

# LAND TENURE AND VIOLENT CONFLICT IN KENYA

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December 2008

## Introduction

Until recently, it had become common to describe Kenya as “an island of stability in an otherwise unstable region.” The violence which followed the disputed results of Kenya’s December 27th general elections therefore surprised many people due to the speed at which it spread across many parts of the country. However, a wide-ranging and historical perspective reveals that the relative stability which has generally been experienced by the economic ‘centre’ in Kenya is not necessarily enjoyed by the ‘periphery’.<sup>1</sup> Kenya is a society characterised by deeply embedded structural violence, due to deeply unequal and dysfunctional legal, political, social and economic structures, which prevent the majority of Kenyans from achieving their full potential.<sup>2</sup> Of course, certain levels of conflict are endemic to all societies. The key issue is whether, and how, these tensions can be managed through transformative processes in the political, economic and social spheres.

Land tenure institutions, along with related property rights regimes governing natural resources, form the foundations of structural violence. Land tenure systems have complex interactions with the social, environmental, economic, legal and political spheres, and its access to land has emotional and spiritual aspects. Often, decision-makers tend to focus solely on the legal aspects, and conceptualise land primarily as an economic resource, leading to major problems related to local ‘appropriateness’, legitimacy, and implementation.

Due to the importance of land for livelihoods and identity in Africa, governance of land is at the heart of the state-society relationship. This policy brief traces the history of land tenure in Kenya, especially as it relates to the areas most affected by the recent post-election violence.

It is important to recognise that not all post-election violence was linked to disputes over land tenure. In a context in which discussions of land-related grievances have become increasingly politicised and divisive, ACTS’ research proceeds from an established independent and impartial viewpoint.<sup>3</sup> This policy brief is part of the inception phase of a new project on Land Tenure and Violent Conflict in Kenya. In its second phase, the project will examine specific land conflicts in several parts of the country, look into the policy and legal frameworks regarding land tenure and population displacement at regional and international levels, and will develop specific policy recommendations to assist the Government of Kenya and its international development partners to address the links between land tenure issues and violent conflict.

## A Long History of Land-related Injustice

A historical analysis of conflict over resources in Kenya, and the role of the state, suggests that there are continuities, as well as changes, from the colonial period to the present.

The concept that land in Kenya was ‘terra nullius’ (vacant land), and its citizens ‘tenants at the will of the crown’, was at the heart of colonial land tenure system.<sup>4</sup> According to

this morally abhorrent argument, Africans did not have legal ownership rights to the land they customarily owned; instead, they had only user rights. Native Lands Trust Boards were established to manage African affairs in the ‘Reserves’. The Boards established a paternalistic and very much ‘top down’ approach to land administration, which persists to this day.<sup>5</sup> This paradigm of dispossession and disenfranchisement has been fundamental to the history of land tenure in Kenya.

Land was alienated from customary systems, usually without compensation, for the use of white settlers, who relied on African labour. Africans were restricted to “native reserves” which formed the basis of ethnically-defined administrative units, which are the precursors of today’s districts and locations. By 1934, European settlers, who represented less than a quarter of one percent of the population at that time, controlled about a third of the arable land in the country.<sup>6</sup>

Every ethnic group in Kenya experienced land losses, though some communities lost more than others. For example, in 1904 the Maasai were moved from their preferred grazing grounds in the central Rift Valley, to two ‘reserves’, and then in 1911 one of these reserves was again moved, against the wishes of the pastoralists.<sup>7</sup> The Maasai lost more than half of their customary territory.<sup>8</sup> The Kikuyu were another community hard hit by excisions of land, such as the 60,000 hectares converted to European coffee farms in Kiambu. This was exacerbated by the particular speed of commercialization of the Kikuyu economy, which soon led to the emergence of a wealthy landowning

class, to the detriment of larger land-poor and landless classes.<sup>9</sup> On the 10-mile coastal strip, the colonial regimes recognised the claims of the Sultan of Zanzibar. Only his 'subjects' – mainly those with some ancestral links outside Kenya – could register land. This meant that up to 25% of the indigenous 'mijikenda' population were turned into landless 'squatters,' unable to register the land that they had lived on for generations.<sup>10</sup>

Customary land ownership in Kenya was not 'individual' (or 'communal') but rather involved a mixture of personal, familial and economic relationships.<sup>11</sup> The British colonial regime attempted to codify customary land tenure systems, a process of simplification and misinterpretation which was often divisive at the local level.<sup>12</sup> While customary rights remained unregistered, the colonial authorities established a system which allowed only for the registration of individual title. The 1954 'Swynnerton' Plan for the Reform of African Land Tenure became the fundamental blueprint for many of the land tenure reforms which have been implemented to date. A process of land adjudication, consolidation and registration, which has covered much of the arable land in the country, has resulted in heads-of-household being granted individual rights to land, often at the expense of the rights of female relatives and those with customary rights of use or tenancy. Collective forms of tenure, which would have more appropriately reflected the existing local tenure systems, were not supported by legislation and land could not be registered collectively. The effects of alienation of land from customary systems and the possible links to violent conflict are profound, and cannot be gauged purely by economic criteria. For many Kenyans, the undermining of traditional land usages has "cut the heart out of their way of life."<sup>13</sup>

### Land and Conflict in the Colonial Period: Mau Mau and Land

Massive seizures of Kikuyu land and the forced displacement of 'labourers' for settler production were major factors in the Mau-Mau revolt.<sup>14</sup> The Mau Mau leadership stated that, "We are fighting for all land stolen from us by the Crown

through its Orders in Council of 1915, according to which Africans have been evicted from the Kenya Highlands...."<sup>15</sup> One of the reactions of the Colonial regime to the revolt was to round up tens of thousands of Kenyans, mainly Kikuyu, Embu and Meru families who were living outside of their home areas, and forcibly move them to the 'reserves.' Meanwhile, between March 1954 and the end of 1956, the government ordered the confiscation of land belonging to a total of 3,533 suspected Mau Mau militants, of whom between 25% and 50% were found to be already landless.<sup>16</sup> The counter-insurgency strategy of forced 'villagization,' under which over a million people were concentrated into 845 villages, was a direct source of inspiration for the land consolidation programme in Kikuyu areas.<sup>17</sup> Unsurprisingly, those local leaders loyal to the authorities managed the consolidation exercise and appropriated land for themselves during the process. The end result was a significant increase in the numbers of landless Kikuyu.<sup>18</sup> Many of them were forced to move elsewhere within the country in order to look for land, and to remove themselves from local conflicts stemming from the divisive impacts of colonialism on Kikuyu communities.

### Land Policies at Independence

At the Lancaster House negotiations which established the political basis for Independence, the UK Government pressured Kenya to accept a 'willing buyer, willing seller' approach to question of white settler farms and ranches, and a relatively small financial contribution from the UK government.<sup>19</sup> Jomo Kenyatta's group acquiesced, despite pressure from some communities, and many former Mau Mau militants, to refuse. The land issue was at the heart of politics at this time, and a key difference in the political platforms of the two emergent political parties, the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU), was that KADU advocated *majimbo*, a form of federalism. Under this arrangement, regional assemblies would oversee the administration of land matters.<sup>20</sup> Politicians have warned that extreme interpretations of "majimbo" would benefit local 'sons of the soil'

rather than 'immigrants' and amount to "ethnic balkanisation" of the country.<sup>21</sup>

Immediately prior to Independence, there were fears that the landless would reassert the land redistribution aims of Mau Mau. A programme of settlement schemes, including the 'Million Acre Scheme', was established in 1962 to defuse tensions and ensure that the colonial land-holding structure – dominated as it was by large farms – could be preserved more-or-less intact, without a radical redistribution taking place.<sup>22</sup> The scheme was designed more to aid those Europeans who wanted to leave the country, than those indigenous Africans who received the land.<sup>23</sup>

By 1977, about 95% of the former "white highlands" had been transferred to black African ownership. Settlement schemes, which were often located on the site of former 'white settler' farms, generally benefited those with some capital, rather than the poor and landless. The 'high density' settlements provided some access to land for landless households, but the poor quality land and scarce extension services made a "sham" of the ostensible aim of enabling landless households to succeed economically.<sup>24</sup> In the case of settlement schemes established in the late 1970s and 1980s there was extensive corruption.<sup>25</sup> Elites with political connections soon accumulated very large landholdings, through legal and illegal means. However, a large landless or land-poor population, including former Mau Mau militants, remained without land or compensation for colonial-era alienations. By 1990 it was estimated that some 10% of Kenya's population was landless, though accurately determining the exact number has proven difficult.<sup>26</sup>

The fundamentals of the colonial land tenure system, especially the very unequal relationship between statutory and customary tenure, the importance of *de facto* ethno-territorial units, the unaccountable powers of the executive over land, and state controls over 'Trustland', remained in place after Independence. Kenyan scholars have persuasively argued that this continuity is in contradiction to the objectives of the struggle for decolonisation.<sup>27</sup>

Broadly speaking, there are three categories of land recognised by statutory

law in Kenya. **Firstly**, most of the high potential agricultural areas have been completely adjudicated and registered as private freehold land. More land is coming under freehold as a continuous process of adjudication and titling alienates land from customary controls. Titling benefits the title-holder, but tends to result in the dispossession of so-called 'secondary' or 'derived' rights holders. Titling tends to disproportionately benefit men to the detriment of women. **Secondly**, most of what was known as 'crown land' during the colonial era was categorised after Independence as government land, including the ancestral lands of many communities. The Government Lands Act does not protect the public interest as regards the stewardship or utilization of these lands.<sup>28</sup> The President is legally empowered to make 'grants' of unalienated government land, including for auction. Land can therefore be alienated from customary ownership and sold on the open market. The management of the **third** main category of land, trust lands, has been particularly problematic. Management responsibilities are vested in County Councils and the Commissioner of Lands. Consultation with local communities is minimal, and there have been many outright legal abuses, and more generally a systematic prioritization of economic, rather than social objectives, to the detriment of local livelihoods. It is significant that the districts with the highest percentage of alienated government or trust land are Kajiado, Laikipia, Trans Nzoia, Uasin Gishu, Nakuru and Kwale - all these have seen violence over the past 15 years.<sup>29</sup>

### Migration and Settlement within Kenya

**The Constitution of Kenya protects citizens' rights to move and settle anywhere in the country. Those farm labourers who had worked on settler farms outside of their home areas, and had become 'squatters', tried to buy plots in the ex-settler farms. The settlement programme was explicitly designed along ethnic lines, and resulted in the consolidation of ethnic homogeneity in many areas.**<sup>30</sup> Evidence shows that members of the Kikuyu community were able to gain access to resettlement schemes across the country,

in Coast Province, Rift Valley Province, and other locations.<sup>31</sup> There were 'push' and 'pull' factors involved in this. As a community, they were land-poor because of colonial confiscation of land, consolidation policies, and population growth. Some two-thirds of all squatters in the country were Kikuyu.<sup>32</sup> At the same time, some households were politically and economically positioned to raise capital.<sup>33</sup> Many invested in land-buying companies. Given the key role of powerful Kikuyu politicians within Kenyatta's government, ethnic favouritism and political patronage also played an important role, as did out-and-out corruption.

More generally, within areas held under 'common property' tenure systems, adjudication of customary land, and group-ranch legislation in Maasai areas, led to the individualisation and sale of plots, often to 'incomers'. Significant numbers of smallholder farmers therefore moved into environmentally fragile drylands, particularly in Rift Valley Province. This has led to land-use conflicts, competition over water sources, and environmental degradation.

By 1989, immediately before the re-introduction of multi-partyism, 'incomers' comprised 35% of the Rift Valley population. Experts have estimated that some 95 percent of recent violence in the Rift Valley has occurred in areas where settlement schemes are located.<sup>34</sup>

The reality of migration, land acquisition and historical displacement is highly complex. Unfortunately, over-generalisations are common. Some actors who favour the status quo continue to emphasise 'sanctity of title', ignoring corruption, political favouritism and other problematic aspects related to 'migration' and land acquisition. Conversely, other stakeholders only draw attention to the issue of ethnic patronage and irregular acquisition, forgetting that many migrants are invested all the money that they possessed to gain a title deed, as they were legally entitled to do, and ignoring the role of 'indigenous' local leaders who contributed to and benefited from the corrupt allocation of land.<sup>35</sup> Indeed, many of those gaining political leverage from the land question are themselves owners of huge farms and ranches, acquired in dubious

circumstances. In addition, there is a tendency to look only at the collective effects of 'migration' and forget that this collective impact is the result of rational economic choices made by individuals and households. 'History' is (re)constructed and reinterpreted, often in politically expedient ways, and "social memory" becomes liable to become stuck in a rut of cliché and stereotype.<sup>36</sup>

### Recent Political Violence and Contested Claims to Land

The post-election violence that affected Kenya in the first months of 2008 took on different forms, and a number of different dynamics can be discerned. The timing of the violence – with incidents occurring "within minutes" of the announcement of the election results – demonstrates the clear link to national-level politics, and in particular accusations of electoral fraud.<sup>37</sup> In cases where politicians attempted to restrain the members of their ethnic community from committing violence, less conflict tended to occur.<sup>38</sup> In cases where politicians and administrators failed to intervene or worse, encouraged violence, loss of life and destruction of property was particularly severe. Whilst some of the violence appeared to be spontaneous<sup>39</sup>, there are reports of prior organization and planning. Indeed, some 'migrants' had been threatened with eviction during the constitutional referendum campaign in 2005.<sup>40</sup> The head of the National Security Intelligence Service (NSIS) reportedly warned other security agencies in late 2007 that, "Indicators for potential violence included cutthroat competition for political offices, unfinished constitutional review business, the Majimbo debate and political zoning"<sup>41</sup> The concept of majimbo, in particular, is of relevance to land as a territorial resource. Majimbo was not fully or officially defined by its proponents in the run-up to the elections, and was easily interpreted as a "get the land back issue" particularly affecting zones of high in-migration, such as the Rift Valley.<sup>42</sup> A Government enquiry into the violence noted that, "there was an expectation of the eviction of non-Kalenjin people from South Rift long before the elections were held... they expected that, as a result of the enforcement of *majimbo*, other communities would have to leave the Rift Valley."<sup>43</sup>

The 2008 violence is exceptional only in its geographical spread. All elections held since multi-party-ism was re-introduced in Kenya have been associated with violence and population displacement, except the 2002 elections. Even prior to Independence in 1963, 'immigrants' living in the Rift Valley were threatened with 'eviction', by force if necessary.<sup>44</sup> In 1991, much of the violence was centred around farms which were formerly part of the so-called 'white highlands', land appropriated from those communities who customarily owned and occupied it by the colonial government for white settler farming. As described above, it was not restituted to local communities but rather sold, or turned into settlement schemes. Those communities who had customarily owned the land generally did not have access to the farms, or refused to purchase land which they saw as customarily belonging to them. They argue that the land remains their customary communal property.

This led to a situation where the households who purchased the land were seen as 'immigrants.' Mitetei farm in Tinderet division, Nandi District, provides an example: purchased by members of the Kikuyu, Kamba, Luhya, Luo and Kisii communities, it is located in a traditionally Kalenjin area. Some local Kalenjin argued that they should also receive shares in the farm, leading to a dispute in which the local authorities took the side of the Kalenjin, because of ethnic affiliations and party politics.<sup>45</sup> This farm was the scene of attacks by Kalenjin in October, 1991, causing all non-Kalenjin occupiers to flee. In or about June, 1992, the farm was surveyed and title deeds were issued to local Kalenjin people, who refused to reimburse the IDPs for the cost of their shares, arguing that it was 'rent' for land which really belonged to Kalenjin.<sup>46</sup> In Kericho District, youths were reportedly promised "jobs and land" in return for participating in attacks on "immigrant" communities and their property. Parts of Nakuru district, which has a large "immigrant" population, were also affected, particularly Molo, Njoro and Olenguruone.<sup>47</sup> Incidents like these

led the judicial commission which investigated the so-called tribal clashes to conclude that land was one of three principle causes for the clashes.<sup>48</sup> In 1997 and 2008, violence again centred around areas where so-called "immigrant" groups were located. For many of those displaced in 2008, it was their third or fourth experience of displacement.<sup>49</sup>

The violence in Mt Elgon District, in Western Kenya, differed from that seen in other parts of Kenya due to the pre-existence of a militia group, the Sabaot Lands Defence Force (SLDF), since 2006. In the run-up to the elections in December 2007, the violence became increasingly linked to national party politics. The military embarked on a violent large-scale operation against the SLDF in March 2008, resulting in many fatalities.<sup>50</sup> The military operation has resulted in relative security being restored to the area, but is unclear whether this military solution to what is essentially a socio-economic and legal problem will have sustainable results, due to the lack of attention being paid to the underlying land disputes. The SLDF is not unique in Kenya. In Coast Province, a militia group known as the Mombasa Revolutionary Republican Council was broken up by security forces in 2007. Its aim was to "disenfranchise upcountry people and later reclaim land owned by perceived outsiders".<sup>51</sup> Other militia, often linked to politicians and criminal networks, exist in Kenya though their relation to the question of land tenure is complex.

It is clear that forced population displacement fulfils several goals. First, it allows local communities or attackers to use, 'grab' (on a permanent or temporary basis) or buy the land (at an artificially low rate). A government enquiry into the violence reported that in parts of the Rift Valley, armed youths were allegedly going to be used to prevent internally displaced individuals from returning to their farms and to raise funds to purchase land at "throwaway prices." To achieve this, the displaced would be prevented from returning, and local people were warned that anyone who paid a price beyond 10,000/- per acre for land belonging to

an IDP would have their house burnt down.<sup>52</sup> Victims of violence around Eldoret have recently complained that they are being offered only half the market value for their land .<sup>53</sup>

Forced population displacement also fulfils direct political goals. Because Kenyans are perceived to vote according to ethnic loyalties, evicting people of a particular ethnicity before an election is a means of altering the election results. The resulting homogenous zone is a political resource used by power-brokers and strongmen to bargain for power with key political actors.<sup>54</sup> There are also economic factors involved – competition for jobs or market access is often fierce. All of these factors can be part of an ideology of "collective punishment" for perceived 'crimes' by members of particular ethnic groups.

## Conclusion

**This policy brief has attempted to provide a broad overview of the land question in Kenya. It has shown the legacy of colonial policies and the complexity of the issues involved, and the dangers of ethnic stereotyping. Observers have noted that progressive narratives of historical displacement and land loss that avoid the temptations of over-generalization and ethnic chauvinism would, "include notions of citizenship, of plurality, of limited choices and public interest, but without abandoning the central themes of redress, of justice with reconciliation."**<sup>55</sup>

As noted by one of Kenya's most celebrated land experts, a fragmentary approach to land reform is unlikely to resolve the land question.<sup>56</sup> A draft Land Policy was finalized in 2007, through a wide-ranging consultative process. The draft Land Policy represents an opportunity to implement the fundamental land tenure reforms that are necessary in order to rid Kenya of much of its colonial baggage and to place responsibility for decision-making over land much closer to the communities who depend upon access to land for their livelihoods. Land tenure systems depend upon

social acceptance and cannot simply be imposed from above, as has been the case throughout Kenya's history. The draft policy has a number of useful aspects which, if implemented effectively, could result in the fundamental reform of the land tenure system. Key aspects of the land policy include a special mechanism which will be established to address historical land injustices, the repeal of the Trust Lands Act and the establishment of a new category of 'community land', improvements to the land registry system to reduce confusion and corruption, de-concentration of powers from the Presidency to a proposed National Land Commission, restrictions on holding idle land for speculation, and environmentally-conscious land use policies which would reduce land degradation and conflict over competing land uses. The Ministry of Lands has initiated a public awareness programme on the draft land policy. However, there remain major political obstacles to the promulgation and implementation of the policy, which will require amendments to the Kenyan constitution. In addition, the policy is a framework document, and many aspects will need to be clarified.<sup>57</sup> It will require a great deal of expertise, innovation and determination to design appropriate mechanisms which can make its broad policy statement manifest as facts on the ground.

In order to overcome the cumulative effect of a century of unjust and semi-dysfunctional land governance, a critical mass of technical, financial and popular support amongst key stakeholders will have to be mustered and maintained. Local communities are central to this effort, and other key stakeholders include civil society groups, legislators, and international development partners.

### Notes

1 The centre-periphery metaphor reflects the geography of the country to some extent (with the far North enjoying little in the way of development or security), but it should also be noted that even Nairobi, the centre of political

power, encompasses numerous informal settlements and other low-income areas where violence is not uncommon.

2 According to Galtung, one of the chief theorists of structural violence, "violence is present when human beings are influenced so that their actual somatic and mental realisations are below their potential realisations." J. Galtung, "Violence, Peace and Peace Research" *Journal of Peace Research*, Vol.3 (1969) pp. 167-191.

3 Key ACTS publications on land and/or conflict include Okoth-Ogendo, H.W.O. *Tenants of the Crown: Evolution of agrarian law and institutions in Kenya*. ACTS Press, 1991; Okoth-Ogendo, H.W.O., Tumushabe, Godber W. (eds) *Governing the Environment: Political Change and Natural Resources Management in Eastern and Southern Africa*. ACTS Press, 1999; Lind, J and Sturman, K (eds.) *Scarcity and Surfeit: The Ecology of Africa's Conflicts*, ACTS Press, Nairobi / Institute for Security Studies, Pretoria. 2002; Huggins, C and Clover, J. (eds) *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa*. African Centre for Technology Studies, Institute for Security Studies (South Africa), 2005

4 Okoth-Ogendo, H.W.O. (1991)

5 Wanjala, S. *Land and Resource Tenure, Policies and Laws: a Perspective from East Africa*. Paper prepared for the Pan-African Programme on Land and Resource Rights (PAPLRR) inaugural workshop, Cairo, Egypt 25 - 26 March 2002

6 Berman, B. *Control and Crisis in Colonial Kenya : the Dialectic of Domination*. James Currey Publishers. 1990. Pg 189 note 18

7 The 1911 moves was a violation of the 1904 Treaty between the British government and the Maasai. See Hughes, Lotte. "Rough Time in Paradise: Claims, Blames and Memory Making Around Some

Protected Areas in Kenya" in *Conservation and Society*, 5 (3), 2007

8 Hughes (2007). The exact figure is difficult to calculate because Maasai occupation and use prior to 1904 was not fully documented.

9 Berman (1990) pg. 227

10 Kanyinga, K. *Struggles of Access to land. The 'Squatter Question' in Coastal Kenya*. Danish Institute for International Studies. CDR Working Paper 98.7, June 1998

11 Leo, C. *Land and Class in Kenya*. Toronto and London: University of Toronto Press, 1984. Chapter 2

12 For a more detailed discussion of customary land tenure systems in Kenya see e.g. H.W.O. *Tenants of the Crown: Evolution of agrarian law and institutions in Kenya*. ACTS Press, 1991; Pottier, J. 'Customary land tenure' in Sub-Saharan Africa today: Meanings and contexts' in Huggins, C and Clover, J. (eds) 2005; Mackenzie, F. *Land, Ecology, and Resistance in Kenya, 1880-1952*. Portsmouth: Heinemann, 1998

13 Leo (1984)Pg 32

14 However, it is important to state that the Mau Mau was not only concerned with land – its concerns and its goals broadened considerably as the movement developed. While the massive impoverishment that resulted from the British land seizures and labour policies was certainly a key source of grievance and a motivating factor for those who went 'into the forest' to join the Mau Mau, the movement clearly had a nationalist ideology that went beyond securing purely economic gains.

15 Cited in Mazrui, A. "Ideology, theory, and revolution: lessons from the Mau Mau of Kenya". *Monthly Review*, Sept, 1987

16 Berman (1990) pg. 365

17 Berman (1990) pg. 366

18 Mauhan-Brown, D. *Land, Freedom and Fiction: History and Ideology in Kenya*. Zed Books, 1985. pg. 186

- 19 The payment of 9.6 million GBP was far less than most estimates of Britain's financial responsibility. Leo (1984) pg. 91
- 20 Kanyinga (1998). Many sources suggest that the impetus for regionalism was formulated or at least encouraged by European politicians. See e.g. Leo (1984) pg. 90
- 21 Raila Odinga's statements reported in the Daily Nation of August 14, 1994, cited in Oucho, J. *Undercurrents of Ethnic Conflict in Kenya*. Brill Publishers. 2002
- 22 Mauhan-Brown (1985)
- 23 Leo (1984) pg. 141
- 24 *Ibid.*
- 25 Report of the Commission of Inquiry into Illegally and Irregular Allocation of Public Land, 2005 (commonly known as the Ndung'u Report)
- 26 Rutten, M. 'Land reform in Africa : lessons from Kenya' In: A.L. Naerssen ; M.M.E.M. Rutten ; A. Zoomers (eds.) *The diversity of development : essays in honour of Jan Kleinpenning*, Assen: Van Gorcum, 1997.
- 27 Kanyinga, K. *The Land Question and Sustainable Development in a Historical Perspective in Kenya*. Working Paper, Southern Africa Institute for Agrarian Studies. 2005
- 28 Aggarwal, S. and Thouless, C. *Land Tenure and Property Rights Assessment: The Northern Rangeland and Coastal Conservation programmes of USAID/Kenya*. ARD, 2008
- 29 Kimenyi and Ndung'u (2007) "Sporadic Ethnic Violence: Why has Kenya not experienced a full-blown civil war?" in P. Collier and N. Sambanis (eds), *Understanding Civil War (Vol. 1: Africa)*, World Bank: Washington, D.C., 2005.
- 30 Leo (1984) Pg 111
- 31 Kanyinga (2005)
- 32 Leo, C. *Land and Class in Kenya*. Toronto and London: University of Toronto Press, 1984, cited in Oucho (2002)
- 33 Brown, Stephen, "Quiet Diplomacy and Recurring "Ethnic Clashes" in Kenya", in in Chandra Lekha Sriram and Karin Wermester, eds. *From Promise to Practice: Strengthening UN Capacities for the Prevention of Violent Conflict* (Boulder: Lynne Rienner, 2003)
- 34 Interview with David Anderson, cited in Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance*. 2008
- 35 Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance*. 2008
- 36 Hughes (2007)
- 37 Kenya National Commission on Human Rights, *On the Brink of the Precipice: a Human Rights account of Kenya's post 2007 Election Violence*. Nairobi. 2008. pg. 7
- 38 Kenya National Commission on Human Rights (2008) pg. 10
- 39 Interviews, Nairobi, September 30, 2008
- 40 Report of the Commission of Inquiry into Post-Election Violence (2008) (commonly known as the Waki Commission) pg 57
- 41 Ombati C. and B. Omanga. "We forewarned authorities over post-election violence, Gichangi tells Waki team". *East African Standard*, July 18, 2008
- 42 Kenya National Commission on Human Rights (2008) pg. 10; Waki Commission Report pg 41
- 43 Waki Commission Report pg 136
- 44 Kanyinga (2005)
- 45 The Kalenjin were seen as supporters of the governing party, KANU and incumbent President Moi.
- 46 Akiwumi, A. M. *Report of the Judicial Commission Appointed to Inquire in Tribal Clashes in Kenya*. 1999 (released 2002) chapter 1 pg. 7
- 47 Kimenyi and Ndung'u (2007)
- 48 Akiwumi (1999) chapter 1 pg. 9
- 49 Klopp, J. and P. Kamungi. *The Politics of Displacement in Kenya*. 2008
- 50 See Human Rights Watch, *All the Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict*. New York/Nairobi. 2008
- 51 Waki Commission Report pg 222
- 52 Waki Commission Report pg 72
- 53 Odunga, D. "Poll chaos victims seek help to sell land at market prices". *Daily Nation*, Nairobi, Nov 21, 2008
- 54 Klopp and Kamungi (2008)
- 55 Walker, C. "Relocating restitution". *Transformation* 44, 2000.
- 56 Okoth-Ogendo, H.W.O. *The Last Colonial Question: an essay in the pathology of land administration systems in Africa*. Keynote presentation at a Workshop on Norwegian Land Tools Relevant to Africa, Oslo, Norway, 3-4 may 2007
- 57 For example, the way in which existing Group Ranches will be managed under the new policy. See e.g. Aggarwal and Thouless (2008)

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