

**SEEDS OF STRIFE: UNRESOLVED LAND GRIEVANCES AND ELECTORAL
VIOLENCE IN KENYA**

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ABSTRACT

During electoral seasons, citizens often engage in violence to ensure their preferred candidates gain power. Disputed electoral results are a major factor but not the only reason for Kenya's recurrent post-election violence. This paper argues that the politicisation of land issues and unresolved land grievances in developing countries, including Kenya, enable opportunistic politicians to incite violence, with elections acting as a catalyst for clashes over land grievances. The paper examines the connection between land issues and post-election violence, analysing Kenya's history since adopting multiparty democracy and the tribal clashes around elections. It argues that land grievances provide politicians with a means to incite tribal attacks, leading to ethnic evictions and violence. The paper illustrates how tribal politics and land ownership conflicts in Kenya, particularly in the Rift Valley, are manipulated by politicians to weaken opponents or cut off their support.

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1.0 INTRODUCTION

All Kenyans collectively own the territory that constitutes the Republic of Kenya.¹ Land is a very valuable resource, land delineates Kenya's borders;² and as such, land and politics are inseparably linked. In addition, land is necessary for human survival and growth. It is seen as an asset as well as a measure of economic success. Unfortunately, this land has not been equally held in the society. Over time, those in positions of authority have altered land ownership and holding, in ways that benefit them or their allies.

Land-related tribal conflicts are a common occurrence in Kenya. For example, land conflicts were blamed for tribal conflicts that occurred in the 1990s in the districts of Kakamega, Kisumu, Narok, and Kisii.³ Numerous conflicts that have enveloped Kenya have been fuelled in large part by ethnicity and the way the land question has been handled in the country since colonial times.⁴ Consequently, these tensions have created conflict between ethnic groups and tribal interests. In particular, violent conflicts have erupted between ethnic groups and communities dispossessed of their land during colonial times—and over competing territorial claims.⁵

Some researchers argue that politicians frequently resort to violence in closely contested elections to manipulate voter behaviour, reduce turnout, or disrupt voting patterns through the use of strategies like evictions and displacements. Moreover, they

¹ Article 61(1), Constitution of Kenya (2010).

² Article 5, Constitution of Kenya (2010).

³ Telewa M., Yahya Mohamed, 'Clashes have left several dead and thousands homeless: Terror in Trans Nzoia,' *The Daily Nation* (Friday, 3 January 1992), p.13.

⁴ Republic of Kenya, *The Final Report of the Truth, Justice and Reconciliation Commission of Kenya*, vol. IIB, 3 May 2013 version, p. 124.

⁵ *Ibid* at p. 296.

argue that politicians and incumbent governments may employ pre-election violence as a strategy to diminish political competition, while post-election violence might be utilised in response to citizen protests over election outcomes or as an attempt to overthrow an incumbent leader.⁶

2.0 AFRICAN PERSPECTIVE ON LAND HOLDING

It would be crucial to first comprehend the value placed on land in Kenya and throughout Africa before proceeding to analyse why and how land would serve as a mobilising tool for electoral violence. Accordingly, this part addresses the value placed on land ownership and how Kenyan and African societies have perceived it.

Prior to colonisation, the majority of communities were made up of individuals with similar heritage and cultural practices. They would live on one section of the land and leave the remainder for commercial use.⁷ Pastoralist communities would let their cattle graze on the common areas while farming communities used the land for their operations without any disputes over their ownership.⁸

In addition to being viewed as a political or economic resource, land is also valued as a transgenerational asset because it is held for the benefit of future generations as well as the living. It is a medium that both within and between generations, defines and

⁶ Emilie Hafner-Burton, Susan D. Hyde and Ryan S. Jablonski, 'When Do Governments Resort to Election Violence?' (January 2014) Volume 44 Issue No. 1, *British Journal of Political Science*, pp. 155, 157, available at <http://dx.doi.org/10.1017/S0007123412000671> (accessed 28 January 2024).

⁷ Eric Mulevu, 'A Critical Analysis of the extent to which the National Land Commission addresses the Land Question in Kenya' Unpublished LLM Thesis, University of Nairobi, Nairobi Kenya, p. 15, available at http://erepository.uonbi.ac.ke/bitstream/handle/11295/102183/Mulevu_A%20Critical%20Analysis%20of%20the%20Extent%20to%20Which%20the%20National%20Land%20Commission%20Addresses%20the%20Land%20Question%20in%20Kenya..pdf?sequence=1 (accessed 31 December 2023).

⁸ Ibid.

unites social and spiritual relationships.⁹ The term "yet-to-be-born," as opposed to "unborn," is used by the Bantus to emphasise the certainty of their birth and to establish the reason behind the duty to protect their property.¹⁰ Therefore, land belongs to a large family that includes many deceased, few living, and countless unborn members. For this reason, some have rightly argued that forcing Africans off their land is an act of great injustice and that even in cases where people leave their homes voluntarily, there is a fundamental severing of ties that cannot be repaired and frequently results in psychological issues.¹¹

Certain communities also considered land to be a part of a spiritual cosmology. There are holy places in the country where people performed religious and spiritual rites, including offerings and sacrifices. According to Jomo Kenyatta, the land provided the Agikuyu with the necessities of life, enabling them to attain both spiritual and mental fulfilment.¹² Thus, through contact with the earth where the ancestors are buried, communication with the ancestral spirits is sustained.¹³ To them, the earth is the 'mother of the tribe.'¹⁴ Kenyatta further explains that the mother bears her burden for nine months while the child is in her womb, and then for a short period of suckling, but then the soil feeds the child throughout a lifetime and after death, the soil nurses

⁹ Republic of Kenya and Njonjo C, *Report of the Commission of Inquiry into the Land Law System of Kenya on Principles of a National Land Policy Framework, Constitutional Position of Land and New Institutional Framework for Land Administration*. (Nairobi: Kenya, 2002), p. 19.

¹⁰ Bénézet Bujo, 'The Ethical Dimension of Community; The African model and the dialogue between North and South' (1998) *Paulines Publications Africa, Nairobi*, p. 27.

¹¹ Francis Kariuki, Smith Ouma, and Raphael Ng'etich, *Property Law*, (Strathmore University Press, Nairobi, 2016, p. 53.

¹² *Ibid*, p. 55.

¹³ *Ibid*.

¹⁴ *Ibid*.

the spirits of the dead for eternity making it the most sacred thing above all that we dwell in or on it.¹⁵

Furthermore, referring to the well-known *SM Otieno case*,¹⁶ which involved a disagreement over a Luo man's final resting place – that is, whether to bury him on his ancestral land, Nyalgunga, or in his marital home, Upper Matasia – the court decided to support the Luo clan by allowing them to bury the deceased on their ancestral land. This decision was made in light of the relationship between land and culture.

Land and culture are intertwined. For instance, in sealing marital ties, an animal had to be slaughtered and its blood left to flow on the earth in the name of honouring the ancestors, failing which, all aspects of marriage including its fruitfulness in terms of children were considered jeopardised from the outset.¹⁷ Libation was also poured for the ancestors during important rituals and occasions to honour them.

For these reasons, in Kenya and Africa at large, land is such an important asset and aspect of society, and as such, it may not be easily exchanged.

3.0 TRACING THE HISTORY OF LAND IN THE KENYAN RIFT VALLEY

The Rift Valley has been a centre of conflicts over land. Together with the majority of the formerly productive White Highlands, this multi-ethnic region has the highest vote share nationwide.¹⁸ This section takes up the claim that the way colonialists and the first two post-independence administrations handled the land issue in this area created

¹⁵ Ibid.

¹⁶ *Virginia Edith Wambui Otieno v Joash Ochieng Ougo and Omollo Siranga* (1987) eKLR.

¹⁷ *Supra* note 11, p. 59.

¹⁸ Ibid, p. 422.

the conditions for the tribal conflicts that occurred there in the 19th and 20th centuries.

The Rift Valley province was home to a number of pre-colonial communities, including the Maasai, Samburu, and Kalenjin. Some of the most fertile regions in Kenya were divided up by the colonial government and set aside for European cultivation, giving other communities a chance to settle there as squatters, who supplied cheap labour for the settler farms.¹⁹ The Mau Mau movement gained momentum as a result of the colonial government's attempts to suppress the rights of farm labourers to use the land for farming on their own account and to reduce the number of Africans on settler farms through expulsions.²⁰

Agikuyu, Ameru, and Aembu groups, on the other hand, were the original inhabitants of the Central Province. Given that a large portion of the land was likewise alienated for settler cultivation, leaving the indigenous communities as squatters on the settler fields, the situation was not much different. Even though they established white highlands, the colonial powers restricted access to land rights while indirectly expanding land access.²¹ The goal was to encourage migration into the White Mountains,

¹⁹ Mwangi S. Kimenyi and Njuguna S. Ndung'u, 'Sporadic ethnic violence: Why has Kenya not experienced a full-blown civil war?' (2005), p. 138 in Paul Collier and Nicholas Sambanis (eds), *Understanding Civil War: Evidence and Analysis* (The World Bank, 2005), available at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=a2a0147ab84f76e470c76f2607bbe9fa72a6b685#page=141> (accessed 28 January 2024).

²⁰ Catherine Boone, 'Land Conflict and Distributive Politics in Kenya' (April 2012) Vol. 55, No. 1, *African Studies Review*, p. 79, available at <https://www.jstor.org/stable/41804129> (accessed 28 January 2024).

²¹ Mwangi S. Kimenyi and Njuguna S. Ndung'u, 'Sporadic ethnic violence: Why has Kenya not experienced a full-blown civil war?' (2005), p. 138 in Paul Collier and Nicholas Sambanis eds *Understanding Civil War: Evidence and Analysis* (The world Bank, 2005), available at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=a2a0147ab84f76e470c76f2607bbe9fa72a6b685#page=141> (accessed 28 January 2024).

which would drastically increase the Kikuyu population's range and cause them to relocate outside of Central Province.²²

Furthermore, in the 1950s, during the state of emergency, land consolidation occurred in this region. Individuals who benefited from this procedure were those who supported the government rather than the Mau Mau uprising. When the state of emergency ended, many political inmates returned home only to learn that their land had been seized by colonial loyalists.²³ As a result, some chose to travel to cities in search of work and business opportunities, while others moved to the Rift Valley in anticipation of land redistribution after attaining independence.²⁴ Another group reunited with their family who had settled in the Rift Valley decades ago, and lived as squatters on land owned by settlers.²⁵ As a result, when partial redistribution of land previously owned by settlers began, these squatters became the immediate benefactors.²⁶

In terms of land ownership, injustice occurred when the British colonists took land from indigenous people, only for politically powerful characters to restore it once Kenya attained independence in 1963. Rather than restoring stolen properties to their rightful owners, these politically connected individuals took advantage of the departure of white settlers, stealing land and leaving pre-existing owners landless.²⁷ Despite Kenya's

²² Ibid.

²³ Walter Oyugi, 'Politicised Ethnic Conflict in Kenya, A periodic Phenomenon' (Addis Ababa, 2000) p. 7, available at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=59065674ab2e6c78ba501257a18e6a6132b18e63> (accessed 31 January 2023).

²⁴ Ibid, at p. 7.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Aquiline Tarimo, 'Politicisation of Ethnic Identities: The Case of Contemporary Africa,' (2010) Volume 45 Issue No. 3 p. 297-308. *Journal of Asian and African Studies*, available at <https://doi.org/10.1177/0021909610364775> (accessed 28 January 2024).

first post-independence administration implementing the 'willing-buyer-willing-seller' policy, the situation for indigenous communities in the Rift Valley did not improve.

This can be due to the acts of the Kikuyu, Meru, and Embu populations, which took advantage of the opportunity and founded various land-buying companies. Throughout the 1960s and 1970s, these organisations were instrumental in facilitating the settlement of hundreds of thousands of Kikuyu in the Rift Valley, a region previously inhabited by the Kalenjin, Maasai, and other pastoral communities.²⁸ It is worth noting that the aforementioned communities were not the only ones to relocate to the Rift Valley since the Kisii, Luo, and Luhya groups also moved to the Rift Valley and secured land with the help of Jomo Kenyatta's administration.²⁹ The formation of settlement plans and land purchase corporations in the Rift Valley may be interpreted as introducing ethnic considerations to the land, resulting in political and tribal confrontations. During the 1970s, the Kenyan government took over the majority of European-owned farms, which it then sold or transferred to individuals and businesses through government-financed agreements.³⁰ The government acquired property in the Rift Valley, and around half of it was subdivided and allocated to create small-scale farms for residents or communities relocating to the region.³¹

Despite protests from indigenous populations in the Rift Valley, the settlement pattern continued. For example, in 1969, the Nandi community expressed their dissatisfaction at a meeting in Nandi Hills known as the "Nandi Declaration." During this assembly of

²⁸ *Supra*, note 23, p. 7.

²⁹ *Ibid*.

³⁰ Catherine Boone, 'Land Conflict and Distributive Politics in Kenya' (April 2012) Vol. 55, No. 1, *African Studies Review*, p. 79, available at <https://www.jstor.org/stable/41804129> (accessed 28 January 2024).

³¹ *Ibid*, at p. 79.

radical politicians, they opposed what they saw as an intrusion on their ancestral territory by "outsiders."³² Criticising Kenyatta's selling of Nandi land to non-Nandi individuals, they referred to the settlement plans as "Kenyatta's colonisation of the Rift."³³ Catherine Boone also added that in the 1950s and 1960s, politicians purporting to represent Indigenous Rift Valley tribes passionately opposed this settlement pattern, pushing for the return of land taken from them during the British colonial era.³⁴

President Kenyatta attempted to calm this rebellion by enlisting the help of influential Kalenjin personalities in the administration, with Vice President Daniel Moi playing a key role.³⁵ However, this was only a temporary solution, as Moi took over as the president a few years later. During his first decade in power, President Moi was able to maintain control of the situation by leveraging the political-administrative culture developed during the one-party era. Concurrently, he created a mechanism to limit the ability of non-indigenous groups in the Rift Valley to obtain further territory in the region.³⁶

It is clear that successive Kenyan government administrations have used their discretionary authority in granting land in the Rift Valley to deliberately construct political support that will improve their position against rivals.³⁷ As a result, disputes over land in Kenya are closely linked to differences about how state power has been used for political purposes.³⁸

³² *Supra*, note 23.

³³ *Supra*, note 31.

³⁴ *Ibid*, at p. 82.

³⁵ *Supra*, note 23.

³⁶ *Ibid*.

³⁷ Catherine Boone, *supra*, note 31, at p. 78.

³⁸ *Ibid*, at p. 78.

4.0 THE INSIDER AND OUTSIDER NARRATIVES IN LAND OWNERSHIP

One could wonder why communities would mercilessly evict their neighbours or commit destructive acts and violence against groups with whom they had previously coexisted peacefully for many years. This section attempts to establish a link between how land has been allocated and held in the Rift Valley and how politicians have used this opportunity to advance their interests, often creating insecurity in land ownership. It adopts a primary argument that when politicians feel a threat to their positions, they rely on land grievances to regain political mileage.

As previously stated, a major chunk of land in the Rift Valley was allocated to non-indigenous communities who were commonly referred to as "invaders," "foreigners," or "immigrants." Politicians regularly use this argument to persuade their supporters that their land rights were being infringed, tying the outcome of an election to their fate. They created a narrative of potential political and territorial loss for these perceived intruders, laying the groundwork for violence. This dynamic gave rise to insider and outsider narratives, which influenced the nature of the violence seen throughout the Rift Valley. The Rift Valley's indigenous groups regarded themselves as oppressed and disadvantaged as a result of the new settlement pattern, which appeared to benefit non-indigenous communities. This created a sense of unease among them, as they feared that the growing flood of immigrants into their area would result in the loss of both their land rights and political influence in the region. The indigenous populations saw the uninvited arrivals as foreigners seeking to establish dominion over their territory. This narrative served as the foundation for later violence aimed at driving them away from their land.

Land ownership remained a major source of controversy in the Rift Valley during the Kenya African National Union (KANU) government. Opportunistic politicians took advantage of the situation to exploit local concerns and encourage violence in order to gain electoral and political support.³⁹ Politicians and supporters of the ruling party, as well as many regular individuals, fiercely lobbied for the return of the alleged "stolen" lands to their "original owners."⁴⁰

The commencement of multiparty democracy in 1991 caused the elites loyal to President Moi to see a danger to their political authority and interests. In response, they renewed proposals for territorial delineation, designating particular areas, like as the Rift Valley, as a "KANU area." KANU's opponents were labelled as "settlers" and "foreigners."⁴¹ The goal was to zone out certain areas, preventing the opposition from receiving the necessary percentage of votes.⁴² The Daily Nation Newspaper in 1992 noted an instance where Luo families fled their homes in Kericho after leaflets threatening them with death were circulated, something which saw ten persons killed from the tribal attacks.⁴³

³⁹ Ibid at p. 78.

⁴⁰ Catherine Boone, 'Politically Allocated Land Rights and the Geography of Electoral Violence: The Case of Kenya in the 1990s', (2011) Volume 44 Issue 10, *Journal of Comparative Political Studies*, pp. 1327, available at <https://doi.org/10.1177/0010414011407465> (accessed 28 January 2024).

⁴¹ Francis Kariuki, Smith Ouma, and Raphael Ng'etich, *Property Law*, (Strathmore University Press, Nairobi, 2016), p. 423.

⁴² Ibid, at p. 59.

⁴³ Mwatela K., Kennedy Masibo, and Caleb Atemi, '10 Killed in more tribal fighting' *The Daily Nation*, (Monday, 16 March 1992), pp. 1-2.

5.0 ELECTORAL VIOLENCE AS A TOOL FOR POLITICAL DOMINATION AND PUNISHMENT: LAND, INCITEMENT, AND DISPLACEMENT IN KENYA

The above section has illustrated how opportunistic politicians rely on pre-existing land grievances to divide and turn communities against each other, something which created the “insider” and “outsider” narratives. This section adopts an argument that elections provide a perfect opportunity to evict members of opposing communities either as a strategy to win the elections or as a punishment mechanism for members of opposing communities.

It is important to note that occurrences of electoral violence typically occur before or immediately after an election. During each election cycle, candidates predict whether the outcome is likely to favour them. If they believe the outcome will be bad, they may resort to pre-election violence as a strategic technique to reduce political competition.⁴⁴ Post-election violence is often caused by members of the general public expressing dissatisfaction with the election results. Notably, these protests can undermine the credibility of the incumbent and, in some cases, gather momentum to unseat them.⁴⁵ Existing research indicates that post-election protests are often triggered by factors such as election violence and fraud.⁴⁶

While an incumbent may use pre-election violence to reduce electoral competition from opponents, this technique can unintentionally increase the likelihood of post-

⁴⁴ Emilie Hafner-Burton, Susan D. Hyde, and Ryan S. Jablonski, ‘When Do Governments Resort to Election Violence?’ (January 2014) Volume 44 Issue No. 1, *British Journal of Political Science*, pp. 155, available at <http://dx.doi.org/10.1017/S0007123412000671> (accessed 28 January 2024).

⁴⁵ *Ibid*, at pp. 156- 157.

⁴⁶ *Ibid*, at p. 157.

election unrest.⁴⁷ As previously stated, post-election protests threaten the incumbent government's authority, potentially causing the incumbent to intensify the use of violence in order to silence popular discontent and maintain power. This, in turn, may spark post-election violence.⁴⁸

During the 1992 electoral cycle, violence in the rift valley started way before the elections were held, while in 2007, violence broke out in various parts of the country immediately after the announcement of the presidential election results. This section adopts an argument that this is no coincidence seeing that the violence and evictions would be done for either of the three reasons listed below:

- i. Evictions and violence against opposing communities would be used as a strategy to win the elections.
- ii. Evictions and electoral violence would be used to punish members of a community simply because they supported and/or voted for a particular candidate.
- iii. Cleared-up land would be used to reward communities or gain political support from communities.

To begin, electoral violence may be used in an electoral season as a strategy to achieve victories and increase political representation. In this scenario, pre-election violence may erupt with the intention of instilling fear and worry in voters, compelling them to leave their homes and, as a result, prevent them from voting. As previously stated, the

⁴⁷ Ibid.

⁴⁸ Ibid.

implementation of multiparty democracy in 1991 caused the elites connected to President Moi to see the fear of losing political power, jeopardising their political interests. In response, they reignited calls for territorial delineation, referring to regions opposed to KANU as 'settlers and outsiders.'⁴⁹ The goal was to zone out the region and prevent the opposition from obtaining a minimum proportion of votes.⁵⁰ The series of violence in the Rift Valley functioned as a motivation to mobilise potential supporters and encourage voting, while also attempting to reduce the opposition's vote share by discouraging or stopping likely voters connected with opposition parties from participating in the elections.⁵¹ According to Catherine Boone, the land regime was critical, not just in identifying the locations of much of the violence, but also in shaping the systems and processes that enabled rural violence to occur.⁵² When the elections were held on 29 December 1992, many Kenyans were unable to vote owing to displacement and damage caused by ethnic conflicts.⁵³ Many eligible voters had misplaced important documents such as their identity cards, which would have aided their voter registration.⁵⁴ Furthermore, several people were unable to return to their home regions to vote. According to writers such as Kaimenyi and Ndung'u, the violence in the Rift Valley was intended to disrupt the voter registration process prior to the

⁴⁹ Francis Kariuki, Smith Ouma and Raphael Ng'etich, *Property Law* (Strathmore University Press, Nairobi, 2016), p. 59.

⁵⁰ *Ibid*, at p. 59.

⁵¹ Catherine Boone, 'Land Conflict and Distributive Politics in Kenya' (April 2012) Vol. 55, No. 1, *African Studies Review*, p. 86, available at <https://www.jstor.org/stable/41804129> (accessed 28 January 2024).

⁵² Catherine Boone, 'Politically Allocated Land Rights and the Geography of Electoral Violence: The Case of Kenya in the 1990's', (2011) Volume 44 Issue 10, *Journal of Comparative Political Studies*, pp. 1327, available at <https://doi.org/10.1177/0010414011407465> (accessed 28 January 2024).

⁵³ Human Rights Watch, 'Divide and Rule: State- Sponsored Ethnic Violence in Kenya' p. 35, available at <https://www.hrw.org/reports/1993/kenya1193.pdf> (accessed 28 January 2024).

⁵⁴ *Ibid*.

elections, preventing thousands of dissenters in war zones from voting and therefore ensuring a good outcome for KANU.⁵⁵

Even before the elections began in 2007, there was violence in the Kuresoi and Molo constituencies, as well as the Mt. Elgon region. During this time, towns were specifically targeted and displaced to disrupt the vote by evicting settled populations.⁵⁶ A part of the population was dissatisfied with the December 2007 election results, while others were frustrated due to the intentional postponement of addressing longstanding land grievances that had been haunting society since independence.⁵⁷ Consequently, electoral violence provided an opportunity to rectify some of the historical injustices committed against specific communities.⁵⁸

In 2017, leaflets and messages circulated in the informal settlements of Nairobi, warning of impending evictions.⁵⁹ Further, during the recently concluded elections in July 2022, roughly 10 days before the general elections, the Daily Nation Newspaper reported that while the Azimio flag bearer, Mr. Odinga campaigned in the Rift Valley, an area presumed to be the opponent's stronghold (Kenya Kwanza), he urged the people in the region to remain steadfast and not be intimidated into voting for a particular

⁵⁵ Mwangi S. Kimenyi and Njuguna S. Ndung'u, Sporadic ethnic violence: Why has Kenya not experienced a full-blown civil war? (2005), p 138 in Paul Collier and Nicholas Sambanis eds *Understanding Civil War: Evidence and Analysis* (The World Bank, 2005), available at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=a2a0147ab84f76e470c76f2607bbe9fa72a6b685#page=141> (accessed 28 January 2024).

⁵⁶ Anderson D. and Lochery L., 'Violence and Exodus in Kenya's Rift Valley, 2008: Predictable and Preventable?' (2008) Volume 2 Issue 2, *Journal of Eastern African Studies*, p 331, available at <https://doi.org/10.1080/17531050802095536> (accessed 31 December 2023).

⁵⁷ Aquiline Tarimo, 'Politicisation of Ethnic Identities: The Case of Contemporary Africa', (2010) Volume 45 Issue No. 3 pp. 297-308. *Journal of Asian and African Studies*, available at <https://doi.org/10.1177/0021909610364775> (accessed 28 January 2024).

⁵⁸ Some K., "How state land policy shaped conflict" *Daily Nation Kenya* 10 February 2008, p. 9.

⁵⁹ Mutisya Joshua, 'Violence related to campaigns peaked in July' *Daily Nation* 5 August 2017.

candidate.⁶⁰ Further, on 2 August 2022, the Standard Newspaper noted that the then Deputy President who doubled up as Kenya Kwanza's flag bearer cautioned the national government officials of circulating hate leaflets in parts of Uasin Gishu county, ordering members of certain communities to leave Uasin Gishu county saying that some state operatives were out to plant seeds of discord and drive a wedge between the communities living in the Rift Valley. Similar sentiments were echoed by his co-principals and allies: Rigathi Gachagua; Musalia Mudavadi, and Moses Wetangula.⁶¹ Additionally, elders from the Uasin Gishu county also condemned these hate leaflets and called for peaceful polls stating that the residents have coexisted peacefully and do not anticipate violence.⁶² Similar sentiments were reported by the Star Newspaper and the Standard Newspaper, roughly four days to the polls.⁶³ This, therefore, shows that the political strategies of incitement, intimidation, and evictions that were used to win elections in the past are still arguably used in the present and might have a significant impact on the polls.

Second, evictions and electoral violence were used as punishment against people of a community just because they supported and/or voted for another candidate. For example, in 1992, the Daily Nation reported an incident in which an Assistant Minister for Water in the KANU Regime said that ethnic confrontations in the Mt. Elgon region

⁶⁰ Matara E, 'Raila Launches get-the-vote out strategy as he rallies Nakuru' *Daily Nation*, Friday 29 July 2022; See also Citizen TV, 'Odinga unveils "Firimbi Movement" to rally voters on August 9' (YouTube), available at <https://www.youtube.com/watch?v=IAeYytTEtJw> (accessed 31 July 2024).

⁶¹ The Standard Team, 'Ruto Says State-Sponsored chaos will be used to deny him victory', *The Standard*, Tuesday 2 August 2022, 8. See also Citizen TV, 'DP Ruto Wants officials 'fear mongering' in the Rift Valley Punished' (YouTube), available at <https://www.youtube.com/watch?v=SBQIP9ht5ZM> (accessed 31 July 2024).

⁶² Kolongei L., 'Elders Condemn hate leaflets, call for peaceful polls' *The Standard*, Tuesday 2 August 2022, 8.

⁶³ Kipkemoi F, 'DP Ruto alleges plot to incite communities in the Rift Valley' *The Star*, Thursday 4 August 2022, 8. See also Mugambi J and Njugune G, 'Kenya Kwanza now says hate leaflets authored by the state' Thursday 4 August 2022, 7.

had been exacerbated by Forum for Restoration of Democracy (FORD) members. This was owing to FORD supporters' perception that if the new government (FORD) assumed power, Sabaots would be evicted and pushed to Sebei, Uganda.⁶⁴ Furthermore, influential KANU leaders attempted to intimidate and/or punish possible opposition votes belonging to "rival" ethnic groups. The goal was to discourage them from voting and/or forcibly remove them from their homes and farms, thereby preventing them from voting on election day.⁶⁵ According to Throup and Hornsby, the land-related violence experienced in the Rift Valley in the 1990s was motivated by the dual goals of securing resources for KANU-supporting areas and punishing opposition supporters.⁶⁶ It is clear that during the 1990s, the state's coercive authority to distribute and reallocate land was selectively employed to punish opposition supporters,⁶⁷ resulting in areas that were not connected with the ruling party becoming targets of expropriation.⁶⁸

In 2007, the Rift Valley violence was characterised by community discussions about territorial conflicts and private property rights.⁶⁹ This form of violence had ethnic implications, with the goal of driving non-indigenous groups out.⁷⁰ The rationale for this was that these communities had voted for the government and a Kikuyu candidate,

⁶⁴ Njeri Mwangi, 'Clashes: Many Parties blamed' *The Daily Nation*, Thursday, 2 January 1992, 4.

⁶⁵ Catherine Boone, 'Politically Allocated Land Rights and the Geography of Electoral Violence: The Case of Kenya in the 1990's', (2011) Volume 44 Issue 10, *Journal of Comparative Political Studies*, p. 1314, available at <https://doi.org/10.1177/0010414011407465> (accessed 28 January 2024).

⁶⁶ Throup David, Hornsby C., "Multiparty Politics in Kenya: The Kenyatta and Moi States and the Triumph of the System in the 1992 Election" (Athens: Ohio University Press, 1998), p. 542-543.

⁶⁷ Catherine Boone, 'Politically Allocated Land Rights and the Geography of Electoral Violence: The Case of Kenya in the 1990's', (2011) Volume 44 Issue 10, *Journal of Comparative Political Studies*, p. 1328, available at <https://doi.org/10.1177/0010414011407465> (accessed 28 January 2024).

⁶⁸ Ibid.

⁶⁹ Karuti Kanyinga, 'The legacy of the white highlands: Land rights, ethnicity and the post-2007 election violence in Kenya' (2009) Volume 27 (Issue 3) *Journal of Contemporary African Studies*, p. 340, available at <https://doi.org/10.1080/02589000903154834> (accessed 28 January 2024).

⁷⁰ Republic of Kenya, 'Commission of Inquiry into the Post-Election Violence 2008.'

despite being located in the Kalenjin's native territory.⁷¹ Additionally, from the time when the referendum was held in 2005, politicians across the country rallied supporters against ethnic 'others.'⁷² The rhetoric in the Rift Valley was especially caustic, characterising local Kikuyus as beneficiaries of state favouritism, 'guests' who had bought Kalenjin land during Kenyatta's reign. They were portrayed as a group that did not appreciate their 'hosts,' consistently voting against local preferences, and named local farms and trading centres after locations in Central Province.⁷³ However, the Commission of Inquiry into Post-Election Violence (CIPEV) observed that in the Rift Valley, the attacks were specifically aimed at members of the Kikuyu and Kisii communities perceived to be affiliated with the Party of National Unity (PNU) and President Kibaki, both of whom were viewed as beneficiaries of the "rigged election."⁷⁴ Finally, the reclaimed property could be used to reward or gain political support from local communities. Land seizures and resettlements were used to boost the ruling party's popularity and voter turnout, particularly among destitute and landless Kalenjin and Maasai communities who may have questioned the contributions of the socioeconomic elite and the government as a whole.⁷⁵ According to Throup and Hornsby, the land-related violence in 1991-92 and 1993-94 was motivated by the desire

⁷¹ Karuti Kanyinga, "The legacy of the white highlands: Land rights, ethnicity and the post-2007 election violence in Kenya," (2009) Volume 27 (Issue 3) *Journal of Contemporary African Studies*, p. 340 available at <https://doi.org/10.1080/02589000903154834> (accessed 28 January 2024).

⁷² Gabrielle Lynch, 'Courting the Kalenjin: The Failure of Dynasticism and the Strength of the ODM Wave in Kenya's Rift Valley Province' (October 2008) Volume 107 Issue 429, *African Affairs*, p. 564, available at <https://doi.org/10.1093/afraf/adn060> (accessed 28 January 2024).

⁷³ Ibid.

⁷⁴ Republic of Kenya, 'Commission of Inquiry into the Post-Election-Violence,' pp. 53-54.

⁷⁵ Catherine Boone, 'Politically Allocated Land Rights and the Geography of Electoral Violence: The Case of Kenya in the 1990's', (2011) Volume 44 Issue 10, *Journal of Comparative Political Studies*, p. 1328, available at <https://doi.org/10.1177/0010414011407465> (accessed 28 January 2024).

to secure resources for KANU-supporting communities while penalising opposition supporters.⁷⁶ Furthermore, various observers and researchers highlighted the Kalenjin's extensive takeover of abandoned property and land which was made possible by eviction.⁷⁷ Persistent tribal conflicts in the Rift Valley drastically altered land ownership patterns and reduced the presence of non-Kalenjin landholders in the region.⁷⁸ By the decade's end, a lasting and intentional redistribution of land had occurred in the Rift Valley.⁷⁹ In 2007, the Daily Nation thus reported:

*In the Rift Valley, the fertile land has attracted the interest of most farming communities.... But now, threatened by the increasing population, some indigenous residents wish to reverse the trend and are determined to keep the immigrant communities away.*⁸⁰

6.0 POLITICIANS AND THE MOBILISATION OF VIOLENCE

Politicians not only used land grievances to rally their supporters, but they also used state resources to fund, deploy, lead, and protect those carrying out activities such as home burnings, killings, expulsions, and land seizures.⁸¹ This section argues that in many cases, politicians actively participated in plotting electoral violence against

⁷⁶ Throup David and Hornsby C., 'Multiparty Politics in Kenya: The Kenyatta and Moi States and the Triumph of the System in the 1992 Election' (Athens: Ohio University Press, 1998), pp. 542-543.

⁷⁷ Karuti Kanyinga, 'The legacy of the white highlands: Land rights, ethnicity and the post-2007 election violence in Kenya' (2009) Volume 27, (Issue 3) *Journal of Contemporary African Studies*, p. 341, available at <https://doi.org/10.1080/02589000903154834> (accessed 28 January 2024).

⁷⁸ Catherine Boone, 'Politically Allocated Land Rights and the Geography of Electoral Violence: The Case of Kenya in the 1990's', (2011) Volume 44 Issue 10, *Journal of Comparative Political Studies*, p. 1328, available at <https://doi.org/10.1177/0010414011407465> (accessed 28 January 2024).

⁷⁹ Catherine Boone, 'Land Conflict and Distributive Politics in Kenya', (April 2012) Vol. 55, No. 1, *African Studies Review*, p.88, available at <https://www.jstor.org/stable/41804129> (accessed 28 January 2024).

⁸⁰ 'Population pressure at the center of crisis in Rift Valley' *Daily Nation*, 9 Feb 2008.

⁸¹ Catherine Boone, 'Politically Allocated Land Rights and the Geography of Electoral Violence: The Case of Kenya in the 1990's' (2011) Volume 44 Issue 10, *Journal of Comparative Political Studies*, p. 1327, available at <https://doi.org/10.1177/0010414011407465> (accessed on 28 January 2024).

certain groups and, when necessary, encouraged members of their community to act against individuals from opposing communities. There were instances where they financially supported such violence, while the government in power either ignored it or, in certain cases, used state resources and apparatus to carry out the attacks. Arguably, the fear of losing power in an election could drive an incumbent to resort to various forms of political repression, including violence.⁸²

To begin with, politicians would orchestrate the evictions, occasionally going as far as to encourage members of their own communities to act against individuals from opposing communities.⁸³ For instance, Mueller observes that these groups were usually formed, backed, or enabled by the state's security apparatus and provincial administration. Key KANU politicians, listed in both human rights and government commission findings, were responsible for organising youth gangs.⁸⁴

Furthermore, during the 1991-1992 and 1996-1997 electoral cycles, persons characterised as "influential supporters of Moi" organised rallies in Rift Valley constituencies, pushing Maasai and Kalenjin populations to establish their land rights as the region's original occupants. They also threatened violence against the "immigrants" who had established in the former white highlands.⁸⁵ As previously stated, Lynch observes that politicians, members of the ruling party, and many ordinary individuals

⁸² Emilie Hafner-Burton, Susan D. Hyde and Ryan S. Jablonski, 'When Do Governments Resort to Election Violence?' (January 2014) Volume 44 Issue No. 1, *British Journal of Political Science*, pp. 155, 157, available at <http://dx.doi.org/10.1017/S0007123412000671> (accessed 28 January 2024).

⁸³ Materu F.S., 'The Post-Election Violence in Kenya: Domestic and International Legal Responses: Background to the post-election violence' *The International Criminal Justice Series*, Vol 2, T.M.C. (Asser Press, 2015) p. 34.

⁸⁴ Mueller Susane D., 'The political economy of Kenya's crisis' (2008) Volume 2, Issue 2, *Journal of East African Studies*, pp 185-210, available at <https://doi.org/10.1080/17531050802058302> (accessed 28 January 2024).

⁸⁵ Throup David and Hornsby C., *Multiparty Politics in Kenya: The Kenyatta and Moi States and the Triumph of the System in the 1992 Election*, (Athens: Ohio University Press, 1998), p. 80.

highlighted the importance of returning "stolen" land to its "original owners."⁸⁶ The politicians promised members of the Kalenjin, Maasai, and other pro-KANU tribes that they would pursue a policy known as "Majimboism," which essentially meant federalism. However, in practice, this amounted to ethnic cleansing.⁸⁷ Majimboism mandated that land be allocated based on ethnic identification, which resulted in violence against members of non-Rift Valley populations.⁸⁸ For some politicians, Majimboism was seen as a deceptive cover for a plot to unlawfully seize the property of non-indigenous communities in the Rift Valley province.⁸⁹

In some cases, politicians actively orchestrated and oversaw planned violence, while the government used its official machinery and power to expedite evictions, sometimes deploying armed officers to carry them out. The Akiwumi inquiry focused on a specific occurrence in 1993 when the Luo community was evicted by police officers backed by bulldozers bearing government registration stamps, which demolished practically all of the houses. The ruthless and premeditated attacks on supposed "immigrants" attempted to push selected communities off their farms, economically cripple them, and inflict psychological damage, with armed officers frequently carrying out the evictions.⁹⁰ Politicians' involvement in tribal politics can be seen in the events of 1992 in Transzoia

⁸⁶ Catherine Boone, 'Politically Allocated Land Rights and the Geography of Electoral Violence: The Case of Kenya in the 1990's', (2011) Volume 44 Issue 10, *Journal of Comparative Political Studies*, p. 1327, available at <https://doi.org/10.1177/0010414011407465> (accessed 28 January 2024).

⁸⁷ Nation Team, "Rift Valley calls off "Majimbo Rally" *The Daily Nation*, Wednesday 11 September 1991, pp 1-2; Republic of Kenya, 'Kenya's Unfinished Democracy: A Human Rights Agenda for the New Government' (December 2002) Vol 14, No. 10(A), 5, available at <https://www.hrw.org/reports/2002/kenya2/kenya1202.pdf> (accessed 28 January 2024).

⁸⁸ Ibid, Republic of Kenya,), p. 5.

⁸⁹ Nation Team, "Rift Valley calls off "Majimbo Rally" *The Daily Nation*, (Wednesday September 11, 1991), pp. 1-2.

⁹⁰ Republic of Kenya, Report of the Judicial Commission appointed to Inquire into Tribal Clashes in Kenya (Akiwumi Report, 1999), Chaired by Hon Justice A.M Akiwumi, pp. 3, 30 and 31.

and sections of Bungoma Districts when the Saboti MP and KANU Chair voiced worry over the local MP and councillors' silence amid continuing hostilities. Political observers believe politicians played an important role in these incidents.⁹¹ The National Council of Churches of Kenya's Cursed Arrow study, released in April 1992, blamed high-ranking government officials and linked Rift Valley violence to political objectives. The Inter-Parties Symposium Task Force Report released the same month, described organised violence under central leadership, frequently involving local administration and security forces, with high-ranking officials supposedly compensating warriors for their damaging deeds.⁹² The Kilikumi Report, published in September 1992, linked politicians to tribal violence, claiming that attacks were politically motivated and planned by individuals close to the President. It discovered that government officials encouraged the violence and determined that it came from the misguided belief that some ethnic groupings might obtain property by driving others away. The study named Kalenjin government officials and security officers, presenting proof that warriors were hired and paid for by senior government officials, carried in government vehicles and helicopters, and frequently released by the provincial administration and security forces.⁹³

In 2007, the Commission of Inquiry into Post-Election Violence (CIPEV) identified a pattern of planned and orchestrated violence by politicians, businesses, and criminal groups. Kikuyu gangs targeted people of the Luo, Luhya, and Kalenjin communities in

⁹¹ Telewa M. and Yahya Mohamed, 'Clashes have left several dead and thousands homeless' *Daily Nation*, (Friday 3 January 1992), p 13.

⁹² Africa Watch, "Divide and Rule: State- Sponsored Ethnic Violence in Kenya." p. 39.

⁹³Ibid, pp. 39-41.

slums such as Naivasha, Nakuru, and Nairobi. Similarly, organised Kalenjin adolescents in the North Rift attacked and ejected Kikuyus, implying that certain attacks targeted specific ethnic groups while omitting others entirely.⁹⁴

Finally, politicians organised and carefully planned attacks. The Commission of Inquiry into Post-Election Violence (CIPEV) report emphasised the attacks' careful preparation, with victims receiving advance warnings and a large number of attackers deployed from locations other than the violence location. The presence of petrol and guns at numerous locations underlined the necessity for arrangements for acquisition, concealment, and transportation.⁹⁵ In the Kericho District, the Akiwumi report noted prophetic warnings given to the Luo community before their eviction,⁹⁶ and similar sentiments were recently expressed to non-indigenous communities in certain Rift Valley areas in the recently concluded general elections.⁹⁷

Moi was not a candidate in 2002, therefore Kalenjin political elites did not have to mobilise support for him.⁹⁸ Furthermore, the choice of Uhuru Kenyatta as the KANU candidate integrated Kikuyu-Kalenjin interests since Uhuru was perceived to preserve both Moi and Kalenjin interests while also protecting Kikuyu interests.⁹⁹ This factor

⁹⁴ Republic of Kenya, Commission of Inquiry into Post-Election Violence, p. 54.

⁹⁵ Ibid.

⁹⁶ Republic of Kenya, 'Report of the Judicial Commission appointed to Inquire into Tribal Clashes in Kenya (Akiwumi Report),' Chaired by Hon Justice A.M Akiwumi, p. 31.

⁹⁷ Matara E., 'Raila Launches get-the-vote out strategy as he rallies Nakuru', *The Daily Nation*, Friday 29 July 2022; 'Odinga unveils "Firimbi Movement" to rally voters on August 9' by *Citizen TV*, available at <https://www.youtube.com/watch?v=IAeYytTEtJw> (accessed 29 July 2022); The Standard Team, 'Ruto Says State-Sponsored chaos will be used to deny him victory,' *The Standard*, Tuesday 2 August 2022, 8; Kolongei L., 'Elders Condemn hate leaflets, call for peaceful polls', *The Standard*, Tuesday 2 August 2022, 8; Kipkemoi F., 'DP Ruto alleges plot to incite communities in the Rift Valley', *The Star*, Thursday 4 August 2022, 8; Mugambi J. and Njugune, 'G Kenya Kwanza now says hate leaflets authored by the state,' Thursday 4 August 2022, 7.

⁹⁸ Francis Kariuki, Smith Ouma, and Raphael Ng'etich, *Property Law*, (Strathmore University Press:Nairobi, 2016), p. 423.

⁹⁹ Ibid, at p. 423.

elucidates the absence of ethnic clashes during the 2002 elections. The 2013 and 2017 elections were relatively peaceful, with few reported incidences of violence, especially in the Rift Valley. One may argue that William Ruto's collaboration with Uhuru Kenyatta established a sense of security in both communities, contributing to a decade of relative calm in the country.

7.0 THE LAND DEBATE DURING THE 2005 BOMAS DRAFT CONSTITUTION

The proposed constitution included a comprehensive framework for land administration, emphasising access and control while categorising land as public, community, or private.¹⁰⁰ It sought to provide equitable, efficient, and accountable landholding in Kenya,¹⁰¹ with the state in charge of ensuring fair access to land and protecting landholders.¹⁰² The state was expected to promote a favourable socioeconomic and legal environment for property creation, development, and management.¹⁰³ Unfortunately, the proposal was rejected in the 2005 referendum, resulting in violent land conflicts in Mt. Elgon and Kuresoi. Mt. Elgon's unrest stemmed from disagreements over plot allocation in a settlement scheme,¹⁰⁴ whilst Kuresoi saw confrontations between Kikuyu and Kalenjin over land ownership, including farms seized from fleeing settlers.¹⁰⁵ These conflicts may have arisen as a result of the missed opportunity to address common land rights issues following the constitution's

¹⁰⁰ Article 78 (2), The Bomas Draft 2005.

¹⁰¹ Article 77 (1). The Bomas Draft 2005.

¹⁰² Article 77 (2) The Bomas Draft, 2005.

¹⁰³ Article 84 (2) The Bomas Draft 2005.

¹⁰⁴ Karuti Kanyinga, 'The legacy of the white highlands: Land rights, ethnicity and the post-2007 election violence in Kenya' (2009) Volume 27, (Issue 3) *Journal of Contemporary African Studies*, p. 339, available at <https://doi.org/10.1080/02589000903154834> (accessed 28 January 2024).

¹⁰⁵ Ibid.

rejection.¹⁰⁶ Violence in Kuresoi continued for weeks before the 2007 general election, possibly to discourage voter turnout in the multi-ethnic district.¹⁰⁷

8.0 LEGAL AND INSTITUTIONAL DYNAMICS OF LAND REFORM IN KENYA POST-2010

The post-2007 election violence highlighted the critical need for constitutional reform, a demand endorsed by Kofi Annan, who led the African Union Panel of Eminent African Personalities in negotiating a solution.¹⁰⁸ President Kibaki's Party of National Unity (PNU) and Raila Odinga's Orange Democratic Movement (ODM) forged a historic agreement centred on power-sharing and a pledge to solve long-standing concerns that contribute to electoral violence, which included constitutional and land reforms.¹⁰⁹ In the sphere of land, the pledge resulted in the initiation of a national land policy, which was ultimately approved in 2009.¹¹⁰ This strategy sought to address major land disputes related to the 1992, 1997, and 2007 elections,¹¹¹ focusing on particular remedies for historical injustices and protecting the land rights of minority communities and disadvantaged groups.¹¹² The principles of this initiative were later included in Kenya's 2010 Constitution, ensuring that these marginalised communities are recognised, protected, and have access to property.¹¹³

¹⁰⁶ Francis Kariuki, Smith Ouma and Raphael Ng'etich, *Property Law*, (Strathmore University Press: Nairobi, 2016), at p. 423.

¹⁰⁷ Karuti Kanyinga, 'The legacy of the white highlands: Land rights, ethnicity and the post-2007 election violence in Kenya' (2009) Volume 27, (Issue 3) *Journal of Contemporary African Studies*, p. 339, available at <https://doi.org/10.1080/02589000903154834> (accessed 28 January 2024).

¹⁰⁸ Ambreena Manji, 'The Struggle for Land and Justice in Kenya; Land and Constitutional Change,' *Eastern Africa Series*, NED- New Edition, Boydell and Brewer, p 80.

¹⁰⁹ *Ibid*, at p. 80.

¹¹⁰ Sections 26, 39, 174, 175, 178 and 179, National Land Policy (Sessional Paper No. 3 of 2009).

¹¹¹ Ambreena Manji, 'The Struggle for Land and Justice in Kenya; Land and Constitutional Change,' *Eastern Africa Series*, NED- New Edition, Boydell and Brewer, p 80.

¹¹² Section 171-183, National Land Policy (Sessional Paper No. 3 of 2009).

¹¹³ Chapter 5, Constitution of Kenya (2010).

Moreover, the National Land Commission (NLC) was established under Kenya's 2010 Constitution to handle land-related issues and offer a framework for resolution. The commission's functions include conducting research on land and natural resource use, making recommendations to relevant authorities,¹¹⁴ and initiating investigations into current or historical land abuses, and recommending appropriate remedies.¹¹⁵ However, issues have developed, resulting in jurisdictional conflicts between the National Land Commission and the Ministry of Lands, which has traditionally handled land issues. A case demonstrating this is *Republic v National Land Commission (NLC) Ex-parte Cecelia Chepkoech Leting and 3 others*,¹¹⁶ involving a dispute over prime land in Upper Hill, Nairobi. Mr Leting had allegedly been allocated the piece of land by the former president of Kenya, Daniel Arap Moi. The commission sought to investigate how Mr. Leting had acquired the piece of land with a view to repossessing it as required by the National Land Commission Act which gave the institution the mandate to review all grants and dispositions of public land, either on its own motion or upon receipt of the complaint with a view to establishing their legality or propriety.¹¹⁷ The court ruled that the NLC had jurisdiction only over public lands and could not proceed with investigating how Mr Leting acquired the land.¹¹⁸

¹¹⁴ Article 67(2)(d), Constitution of Kenya (2010); See also the National Land Commission Act, 2012, the Land Act, 2012, the Land Registration Act, 2012.

¹¹⁵ Article 67 (2) (d), Constitution of Kenya (2010).

¹¹⁶ *Republic v National Land Commission Ex-Parte Cecelia Chepkoech Leting & 3 others* [2016] eKLR.

¹¹⁷ Section 14, The National Land Commission Act (Act 5 of 2012).

¹¹⁸ 'National Land Commission loses bid to repossess land from ex-PS Leting' *Business Daily*, Tuesday 20 December, 2016, available at <https://www.businessdailyafrica.com/bd/economy/national-land-commission-loses-bid-to-repossess-land-from-ex-ps-leting-2134458> (accessed 28 January 2024).

9.0 THE LACK OF POLITICAL GOODWILL IN IMPLEMENTING LAND REFORMS

The 2010 Constitution introduced major land reforms to address Kenya's challenges, primarily through the implementation of land regulations stated in the fifth schedule. Unfortunately, the administration has lacked the political will to implement these laws as intended. Many of the laws that were supposed to go into effect in August 2015 were delayed. For example, the Community Land Act was enacted in 2016.¹¹⁹ It sought to address communal land issues but does not properly account for the intrinsic nature of commons and traditional ethnic societies.¹²⁰ Instead, it introduces its mechanisms, which have the ability to perpetuate community land loss through privatisation,¹²¹ mirroring the shortcomings of the abolished Land (Group Representatives) Act and the Trust Land Act.¹²²

Another proposed reform in the 2010 constitution addresses minimum and maximum land holdings. This reform, which aimed to provide legal frameworks for land acreages, eliminate inequality, and promote equitable land allocation, was due to go into effect by August 2015.¹²³ However, it remains unpassed for the time being, leaving many ordinary Kenyans as squatters and landless, susceptible to the political class, which owns the vast majority of the country's land.¹²⁴

¹¹⁹ Francis Kariuki, Smith Ouma, and Raphael Ng'etich, *Property Law*, (Strathmore University Press: Nairobi, 2016), at p. 331.

¹²⁰ *Ibid*, at p. 428.

¹²¹ *Ibid* at p., 428, See also The Community Land Act (Act 27 of 2016).

¹²² Francis Kariuki, Smith Ouma and Raphael Ng'etich, *Property Law*, Strathmore University Press, Nairobi, 2016, at p. 428.

¹²³ Clause 3, Minimum and Maximum Land Holding Acreage Bill (2015), available at <https://www.kpda.or.ke/documents/Policies/Minimum%20and%20Maximum%20Land%20Holding%20Acreage%20Bill%202015.pdf> (accessed 28 January 2024).

¹²⁴ The bill still remains unpassed. See the Land Laws (Amendment) Act 2015 (52nd Item), available at <https://kenyalaw.org/kl/index.php?id=5189> (accessed 28 January 2024).

10.0 RECOMMENDATIONS AND WAY FORWARD

Kenya now has institutional frameworks capable of tackling various land-related issues, an improvement that did not exist before 2010. However, there is a lack of institutional independence and clear standards for these two organisations' roles and powers, as demonstrated in 2014 when the Supreme Court was asked to issue an advisory opinion on their relationship.¹²⁵ Further, corruption is another challenge facing these institutions. For instance, in 2018, the chairperson of the National Land Commission, Professor Mohammed Swazuri and sixteen others were charged in an Anti-Corruption Court for using his office to improperly confer a benefit and facilitating the award of compensation of a public parcel of land to a company.¹²⁶ With lack of institutional independence and corruption threatening to kill the successes introduced by the 2010 Constitution into the land regime, there is a need to resolve the wrangles that exist between the Ministry of Lands and the National Land Commission in order to ensure that they achieve the mandate given to them, especially in resolving historical injustices related to land and land ownership. Furthermore, many proposed land reforms and policies aimed at resolving Kenya's land issues are yet to be realised. For instance, the Truth and Justice Reconciliation Commission released its report in 2013 but up to date, political leaders, in government as well as in opposition, have found it politically inconvenient to act on the report.¹²⁷ Among the issues identified by the

¹²⁵ In the Matter of the National Land Commission [2015] eKLR.

¹²⁶ Professor Swazuri Charged with Graft' EACC News. available at <https://eacc.go.ke/default/professor-swazuri-charged-with-graft/> (accessed 28 January 2024).

¹²⁷ Maliti T., 'How Kenya's Truth Commission Report Became a Political Ghost' *JusticeInfo.Net*, 29 May 2020, available at <https://www.justiceinfo.net/en/44424-how-kenya-s-truth-commission-report-became-a-political-ghost.html> (accessed 28 January 2024).

report were the causes of the continuous historical land injustices in Kenya. The law relating to the maximum and minimum land holding is another important land reform issue that has not been successfully implemented leaving loopholes for the powerful persons in the society to own most of the land leaving ordinary Kenyans as squatters and landless and at the mercy of the political class, something which can be used again to mobilise electoral violence just as in the past. There is therefore an urgent need to implement the various law reforms and recommendations by various commissions as a step towards achieving land justice in Kenya.

The politicisation of land and mobilisation of electoral violence has also been identified as a major cause of land-related conflicts. It is therefore important to have politicians who mobilise and incite electoral violence on grounds of land grievances prosecuted and charged. There is also a need for Kenyans to elect leaders based on merit and not based on tribal lines as this has been exploited to rally divisions among communities.

11.0 CONCLUSION

This article has shown how opportunistic politicians can use pre-existing land grievances to incite election violence, particularly when they sense a danger to their political power. Although the 2010 Constitution was adopted 14 years ago and Kenya has been independent for more than 60 years, land ownership remains a contentious subject. Electoral violence can still be organised around ethnicity and land ownership since, the National Cohesion and Integration Commission recently stated that pre-

existing social conflicts, including ongoing disputes over land or resources, increase the likelihood of election violence, particularly in the Rift Valley.¹²⁸

While the 2010 Constitution aimed to rectify historical land injustices, ongoing tensions between the Ministry of Lands and the National Land Commission may delay the anticipated new era of land administration. It is imperative to provide these bodies with the necessary support to resolve land-related issues. Collaborative efforts between the government and the people of Kenya are essential to effectively address and solve land disputes in the country.

¹²⁸ Republic of Kenya, 'Towards a Violence-Free 2022 Election,' p. 30.