



# **‘Kitu Kichafu Sana’: Daniel Arap Moi and the Dirty Business of Dismembering Kenya’s Body Politic**

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## Introduction

Kenya’s return to multi-party politics in 1991 has been defined by campaigns for democracy and human rights, the intensification of politicization of ethnic difference or ethnicization of political differences, intense political competition state power, cyclical political violence, mass murder, rape, destruction, displacement and land dispossessions. Moreover, Kenya’s general elections, except the 2002 and 2013, have been characterized by waves of political violence of varying regional intensity. The Rift Valley, however, more than any other location, including the Coast Province, has experienced the most frequent and intense forms of the elections related violence.

These waves of violence beg several questions: why has the Rift Valley has been the epicenter of Kenya’s election-related political violence? What distinguishes the Rift Valley land question from the Coastal land question? To what extent does the unresolved question of the land, the land past and present pastoralist communities lost to the European settlement schemes and the contested Kenyatta (independence) era re-settlement schemes, account for the violence in the Rift Valley? To what extent does the British and the Kenyatta government’s Mau Mau counter-insurgency strategies and economic policies account for these waves of violence?<sup>1</sup> To what extent does the explicit and implicit colonial and independent governments’ sedentary agrarian biases against the pastoralist mode of production explain the silences on the pastoralist communities claims for restorative justice in the wider debate on land, dispossession and displacement in the Rift Valley? What types of justice questions do these conflicts raise?

<sup>1</sup> Daniel Branch, *Defeating Mau Mau, Creating Kenya: Insurgency, Civil War and Decolonization*. Cambridge: Cambridge University Press, 2009.

## Political Violence and General Elections in Kenya

In October 1991, a new wave of violence that was variously been labeled “land clashes,” “ethnic violence,” “tribal clashes,” and “ethnic cleansing,” hit the communities who were living in the then Rift Valley Province and along the borders Rift Valley, Nyanza, and Western provinces perceived to be supporting political movements opposed to the KANU one-party state in the struggle for the return of the multi-party system of government. In the Rift Valley, this wave of violence continued, intermittently, until 1998, while the Coast Province experienced in the run-up to the 1997 General Election to 1998.

The vast media reports and the official commission of inquiries suggest that gangs, armed with bows, arrows, spears, Molotov cocktails, and sometimes guns, whose real identity or identities remains disputed, perpetrated the first wave of violence with the complicity of the security officers of the Daniel Moi’s government. These reports also suggested that Daniel Moi’s government instigated the violence, Kalenjin elites and some of Kalenjin peasants who continue to occupy or use the lands left vacant by those displaced were the primary beneficiary of its short-term and long-term consequences.<sup>2</sup>

Subsequently, Kenya witnessed other waves of political violence, similar to the first, in the run up to the general elections of 1997, in the then Rift Valley and the Coast Provinces, and after the disputed presidential election of 2007. In 1997 political violence, the Rift Valley and at the Coast, were centers of political violence. The violence at the Coast targeted mostly peasants and workers, from Kenya’s hinterland, who had emigrated to work in the plantation farms, hotels and the docks of Mombasa and perceived to be pro-opposition. Both Rift Valley and the Coastal Province have a long history of land displacement and dispossession and are home to some of the most contested independent era settlement schemes.

However, unlike the first wave of violence, the political violence in 2007/8 was swift, more widespread and socially intimate: various urban and rural locations within six out of eight of the then Kenyan administrative provinces experienced the violence. Only the North Eastern and East-

2 The Parliamentary Select Committee to Investigate Ethnic Clashes in Western and other Parts of Kenya, 1992 (*The Kiliku Report*), Government of Kenya, *Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya*. Nairobi: Government Printer, 2002 (*The Akiwumi Report*); and Government of Kenya, Commission of Inquiry Into Post Election Violence. Nairobi: Government Printer, 2008(*The Waki Report*). Prisca Kamungi provides higher figures, which contest the official report’s. However, unlike the Waki Report, Kamungi does not account for how she arrives at higher figures from the government, Kenya Red Cross, and the United Nation Sources.

ern Provinces did not experience the violence. The Commission of Inquiry into the Post Election Violence, an official report, suggests that at least 1,113 persons were killed, the Kenyan security forces killing 405 person, and citizen on citizen violence accounting for about 728 deaths.<sup>3</sup> Rift Valley accounted for highest number of reported deaths, injuries and displacement. The report also notes that about 350,000 persons were displaced and about 1,916 sought refugee in Uganda.<sup>4</sup>

The 2007/8 wave of political violence set neighbors against neighbor. It targeted government installations in the Orange Democratic Movement's strongholds. It also led to the deep politicization of everyday market relations and exchanges: the Orange Democratic Movement (ODM) launched a bitter consumer boycott of good and services whose providers were perceived to be pro-Party of National Unity (PNU), some PNU landlords in Nairobi's low income houses and slum lords evicting their tenants perceived to pro-ODM, while some ODM slum dwellers refused to pay rents to the slumlords or evicted slumlords perceived to be pro-PNU.

Therefore, Kenya's transition from the authoritarian one-party state, through multi-party politics, to a new constitutional order has been violent and bloody. However, various academic and human rights advocacy explanations, which look at the political violence in the Rift Valley through humanitarianism lenses, have focused mostly on the present claims and demands for justice, on the one hand. On the other, some of the academic literature which historicizes the political violence have examine only the Kalenjin's past historical injustice and the political claims, and not the claims of other pastoralist communities of the Rift Valley counties and the political subjectivities it has engendered and the politics of it enables and constrains in contemporary Kenya.<sup>5</sup>

Arguably, these studies, too, have not paid sufficient attention to significance of the past and the present pastoralist communities' claims of loss land, fear of economic and political marginalization and historical injustice, the explicit or implicit sedentary agrarian biases that occlude meaningful engagement with these pastoralist claims.

Prisca Kamungi, for example, discusses the pastoralist land question merely as a background to the present humanitarian crisis, and a crisis that

3 Government of Kenya, 2008: 331

4 Government of Kenya, 2008: 352

5 See Gabriella Lynch, *I Say to You: Ethnic Politics and the Kalenjin in Kenya*. Chicago: University of Chicago, 2011, and Karuti Kanyinga, "The Legacy of the White Highlands: Land Rights, Ethnicity and the Post-2007 Election Violence in Kenya," *Journal of Contemporary African Studies* 27 (3), 2009: 325-344.

calls for state intervention.<sup>6</sup> However, Kamungi is silent on the justice questions on the historical injustices of the pastoralist communities and makes no recommendation on how it should be redressed. Kamungi also does not pay attention the impact of the ingrained sedentary agriculture bias, a bias that always talks about the land in the Rift Valley only as 'arable,'<sup>7</sup> and legitimates political claims of sedentary farmers. It, however, de-legitimizes the pastoralist land claims for justice for past and independent era historical injustices.<sup>8</sup>

The official, and the various unofficial reports on the violence suggest that the peasants and farm workers of the Rift Valley were the primary victims of the violence, in the 1991-1998 wave. In the 2007/8, the second wave of violence, which affected the rural and urban locations, peasants, farm workers, petty-traders and wholesalers, the urban-poor and other workers perceived to belong to or sympathetic to either the Party of National Unity or the Orange Democratic Movement, were the main target of the violence.

The political violence was both spontaneous and organized.<sup>9</sup> The violence in its organized form was mostly perpetrated by the state security agents, state security agents and militia groups, acting on behalf of the Party of National Unity, on the one hand, and various militia groups in the Rift Valley and urban slums allied to politicians in the Orange Democratic Movement, on the other. The peasants and the urban poor of the farms in the Rift Valley, and the slums of the Kenyan towns of Eldoret, Kisumu and Nairobi, respectively, more than any other classes, bore the brunt of the 2007-8 political violence.

This paper seeks to explore the type of politics that the historical injustice of present and past pastoralist communities of the Rift Valley enables and the liberal democratic politics it constrains. It looks at how the interplay between class and ethnicity has defined politics and violence in the Rift Valley, how the nature of the leading Rift Valley elites' political alliances define the contours of the political violence or bargains and concessions from Kenya's body politics, but falls short of demanding distributive and reparative justice for the past and present pastoralists communities they represent. It largely focuses on the early 1990s political violence in the Rift Valley that fundamentally redefined political competition in Kenya.

6 Prisca Mbura Kamungi, "The Politics of Displacement in Multi-Party Kenya," *Journal of Contemporary African Studies* 27 (3) 2009: 345-364.

7 Prisca Mbura Kamungi, "The Politics of Displacement in Multi-Party Kenya," *Journal of Contemporary African Studies* 27 (3) 2009: 346.

8 Human Rights Watch 1993, 2008

9 Government of Kenya, 2008.

It also attempts a discourse analysis of some of the media reportage and seminal documents that have shaped the discussion of the violence and demands for justice. It is organized as follows: first, the paper examines some academic and human rights discourses on the violence in the Rift Valley. Second, the paper examines the political violence that came to be variously known as 'land clashes,' 'tribal clashes,' 'ethnic violence,' 'ethnic cleansing' or 'political violence.' It looks at what the official government explanation and dissenting views on the violence says, reveals and elides about the political significance of the violence.

The paper historicizes the creation of settlement schemes vis-à-vis the pastoralist communities' claims of land injustices. It also examines the sedentary agrarian ideological biases, which continue to delegitimize the Rift Valley pastoralist communities' land claims. Lastly, the paper briefly looks at what the political contestations and violence, during the transition to multi-party and democratization, has produced in Kenya vis-à-vis the political demands of the pastoralist communities: the Constitution of Kenya, 2010.

The constitution of Kenya, 2010, stands out as a bold attempt to deal with the land and ethnic questions that underpin the deadly violence of the Rift Valley province, through the two-tier system of government, national and county, and other provisions. However, this bold attempts to redress the centrifugal forces of politicized ethno-regional marginalization and inequalities, historical land injustice, and ethnic discrimination was rejected by the Kalenjins generally, led by William Ruto, and Daniel Moi, and some Christian clergy, notably those, allied to the National Council of Churches of Kenya, in the 2010 national referendum.

I argue that the present claims for restorative and redistributive justice by the past and the present pastoralist communities rest on the claims over the land they lost to European settler agriculture, the fabled game reserves such as Amboseli or Maasai Mara and the independent era settlement schemes. The independent era land redistribution was informed by the British and the Kenyatta counterinsurgency strategy that sought to undermine the political base of the militant Mau Mau nationalist and radical nationalist who favored the nationalization of the White Highland and its redistribution to the landless.

This strategy, coupled with sedentary agrarian biases against the pastoralist, favored mostly the multi-ethnic Kenya elites (the nationalist with few exceptions such as Bildad Kaggia and Joseph Murumbi), the communities (the Luo, Meru Luhya and the Kisii), and notably, the Kikuyu, who

were in better represented in Kenyatta's government, the European settlers who stayed on after independence and the Multi-National Companies. The pastoralist communities, especially the Maasai, the Saboats and the Nandi, whose claims to these lands as 'ancestral lands,' were the most disadvantaged by the settlement schemes.

This counterinsurgency strategy spawned a multi-ethnic Kenya elites, including the Kalenjin and the Maasai, with vested interest in unequal land ownership and control of state power as the only guarantee against the landless. The Kalenjin elites, especially Daniel Moi, who had acquiesced to the Kenyatta's regime consolidation strategy, more allies from the Coastal and other parts of the Rift Valley, traded off land for the ultimate political prize: state power. The non-Kalenjin and non-Maasai peasants could keep their lands as long as the Kalenjin elite and their allies kept state power.

Arguably, the successive Rift Valley political elites, apart from Jean Marie Seroney, William Murgor and Chelegat Mutai, as Lynch suggests, have not only used the unresolved pastoralists land claims and social justice questions as a resource for constructing a historical, political and moral community, but also extracting political concessions from Kenya's body politics. However, even when in power, these elites have not proposed a non-violent alternative on how the pastoralist land claims and historical injustices alongside the social justice claims of those displaced and disposed by the cyclical waves of election-related political violence should be redressed.

Thus, in 1991, the pastoralist communities, namely the Maasai and the Kalenjin, claims of historical land included but were not limited to the smallholder lands of the independent era settlement schemes. However, the Moi regime successfully contested only the smallholder lands owned by non-Kalenjin and non-Maasai peasants. In doing so, the Moi regime parried both internal (Rift Valley) threat and external (national) threat to the regime. The Moi regime successfully turned a growing restlessness by the landless in the Rift Valley, from an inter-class conflict between the large land owning multi-ethnic Kenyan and the Multi-National Companies, into an intra-ethnic land conflict amongst the peasants and the landless.

Externally, the violence as part and parcel of a wider strategy to contain the opposition ensured that the opposition the opposition politics was largely confined to the urban areas and electoral threat to Moi's hold on power was substantially reduced. The bloody multi-party political struggles spawned a strong human rights and democracy movement, which culminated in the enactment of a new constitution on the one hand, and

on the other hand, as Kamungi notes, the displacements and politicization of ethnic differences spawned social movements such as the Mungiki, or the Saboat Land Defence Force (SDLF), and one can add, the Mombasa Republican Council (MRC), whose initial goal was to reclaim lost “ancestral lands” in the Central Province, Bungoma, and Coastal strip, respectively.<sup>10</sup> However, these movements turned into violent and criminal outfits, terrorizing the very communities they claim they belonged to or seek to liberate or like Mungiki, gangs for hire by Kenyan political elites in deadly political contests.

### Discourses on Political Violence in Kenya

Some academic literature on property rights, such as Onoma’s<sup>11</sup> and some influential the international human rights advocacy literature on political violence in Kenya, such as the Human Rights Watch, and Kamungi,<sup>12</sup> have foregrounded the questions of humanitarianism, property and justice for the present victims of violence, respectively, as entry point into understanding the political violence in Kenya’s Rift Valley counties. However, these approaches, arguably, have not sufficiently historicized the pastoralist communities’ land question as a question of restorative and distributive justice to be considered alongside other claims for justice.

These studies have also not paid sufficient attention to the intricate interconnection between the control of state power, the colonial and post-colonial counterinsurgency against the Mau Mau movement for land and freedom, and the interplay between ethnicity, class formations and struggles. These studies have tended to place emphasis mostly on the more recent dimensions of political violence: humanitarian crises, the ethnicity of the alleged perpetrators of the violence and its victims, the plight and the social justice questions of the recently displaced and disposed, property rights and restitution.

Moreover, these studies have ignored the significance of the nature of the citizenship crises, the competing political communities, forms of political organizations, and political consciousness that the failure of the successive government to redress the political fears of the pastoralist communities, the communities that lost the largest piece of land and way of life to settlers’ sedentary agriculture, has produced.

<sup>10</sup> Kamungi, 2009: 360.

<sup>11</sup> Ato Kwanema Onoma. *The Politics of Property Rights in Africa*. Cambridge: Cambridge University Press, 2015.

<sup>12</sup> Africa Watch, *Divide and Rule: State-Sponsored Ethnic Violence in Kenya*. New York: Human Rights Watch, 1993, and Kamungi, 2009.

That is, these studies, too, have not paid sufficient attention to the political crisis the break down of the elite political consensus between Daniel Arap Moi and Jomo Kenyatta, a consensus that allowed Jomo Kenyatta to export Central Kenya's, and some of the densely populated locations social crisis into the Rift Valley, has produced. The Kenyatta era settlement schemes were only a safety valve that eased the social crises brought about by establishment of 'the White Highlands,' the alienation of land for sedentary agriculture, and the Mau Mau war of resistance. These settlement schemes, rather than redressing the land question, compounded the social justice question and its politics during the authoritarian one-party state system.

Arguably, these studies, too, have ignored the political claims that the ingrained sedentary agricultural biases of the successive colonial and post-independent governments legitimates or delegitimizes, and how the Kalenjin, and the Maasai elites have deftly deployed the unresolved historical land injustices to build a political constituency and extract significant political concessions from Kenya's body politic. However, the historical injustice against peasants in Central Kenya, and the pastoralists in the Rift Valley have invariably shaped Kenya's political history and continue to shape Kenya's political trajectory.

Arguably, Kanyinga's political economy approach,<sup>13</sup> unlike Onoma's property rights and rational choice option or Kamungi's that emphasizes the manifest humanitarian crisis, offer a better approach to understanding the politics in the Rift Valley. Rather than a narrow focus on leaders' economic rationality, which is assumed to be consistent and about maximizing returns, Kanyinga focuses on the class formation, class struggles, and the interplay between class and ethnicity, land and representation, as well as the consequences of independent Kenya government policy choices and its outcomes. Kanyinga argues that power relations determine the agrarian pattern of land tenure, relations and conflicts. Consequently to understand the nature of a power structure is to understand the agrarian conflicts within a state.

### **Rational Choices and Property Rights Approach**

Through a comparative study of Ghana, Kenya and Botswana Ato Kwane-ma Onoma argues that an understanding of the nature of a country's political economy is important, if one is to understand the politics of property and property rights in Africa. Onoma poses the question: "why do political

<sup>13</sup> Kanyinga, 2009.

leaders in Africa create and strengthen institutions of land management that secure property rights, while others destroy the already existing institution?" Using rational-choice reading of what determines a government's choice of property regime, Onoma primarily focuses how attitudes of leaders towards property and competing authorities variously define property rights, transparency of transactions on land and security of tenure and transparency.

Onoma argues that the type of property (land) regime and security of property a country enjoys is determined by the type of benefit a regime derives from land. That is a regime can draw either direct or indirect material benefit from land. Onoma suggests that politicians or political leaders who derive benefits from land indirectly, through putting land to productive use (from agriculture, mining and forestry), like Mancur Olsen's stationary bandits, prefers secure, transparent and reliable system of land management, on the one hand. On the other, political leaders who derive direct benefit from land, uses land for patronage-client relations and political exchanges, like Olsen's roving bandits, prefer an opaque, insecure and unpredictable land management regime.

Moreover, Onoma, through Foucault, focuses on what the competing interests of the ruling elites, who direct benefits from land produce: bureaucrats and land brokers produce, the conflicts and parallel registers of property, and political patronage. Onoma argues that the confusion created by chaotic management of land or property, encourages such governments to behave as roving bandits. Onoma argues that Kenyan political regimes typifies both the stationary and the roving bandit approach to managing land, unlike Botswana which typifies the stationary bandit or Ghana which typifies the roving bandit approach.

According to Onoma, early and the late Kenya, managed land differently. That is, the Kenyatta regime and the early Moi era managed land like stationary bandits. However, the late Moi era managed land like roving bandit. The introduction of multiparty politics accounts for Kenya's shift from stationary bandit approach to the roving bandit approach to land management. The security of the regime determined how the system of property management.

Despite the significance of Onoma's contribution to one's understanding of the impact of competition for state power on a country's political economy, political stability and land conflicts, Onoma's property-centric understanding of political economy elides the salience of the particularity of struggles for state power, the interplay between class and ethnicity in

these struggles, in a former European settler colony such as Kenya.

Onoma's comparative study of Ghana, Botswana and Kenya, elides the historical specificity of Kenya's politics of rights, civil political and private property, as the politics of a one time European settler colony. The political contestations in Kenya, though plays out as a struggle over land, has never been solely a struggle for land, but at once a struggle for land and representation. That is, a struggle for a form of government that would guarantee political representation and voice, especially against ethnic domination and on issues of land ownership, control and use.

It the politics of the contradictions of the legacy of Mahmood Mamdani's bifurcated colonial state,<sup>14</sup> the contestations between subjectivities produced by customary sphere and the civil sphere, once civil and political rights has been extended to all the previously excluded African ethnic groups, and restrictions on movement and residency by "alien-Natives," across the boundaries of the native reserves and the White Highlands, is removed.

Ogot observes that, in Kenya, local or the African Native Reserves or districts, the only spheres where the British allowed African politics, engendered an ethnic consciousness and ways of organizing politics that preceded the national consciousness and political organizations.<sup>15</sup> Moreover, no national coalition of notable ethnic elites, from Kenya African Union to the National Rainbow Coalition (NARC) leaders has been sufficiently national or held out long enough to transcend its own ethno-regional cleavages. Conversely, the collapse of these coalitions has often led to ethnicization of political differences.

Consequently, how does political conflicts that pits liberal democratic citizenship against communitarian citizenship redefine civil political rights as well as property rights and its management regime? How does the unresolved tension between the politics that invokes the collective rights based on 'reserves or homelands,' as the abode of particular 'natives,' or ethnic groups, a politics which demands a federal system of government and seeks protection in circumscribing the reach of a unitary state and remit over land, on the one hand, and the politics of a unitary state, as the abode of atomic, civil and political rights bearing individuals, whose rights to property and representation can only be circumscribed by the limits of individual abilities, define property rights and politics in the Rift Valley?

14 Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Kampala: Fountain Publisher, 1996.

15 B.A. Ogot, *History as Destiny and History as Knowledge: Being Reflections on the Problem of Historicity and Historiography*. Kisumu: Anyange Press, 2005:440-482.

Onoma's discusses Kenya in terms of early Kenya and late Kenya, a periodization that largely coincides with the Kenyatta regime and the Moi regime, respectively. However, the suggestion that what distinguished the type of property regime, beside the security of the regime, was the rational logic of the types of benefits, either Kenyatta or Moi, derived from land is an academic argument that recalls Kenya "street or bar room talk" with an tinge of agrarian prejudice and indifference to pastoralist mode of production.

This "street or bar room talk" compares Kenyatta's regime with Moi's regime. It holds that there was a qualitative difference between the Kenyatta (the mostly Kikuyu dominated) regime, a regime of farmers, who uses land judiciously tends well to his crops and lives off its produce, while Moi's was a regime of pastoralist, who uses land extravagantly, overstocks and razes pasture to the ground and moves on the next one, leaving destruction in its wake. Kenyatta was the stationary bandit, while Moi was the roving bandit.

These talks ignore the impact of substantive land alienation for sedentary agriculture and game reserves, how it hemmed in the pastoralist mode of production, turning cattle keeping into a modern tragedy. However, Onoma's contentions raises important questions for the politics in the Rift Valley: to what extent did the size of the available resources for, including land, for regime consolidation and patronage, define the differences between the Kenyatta and the Moi regime? What was the nature of the political threats that the Kenyatta regime faced and the threats the Moi regime faced tell us about the politics of property rights? How did these regime insecurities play out in the Rift Valley? What was the impact of Moi's own "counterinsurgency" strategy against the human rights and democracy movements on the outcomes of the British-Kenyatta counterinsurgency against the militant Mau Mau and radical nationalist?

Onoma's dichotomy between direct or indirect material benefit as the explanation of political choices of different regimes ignores the fact that both Moi and Kenyatta, used land according to the two logics: directly and indirectly. The two logics are not mutually exclusive. Successive independent era regimes in Kenya have used land to lay the foundation of an African bourgeoisie class and to co-opt political opponents, military leaders and supporters. The have also used either public land or land previously owned by settler farmers for patronage politics. However, Jomo Kenyatta had the more settler lands and favorable international regime of aid than Moi, for his patronage politics.

Consequently, what was at stake, arguably, was not the regime of property rights per se, but whose property rights was secured by the two regimes, in face of political threats. The security of large lands or plantations, owned by the multi-ethnic Kenyan elites and Multi-National Companies have largely remained secure and have been secured by the both the Kenyatta and the Moi government. Conversely, the degrees of insecurity may differ, but public land, the pastoralist land, under group ranch or trust land titles, have been most insecure property in during these two regimes.

In the Kenyan context, arguably, the nature of property rights and land management system, Onoma's concern, cannot be understood without examining the major political question: the legacy of the British Kenyatta government's counterinsurgent, adopted by the Kenyatta regime against the threats of of the Mau Mau militants demand for land and the radical nationalist. Moreover, one cannot ignore the ingrained colonial and independent Kenya's policy bias, which privileges sedentary agricultural communities claims to land and productivity sedentary agriculture as opposed to nomadic pastoralism, has often undermined the pastoralist communities claims for restorative justice over land.

## Human Rights Discourses

The early international human rights report such as Human Rights Watch "Divide and Rule" on the political violence in the Rift Valley suggested that Kenya's land questions were: the question of the British white settlers who still occupied the land; the question of the pastoralist who originally ousted from the land; and the question of the squatter, farm workers who had been drawn into the settler agricultural economy. The report also notes that the post-colonial government addressed the interest of the British settlers, however, the post-colonial government made no effort to settle the interest of the pastoral communities who had been displaced by the simultaneous creation of the White Highlands and the Native Reserves.

However, the report's framing of Kenya's land questions ignores an important land question: the question of the resettlement of some of those rendered landless by colonialism and class struggles in Central Kenya and how it has shaped Kenya's political trajectory. It similarly ignores the class and gender dimensions of the land question. The colonial land and labor policy not only linked the two land questions and resistance against colonialism, but also the major options contemplated by the Central Kenya leaders.

Arguably, whether the militant Mau Mau won or lost the struggle for land in Central Kenya, the Central Province land crisis would still have had

an impact on the Rift Valley Province's land question. John Lonsdale notes that the question of who, amongst, the mostly Kikuyu militants should be allocated the Rift Valley land was one of the issues that divided this militant nationalist movement.<sup>16</sup> The across section of the Mau Mau militants argued that the land in the Rift Valley "must go to the tiller: the squatter who had cultivated the 'white lands and formed the major *riigi* ranks."<sup>17</sup> However, as Branch details, the moderates, "home guards or the loyalist" under Jomo Kenyatta won the struggle. How did the Kenyatta's government respond to the social and political crisis occasioned by colonialism and Mau Mau war as a civil war within the Mount Kenya communities, especially among the Kikuyu?

### The Maasai Land Question

The Africa Watch report's discussion of the Maasai and the land conflict not only reiterates the sedentary agrarian claims, which have been used to delegitimize the past and present pastoralist communities' land claims, but also ignores how the colonial and independent Kenya policy contestations and contexts that de-legitimizes past and present pastoralists communities land claims. The Africa Watch Report notes:

Among the Kikuyu, unlike the communal pastoral groups such as the Maasai and the Kalenjin, farming was an established practice. Accordingly, many Kikuyu were eager to take advantage of the opportunity to purchase land.<sup>18</sup>

However, that the fact that former "squatters," farm workers and other ethnic groups held more land in the Rift Valley cannot be explained by group or communal attitudes towards farming or mastery of farming skills only, as the Africa Watch report does. This argument not only undermines the reports critical observation that the pastoral land question was not addressed, but also blames the victim for their loss. It suggests that Africa Watch Report does not take the pastoralist loss of land and case for restorative justice seriously.

The report does not take the subjectivities of yester-years victimhood and its connection to present suffering seriously. Indeed, a pastoral mode of production, which co-exists with sedentary agriculture, hardly needed to cultivate its own farming skills. Consequently, the Maasai's loss cannot

<sup>16</sup> John Lonsdale, "Moral and Political Argument in Kenya," in Bruce Berman, Dickson Eyoh and Will Kymlicka (eds.), *Ethnicity and Democracy in Africa*. London: James Currey, 73.

<sup>17</sup> *ibid*, 87.

<sup>18</sup> Africa Watch, *Divide and Rule*, 24.

be blamed on the sets of skills they hardly they needed. Rather, the Maasai loss can be understood as political loss to mightier political forces. That is, the kind of policy and discourses of government and human rights that describes the Rift Valley as Kenya's "most fertile area," for sedentary agriculture.

Arguably, the skew in land allocation in the settlement schemes in the Rift Valley largely at the expense of the pastoralist communities was the result of several factors: It reflects the political as well as the social capital that each community had at the turn of independence. It also reflects who was favored by the policies of the Kenyatta regime on agriculture, the allocation of loans for resettlement, the formation of land buying companies and co-operatives, and who had the control of national and local land offices.

### **European Settlers and the White High Lands of the Rift Valley**

The Rift Valley province or present day counties, as a consequence of the colonial settler agriculture's land and labor policy, have had one of the most ethnically diverse rural populations in Kenya. The Anglo-Maasai agreements and the 1902 Crown Land Ordinance that decreed that "any land which was unoccupied, whether temporarily or otherwise by African, was available to the European settlers without reference to the Africans."<sup>19</sup>

Through this and others decrees, the British colonialist alienated land that runs from Nairobi to Mount Elgon, especially in places such as Naivasha, Laikipia, Nyandarua, Nakuru, Kericho, Nandi, Uasin Ngishu, Trans-Nzoia and Bungoma, where most of the political violence has been experienced. They also created several native reserves for the pastoralist along these locations, notably for the Maasai and the Kalenjin and game reserves out of parts of the Native Reserves.<sup>20</sup>

Therefore, the British settlers to alienated more land from the pastoralist communities whose land use pattern, for pastoral mode of production, was often defined by temporary absence from locations that spanned large swathe of land, but construed as "unoccupied" wasteful by the British. In absolute terms, despite their spirited resistance, the pastoralist communities, especially the resistance by the Nandi of the Rift Valley, lost the largest acres of land to the British settler economy, more than other ethnic groups.<sup>21</sup>

<sup>19</sup> Government of Kenya, 2002: 61.

<sup>20</sup> Ibid.

<sup>21</sup> Caroline Elkins' *Britain Gulag: The Brutal End of Empire in Kenya*. Capetown: Jonathan Cape, 2005, grudgingly concedes this fact in footnote number 26.

While the British European settler economy alienated from the pastoralists, it drew its labor from other Native Reserves. The pastoralists were considered ill adapted to sedentary agrarian labor. Consequently, as Lynch points out “the White High Lands” drew its labor from other Native Reserves, notably, from the Kikuyu, Luo, Kamba, Teso, and Luhya native reserves. These policies not only altered the demographic make up of the White High Lands, but also of the politics of who would have the right to land and to represent the residents of such locations, after independence.<sup>22</sup>

## Land and Political Violence

If, as B.A. Ogot argues, Mau Mau war was at once “a militant nationalism and a peasant war emerging out of the growing class struggles” within the Gikuyu community,<sup>23</sup> then, the Africa Watch argument ignores the significance of the Rift Valley to the process of class formation and capital accumulation by the Kenyatta regime elite. It ignores the connections between yester-years injustices and the humanitarian and manifest injustices it advocates should be redressed.

The land question in Central Kenya was settled in favor of the home guards, multi-ethnic independent era Kenya elites, remaining British settlers and the Multi-National Corporations, and largely at the expense of the Mau Mau of Central Kenya and the pastoralist in the Rift Valley. The “availability” of Rift Valley land, however, greatly facilitated the consolidation of the political and economic positions of the home guards in Central Kenya and stabilization of the Kenyatta regime: it enabled them to export the social and political crisis, wrought by colonial dispossession, to the Rift Valley.

However, its success also rested on ability of both the Kenyatta and the Moi regime’s the suppression of the pastoralist claims championed by leaders such as Jean-Marie Seroney among the Nandi, and the William Ntimama, among the Maasai.<sup>24</sup> These demands had been voluble during the Lancaster House Constitutional talks.

<sup>22</sup> Lynch, 2011.

<sup>23</sup> B. A. Ogot, “Mau Mau and Nationhood—the untold story,” in *History as Destiny and History as Knowledge: Being Reflections on the Problems of Historicity and Historiography*. Kisumu: Anyange Press, 2005, p.336.

<sup>24</sup> In the early 1980s, President Moi detained William ole Ntimama over the Maasai land claims. While the Kalenjin elite closed ranks with the Maasai elite in the 1990, there was a tension over land claims between the two groups. The Maasai claimed Uasin Gishu, protested the resettlement of the Kipsigis in parts of Narok, and the Mau forest region.

## The Lancaster House Talks and the Maasai Agreement

Ogot points out that the Maasai, for example, had lost huge swathes of land under the Anglo-Maasai treaties of 1904 and 1911, and more land, when three game reserves Mara, Amboseli and Samburu, were created out of the Maasai Native Land.<sup>25</sup> However, the colonial government and the successive post-colonial government have remained indifferent to the Maasai land claims. During the Lancaster Constitutional talks the Maasai land claims were dismissed, to the chagrin of Justus Ole Tipis, the leader of the Maasai members of the legislative council and Maasai delegation to the Lancaster talks.

Justus ole Tipis argued for restorative justice, he proposed that each land case should be addressed discretely and only by the signatories to the agreement that supposedly transferred the land to the British. The Maasai delegation had raised the following issues, amongst others, that:

- (2) All along the African political cry has been that Africans in Kenya, by their tribes, should get their lands back
- (4) The bulk of the Kenya Highlands fall within the original Masai territory which fact the agreement admits and recognizes.
- (5) In the process of re-acquiring land to hand back to African tribes—for this is in effect what resettlement comes to—the Masai claims and rights must be fully recognized and their lands must not be used as pawn in the game of political appeasement of non-Masai.

The Maasai delegation also raised an interesting legal argument on the controversial 1904 and 1911 Anglo-Masai agreements, that is:

- (6) The Masai cannot accept that a special guarantee under the agreement should be a subject to be provided for in any special manner under the independent constitution of Kenya. Whereas Her Majesty's Government was a foreign government the future Kenya government, of which the Masai are one; and just as the Masai will not be in a position to appeal to Her Majesty's Government if the new Kenya government discriminates against them as a tribe, it is idle to pretend that the Masai should transfer the faith and trust which they had in Her Majesty's Government to a new Kenya government to safeguard their tribal right in any other manner that does not apply to all other tribes alike.<sup>26</sup>
- (7) To this effect, Sir, it should be noted that no monetary return was paid

<sup>25</sup> B.A. Ogot, "Political history of post-colonial Kenya," in *History as Destiny and History as Knowledge: Being Reflections on the Problems of Historicity and Historiography*. Kisumu: Anyange Press, 2005: 461.

<sup>26</sup> KNA, MAC/KEN/47, Report of the Kenya Constitutional Conference Lancaster House, 6/2/1962 to 13/3/1962.

to the Masai for land, and what we are asking is the return of our land from those who took it from us.

In the fair copy of the report on the conference, the Maasai delegation had made the following proposals amongst others:

(i) the land which the Masai vacated in accordance with the Agreement belong to the Masai. The Masai wanted their ownership to be recognized and have the first claim on these lands when they were vacated by the Europeans who now farmed them;

(iv) they asked that some means should be found whereby the tribes akin to them now occupying land to the north and west of the Rift Valley should be enabled to unite.<sup>27</sup>

On the contrary, the British argued that:

Her majesty's Government could not admit any claims in respect of lands which the Masai claim had vacated under the Agreements. The Masai had agreed to give up the occupation of certain lands; in return they had received a guarantee of quiet enjoyment in respect to the lands reserved to them, and this would continue to be guaranteed under the constitution. There was nothing in the Agreement to suggest that Masai retained a right to re-occupy their former land if Europeans vacated it, nor could such a suggestion be founded on any legal principle to this case.<sup>28</sup>

However, the rough notes, archived as part of this report, gives a glimpse into the underlying attitudes of the British colonial government toward the Maasai that explains their reluctance to entertain the Maasai's demand for restorative justice. The notes points out that, to the British colonial officials:

The Masai tribe hold some 16,000 square miles of land in Kenya by treaty with the British government. The Masai who today number some 75,000 have in the past, because of their war-like activities, occupied the most fertile grazing lands in Kenya by keeping out other tribes by force. After the advent of the European, the Masai were removed from most of the fertile lands held by them and this land was given over for European settlement. The Masai are now claiming all their former lands as and when they are taken over by an African Government from the European farmer. The Conference decided that the Masai treaties of 1904 and 1911 are no longer valid largely because of the extent of the present Masai reserve (16,000 square miles) is more than enough for the needs of the Masai and for the foresee-

<sup>27</sup> KNA, MAC/KEN/47, Report of the Kenya Constitutional Conference Lancaster House, 6/2/1962 to 13/3/1962.

<sup>28</sup> KNA, MAC/KEN/47, Report of the Kenya Constitutional Conference Lancaster House, 6/2/1962 to 13/3/1962.

able future.<sup>29</sup>

The Maasai delegation saw the refusal of the British to acknowledge their land claims as betrayal but remained resolute in their quest for restorative justice. Justus ole Tipis concluded:

In conclusion, Sir, since the so-called British justice has been betrayed, has diminished, in the way the Masai case has been handled, in that this is a case of robbing Peter to pay Paul, the land-hungry and the land profiteers and those who took our land from us, when the British Government withdraw, we register our dissatisfaction in no uncertain terms to Her Majesty's Government, who are parties to this agreement—that there is no settlement, that the Masai on their part must have their land back to benefit by it, that Her Majesty's Government have responsibility which should not be lightly discharged, and that those who take it that they are going to benefit at the expense of the Masai should duly take heed. No man on earth could dream and expect the Masai as a people to be on the dry, arid lands on to which they were pushed, whereas our former rich and very fertile lands is given to people who had no claim to it whatsoever.<sup>30</sup>

If the rough notes revealed the British government's prejudice against the Maasai in particular and pastoralism in general, then the KANU delegates the Lancaster Conference expressed a similar view, albeit with the echoes of British colonial rationale for dispossession Africans of their lands. In an antecedence to the policy choice offered by Kenya's seminal development policy, *African Socialism and its Application to Development: the Sessional Paper no.10 of 1965*, the KANU delegation noted that:

Land is a national asset and its full development is urgently necessary in the interests of all the people of Kenya, and indeed of the future East Africa Federation. The wealth of the country is dependent to such a great extent on its agriculture that no racial or tribal considerations should be permitted to interfere with the attainment of its maximal potential. It is recognized that land is an emotional issue in Kenya; that many grievances, real or imaginary, exist; and that some areas wish to guard most jealously against central government control. Whatever measure may be necessary to allay such fears, it must be clearly established that the Government's principle aim must be to ensure maximum productivity for the benefit of all. Mr. Jomo Kenyatta has consistently reiterated his broad policy as regards land. It is that the maximum security must be given to those irrespective of race or tribe, who have developed their land and that idle underdeveloped acres

<sup>29</sup> KNA, MAC/KEN/47, Report of the Kenya Constitutional Conference Lancaster House, 6/2/1962 to 13/3/1962.

<sup>30</sup> KNA, MAC/KEN/47, Report of the Kenya Constitutional Conference Lancaster House, 6/2/1962 to 13/3/1962.

must be made available for the benefit of the landless and the impoverished. This memorandum is directed towards the detailed attainment of this policy.<sup>31</sup>

In the Sessional Paper no 10 of 1965,<sup>32</sup> president Jomo Kenyatta, hoped the publication of the policy document “should bring an end to all the conflicting, theoretical and academic arguments that have been going on.” Kenyatta noted that Kenya could not develop, if Kenyans “continue with debates on theories and doubts about the aim our society.” Therefore the government would pursue growth and productivity. The policy noted that “*idle land and mismanaged farms will not be permitted whether such is owned by Kenya citizen or foreigner.*”<sup>33</sup>

The policy recommended that land should be put to productive use, effectively and closely controlled so that its ownership is not concentrated in the hand of a few. More importantly, land would be progressively Africanized, ceiling on placed on ownership and the formation of co-operative would be promoted to ensure equitable distribution of land. On the former European settler farms, the policy said: “*it should be established that property in future should be given to producer co-operative formed by people such workers and squatters already employed on the land*”<sup>34</sup> and a credit facility extended to such co-operatives to achieve this goal. On the contrary, Kamungi notes that Oginga Odinga, the leader of the radical nationalist who favored nationalization of these land, had proposed that land be allocated on 60:40 ratio, 60 for the “indigenes” and 40 for the “outsiders”.<sup>35</sup> What did the policy produce?

### “Robbing Peter to pay Paul”

Ogot in an evocative and incendiary article on Kenya’s post-colonial history argues that:

Kenyatta appeased the land hunger of the former Mau Mau by successively settling them into the Million-Acre, Haraka and Harambee Settlement Schemes on soft loans terms. Between 1960 and 1966, the Kikuyu came back to the Rift Valley, and the Gikuyu reserves of Kiambu, Muranga and Nyeri were now extended into Nakuru, Laikipia and Nyandarua districts—

<sup>31</sup> KNA, MAC/KEN/47, Report of the Kenya Constitutional Conference Lancaster House, 6/2/1962 to 13/3/1962.

<sup>32</sup> Government of Kenya, *African Socialism and its Application to Development: the Sessional Paper no. 10 of 1965*. Nairobi: Government Printer, 1965.

<sup>33</sup> Ibid, 39.

<sup>34</sup> Ibid, 38.

<sup>35</sup> Kamungi, 350.

which became fully Kikuyu reserves—and also into Eastern Nandi, Eastern Kericho, and the Southern–Uasin-Gishu districts. Also, tracks of land in the Rift Valley were given to the President's closest sycophants such as Njenga Karume and Kihika Kimani. In this process, the concept of communal land ownership that was so dear to the framers of Majimboism was jettisoned and nobody listened to the cries of the historically aggrieved communities such as the Maasai and the Kalenjin about their “lost land.”<sup>36</sup>

Kanyinga also notes that the need to contain the social crises, which underpinned the Mau Mau war of independence, led to an initial Africanization process that favored the Kikuyu peasants and annexation of parts of the Rift Valley, such as Kinangop, to Central Province to settle landless Kikuyus. The subsequent resettlement schemes favored laborers, also skewed the redistribution in favor of the Kikuyu, who constituted the majority of laborers in the settler farms<sup>37</sup>. This undercut the social base of both Mau Mau militant and radical nationalist, however, it ethnicized the land question in the Rift Valley. It also evoked ethnic animosity as expressed by Jean Seroney's “Nandi Hills Declaration” of 1969.<sup>38</sup>

Brown notes that at the Coast, the re-settlement in ‘schemes’ such as Mpeketoni was done in favor of the Luo, Kikuyu, Kisii and the Kamba. These communities are politically referred to as “wabara” or people from the hinterland as opposed to “wapuani” or the Coastal people.<sup>39</sup> Wapuani's landless lost out in these settlement schemes, despite having a long history of being dispossessed that ran far back to the establishment of Arab plantations such as the contested Mazrui family owned lands. They lost more land in Kwale, Kilifi, Malindi, and Taita Taveta to settlement schemes such as Mpeketoni and Lake Kenyatta, settlement schemes, and the beach plots to the Kenyatta elite.

The pastoralists land claims and hard feelings laid latent, under the authoritarian one-party state, until Moi stroked the smoldering embers of 1960s Majimbo fires in 1990s to stave off the opposition of an emerging multi-ethnic political coalition agitating for political change. Arguably, this is the politics that contextualizes William ole Ntimama's callous remarks, cited in the Africa Watch Report, in response to accusation of instigating

36 B.A. Ogot, “Political history of post-colonial Kenya,” in *History as Destiny and History as Knowledge: Being Reflections on the Problems of Historicity and Historiography*. Kisumu: Anyange Press, 2005, p.461.

37 Kanyinga, 2009: 328-332

38 Lynch, 2011: 98.

39 Stephen Brown, “Quiet Diplomacy and Recurring “Ethnic Clashes” in Kenya,” in Chandra Lekha Sriram and Karin Wermester, eds., *From Promise to Practice: Strengthening UN Capacity for the Prevention of Violent Conflict*. Boulder: Lynne Rienner, 2003.

the killings in Enosopukia.

The report notes that Ntimama said that “he had no regrets about the events in Enosopukia because the Maasai were fighting for their rights. He also said that the Kikuyu ‘had suppressed the Maasai, taken their land and degraded their environment...we have to say enough is enough. I had to lead the Maasai in protecting our rights.<sup>40</sup> Indeed, the connections between the violence and the unfinished politics of federalism (Majimbo) were widely articulated by various politicians and public intellectuals in the 1990s.

David Ndi, in a critique of the emerging national consensus on the way of to end Kenya’s economic and political crisis of the Moi era, noted that Kenya is a nation of tribes.<sup>41</sup> Yet the ascendant discourses of human rights, constitutional reform, rule of law and economic development, seems not to have factored in this important fact. Ndi observed that Kenya “like Ethiopia, Tanzania and every other African country, are a nation of tribes and there seems to be little point in chasing a nation of make-believe, something different from the sum of its tribes.”<sup>42</sup>

According to Ndi, ethnic identities were legitimate political identities, yet the current constitution and constitutional debates seem not acknowledge this political fact and address is as such. According to Ndi, the emerging national consensus on how to reform Kenya’s politics and economics was not addressing an important issue: the question of land and ethnicity. Kenya’s transition to democracy must confront the issue of ethnicity and land, perhaps in the manner in which Ethiopia, and Tanzania had variously addressed these issues. The critical issue was: are tribes legitimate identities in constitutional order?”<sup>43</sup>

Moreover, in making a case for a serious consideration of the question of ethnicity and federalism, Ndi pointed out that:

It is foolhardy to hold the view, like one often hears among the well-heeled Kikuyus, that the community owes their geographical spread in the country entirely to their entrepreneurial prowess.

It is matter of historical fact that the co-optation of Kadu into Kanu after independence gave the Kenyatta government the latitude to pursue, not only a land policy that benefitted Kikuyus and other favoured groups, but also to deploy the provincial administration to entrench and protect the interests

<sup>40</sup> Africa Watch, *Divide and Rule*, 59.

<sup>41</sup> David Ndi, “Law reforms must address land issue,” *Sunday Nation* 23 July 1995, p.7

<sup>42</sup> David Ndi, “Law reforms”

<sup>43</sup> David Ndi, “Law reforms”

of the favoured groups everywhere in the country.<sup>44</sup>

Ndii also suggested that Kenya's political crisis was not only underpinned by the Kenyatta regimes use of the provincial administrative structures to entrench and protect elite and favored groups' interests, but also by the application of the lessons of the counterinsurgency land reforms of the 1950s. Ndii noted:

More importantly, the land reform process initiated under the Swynnerton Plan in the 1950s was already rigged in that direction. The architects of the plan made it plain that they considered the creation of a "landed" capitalist class among the peasantry as the solution to political dissent and economic viability of the colony. But it does not matter whether this is the true interpretation of history or not. It only matters that is perceived as such.

Hence the perception that the current constitutional order, in so far as land rights are concerned, carries historical injustice. This perception is not inconsequential.<sup>45</sup>

Although making a case for the constitutional recognition of ethnicity and federalism as means of protecting ethnic land rights, Ndii also observed that there was either a perception or fact that "the presidency and not the constitution... is the ultimate safeguard of tribal interests and the seemingly irrational unwillingness of any tribe to compromise on the occupancy of State House."<sup>46</sup>

Consequently, Ndii suggested that Kenya's land reforms should consider Tanzania's land reform suggestions: abolition of centralized land registration, the institution of local registries and land controlled by elected local land committees, and that the radical land title be vested in national commission, and not the president.

## Echoes of Lancaster House Constitutional Talks

Ndii proposals on the recognition of ethnic identities, corresponding ethnic land rights recalled the KANU-KADU debates at the Lancaster House Constitutional Conference, a political divide not just by ethnicities as is often stated, but also by social-economic inequalities between the communities they represented. That is, the centralist and the Majimboist/ federal debates on state power, the structure of government and land. KADU had argued for a system of regional government with powers over land, regional police force, and a bi-cameral system of parliament, where the senate

<sup>44</sup> David Ndii, "Law reforms"

<sup>45</sup> David Ndii, "Law reforms"

<sup>46</sup> David Ndii, "Law reforms"

and a high threshold on legislative reform would protect the regional interests.<sup>47</sup> KANU opposed these propositions.

However, KANU tactically conceded, and Kenya briefly was a federal state. KANU did not want to the difficult issues of land, ethnic identity and regionalism to delay independence. KANU's strategy was to use democratic procedures and the co-optation of the KADU elite to undo these constitutional guarantees. KANU's understanding of democracy as majoritarianism is instructive in this regard. At the Lancaster House conference Jomo Kenyatta, the president of Kanu had argued:

First, KANU has set itself firmly on the path of Parliamentary Democracy fully understanding and accepting its implications. That is what we mean when we say we want the British or Westminster pattern of Constitution. That is why we demand a clear and comprehensive Bill of Rights and an independent judiciary. I would like to make it very clear Sir, that my party and I are definitely against any form of dictatorship and we are, and have always been, ready to consider reasonable proposals to ensure that dictatorship does not emerge. We believe that our proposal contain the necessary safeguards for this purpose. But it must be made equally clear that Parliamentary Government means effective Government. It means Government by the majority party and the consent of the minority to the predominance of the majority party, its leadership and its policy until the next election. That is what my friend Mr. Odinga termed dictation by consent, and he cited the British Government as a good example of this. Today the Conservatives Party rules, sometimes very strongly, but this system if very different to dictatorship.<sup>48</sup>

In other words, KANU, the dominant pre-independence national political coalition, thought of democracy as the right of the majority to impose their will on the minority, willy-nilly, not as system of government that recognizes the fears, rights and opinion of the minorities as legitimate, and one that required various institutional and electoral safeguards. To KANU, what was good for the British, however brutish, was good for Kenya. KANU ensured that the Majimbo Constitution died on the vine: the first amendments to the Lancaster House Constitution made Kenya a republic with an executive president, with immense unchecked or balanced powers over the judiciary, the parliament, the police and the parliament. These amendments notably abolished the revenue base of the Majimbo government and

<sup>47</sup> KNA, MAC/KEN/47, Kenya constitutional conference, memorandum by the KADU Parliamentary Group, 20 February 1962.

<sup>48</sup> KNA, MAC/KEN/47, Kenya constitutional conference, statement by Jomo Kenyatta, president of KANU, 21 February 1962.

strangled them out of existence.

## The Independent Kenya's Settlement Schemes

The European settler state's mode of rule and white settler economy produced two political subjects whose claims to land is mutually exclusive: the pastoralist communities who were displaced from the land to make room for most of the settler farms in the "White Highlands" claimed the land on the basis of ancestry and pre-colonial occupation. They argued that "White HighLands" should be re-allocated on the basis of the claims of ancestry and restorative justice. However, the ethnic groups, who had been labored in the settler farms or share-cropped with the settler farms argued that "the White Highlands" should be allocated on the basis of residency and labor that had turned these lands into profitable sedentary agricultural lands.

During the Lancaster House Constitutional Conference, the pastoralist communities' leaders, mostly in Kenya Democratic African Union and allied to various settler political parties, unsuccessfully pursued the right to former White High Lands as a quest for restorative justice. However, the failure of KADU's quest for restorative justice was compounded by the Jomo Kenyatta's government political strategy and policy choices, which were a continuation of counter-insurgency strategy of the British against the Mau Mau and radical Kenyan nationalist, who were demanding redistribution of White Highlands without compensation.

Karuti Kanyinga notes points out that early settlement schemes, mostly the mono-ethnic types, were skewed in favor of the landless Kikuyus, considered the most restless landless people, whose demand for land could destabilize the independent Kenyan polity. For example, the Kinagop settlement scheme in Nyandarua district was carved out of land, which the Kalenjin and the Maasai claimed, but was used to resettle the landless Kikuyus from the highlands and the populated native reserves.<sup>49</sup>

Kanyinga adds Jomo Kenyatta's Africanisation of the White Highlands ethnicized the land question. The independent era resettlement policy favored the labor-residence claims and willing-buyer purchase, but repressed the pastoralist communities' indigeneity and historical injustice claims and the quest for restorative justice over lost lands. The pastoralist were the most disadvantaged by these policies, however, the Kikuyu, by the virtue of a long history of collective solidarity, colonial and Kenyatta government's counter-insurgency strategy, knowledge of the intricacies of

49 Kanyinga, 2009: 332.

modern land management system and titling,<sup>50</sup> Kikuyu elite control of key government offices and banks were the most advantaged in the market mediated competition for land.

The Akiwumi report notes that the Kenyatta's government effected resettlement process in three ways: government bought land and "transferred to Africans in either high density schemes, in which plots were small or low density schemes where larger plots were available," government also set up a parastatal the Agricultural Development Co-operation (ADC), which bought and managed, singly or jointly with private companies, some of the settler farms in the former White High Lands or Scheduled Areas, and lastly, individuals, through co-operative societies or land buying companies, bought large lands, with single block title, borrowing loans from the Land Banks, Agricultural Finance Corporation and other sources.<sup>51</sup>

The ADC or sometimes the Ministry of Agriculture directly took over the management of some of the former settler farms, and eventually sold these lands to land companies or co-operative societies owned by the farm hands, who had been "squatting" on these lands and subsequently subdivided into small individual owned parcels. The land co-operatives or companies' shareholders were ethnically diverse. However, while some peasants got title deed for their pieces of land, others, based on ethnic discrimination by the Moi government, were not given title deeds.

However, as Paul Syagga points out, the multi-ethnic Kenyan elites were allocated "the Z plots," a 100-acre land, together with the farmhouse, following a 1964 Jomo Kenyatta directive that such lands should be allocated to prominent people,<sup>52</sup> who, unlike the smallholder peasants, could preserve its beauty and grandeur. But more importantly, used to co-opt the elite and prop an African bourgeoisie with adequate stakes in moderate politics and status quo. The list of the beneficiaries of land allocated on this basis reads like who was who in Kenya, with the notable exceptions such as Joseph Murumbi, the second vice president, and Bildad Kaggia, an assistant minister.

The government officials' manipulation of bureaucratic processes of land titling and differential access to state power and loans from land banks as well as distress sales exacerbated the land inequality between

50 Kanyinga, 2009: 328, notes the transformation of land tenure system for Africans, the individualization, surveying, consolidation and registration of individual title began in Central Province.

51 Government of Kenya, 2002: 62.

52 Paul syagga, "Public Land, Historical Land Injustice and the new Constitution of Kenya." Working Paper Series no.9. Nairobi: Society for International Development, 2011.

classes and between ethnic groups in the Rift Valley. However, the land conflicts did not take a violent expression until the demand for multi-party politics gained ground. These are the farms that have bore the brunt of the political violence that defines Kenya's competition for political office, especially the presidency. Indeed, a case study of two such farms Meteitei and Buru, the first to experience the violence, is illustrative.

### **Meteitei Farm**

On the 28th of October 1991, violence broke out in Meteitei Farm in Tinderet, Nandi District, in the Rift Valley province of Kenya. B.A Ogot notes that from 1895 to 1905, the British organized several military attacks against the Nandi, killing over 100,000 Nandis including the *Orkoyiot*, their political and spiritual leader.<sup>53</sup> The Nandi lost 1250 square miles of land to the British White Settler schemes. The 1934 Carter Land Commission noted that the Maasai and the Nandi had lost the greatest acreage of land to colonial settler agriculture.<sup>54</sup>

Although the Kalenjin (Nandi) land grievance against settlements schemes, Kenyan elite owned large farms and mostly British owned Multi-National Companies remains latent, Moi regime stroked the embers of fire in the early 1990s.<sup>55</sup>

The Meteitei, Buru, Owiro and Momoneit farms were located in the former white highlands and along the former Kalenjin native reserves. In some cases also these settlement schemes were also allocated district administrative and ethnic boundaries. However, the contested allocating these lands to the laborers or former squatters, mainly from the Kikuyu, Luo, Kisii and Luhya ethnic groups, without redressing the Kalenjin land claims, the government created tension between ethnic groups and the Kalenjin.

Not surprising, the political violence began with the settlement schemes most vulnerable to competing political claims and grievance over land: who has the rights to own and use land in the former 'scheduled areas' or white highlands, and what is the basis of land ownership and control of land? Market conferred rights to property or historical claims of ancestry and belonging.

The KANU politicians exploited these grievances, but politicized only the Nandi or the Kipsigis hard feelings against the smallholder peasants

<sup>53</sup> B.A Ogot, 2005: 397.

<sup>54</sup> Ibid.

<sup>55</sup> *Weekly Review*, "The Multi-party debate," 30 March 1990.

from the ethnic communities perceived to be supporters of, or sympathetic to, the opposition pressure group Forum for the Restoration of Democracy (FORD). The victims of the violence as well as other Kenyans were puzzled by the surprise attacks. However, the violence was not confined to only one farm.

The violence quickly spread to other neighboring farms such as Owiro, and Buru farms and along the boundaries of Kericho, Nandi and Kisumu districts. On 4th of November 1991 the *Daily Nation* reported that:

Six more people have died following clashes over land in Tinderet Division of Nandi District. Three primary schools have been closed while police estimate that over 10,000 people were rendered homeless after their homes were set on fire by rampaging youth. The clashes, which started the Meteitei Land Buying Company farm in Songhor Location last week, have now spread to Koisagat Farm, Kitororo, Kimwani Agricultural Corporation (ADC) farm and Owiro Farmers Co-operative Society. ...<sup>56</sup>

The chairman of Owiro Farmers Company, Mariko Muga, told the *Daily Nation* that “nearly 2000 people out of the 3000 (including children) who had inhabited the farm had been rendered homeless. He said his company owns the 1,600 hectare farm.” Muga also told the *Daily Nation* “his society had bought the Owiro farm from a European in 1968 for 740,000 Kenya shillings. He said that there were no land disputes among the members of his society. However, those who had raided the farm claimed that the members of his company were ‘outsiders.’

Mariko Muga, also told *the Daily Nation* that:

Raids at his farm started on Friday night and continued most of Saturday and Sunday. He said that the attackers ordered those they considered to outsiders to leave their homes after which the huts or houses were set on fire. He estimated the gang, which attacked on the first night numbered 300 and 400 people. Mr Muga claimed that prior to the attack, the chief of Songhor location, Mr Henry Tuwai, had advised residents against sleeping in their house because of the danger of raid by morans. Mr Muga claimed that on Saturday, police came and fired in the air but the morans continued looting and burning houses.<sup>57</sup>

Indeed, the *Daily Nation* reporter “saw several of the raiders armed with bows and arrows, patrolling Owiro farm.”<sup>58</sup> The *Daily Nation* further reported that when the leaders (who included the Nandi District Commissioner,

<sup>56</sup> Nation Reporters and Correspondent, “Six more killed in land clashes,” *Daily Nation*, 4 November 1991, p.1-2.

<sup>57</sup> *Nation reporters and correspondents*, “six more killed in land clashes”

<sup>58</sup> *Nation reporters and correspondents*, “six more killed in land clashes”

David Mativo, the Minister for Co-operative Development, John Cheruiyot, the Nandi KANU branch chairman, Henry Kosgey and the Rift Valley Provincial Officer), and contingent of anti-riot police office visited the area, on Saturday, these leader saw “over 200 grass thatched huts being set ablaze by over 400 unruly youths.”<sup>59</sup>

Gerry Oduor,<sup>60</sup> a *Kenya Times* reporter, who covered the same story, also noted that:

Hundreds of villagers fleeing land clashes in Tinderet Division, Nandi District, yesterday continued to pour in the neighbouring Kisumu District. Following the clashes—which spread to Songhor, Koru, Kopere, Kadan, Chemelil and Muhoroni—hundreds of security personnel have been deployed as far as from Kericho to restore order on the main highway where mobs have erected road block barricades.

Oduor, added that:

Yesterday at least two people were admitted at the New Nyanza General Hospital following the land clashes, which erupted over eight days ago at Meiteitei, Nandi District. ....the assailants from Nandi District, numbering between 200-300 youths dressed in red and white uniforms, on Monday afternoon set hundreds of villagers, mainly small scale farmers fleeing for their lives as they stormed the ADC farm at Kowiro

One victim of the violence, Martin Ogango, told Oduor that:

the raiders struck at about 8 pm and shot him with three arrows. “I managed to pluck out the arrows and raised alarm.” The raiders fled after setting my house on fire... the raider also escaped with a few of his belongings, including household goods...<sup>61</sup>

Flora Mumbi Kaguaru, a resident of Momoniet farm, Kipkelion in Kericho district, who experienced the violence, told a *Daily Nation* correspondent “a band of arsonist raided Momoniet farm on Wednesday at 6.00pm and burnt homes.”<sup>62</sup> The victims of the violence told the *Daily Nation* correspondence that “the raiders were heading towards Sitoito Farm and the Keringet area in Nakuru District.”<sup>63</sup>

<sup>59</sup> *Nation reporters and correspondents, “six more killed in land clashes”*

<sup>60</sup> Gerry Oduor, “More families flee Tinderet clashes,” *Kenya Times*, 6 November 1991, p.1. In a press statement to *The East African Standard* the Nandi leaders accused the Luo community of sparking the violence. The Nandi leaders alleged that the whereas the situation in Meteitei farm was tense, violence began when a “Luo policeman shot a Nandi during a riot on Meteitei farm on the October 29.” See, Kihu Irimu, “Clashes: Nandis not to blame—Kosgey,” *The East African Standard*, 6 November 1991, p.15.

<sup>61</sup> Oduor, “More families,” p2.

<sup>62</sup> *Nation Correspondents, “46 charged over land clashes,” Daily Nation*, 8 November 1991, p9.

<sup>63</sup> *Nation Correspondents, “46 charged over land clashes,” Daily Nation*, 8 November 1991, p. 9.

Similar patterns of violence would be witnessed in Saboti, Endebes, Kwanza in Trans-Nzoia district, from 23 December 1991 to July 1992,<sup>64</sup> in Mount Elgon region from January 1992 to August 1992, the Nandi-Uasin Gishu Kakamega district common border, in Nyamaiya, Nyangusu and Kilgoris borders of Rift Valley and Nyanza province, January 1992- to- Eronge and Sotik, in 1992. Molo, Olenguruone, and Burnt Forest would particularly experience continual attacks in the 1990s.

The attacks in these places followed a similar pattern: a surprise night or day time attack the attacks by a group of well organized invaders, who mostly targeted non-Kalenjin and non-Maasai ethnic groups living in ethnically mixed settlement schemes of the former white highlands. They touched houses, maimed and killed, while those in charge of state security apparatuses dithered.

### **Official alibis: Tradition, Cattle Rustling, and Border Disputes**

Although the patterns of these attacks were similar, the government explanation for the violence was varied. As Brown notes, through this strategy, the government successfully represented the conflicts as something local, and does not call for international intervention. Yusuf Haji, the highest ranked administrator in the Rift Valley province, described the violence that hit the settlement schemes as “*kitu kichafu sana*” ( a very dirty affair).<sup>65</sup> President Moi explained that the violence along the Kisii, Nyamira and Kericho District administrative borders, Moi’s was caused by political incitement by FORD activist who stroked the “traditionally cattle-rustling and border disputes” between the Kisii and Maasai.”<sup>66</sup>

Moreover, according to this government explanation, the ethnic communities living in Mt Elgon region, namely the Sabaots, the Tesos and the Luyias, “have traditionally been suspicious of one another due to cattle-rus-

64 Sunday Nation Team, “5 more killed in ethnic clashes,” *Sunday Nation* 29 December 1991: p.1 and p.11.

65 The Rift Valley Provincial Administrator, Yusuf Haji, described the seven-day attacks in Meteitei and Owiro farms as “*Kitu chafu sana*,” Kiswahili for “ a very dirt affair” as Emman Omari and Nation Correspondent reported. See, “Nandi clashes: Govt’s ‘return to home’ orders,” *Daily Nation*, 7 November 1991, p.32. However, Haji’s statement hardly expresses moral indignation or disgust. The Nation reports that Haji told the public at Maraba in the affected region “the skirmishes illustrates what it means to have chaos.” In Charles Tilley’s formulation, what was sordid was the dirty business of valorizing ethnic differences, land grievances and reconstructing borders and boundaries in the Rift Valley along the 1962 fault lines, by the Daniel Moi’s regime as a bulwark against the threat posed by multiparty politics to the regime’s hold on state power.

66 Kenneth Mwema, “how clashes were planned.”

ting, the dominance of the Bukusu in district affairs, and land problems.” The Sabaots feeling marginalized have demanded “a district of their own.”

However, the Trans-Nzoia seemed to have a difference: the immediate cause of the violence was Sabaots' campaign that Mt. Elgon Sub-District be transferred to Trans-Nzoia District. Similarly, the government discounted the cattle rustling argument on the Kipsigis, Kisii and Luo conflicts. It noted that the violence caused by cattle theft had continued among these groups “unabated for decades, without causing serious tribal clashes.” The government offered an alternative explanation.

### Shareholder Disputes

The government officers at both the national and the local levels said that disputes among the residents of Meteitei and Owiro farms, on the Kericho Kisumu District borders, explained the violence. The Minister of State in the Office of President, Joseph Ngutu, told parliament that “the cause of the of the problem was land shares between some local residents. There had been claims by the parties in dispute about the genuine and bogus members.”<sup>67</sup> Indeed, the Nandi District Commissioner blamed the violence in the Meteitei farm on the unresolved ten-year-old land dispute in the 1,934 hectares farm.<sup>68</sup>

The Nandi District Kalenjin politicians, namely, Henry Kosgey, Benjamin Kositany and Hezekiel Bargetuny accused the Luo leaders, namely, the Members of Parliament, Onyango Midika, of Muhoroni and Ojwang K'ombudo of Nyakach constituency, respectively, of inciting their constituents against the Kalenjins. However, Ojwang K'ombudo, the Member of Parliament for Nyakach noted “Kalenjin leaders must bare the full responsibility over the matter.” K'ombudo noted that the “land dispute and acts of hooliganism of on the non-Nandi members in the area is “a direct result of the recent campaigns by Kalenjin leaders for the re-introduction of *Majiboism*.”

The Kalenjin leaders, however, noted that the matter “was purely a land issue that had got out of control and not a political issue at all.”<sup>69</sup> But, the member of the Owiro cooperative society, the victims of the violence, disagreed. They pointed out that some of “their members had started the clashes over land. We are considered outsiders and therefore, have to be

67 Standard correspondent, “Minister disregard of law to blame,” *The East African Standard*, 7 November 1991, p4.

68 Emman Omari and Nation Correspondent, “Nandi clashes: Govt's 'return home' orders,” 7 November 1991, p.32.

69 Gerry Oduor, “families fleeing”

quiet, they said.”<sup>70</sup>

The Akiwumi report notes that Buru Farm, formerly owned by a white settler, was taken over by the Ministry of Agriculture and Animal Husbandry. However, the Luo squatters, like the landless Kipsigis in a similar parcel of land, who were tilling the land, petitioned the government through Daniel Moi, then the vice president, and bought the land. However, the Kericho District Commissioner and the Kipsigis County Council refused to grant the Luo squatters land titles. These government officers, however, completed the subdivision and titling of land bought by the Kipsigis. They argued that the land belong to the Kipsigis. The Luo squatters had paid more money for the land they wished to buy than the Kipsigis, however, the government had not only withheld their money, but also allowed Kalenjin warriors to attack them and kicked them out, as multi-party politics intensified.<sup>71</sup>

Moreover, observers of the violence of 1990s noted that the new wave of violence not only exceeded the elders’ mediation efforts, the tested inter-communal conflict resolution mechanism, used to mitigate conflicts over cattle theft and land disputes. It also had other new attributes: the government security apparatuses were uncharacteristically too slow to in their response to the new wave of “cattle rustling or land clashes,” or were complicit in the attacks.<sup>72</sup> The state was indifferent to the plight of the victims and hostile to any attempts at peace-making and humanitarian assistance by the church or non-governmental organization.<sup>73</sup>

The attackers were not after cattle, but after evicting the non-Kalenjin. Paul Kimani, who was born in Kuniyak in 1937 and knew no other home,<sup>74</sup> told the *Nation team* “ these people are burning our houses and telling us to go back home. Which home do I go to? I know that my dead parents came from somewhere in Kiambu but this is my home.”<sup>75</sup> Moreover, the ethnic hostilities had also spilled over into other locations within Kericho Districts, namely tea plantations, hotels, and schools, were the Luos, perceived to be pro-FORD were threatened with eviction.<sup>76</sup> Leaflets were circulating within the Rift Valley warned non-Kalenjins to leave.

70 Gerry oduor, “families fleeing”

71 Akiwumi report, 92-103

72 The Standard, “Tribal Clashes: where is state machinery,” 10 January 1992.

73 Africa Watch

74 Nation Team, “Man speared to death as land feuds rage,” *Daily Nation*, 9 November 1991, p.1.

75 Nation Team, “Man speared to death as land feuds rage,” *Daily Nation*, 9 November 1991, p.1.

76 Kauli Mwatela, Kennedy Masibo and Caleb Atemi, “10 killed in more tribal fighting,” *Daily Nation*, 16 March 1992, p.1 and p.2

The Human Rights Watch report also noted that the violence being perpetrated by the armed groups from Pokot community was different: "before they [the Pokot/Kalenjin] were only stealing cows, but now they also burning houses and killing people."<sup>77</sup> In Bungoma and Trans-Nzoia the perpetrators of the violence were using guns, bows and arrows.<sup>78</sup> Although the perpetrators of this violence stole cattle from everyone, only the Buku-su houses were being burnt.<sup>79</sup>

The Akiwumi Report noted that the government did not deploy the police in sufficient numbers that could stop the violence.<sup>80</sup> Moreover, the government often selectively applied the law, arresting and prosecuting the opposition politicians and those who were defending themselves against the "Kalenjin attackers." However, the whenever the "Kalenjin attackers" who were arrested were released without any charge. The government biases were also exacerbated by attempts by the Chief Justice Hancox to intimidate the lower courts handling most of these cases.<sup>81</sup>

The Kiliku report concluded that the violence experienced in the Rift Valley was political: it was "KANU fighting FORD."<sup>82</sup> The violence was mostly driven by the perceived political threats the re-introduction of multi-party politics posed to the Kanu regime and partly driven by rivalries over administrative posts in places like Molo. The politics of "political zoning," that is, a process of defining a specific region, either as KANU ZONES or FORD ZONES, were key drivers of the violence.

The Kiliku report suggested that, in the Rift Valley province, the *Majimbo* debate had been understood as the establishment of mutually exclusive ethnically defined regionalism. Kiliku reported that a Mr. Kurgat of Tarbo in Eldoret told the committee that "in the United Kingdom, the Scots lived in Scotland, the Welsh in Wales and the English in England and they just met for business in London."<sup>83</sup> However, the Kiliku report incongruously concluded that some KANU politician and government officer could have been complicit in perpetration of the violence, however, neither the ruling party KANU nor the president Moi and his government bore any collective responsibility for the violence.

77 Africa Watch, *Divide and Rule*, p.29.

78 Africa Watch, *Divide and Rule*, p.49.

79 Africa Watch, *Divide and Rule*, p.30.

80 Africa Watch, *Divide and Rule*, 64.

81 Africa Watch, *Divide and Rule*, 69-70.

82 Amos Onyatta, "Uproar in House as Kiliku reads report," *The Standard*, 25 September 1992.

83 Amos Onyatta, "Uproar in House," p1 and p.12.

## The Report of the Judicial Commission of Inquiry

The Akiwumi Commission also reached a similarly incongruous conclusion. The Akiwumi Commission was categorical that the violence was political. It meticulously investigated all the major incidences of violence, examined the official explanation and alibis, and recommended the prosecution of KANU politicians, businessmen and government officer believed to have perpetrated the violence. However, the commission's explanation of the violence as something driven by structurally unchanging cultural traits undermined the significance of its conclusion. The commission uncritically appropriated the alibis, excuses of the ruling regime, KANU government. For example, the Commission argued that before 1991:

There existed in some cases, from time immemorial, clashes between various tribes including traditional enemies, in the country and even within clans in a given tribe. This clashes and their causes where relevant, will be taken into account in assessing the causes, objectives and circumstances of the tribal clashes that occurred in the country from 1991 to 1998. The phrase 'tribal clashes' within the context of what occurred during the period under consideration, and the political and economic development of Kenya and its advancement in modern civilization, can no longer be limited to the unsophisticated objectives of pre-colonial primitive wars between tribes.<sup>84</sup>

In instances, where the report resorts to 'tradition,' 'culture,' 'traditional stock thieves,' 'customs,' 'tribe' and 'age-old cultural,' it looks at culture or tradition as something as static, ahistorical, and essential markers of ethnic difference. It also understands culture and social relations as something "homogeneous, coherent and timeless."<sup>85</sup> Therefore, it falls for the propaganda value of the Moi regime's uses of the label "tribal clashes," when it invokes traditional enmity or "traditional way of life," even as it acknowledges evidence that point to the deliberate acts of provocation as the trigger of inter-communal violence. Moreover, it references the colonial administrators' reports of 1960s to explain political and social relations of Kenyan communities in the 1990s.

Akiwumi report notes that violence at the Coast was more about election than land. It was part and parcel of KANU's wider strategy to divide the opposition along ethnic and racial at the Coast. Therefore, the contested beach plots were not targeted. It elides the significance of class in the Rift Valley case: land owned by Kenya's multi-ethnic elite and the Multi-Na-

<sup>84</sup> Government of Kenya, 2002: 21.

<sup>85</sup> Lila Abu-Lughod, "Writing against culture," in Henrietta L. Moore and Todd Sanders (eds.), *Anthropology in Theory: Issues in Epistemology*. Sussex: John Wiley and Sons, 2014: 386-399.

tional Companies in the Rift Valley, a category of land that, like its contested Beach Plots in Mombasa, has not been targeted by all the waves of election-related violence.

Thus, violence was political. The KANU regime directed the violence against a population whose political choices it feared could tilt the balance of the electoral competition in favor of the opposition parties, especially the Forum for the Restoration of Democracy (FORD). The violence was primarily political because it was part and parcel of KANU wider strategy of confining the politics of democracy and human rights within the urban areas and making it hard or prevent the emerging opposition political parties from obtaining the statutory requirements for a presidential victory: by displacing thousands of peasants perceived to be pro-opposition, the KANU regime reduced the chances of a united opposition obtaining a simple majority vote out of all votes cast in all constituencies or even the statutory requirement of obtaining at least 25 percent of total votes cast in at least 5 of the 8 provinces of Kenya.

Arguably, the main motive of the KANU elite was not redistribution of land from below, even though the violence achieved this to a limited extent and diverted the inter-class conflict between the landless and large land owners, but the retention of state power, containing the threat of majoritarianism in a polity where ethnic consciousness and elite mediated political coalitions defines electoral victory. Indeed, as Kamungi points out, even though the existence of the internally displaced person justifies new resettlement schemes, "the Agricultural Development Corporation farms slated for resettlement of IDPs in 1995 were grabbed by politicians, business people and army officers and a small fraction of IDPs were settled in forests and swamps."<sup>86</sup> The settlement around Mara, contested by the Maasai, is a case in point.

The violence main aim was to stem the political threat posed by FORD. In the face of a strong pan-ethnic political movement, which brought together notable political elite from various ethnic groups, Daniel Moi re-appropriated and deployed the political fears of Kenya Democratic African Union (KADU), at the dawn of Kenya's independence: independence era politics of "advanced tribes" versus "backward tribes," that was ostensibly represented by KANU and KADU, but reflected ethno-regional socio-economic inequalities, was recast by KANU regime as the politics of ethnic domination, 'big tribes' versus 'the small tribe,' ostensibly represented by FORD and KANU, respectively. KANU ran against a divided opposition in the

86 Kamungi, 2009: 352.

1992 and 1997 presidential elections. Moi served the constitutionally mandated two terms of office, until 2002. In 2003, KANU's candidate, Uhuru Kenyatta, lost to a united opposition, the National Rainbow Coalition, led by Mwai Kibaki. The 2002 presidential election has been the only election, since 1991, that was not only free of violence but also free and fair.

## Conclusion

Contrary to the popular use of adjectives such as “tribal clashes” “ethnic clashes” or “land clashes,” the violence has never been solely about ethnicity or land, even though historical land injustices has been invoked to explain it and its victims defined by ethnicity. More importantly, the violence has been political: its victims are determined by the nature of the Kalenjin and Maasai political elite alliances in a particular electoral contest. Ethnic groups whose elites are included or excluded in political parties or alliances for capturing the presidency, in which the Kalenjin and Maasai elite are principal players, has been the key determinant of victims of the violence, except for the Kisii communities of the Rift Valley, who have been the targeted in all the waves of the violence.

Unlike the other ethnic groups, who mostly vote a single block for parties that represent regional interests, the Kisii, the Meru and Luhya, have tended to vote for the main political parties in general elections. In the 1990s, the violence targeted ethnics groups whose elites had been marginalized the Daniel arap Moi's regime, namely, the Kikuyu, Luo, Kisii, Luhya and Teso. In 2007/8, the targets of the militia violence in the Rift Valley notably spared these ethnic groups except the Kikuyu, who were largely perceived to be pro- Mwai Kibaki led Party of National Unity. The party Orange Democratic Movement was an alliance of several ethnic groups, which notably included the Kalenjin and the Maasai, but largely excluded the Kikuyu. In 2013, the Jubilee Coalition, largely made up of the Kikuyu and the Kalenjin, brought the Kalenjin, Maasai and other pastoralist ethnic groups together. Politics in the Rift Valley was largely peaceful for all the ethnic groups. The Kalenjin and Maasai elite's interests, more than any other factor, has been the key determinant of the course of the political violence in the Rift Valley.

Although the Rift Valley Province has been the epicenter of the political violence (Uasin Gishu, Eldoret, Burnt Forest, and Kuresoi) driven by politics of fear of ethnic domination, the Kalenjin community, an ethnic group that was constructed in response to such fears, voted overwhelmingly against the Constitution of Kenya, 2010. Indeed, William Ruto and Dan-

iel Moi, and some clergymen of the no Campaign in the 2010 Referendum, notably led the opposition against the adaptation of a new constitutional order, arguably, the most significant political response to Kenya's ethnic and land question. However, the majority of other Kenyans voted for the constitution and it was promulgated on the 27 August 2010.

Arguably, the Constitution of Kenya, 2010, addresses Kenya's ethnic question both as a response to potential National Question (ethno-regional nationalism- the Mombasa and Somali nationalism) and as social question (vertical and horizontal social inequalities).<sup>87</sup> It addresses ethno-regional social economic inequality through a raft of measures: the creation of 47 County governments, constitutional allocation of resources and equalization funds, various provision on inclusion, and ethnic diversity. It attempts to redress the disadvantages of the biases of the past governments, and to balance social pluralism with individual rights. However, the current county governments' administrative boundaries, electoral system and the dominance of particular ethnic groups within most of these counties, arguably, reify ethnic identity and identification.

Moreover, the Constitution of Kenya's provisions on land and land policy has yielded more struggles over the control of land management bureaucracies, between the national and county government, than struggles for equity and redistribution of land to the landless, the displaced and disposed. Similarly, while the constitution has progressive provision on ethnicity, but the Commission it mandates to superintend the ethnic and racial discrimination, is arguably, unequal to the task.

However, as Branch points out,<sup>88</sup> the British counter insurgency strategy has ensured that only moderate and pro-status quo leader ascend to the presidency in Kenya. However, the radicals may have their constitutional moments. Whereas the Jubilee Coalition, the political party in power, is made up of the wealthy Kikuyu and Kalenjin elites, and largely supported by their respective ethnic groups across class, the Uhuru Kenyatta -William Ruto government has largely ignored the only serious attempt to deal with some of the issues that fuel the violence in the Rift Valley: the incumbent government has largely ignored the findings and the recommendation of Kenya's Truth Justice and Reconciliation Commission.

<sup>87</sup> Mkandawire, "From the National to the Social Question," *Transformations* 69 (2009).

<sup>88</sup> Branch, 2009.





