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CHANGING POLITICAL REGIMES AND LAND POLITICS IN POST-COLONIAL KENYA

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ABSTRACT

This review paper interrogated the changing political regimes and the land politics in post-colonial Kenya; mainly focusing on Jomo Kenyatta, Daniel Arap Moi, Mwai Kibaki and Uhuru Kenyatta's regimes. It was noted that under Jomo Kenyatta's administration, the land was allocated to close cronies and constituents as patronage and with non-indigenous communities being facilitated by land buying companies owned by political elite from central Kenya in the 1960s and 70s. When Daniel Arap Moi took over power in 1978, his regime adopted the use of land allocation and land-restitution as a means to enhance a cohesive ethno-political constituency out of the ethnic groups claiming to be indigenous to the Rift Valley; the Kalenjin groups, the Maasai, Turkana, and Samburu. There was a shift in government land allocation to the Kalenjin-coalition constituencies and Rift Valley forest reserves such as Mau Forest reserves, Agricultural Development Corporation farms, and Settlement Fund Trustees properties were plundered. Mwai Kibaki upon his election in 2002 sought to redress historical land grievances, ameliorate inequities, and safeguard minority rights by setting up Land Commissions and adopting their reports. Additionally, a Draft National Land Policy whose provisions were later integrated in the 2010 Constitution was developed and in 2012, series of land laws were also passed for implementation. Subsequent to election of Uhuru Kenyatta in 2012, he was mandated to oversee implementation of various land laws and legislation in line with the new constitution. However, political goodwill to implement the various land laws and legislation has been lacking with the powers of the National Land Commission being clipped and transferred to the Ministry of Lands which is under the Executive arm of Government. Given the potential that land has to trigger ethnic violence as witnessed since Kenya's independence, the author recommends for executive unwavering support to the established institutional and legal framework under the 2010 Constitution as well as implementation of the various land laws to address the historical land injustices.

Keywords: Land, Regimes, Settlement, Kenya

1. INTRODUCTION

Globally, the meaning of land remains fluid and the way people view it changes over time and from one society to another depending on the purpose which society expects this resource to serve, (Kathman, 2010). World Bank (2017) posit that this dynamism gives land various proprietary attitudes and user interests defined by the three fundamentals of tenure; land ownership systems, land administration and land laws and legal systems. The political and economic history of the metropolitan and satellite countries indicate that land has always been at the centre in shaping the interaction, events, and transactions unfolding between the global North and the global South (Huggins, 2011). Land determines the productivity of countries, corporations and individuals and has attracted the attention of multiple actors in its governance within and beyond the area of jurisdiction of one's sovereign state (Deininger, 2003). In

Latin America, a study conducted by World Bank, (2017) and Oxfam, (2013) established that ascertaining the identity of landowners in countries such as Honduras, Colombia, Guatemala, Paraguay and Brazil, is almost impossible owing to active involvement of governing elites as well as Multinational Corporations (MNCs) in the fundamentals of tenure such as land ownership systems, land administration and land laws and legal systems control. Lack of transparency in transactions, use of shell companies, titling in the name of third parties, secrecy, and bureaucratic barriers in the institutions that manage public land and property registries create a shield that can conceal the true identity of the owners (Guereña, and Zepeda, 2013). In Brazil, dozens of peasant and indigenous leaders have been murdered for resisting the advance of agro-industry, livestock farming, timber extraction, and mining (Oxfam, 2016). Additionally, extreme land inequality has not been reduced despite implementation of the region's most ambitious agrarian reforms between 1995 and 2010, which saw the state distribute more than 80 million hectares and settle almost a million farming families (Stevens, et.al, 2014). Despite this redistribution effort, Brazil continues to be dominated by large-scale farming operations, with more than 40 percent of land concentrated in less than one percent of its citizens (mainly political elites and powerful oligarch and MNCs) (Tauli-Corpuz, 2016 and Oxfam, 2016).

Studies from the South Asian states indicates that soon after independence, governments' implemented land reforms to remove the vestiges of colonialism (Bachriadi, 2009). Land reforms were initiated for instance in Malaysia, Singapore and Burma since these South Asian countries had inherited a common set of laws and government bureaucracy from the British which were repressive to the indigenous communities especially on land ownership and use (Bachriadi, 2009 and Adas, 1988). As noted by Stevens, et.al (2014), reforms implemented in the 1950s to the early 1970s focused on the abolition of the *Zamindar* system and the recognition of tillers as legal owners; on tenancy reforms; on the imposition of land ceilings and redistribution of private surplus lands; and the redistribution of state lands. Consequently, these states have continually sustained their domestic food requirements due to good land reforms.

A study on land tenure and use in China noted that when Communist Party assumed power in 1949, over 46.6 million hectares of lands were confiscated from landlords and rich peasants and redistributed to about 300 million landless and poor peasants (Bravo, 2001). Although the process was completed in 1952 with every family getting 0.15 hectares, the result of land fragmentation led to reduced agricultural production. Consequently, a severe famine in 1960–1963 where millions of people died, and food shortages were witnessed and by 1970s, one-third of the rural population lacked a stable food supply (Bruce and Li, 2009). Reconsolidation of farmlands was initiated in 1978, and with these reforms, the national output of grains rose from 300 million tons in 1978 to 407 million tons in 1984 (FAO, 2008 and Bravo, 2001). From 1978 to 1983, the per capita incomes of rural people doubled, and food calorie intake increased (Bruce and Li, 2009). In 2002, a new Rural Land Contracting Law was enacted, providing for a lengthened period of 30 years for land rights; an expanded scope of land rights, including the right to transfer land (to other village households), the right to lease land (to non-village households), and the right to receive state compensation (for land taken away by the state or collective); and the issuance of land rights certificates by county-level governments (Ravanera and Vanessa, 2010).

According to Antonio (2013), land ownership in Pakistan at the time of independence, was highly skewed; less than 1% of farm owners controlled over a quarter of all agricultural land. Many landowners were absentee landlords and half of all land was cultivated by tenants with little security and few rights. Moreover, the succession of military juntas and military-backed governments from 1951 onwards depended on the support of feudal lords to stay in power (Binswanger-Mkhize, et.al, 2003). There were three failed attempts at land reform in Pakistan; 1959, Martial Law Regulation 64, 1972 Martial Law Regulation 114 and the 1977 Land Reforms Act (Bruce and Li 2009). Since the 1950s, the Pakistani military has continued to acquire and distribute land to active and retired military personnel, who now control about 4.86 million hectares, constituting about 12% of total state land (World Bank, 2008). Only 40,000 hectares are directly controlled by the armed forces and their subsidiary companies; the rest has been given to army personnel as reward for their service. This has greatly contributed to land inequality in Pakistan with many people remaining landless due to failed land distribution policies (Antonio, 2013).

In Sub-Saharan Africa, Boone et.al (2016) observed that matters of land dispossession and contestation have greatly contributed to various forms of inequalities associated with the crooked distribution of land resources. Additionally, land has been subject to conflict resulting to a number of many discrepancies that exist in today's society and has greatly influenced the socio-economic and political positions of different groups of people. A study by Lahiff, (2003) noted that Southern African states presents a wide spectrum of land policies, embracing a variety of forms of redistribution and tenure reform initiatives, utilizing methods that range from consensual, market based approaches to forcible confiscation. The shared history of colonialism, and with it the dispossession and impoverishment of rural people, which shapes both patterns of landholding and discourses around the value of different types of land use, has shaped governments approach on the need to address land problems (Aliber and Mokoena, 2002).

Oxfam (2016) observed that while the seizure of (mostly) white-owned farms and the accompanying violence undoubtedly marks a new phase in Zimbabwean affairs, it does not necessarily imply a total break with the dominant neo-liberal orthodoxy. While certain property rights are being overthrown, this does not amount to the abolition of private property. Land that is being redistributed under the 'fast track' reforms is effectively being granted under the highly individualized (and relatively secure) model used for redistribution since 1980 (Alexander and McGregor, 2001). Moreover, the recent move to larger individual holdings, coupled with the

reallocation of entire farms to members of the ruling elite, appears to signal a consolidation of private property, albeit in new hands, in what is likely to be a more widely distributed system of private property (Kloock-Jenson, 2000). In South Africa, the land reform programme adopted since 1994 by the African National Congress is aiming at redistributing a substantial proportion of agricultural land to emerging black farmers, to restore land rights lost under previous regimes and to secure the tenure rights of occupants of both communal and privately-owned land (Chaumba, et.al, 2003). This seemingly is being implemented within what is by far the most advanced capitalist economy in Africa, with the most firmly entrenched system of private property, presided over by a government that has distinguished itself as the leading proponent of neo-liberalism on the continent (Bowen, 2000). Unlike many other countries in Southern Africa, current land policy in Mozambique does not have a redistributive element but as World Bank (2017) argues, it seeks to recognize and protect existing land rights, held by the large majority of rural Mozambicans through customary land laws and management systems. Boone, (2012) noted that during the 1994 genocide in Rwanda, the political elite tried to incite ordinary peasants by insisting that lands held by Tutsi families would be redistributed once they had been killed, and this became one of the rationales to justify the killing. In other words, land in Rwanda was politicized in the civil war and used as a tool for demagogic mobilization.

In Kenya, land is the most important of natural resources required for the creation of wealth and the control of the land brings economic power, which in turn, is often the basis of social and political power (Kanyinga, 2009). The centrality of land made it the main reason for the struggle for Kenya's independence from British colonial rule and to date, land remains the mainstay of Kenya's economy where over 80% of its population derives its livelihood from agriculture (Chelang'a, et.al, 2009). Therefore, its ownership, allocation, distribution and utilization are of great concern to most Kenyans. Today the issue of land is treated with fervent sentimentality and sensitivity and in many ways, considered explosive (Boone et. al, 2016). While the constitution guarantees the right of ownership of property anywhere in the country, the peaceful coexistence of the numerous Kenyan tribes appears to have been profoundly undermined by both new and long standing land disputes in which much are historical injustices against the indigenous communities (Boone, 2012). This review paper delves into British expansionism, settlement and land question in Kenya, the Kenyan land politics under the different regimes since 1963 and unearths how the current land inequalities were created and sustained, and thus continues to threaten the peaceful coexistence of various communities even under the new 2010 Constitution.

2. RESEARCH METHODOLOGY

This review paper adopts a historical research design/approach in discussing the different aspects of land politics under different regimes in Kenya. It focuses on British entrenchment and subjugation of land from the indigenous communities (during colonial period) as well as the land politics under various post-independence regimes; Jomo Kenyatta, Danie Arap Moi, Mwai Kibaki and Uhuru Kenyatta's regimes. The researcher relies on already existing secondary data from various journals, government documents, theses and books in interrogating the various themes under study. Lastly, the review paper provides conclusion and recommendation based on its findings.

3. BRITISH EXPANSIONISM, REGIME CHANGE AND LAND POLITICS IN KENYA

The subsequent sections examine the British expansionism, settlement in Kenya, the land politics under Jomo Kenyatta, Danie Arap Moi, Mwai Kibaki and Uhuru Kenyatta's regimes.

3.1 British Expansionism, Settlement and Land Question in Kenya (1895-1963)

The 1885 Berlin Conference triggered by industrial revolution in the 18th Century, led to the scramble and partition of Africa in order to source raw materials for industries in Europe, acquire cheaper labour, find market for processed goods from the industrial states (such as Britain, Germany Belgium, Italy Portugal and France), and the need to expand hegemony beyond Europe (Ndege, 2009). As noted by Ogot, (2005), the declaration of a Protectorate over much of what is now Kenya on 15 June 1895, marked the genesis of British domination and colonization over Kenya. This was the beginning of massive dispossession of indigenous communities of their ancestral land for the railway construction, European settlement as well as the establishment of European economic zone characterized by plantation farming for commercial purpose. The Commissioner for the Protectorate in 1897, invoked the 1894 Land Acquisition Act of India, and adopted it in Kenya in appropriation of all lands situated within one mile on either side of the Kenya-Uganda Railway for the construction of the railway (Ogot, 2005). Additionally, the same Act was also used to forcefully acquire land for other public purposes such as government buildings and plantation farming for commercial purposes (Kagwanja, 2005).

While using the Foreign Jurisdiction Act of 1890, the protectorate administration promulgated the East African Land Regulations of 1897, which it used to alienate land from the natives to allocate to white settlers who would pay for the railway (Ogot, 2005). The Commissioner could initially give certificates of occupancy for only 21 years, a period that was extended to 99 years and any land alienated, whether for construction of the railway or occupation by the administrators or settlers, became Crown Land (Mortensen, 2004). Crown land referred to as all public lands within the East African Protectorate that were subject to the control of His Majesty by virtue of any agreements or treaties, and all lands that had been or may have been acquired by His Majesty under the Land Acquisition Act of 1894, or otherwise (Okoth-Ogendo, 1991). The Crown Lands Ordinance No. 21 of 1902 vested power in the

Commissioner to sell freeholds in Crown land within the protectorate to any purchaser in lots not exceeding 1,000 acres (400 hectares) (Mortensen, 2004).

According to Njonjo Commission (GOK, 2002) and the National Land Policy (GOK, 2009), any empty land or any land vacated by a native could be sold or rented to Europeans, and land had to be developed or else forfeited. The Crown Lands Ordinance of 1902 paved way to surveying and alienation of unoccupied land in the Southern parts of Kikuyu land (Kiambu and Murang'a), an agreement with the Maasai represented by their leader Lenana, and the British annexation of land in Suswa, Ol-Joro-Orok and Ol-Kalau areas for purposes of European settlement in 1904 (Chelang'a, et.al, 2009). In 1911 the Maasai were made to sign a second agreement, which led to their eviction from Laikipia to the Southern Ngong reserves, with resultant loss of livestock and human life during the trekking (Hughes, 2006). The protectorate administration gave no cognisance to customary tenure systems and by 1914 nearly 5 million acres (2 million hectares) of land had been taken away from indigenous Kenyan communities, mostly from the Kikuyu, Maasai and Kalenjin communities in the Rift Valley and Central Kenya regions (Chiriyankandath, 2007). The 1902 Ordinance was repealed and replaced by a new Crown Land Ordinance in 1915 that declared all land within the protectorate as Crown land, whether or not such land was occupied by the natives or reserved for native occupation (Ogot, 2005). The implication was that Africans became tenants of the Crown, with no more than temporary occupation rights to land and the land reserved for use by the Africans could also at any time be expropriated and alienated to the settlers (Mortensen, 2004). The 1915 Lands Ordinance therefore signified the commencement of the disinheritance of natives from their lands and the Ordinance empowered the Commissioner of the Protectorate to grant land to the settlers for leases of up to 999 years (Apel, 2007).

In 1920, Kenya was declared a colony and remained so until the time of independence in 1963 and land issue remained unresolved (Apel, 2007). A definite move towards legal segregation came in 1932 with the Report of the Kenya Land Commission (1934), which recommended fixing the boundaries of the native reserves and the areas reserved for European settlement-called the White Highlands (Syagga, 2006). The indigenous communities in Kenya (such as the Kalenjin, Kikuyu and Maasai) were removed from the White Highlands to give assurance to the Europeans that their areas would remain inviolable (GOK, 2004). According to Chelang'a, et.al, 2009), the annexation of land accelerated to 7.2 million acres (2.88 million hectares) by 1924 and by the time of independence in 1963 a total of 7.5 million acres (3 million hectares) or half the agricultural land in Kenya had been taken away by the white settlers. The effect of the colonial land policy was acute land shortages, landlessness and discontent among the rural peasantry and by 1940s, there was severe shortage of land within the reserves in central Kenya and parts of the Rift Valley thus leading to the emergence of the *Mau Mau* uprising to champion for land rights of the indigenous communities (Hughes, 2006).

Kenyan agitation for their land led to the establishment of Swynnerton Commission in 1954 to investigate how to improve and make African tenure systems contribute to the economic development of the colony (Syagga, 2006). The Commission published a report which noted that the traditional system of tenure in the African reserves encouraged fragmentation of the holdings into smaller units for production, as well as incessant disputes that were a disincentive to long-term capital investment (Swynnerton Plan, 1954). The report, recommended the consolidation of separated land holdings of each family into one, followed by the adjudication of property rights in that land and the registration of individuals as absolute owners of land adjudicated as theirs (KNCHR and KLA, 2007 and GOK, 2004). This was an attempt by the colonial government to establish a single market for land and was intended to end the perceived uncertainty of customary tenure and create stable landed gentry among the Africans (Ogot, 2005). The administrative process of consolidation, adjudication and registration was formalized by the Native Land Tenure Rules of 1956 and to ensure that the rights granted through the process were not disturbed, the African Courts Ordinance was passed in 1957 to bar all litigation regarding land to which the 1956 rules applied (Apel, 2007).

Since large parts of Central Province were consolidated in 1956 during the state of emergency arising from the *Mau Mau* revolt, the effect of these laws was to prevent claims by aggrieved landholders and dispossessed peasants (Mulemi, 2011). These rules were incorporated into the Native Lands Registration Ordinance of 1959, which among other things declared that the first registration was not to be challenged even if it had been obtained through fraud, and that only five persons could be registered as owners of any parcel of land and holding trust for the other members of the family (KNCHR and KLA, 2007 and Veit, 2011). In the majority of cases, only the male head of household was registered as owner of the land. Women and younger men were unlikely to be registered and therefore were effectively excluded from controlling land and other resources that go with it. The elder male owners were given immense power through this system, to the extent that they could mortgage or even sell the land without recourse to other members of the family, who although not owning the land legally, had access rights under customary law (Olende, 2008). The individualization of tenure only took account of people who had land and not the landless or those whose interests did not amount to ownership (Kagwanja, 2005). As a result, cases of family representatives seeking to evict other family members from the family land escalated. This system of land registration was adopted by the post-colonial governments thus facilitating fraud and corruption cases of disinheritance of families and communities that have become rampant in the recent past (Chelang'a, et.al 2009).

3.2 Regime Change and Land Politics in Post-Colonial Kenya

Subsequent sections examines the dynamics of land politics under the post-independent regimes in Kenya; the Jomo Kenyatta's regime (1963-1978), Daniel Arap Moi's regime (1978-2002), Mwai Kibaki's regime (2002-2012) and Uhuru Kenyatta's regime (2012-2017).

3.2.1 Dynamics of land politics under Jomo Kenyatta's regime (1963-1978)

The *Mau Mau* uprising in the central and parts of the Rift Valley in 1950s sought to reclaim the right of the indigenous communities to land right of ownership, with the founding president Mzee Jomo Kenyatta being one of the advocates of this noble task (Robert, 2005). However, the transition to independence under the Kenyatta regime introduced a clear bias in the allocation of farmland in favor of the core constituencies of the ruling party Kenya African National Union (KANU) and specifically from the president's ethnic backyard (Mulemi, 2011). Consequently, those who claimed these same lands as their ancestral birthright were at the losing end of Kenyatta-era land allocations. The indigenous communities for instance in the Rift Valley and the coastal region saw skewed land allocation as a violation of their birthright and that this important resource was being given to 'foreign' settlers and immigrants, regime dignitaries, and key allies of the ruling elite from other parts of Kenya (Wakhungu, et.al 2008). According to Chelang'a, et.al (2009), the option of opening for instance the Rift Valley to settlement by those who could not claim ancestral or pre-colonial rights to these lands was bitterly resisted in 1960s by politicians representing the indigenous communities in the Rift. Additionally, the regions' political leaders argued for restitution of land that had been taken from them by the British Government for commercial farming such as tracks of land in Uasin Gishu, Kericho and Nandi (Veit, 2011). Similarly, the same wave was experienced in the Kenya coastal region where the formerly sisal plantations land had been partitioned to non-indigenous communities and to political elites in the Kenyatta's government (Stewart, 2010).

Earlier before independence, the political leadership of the Kenya African Democratic Union (KADU) had advocated for a *Majimbo* constitution which advocated for a federalist arrangement that would institutionalize regional autonomy on matters such as land affairs and thus transfer the authority of land allocation to regional land boards as opposed to central state agencies (Ogot, 2005). Wakhungu, et.al (2008) noted that the *Majimbo* constitution would grant the various regional boards with the constitutional mandate to safeguard the land rights and patrimony of peoples deemed to be "indigenous" to Kenya's post-colonial territorial jurisdictions. The advocacy for *majimboism* and the strong interest of KADU leaders in the preservation of "tribal land units" where the indigenous ethnic communities would be a priority in reallocation of land, raised the stakes in the drawing and redrawing of jurisdictional boundaries in 1960–63 (Mulemi, 2011). Much contestation was largely about the White Highlands districts that would now be opened up to African landholders and the establishment of smallholdings or peasant farms (Anderson, 2005). As noted by Mulemi, (2011), the struggle over the basic constitutional structure of the post-colonial state was driven by the actors' assessments of how the choice between a unitary versus federal structure, and the drawing of jurisdictional boundaries, would affect the distribution and redistribution of land rights.

Between 1960 to December 1963, the colonial administration sought to sponsor schemes to settle landless and near-landless African families on Rift Valley properties that had been sold to the state by the departing white settlers (Ogot, 2005). According to GOK (2002), tension over land settlement in Nakuru in 1961 and violent land clashes in Narok in 1967 were experienced since most of the settlement schemes violated the integrity of the tribal territories that were claimed by KADU politicians on behalf of the indigenous communities of the Rift Valley including the Kalenjin, Maasai, Turkana and Samburu (NCIC, 2012 and Chelang'a, et.al 2009). While KADU leadership continued their quest over indigenous communities' control of the White Highlands, the ruling Kenya African National Union (KANU) consistently rejected this position leading to ethnic tension in the coastal Kenya and the Rift Valley (Jean-Paul, 2011).

Advocacy for indigenous control of land especially in the Rift Valley came to an abrupt end when in 1964, Daniel Arap Moi along with some members of the Rift Valley coalition were co-opted into the KANU party by Mzee Jomo Kenyatta (Kagwanja, 2005). While Daniel Moi served as the vice-president of Kenya under Kenyatta, he continually towed the president's line on land issues in the Rift Valley and consequently allowed distribution of land to non-indigenous members (Mutua, 2008). As noted by Odingo (1971), it allowed for the settlement of over thirty five thousand Kikuyu families in the Rift Valley in 1960s against the will of the indigenous communities but in line with President Jomo Kenyatta's directive. Several land buying companies owned by political elite from central Kenya region were facilitated by Kenyatta's regime to acquire huge tracks of land from the Rift Valley; land initially belonging to the indigenous communities (Onoma, 2010). As noted by GOK (2008), the Kiambaa Farmers Cooperative bought the 500-acre Kiambaa Farm in Eldoret in 1965 from one Giussepe Morat, and this was the scene where arsonists torched a church and killing tens of people (from the Kikuyu community) during the 2007 Post-Election Violence. Another farm that has always been synonymous with tribal clashes since 1990 is the 1,636-acre Kamwaura Farm in Molo, bought in 1976 from a Lionel Caldwell who was leaving the country. Other big companies that bought land included Ngati Farmers Cooperative, which bought 16,000 acres in 1965 in Naivasha, and Kipsitet Farmers Cooperative, which bought 2,302 acres in Kericho (GOK, 2008). Shipton (1998) observed that the ruling elites then, especially from the central region argued that the Agikuyu community had the right to ownership of land in the Rift Valley since they contributed much in the fight for independence and specifically on the right to land ownership from the white settlers. To consolidate

power, President Jomo Kenyatta ran the country as a one-party state from 1969 until his death in 1978 and completely suppressed the debate on the land question (Bratton and Kimenyi, 2008).

Boone, et.al (2016) observed that serious land question involving Kenyatta's government and members of parliament from the Rift Valley was witnessed in 1970 following unfair land distribution policies. For instance, Jean-Marie Seroney and J. M. Kariuki raised pertinent question on land appropriation and settlement in the Rift Valley resulting in Seroney's imprisonment in 1975 and Kariuki's assassination in 1975. According to Boone (2012) Jean-Marie Seroney, was Member of Parliament from Nandi District, where in 1919, the colonial state had expropriated approximately 17 percent of the land area of the Nandi Reserve (in the Nandi Salient/Kipkarren area) in order to create a Soldier Settlement Scheme for European veterans of World War I. Boone (2012) noted that in the early 1930s over eight thousand members of Nandi community living on alienated land were considered squatters. These long-standing grievances were fueled by the settlement programs of 1960–66, in which much of the property that had been expropriated by the state in 1919, as well as properties comprising expatriate-owned sugar farms in the southern part of Nandi District, were reacquired by the government and then redistributed to non-indigenous groups with no ancestral claims to Nandi land (Chelang'a, et.al 2009).

When Jean Seroney was elected MP for Nandi North Constituency (Tinderet) in 1963 on a KADU ticket and became Deputy Speaker of Parliament, he carried forward his mandate of "protesting the invasion of their (Nandi) ancestral lands by settlers" (Oyugi, et.al, 2003). He published "The Nandi Hills Declaration" in 1969; denouncing Kenyatta's sale of Nandi land to non-Nandi, branding the settlement schemes as "Kenyatta's colonization of the Rift Valley" and laying claim to all land in the District for the Nandi community (Boone, et.al, 2016). Consequently, Seroney was charged with sedition, convicted, and fined in 1975, and was imprisoned for denouncing the post-colonial land allocation to non-Nandi settlers and remained in detention until the end of the Kenyatta regime in 1978. According to Klopp and Lumumba (2016), the violent land and ethnic conflicts witnessed in the Rift Valley in 1991, 1992, 1997 and later in 2007, traces its history to the land question in the larger Nandi and Uasin Gishu counties. Similarly, J. M. Kariuki, an ex-*Mau Mau* fighter, and a Member of Parliament from Nyandarua North constituency (elected in 1974), was assassinated in 1975 for denouncing in Parliament the unfair land distribution policies of the Kenyatta regime, and in particular, accusing Kenyatta of allocating the lion's share of state-owned Rift Valley land to his cronies, rather than to the poor and those who had actually fought for Kenya's independence (Chege, 2008).

It is evident from the discussion that Jomo Kenyatta's regime played a significant role in the acquisition of land from the white settlers. However, his regime used land as patronage to his close family friends, cronies from KANU, as well as members of his ethnic extraction. Land appropriated from the white settlers and meant for indigenous communities for instance in the Rift Valley and the Coastal region was allocated to non-indigenous communities and thus perpetrating landlessness among the indigenous communities in these regions. Studies by Chelanga'a, et.al (2009) confirms that the recurrent ethnic and political conflicts experienced in these regions since 1992 to date are largely motivated by land historical injustices which have never been addressed.

3.3.2 Daniel Arap Moi's regime and land politics in Kenya (1978-2002)

After the death of Mzee Jomo Kenyatta in 1978, Daniel arap Moi who had been the vice president took over the mantle of leadership (Ngunjiri, 2009). Moi's regime in 1980's adopted the use of land allocation and land-restitution as a means to enhance a cohesive ethno-political constituency out of the ethnic groups claiming to be indigenous to the Rift Valley—the Kalenjin groups, the Maasai, Turkana, and Samburu-KAMATUSA (Lynch, 2008). Consequently there was a shift in government land allocation to the Kalenjin-coalition constituencies and as a result, the Rift Valley forest reserves were plundered for this purpose, especially the Mau Forest reserves, Agricultural Development Corporation (ADC) farms, and Settlement Fund Trustees (SFT) properties (Klopp and Lumumba, 2016). Additionally, Moi's regime encouraged the airing of the land grievances of those who had been dispossessed in the land-allocation politics of the 1960s and 1970s, calling into question the legitimacy of settlement schemes created under the patronage of Kenyatta (Chege, 2008). Consequently, this heightened the political contingency of the prevailing distribution of land in the Rift. Kimenyi, et.al (2005) noted that the demographic and environmental stress heightened the tensions and stakes in conflicts over land allocation. In addition to drought, sedentarization, and moves into agriculture on the part of once largely pastoral people increased demands for farmland, domestic legal challenges to the razing of forests and international pressure to curb corruption and lawlessness raised the costs of using the forest reserves as a new land frontier to settle Kalenjin farmers (Chelang'a, et.al 2009). These pressures made it harder for Moi to provide land for his own constituencies without directly attacking the acquired rights of those who had received land under Kenyatta (Mazrui, 2001).

It was convenient to scapegoat Kikuyu and Luo smallholders as illegitimate settlers in the 1980s in order to deflect the wrath of land-hungry Kalenjin away from the vast properties of Moi's own cronies (Kagwanja, 2009). There were sporadic outbreaks of land-related violence in the Rift under the Moi regime in the 1980s, but these were contained and suppressed by the provincial administration and security forces. A study by Chelanga'a, et.al (2009) noted that violent ethnic conflicts in the Rift Valley in 1980s, 1990s and 2000s had land as the key underlying cause and attributed it to skewed land allocation during the Kenyatta's regimes. For example between 14 and 17 March, 1992, ethnic clashes occurred in Molo and Olengurone Divisions, Nakuru District where the Kipsigis (sub-tribe of Kalenjin) warriors raided the homes of Kikuyu, Kisii, Luo and Luhya residents in farms at Kamwaura, Kasimbeiwu, Kipsonoi, Nyota, Temoyetta and Mau summit (Boone, et.al, 2016). The Sabaot and the Pokot attacked the Bukusu and

other non-Kalenjin communities in Bungoma and parts of Trans-Nzoia District between March and April 1992 (Boone et. al, 2012). In 1993, tension increased between the Kalenjin and the Kikuyu where the later were viewed to be aliens and supporters of the opposition party (Mazrui, 2001). Consequently, ethnic clashes erupted at the Burmt Forest area in Tarakwa Division, Uasin Gishu District, between March and October 1993. Similarly, tension led to clashes between the Maasai and Kikuyu in Narok and Enosupukia areas in April and October 1993, respectively (Chelang'a, et.al, 2009). Daudeline (2002) noted that the Kikuyu inhabiting these areas were being punished for having voted for candidates from opposition parties yet they had been 'enjoying land rights in foreign land'.

Chelang'a, et.al (2009) posit that the ethnic clashes in many parts of the country between 1991-93 occurred in ways that suggested that they were well planned to appear mysterious, spontaneous and yet intended to produce the required results. The organization of the clashes involved the recruitment and training of the raiders, their provision with arms, instructions on when and where to raid and how to kill and disappear, how to dress etc (GOK, 2008). From evidence adduced by the Report of Judicial Commission on Ethnic Clashes (GoK, 1999), it was established that top government officials and some army officers were involved in organizing and executing the clashes. The advent of multi-party politics in 1991-92 heightened Moi's regime incentives to mobilize potential and likely supporters and to get these people out to vote, and also to reduce the vote share of the opposition by discouraging or preventing likely opposition-party voters from going to the polls (Boone, 2011). This confluence of factors brought questions of land distribution and redistribution to a crisis point and leading members of the Moi government campaigned openly on a platform of chasing settlers out of the Rift and reallocating land to the regime's own supporters (Mutua, 2008). According to Oyugi, et.al (2003), the people claiming to be indigenous to the Rift Valley—the Maasai and the Kalenjin coalition of smaller groups—were encouraged by KANU Regime to demand that "settlers" be dispossessed of their land and expelled and the land restored to the "original owners" who had been twice denied—first by the colonial state in 1905-20 and then by the ruling party of Jomo Kenyatta in the 1960s and 1970s.

As noted by Lynch (2008), political rhetoric that pervaded Nandi, Nakuru, Uasin-Gishu, and Trans-Nzoia Districts dwelt on how land lost to the Europeans was never recovered, and how under Kenyatta's regime, "foreigners" had been allowed to buy up land which was meant for the indigenous communities. Additionally, Boone, et.al, (2016) noted that in Likia in Molo, Nakuru District, where "most land belonged to Kikuyus in the early 1990s, local Kalenjin politicians reminded people of the past ownership of the land" and encouraged them to reclaim it. In Narok, politicians rallied constituencies of "indigenous people" around the claim that the land titles of Kenyan settlers were worthless pieces of paper that had been illicitly allotted by corrupt agents of the Kenyatta regime (Bratton and Kimenyi, 2008). In 1991 and 1992, pogroms targeted at settlers on settlement schemes killed hundreds and drove thousands off their land and the main victims of violence and displacement were rural families who had benefited from the Kenyatta-era land programs (Oyugi, et.al 2003). A study Chelang'a, et.al (2009) noted that in Trans Nzoia District, gangs incited by Kalenjin politicians invaded farms and drove off settlers, declaring that it was time for the native people to reclaim land that had been transferred to outsiders under Kenyatta. In 1992, a notorious case was that of Buru Farm in Kipsitet (Kericho District), which was notable for the high-profile role of government agents, the explicitness of the government's claim to complete prerogative over the land, and the pre-and post-election time span of the violence (Oyugi, et.al 2003). Occupation of Buru farm by Luo had been under dispute since 1972 and in December 1993 after the election, the Luo who had moved back to Buru Farm were forced out again and their houses were bulldozed by armed policemen and told to leave "government land" and move to Nyanza (Boone, et.al, 2016).

A study by D'Arcy and Cornell (2015) noted that under Moi's regime, over 1,500 people were killed and as many as three hundred thousand were displaced by Rift Valley violence between 1991 and 1996. Moi's regime supporters moved into vacated farms and homes with the assistance and protection of the government and in some cases, land titles were issued to the new occupants. Land related skirmishes occurred in the settlement scheme areas of Coastal Province after 1997 elections, having been shaped by a similar history of land expropriation and top-down land reallocation. Boone, et.al (2016) noted that by 2004 more than a half-million people had been displaced in the 1990s and by the end of Moi's regime in 2002, an additional 350,000 had been internally displaced.

3.3.3 Mwai Kibaki's regime and land politics in Kenya (2002-2012)

According to Klopp (2012), land politics remained a central issue of concern in the Kibaki regime from 2002 to 2012 and especially in the quest for the new constitution in 2005 and 2010 referendums. It began with the Ndungu Land Report and the initiation of National Land Policy drafting process in 2004. The rejection of 2005 proposed Bomas constitution was attributed to controversial clauses of the Draft National Land Policy (DNLP) and the 2007 post-election violence had land-related issues contributing to its emergence (Boone, 2012). Subsequent to the formation of the grand coalition government, the draft National Land Policy was approved in 2009, but the promulgation of the new constitution in 2010 completely negated the provisions of the DNLP (Boone, et.al, 2016). Previously when president Kibaki was sworn in to presidency in 2002, a Commission of inquiry was set in 2003 to examine the illegal and irregular allocation of public land during the Moi's regime, chaired by Paul Ndungu (Gisemba, et.al 2008). The Ndungu Commission report released in 2004 noted that allocation of public land in 1980s and 1990s was a manifestation of the dangers of extreme centralization of land-allocation powers in the hands of the president and on the arbitrary use of these powers (GOK, 2004). The land commission further noted that Moi's regime abused these privileges especially in the former White Highlands where the government owned or controlled land was partitioned and selectively given to specific individuals in government and ethnic groups loyal to the regime (GOK, 2009).

Rutten and Owuor (2009) noted that Ndungu Commission called for the drafting of a new, comprehensive land policy to establish basic priorities and principles that would serve as a prelude to the drafting of land legislation. Owing to inclusion of the provisions of a DNLP in Kenya's Bomas draft constitution which was put to a vote in 2005 Referendum, the opposition campaigned for a "NO" vote and won, by focusing voters' attention on the contentious land provisions (Norris, 2012). The provisions were intended to add momentum to the Ndungu Report's calls for revocation of land grants that had been made illegally by the Moi regime and to also give women equal rights to inherit land just like men (Ngunjiri, 2009). The DNLP process continued, and was approved by the Ministry of Lands in May 2007. A key feature of the DNLP was a complete overhaul of the land administration machinery and a review of all land rights, including land certificates (title deeds) issued or confirmed by the state since independence (GOK, 2009). The objective was to redress historical land grievances, ameliorate inequities, and safeguard minority rights, and could be achieved through the creation of a National Land Board to restrict the power of the Executive and be answerable to Parliament (Boone, et.al, 2016). Kenya's DNLP also posed question on existing legislation governing farmland, wildlife, ranching, and mining and the tone of the policy focused on problems of historical land injustices, the need for protection of minority rights, the question of government repossession of ill-gotten land, and matters of land restitution (D'Arcy and Cornell, 2015).

In the run-up to the general elections in 2007, the Kalenjin rallied behind William Ruto from the Rift Valley and Raila Odinga (the opposition presidential candidate) who pledged before the election that those dispossessed of their ancestral land by Kenyatta regime would reclaim their land if elected (Kagwanja, 2009). Most politicians from the Rift Valley campaigned on a platform that promised to send away land invaders in the great Rift and subsequent to disputed presidential elections in 2007/2008, indigenous ethnic communities ransacked houses and properties of those considered 'aliens' in parts of the Rift Valley such as in Kericho, Bomet, Burnt Forest, Molo, Trans Nzoia, Nandi and Uasin Gishu regions (Michela, 2010). Additionally, hundreds of non-indigenous communities who had been allocated lands in the Rift Valley were killed and over 300,000 were displaced to refugee camps such as in Nakuru, Molo and Naivasha (Amisi, 2009). Coincidentally, these are areas that were previously the epicenters of 1991–93 and 1997 clashes and were part of the White Highlands allocated to non-indigenous communities. A study by Chelang'a, et.al (2009), noted that the violence that was targeted at settlement schemes in the Burnt Forest area (on the Uasin-Gishu/Nandi District border) were planned with the help of local government officials long before the 2007 general election and was targeted on non-indigenous communities who had been allocated land during the Jomo Kenyatta's regime. Additionally, Stewart, (2010) noted that 2007/2008 post-election violence was associated with historical land injustice against the indigenous communities in the Rift Valley especially between the Kalenjin and Kikuyu. Subsequent to the formation of a coalition government in 2008, after the post-election violence, the DNLP was passed by the "Coalition Cabinet" in June 2009, as per a Kofi Annan-mediated agreement which required that a new land policy be voted by the end of year (Klopp and Lumumba, 2016). The version of DNLP approved by the Coalition Cabinet included the establishment of a National Land Commission to manage all public land, with members appointed by the president but vetted by Parliament (Dyzenhaus, 2015).

As noted by Boone, et.al (2016), the mandates of the envisaged National Land Commission included; prohibition on the holding of freehold titles by foreigners who may only hold land under 99-year leases, the conversion of all existing freehold titles and 999-year leases to 99-year leases; investigation of historical injustices relating to land and the establishment of mechanisms for resolving post-1895 land claims; the repossession of public land grabbed or acquired illegally, repealing of the Trust Land Act and the conversion of all former Trust land to community land; the return to communities of land grabbed illegally from Trust Land and compulsory government acquisition of all land on which minerals are discovered, with compensation to affected communities and future government leasing of the land to interested investors (also Klopp and Lumumba, 2016). The Land Policy also recommended the termination of the Group Ranches, the establishment of maximum and minimum acreages for private landholdings, and the protection of the interests of spouses and children in transfers of private land (Boone, et.al, 2016).

According to Klopp and Lumumba (2016), lines of division in the vote on the new constitution in 2010 referendum closely followed the main cleavages in the struggle over allocation of land between indigenous and non-indigenous communities in the Rift Valley. The Kalenjin-coalition leaders led by former president Moi and William Ruto focused their opposition on the proposed restructuring of the institutional locus of state power over land, for instance on the power to determine the minimum and maximum land acreage as such would disadvantage most Kalenjin who were allocated huge tracks of land during the Moi era (D'Arcy and Cornell, 2015). Since power over land allocation at the local level would be lodged in the forty-seven counties, the Kalenjin-coalition leaders foresaw that this could translate into permanent loss of control over large swaths of Rift Valley Province, shrinking the territorial scope of their own political strongholds and cutting off their access to the state institutions that would be decisive in the distribution and redistribution of land (Dyzenhaus, 2015). As noted by Boone, et.al (2016), the anticipated distributional effects of the proposed changes were visible in the geographic pattern of support and nonsupport for the new constitution, where the Rift Valley voted about 66–34 against approval, the only Kenya's provinces to return to a "No" vote in 2010, after the 2005 "NO" vote on the proposed constitution.

3.3.4 Uhuru Kenyatta's regime and dynamic land politics (2012-2017)

Historical grievances dating back to the early colonial period and land-related electoral violence of 1991-1992 and 2007, all contributed to very high levels of pressure for land law reform in Kenya (D'Arcy and Cornell, 2015). Presidential commission reports

and official policy review processes such as the Njonjo Commission Report, the Ndung'u Commission Report, the Waki Commission Report, and the National Land Policy clearly pointed at a chronic pattern of land abuses of the executive branch which are often conflict-inducing (Klopp and Lumumba, 2016). The result was approval of a new National Land Policy in 2009 after more than a decade of civil society activism on the land issue, the 2010 constitution, and the 2012 land laws (Klopp, 2000). Boone, et.al (2016) noted that subsequent to election of Uhuru Kenyatta's as the president in 2012, he was mandated to oversee successful implementation of various land laws and legislation in line with the new constitution, in order to address land issues in Kenya. One of the targets of the new constitution and to a lesser extent the 2012 land laws was to deal with the politicized and corrupt officials that were in the old Ministry of Lands (Klopp and Lumumba, 2016). Although the new land laws in 2012 has done less to achieve a radical overhaul of the Ministry of Lands than many had hoped, some important changes have been made. For instance, in line with the new constitution, key roles initially under the ministry of land such as control over the registries, control over the allocation and management of public land, control over resettlement, powers to revoke title deeds found to have been acquired illegally, have been transferred to the National Land Commission (NLC) through the National Land Commission Act 2012 (D'Arcy and- Cornell, 2015). The NLC would establish its presence on the ground through de-concentration, via a County Land Management Board (CLMB) established in each county.

Owing to immense power of the NLC provided for within the constitution, institutional battles have been witnessed between the executive branch (presidency) against the National Land Commission, leading to question on the president's will to implement the new constitution (Boone, et.al, 2016). This has been occasioned by starving NLC of funds, Ministry of Lands (MoL) failing to turn over relevant information to the NLC, blatant obstructionism such as insisting on housing the embryonic NLC in the same building as the Ministry, and openly defying the constitutional provisions that transferred powers to the NLC (Klopp and Lumumba, 2016). Critically, the NLC has not been able to get access to inventories of public land or land registries meaning that it cannot identify titles or allotment letters that have been irregularly issued for holdings on public land and has been an attempt by key leaders in government and 'land cartels' in Kenya to maintain the land status quo (Bassett 2015). As noted by Boone et.al. (2016), the controversial 2015 Community Land Bill was rolled into a The Land Laws (Amendment) Bill 2015 which, inter alia, transferred control over the land information systems back to the MoL and proposed to disband the CLMBs that the NLC had succeeded in setting up in 44 of the 47 counties. This morphed into a 2016 "Omnibus Bill" that reformers saw as undermining devolution and a complete claw-back of powers by the former Ministry of Lands (Klopp and Lumumba, 2016). It was passed by the National Assembly but stopped in the Senate in June 2015. This legislation later passed the Senate and was signed by the president in August 2016, just two weeks before the constitutionally-mandated deadline for passage of this enabling legislation (Bassett 2015).

As noted by D'Arcy and Cornell (2015), political goodwill especially by Kenyatta's presidency has been lacking and perhaps this is attributed to the findings of the Ndung'u and Waki Commissions' reports that implicated the president's family in illegal land acquisition in the Kenyan Coast and in the Rift Valley in the 1960s and 1970s. Efforts to actualize the mandate of the National Land Commission under Kenyatta's regime in addressing long standing land injustices in Kenya have been unsuccessful. For instance, In Narok County, the NLC has never touched on the most contested and electorally-charged issues involving the Mau Complex settlements despite having enormous climatic impact to Kenya and the various East African states (Boone et.al 2016). Based on the preceding discussions, it is evident that while there is a new constitution as well as requisite laws and legal framework, the lack of political goodwill under Uhuru Kenyatta's regime has been a great setback in ensuring that past historical injustices related to land are fully addressed in Kenya.

4. CONCLUSION AND RECOMMENDATION

From the forgoing discussion, land politics have characterized political discourse of all the regimes since Kenya's independence, with the first two regimes (Jomo Kenyatta and Daniel Arap Moi) allocating land as patronage to their close cronies and ethnic constituents in exchange for political loyalty. While efforts were made by Mwai Kibaki regime to address land historical injustices through enactment of land policies as well as entrenchment of land laws in the 2010 Constitution, there has been a lack of political goodwill under the Uhuru Kenyatta's administration to implement the new land laws and the Constitution. While the powers of the National Land Commission continues to be mutilated and such powers transferred back to Ministry of Lands controlled by the executive arm of government, addressing past historical injustices on land in Kenya remains elusive. Given the potential that land has to trigger ethnic violence as witnessed since Kenya's independence, the author recommends for executive unwavering support to the established institutional and legal framework under the 2010 Constitution as well as implementation of the various land laws to address the historical land injustices.

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