the effectiveness of the formal land dispute resolution mechanism?

satisfied ☐ generally ☐ somewhat ☐ very ☐ unsatisfied ☐ no opinion ☐

5. In your opinion, in which area is land conflicts predominant? _____

6. Why are conflicts predominant in that area? _____

7. What would you want to see improved in the following justice systems?

Informal

.....
.....

Formal

.....
.....

Sex: Male	<input type="checkbox"/>									
Female	<input type="checkbox"/>									
Age:										
<input type="checkbox"/> < 25	<input type="checkbox"/>									
<input type="checkbox"/> 25 - 34	<input type="checkbox"/>									
<input type="checkbox"/> 35 - 44	<input type="checkbox"/>									
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<input type="checkbox"/> 54-64	<input type="checkbox"/>									
<input type="checkbox"/> 65+	<input type="checkbox"/>									
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No formal Education	<input type="checkbox"/>									
Up to primary level	<input type="checkbox"/>									
Secondary Education	<input type="checkbox"/>									
Higher Education	<input type="checkbox"/>									
Occupation _____ Q No. _____ Date.....										

Appendix B: Interview schedule for Land experts, Researchers, State officials

Male ____ Female ____

Title/Position: _____

Organization's Name: _____

1. Which institutions/Organizations are involved in the management of land in the district?
2. Which laws mandate the above mentioned institutions to manage lands?
3. What types of lands and tenures exist in the district?
10. In which areas in the district are land disputes prominent?
11. What are the various types of Land disputes in the district and the reasons for the conflicts?
12. Who are the parties involved in the conflicts? Which public and private agencies are involved in resolving land conflicts?
13. What are the existing guidelines/regulations for handling land conflict resolution in the district?
14. Is there any informal institution that possesses the authority to resolve land disputes?(*Please Name them*)
15. How do dispute resolution decisions affect the management of lands in the district?
16. In your opinion, what changes can be made in relation to both the formal and informal mechanisms for land conflict resolution in the district?

Appendix C: Interview schedule for key persons of land dispute resolution organisations

Male ____ Female ____

Title/Position: _____

Organization's Name: _____ Year established: _____

Ward _____ Number of Employees of the organization: _____

1. In your organization, which types of land disputes do you normally receive?
2. Which laws and corresponding regulations enforce your operations in resolving conflicts?
3. Does the organization have any land conflict resolution procedure(s)?
4. Are the conflict resolution rules known to the parties in conflict before the process starts?
5. How do you resolve Land Conflicts?
6. Are cases filed?
7. What is the average time Spent on a Conflict _____
8. How many cases do you deal within a day? _____
9. How many land conflict cases were/have been filed in

2009	2008	2007	2006	2005
------	------	------	------	------
10. How many were/have been resolved?

2009	2008	2007	2006	2005
------	------	------	------	------
11. How many were/are pending?

2009	2008	2007	2006	2005
------	------	------	------	------
12. How many were/have been referred?

2009	2008	2007	2006	2005
------	------	------	------	------
13. How much does it cost to lodge a complaint and do all the cases cost the same?
14. Does the organization has a budget set aside to deal with disputes?
15. Which Conflict Management Resource Persons are in the organization and how many?
16. Does your organization have adequate resources (time, money, skilled personnel) to deal with land conflicts? What resources are needed?
17. In your opinion, what changes can be made in relation to both the formal and informal land conflict resolution mechanisms in the country

Appendix D: List of Key persons interviewed

No.	Person	Rank	Institution/Organisation	Date(2009)
1	Mr. Daniel E Msangi	Asst Research Fellow	Institute of Human Settlement Studies(IHSS), Ardhi University	5 th Oct
2	Ms. Kerbina Moyo	Lecturer	Department of Land Management and Valuation, School of Real Estate, Ardhi University	5 th Oct
3	Mr. Israel C. Simba	Legal Expert	Department of Land Management and Valuation, School of Real Estate, Ardhi University	6 th Oct
4	Prof J. W. Kombe		Institute of Human Settlement Studies(IHSS), Ardhi University	6 th Oct
5	Mr. Stephen A. P. Shirima	Principal land surveyor/chairperson of customer Service Improvement team,	Ministry of Lands, Housing and Human Settlements(MLHSD)	9 th Oct
6	Mr. Ndemela	Land Specialist	Tanzania Investment centre	9 th
7	Mrs Bundala	Assistant Registrar,	Ministry of Lands,Housing and Human Settlements Development	9 th & 23 rd Oct
8	Mr. Magesa District lands Officer		Municipal Lands Office. Kinondoni	9 th Oct
9	Hon. R. L. David	Chairperson,	Municipal land and housing tribunal	9 th & 12 th Oct
10	Mr. Cathbert Tomitho	Assistant Programmer	Harki Ardhi, Land rights Research and Resources Institute	12 th Oct
11	Rashidi Kondo	Chairperson	Ward Tribunal, Ubungo	13 th Oct
12	Amani Sizya	Mtaa Leader	NHC, Ubungo	13 th Oct
13	John	Lands Officer	Municipal Lands office	16 th Oct
14	Allois Rullo	Kati Baraza la Kata /Secretary	Ward Tribunal Bunju	19 th Oct
15	Malima Shabani	Secretary	Ward Tribunal, Kunduchi	20 th Oct
16	Ramadhani Cambuso	Chairman	Ward Tribunal , Kawe	21 st & 22 nd Oct

17	Ms Subira Sinda	Registrar of Titles	Ministry of Lands, Housing and Human Settlements Development	23 rd Oct
18	Musa Lindi	Cartographer	GIS Unit ,Municipal Council, Kinondoni	16 th Oct
19	Deo Victor	Legal Officer	Municipal land and housing tribunal	17 th & 24 th Oct

Appendix E: Research Matrix

Research Objective	Research question	Research method	Key Persons interviewed
1.to identify and understand the existing justice systems and their conflict solution mechanisms	1. which types of justice systems are available?	Literature , Interviews, directives, questionnaires, field observation	1.Chairmen/secretaries of Tribunals 2.Officials of MLHSD 3. Representative of NGO 4. Officials of Ardhi University 4.Community members/residents
	2. what type of land conflicts exist and how are they resolved/managed?	Literature, Field inspections, archival records, interviews, Proceedings at Tribunals, recordings in case files at DLHT	1. Officials of MLHSD 2.Chairmen/secretaries of Tribunals 3. Mtaa leader of Ubungo & Representative of NGO 4.Community members/residents
2. to identify the parties in dispute and why they prefer a particular system to have their conflicts resolved	3. who are the parties and why do they prefer a particular system to have their conflicts resolved?	Interviews, official records and registers of the institutions, questionnaires for community members	1.Community members/residents 2.Chairmen/secretaries of Tribunals 3. Mtaa leader of Ubungo & Representative of NGO
3.to investigate the degree of land conflict resolutions to the speed of development in terms of spatial units in an area	4. Do the conflict resolution mechanisms lead to differences in the rate of spatial development in the area?	Spatial analysis: visualisation of satellite images and validating with institutional findings	1.Officer at GIS Unit ,Municipal Council, Kinondoni

Appendix F: Kinondoni municipality Population variables by wards

No.	Zone	Division	Ward	Mitaa	Village	Male	Female	Total	Percentage
1.	Ubungo	Magomeni	Mburahati	3	0	10,882	10,726	21,608	2.00%
2.	"	"	Sinza	5	0	17,031	19,438	36,469	3.32%
3.	"	"	Makuburi	3	0	17,341	17,292	34,633	3.19%
4.	"	"	Mabibo	5	0	37,477	36,501	73,978	6.73%
5.	"	"	Manzese	6	0	34,389	32,477	66,866	6.15%
6.	"	"	Ubungo	5	0	22,014	22,325	44,339	4.10%
7.	"	"	Kigogo	3	0	19,282	18,682	37,964	3.44%
8.	"	"	Makurumla	6	0	27,493	26,301	53,794	4.89%
9.	"	Kibamba	Mbezi	3	2	16,584	16,057	32,641	1.64%
10.	"	"	Kimara	5	1	33,053	33,235	66,288	6.03%
11.	"	"	Goba	3	1	4,473	4,044	8,517	0.78%
12.	"	"	Kibamba	1	3	9,164	8,834	17,998	1.64%
13.	Kawe	Kawe	Kawe	6	0	48,058	46,477	94,535	8.60%
14.	"	"	Mikocheni	3	0	13,711	13,572	27,283	2.31%
15.	"	"	Mbweni	2	1	1,865	1,610	3,475	0.32%
16.	"	"	Kunduchi	4	3	38,251	34,676	72,927	6.69%
17.	"	"	Msasani	5	0	21,792	21,665	43,457	3.95%
18.	"	"	Bunju	1	4	10,668	10,200	20,868	1.89%
19.	Kinondoni	Kinondoni	Makumbusho	5	0	28,269	27,433	55,702	5.08%
20.	"	"	Hananasif	3	0	16,040	15,983	32,023	2.92%
21.	"	"	Magomeni	5	0	11,488	11,128	22,616	2.10%
22.	"	"	Ndugumbi	4	0	18,679	18,750	37,429	3.40%
23.	"	"	Kijitonyama	7	0	23,053	24,043	47,096	4.31%
24.	"	"	M'Nyamala	6	0	21,946	22,585	44,531	4.02%
25.	"	"	Mzimuni	4	0	12,710	12,573	25,283	2.31%
26.	"	"	Kinondoni	4	0	10,628	10,861	21,489	1.97%
27.	"	"	Tandale	6	0	23,588	21,470	45,058	4.14%
			Total	113	14	549,929	538,938	1,088,867	100%

Source: Tanzania National Census (2002)

Appendix G: Disposed off and pending Miscellaneous Applications from Wards at the DLHT

Ward	Total	Total%	granted	dismissed	quashed	closed	withdrawn	struck out	Disposed off	Disposed off	Pending	Pending
Boko	3	0.6%	0	1	0	0	1	0	2	66.7%	1	33.3%
Bunju	33	7.0%	4	8	2	0	1	3	18	54.5%	15	45.5%
Goba	16	3.4%	3	3	1	2	0	1	10	62.5%	6	37.5%
Hananasif	10	2.1%	5	2	0	0	0	0	7	70.0%	3	30.0%
Kawe	29	6.2%	9	4	0	0	0	1	14	48.3%	15	51.7%
Kibamba	15	3.2%	10	1	1	1	0	0	13	86.7%	2	13.3%
Kigogo	12	2.5%	4	3	0	2	0	0	9	75.0%	3	25.0%
Kijitonyama	34	7.2%	8	10	1	1	0	6	26	76.5%	8	23.5%
Kimara	52	11.0%	19	10	0	2	3	2	36	69.2%	16	30.8%
Kinondoni	7	1.5%	4	0	0	0	0	2	6	85.7%	1	14.3%
Kunduchi	28	5.9%	10	9	2	0	0	0	21	75.0%	7	25.0%
Mabibo	27	5.7%	12	4	0	2	0	1	19	70.4%	8	29.6%
Magomeni	11	2.3%	2	5	0	0	1	0	8	72.7%	3	27.3%
Makuruma	34	7.2%	9	7	3	2	1	2	24	70.6%	10	29.4%
Manzese	14	3.0%	3	4	0	0	0	3	10	71.4%	4	28.6%
Mbezi	25	5.3%	8	4	1	1	1	1	16	64.0%	9	36.0%
Mburahati	8	1.7%	1	0	1	0	0	0	2	25.0%	6	75.0%
Mbweni	7	1.5%	5	0	0	0	0	2	7	100.0%	0	0.0%
Mikocheni	8	1.7%	5	0	0	1	0	0	6	75.0%	2	25.0%
Makuburi	20	4.2%	7	2	1	1	0	0	11	55.0%	9	45.0%
Msasani	9	1.9%	3	2	1	0	0	1	7	77.8%	2	22.2%
Mwasanyamalo	14	3.0%	3	2	1	1	0	3	10	71.4%	4	28.6%
Mzimuni	8	1.7%	3	2	1	0	0	0	6	75.0%	2	25.0%
Ndugumbi	7	1.5%	4	1	0	0	0	0	5	71.4%	2	28.6%
Sinza	20	4.2%	5	3	0	0	1	0	9	45.0%	11	55.0%
Tandale	4	0.8%	1	1	1	1	0	0	4	100.0%	0	0.0%
Ubungo	16	3.4%	7	0	0	1	1	0	9	56.3%	7	43.8%
Total	471	100.0%	154	88	17	18	10	28	315	66.9%	156	33.1%