

LAND TENURE AND VIOLENT CONFLICT IN KENYA

IN THE CONTEXT OF LOCAL, NATIONAL AND REGIONAL LEGAL AND POLICY FRAMEWORKS

CONSULTATIVE CONFERENCE PROCEEDINGS REPORT



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**Report prepared by Judi Wakhungu
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AFRICAN CENTRE FOR TECHNOLOGY STUDIES

6 October 2008, Hilton Hotel, Nairobi



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The Vision of African Centre for Technology Studies (ACTS) is one of knowledge for better livelihoods. As a think tank in policy research her mission is to strengthen the capacity of African countries and institutions to harness science and technology for sustainable development. ACTS collaborates with governments and many types of public and private institutions to collectively contribute to development and practice of sound policies to promote sustainable development and better living conditions in Sub-Saharan Africa. The specific value-addition that ACTS brings to the policy arena is a science and technology focus for sustainable development, coupled with a wide, ever-growing network of African policy-makers, African governments, regional economic development entities, and African-based public and private institutions and organisations, coupled with experience and recognised leadership.

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Abbreviations & Acronyms

ACTS	African Centre for Technology Studies
CBO	Community Based Organization
CSO	Civil Society Organization
CJPC	Catholic Justice & Peace Commission
GDP	Gross Domestic Product
IDP	Internally Displaced Persons
ISK	Institute of Surveyors of Kenya
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
NARC	National Rainbow Coalition
SLDF	Sabaot Land Defense Force
SW	Saferworld

Introduction

In August 2008, the African Centre for Technology Studies (ACTS) launched the inception phase of a project on *Land Tenure and Violent Conflict in Kenya*. In the aftermath of the early 2008 post-election violence, it became clear that issues related to land tenure were perceived by many experts as key to understanding the root causes and dynamics of conflict. Indeed, the “Kenya National Dialogue and Reconciliation” process identified land reform as key to long-term peace and reconciliation, and the proposed “Truth, Justice and Reconciliation Commission” was mandated to examine historical land injustices, and the illegal or irregular acquisition of land, especially as these relate to conflict or violence.¹ A literature review was conducted, key informants were interviewed, and some preliminary field research was carried out in the Mt. Elgon area. Following these activities, a consultative session was convened in early October to examine the conceptual framework of the project, and to provide feedback on a proposed second phase of activities.

Project Background

The violence which followed the disputed results of Kenya’s December 27th general elections surprised many observers due to the speed at which it spread across many parts of the country. However, the economic and social tensions underpinning the violence have been evident for decades. Kenya is a society characterised by deeply embedded structural violence. According to Galtung, “violence is present when human beings are influenced so that their actual somatic and mental realisations are below their potential realisations”² Structural violence in Kenya manifests itself in anomalous legal, political, social and economic structures. These structures prevent many Kenyans from achieving their full potential. Structural violence if not addressed for prolonged periods of time may eventually lead to physical violence as life in the structure becomes unbearable.³

Land issues are a fundamental aspect of structural conflicts in Kenya but they have also often degenerated into physical violence. The country has witnessed killings before previous elections in both 1992 and 1997, when alleged enemies of the Moi regime became victims of violence, using arguments over the contrasting land rights of ‘immigrants’ and ‘local communities’. Central to land conflicts in Kenya are issues of ownership, access and use. Land has been the crux of economic, cultural and socio-economic change in Kenya. Following years of an inappropriate land tenure system, a large segment of the population continues to have difficulties not only in adapting to the modern agrarian economy but also in coping with the increasingly fragile and marginal environment, land degradation, low agricultural output and intensifying conflicts over access to and control of land.⁴ Inadequate resolution of the land question is also a major cause of poverty in Kenya. Violence over land conflicts has occurred sporadically in different parts of the country, and doubts over the worthiness of land titles almost caused major economic instability a few years ago.

Multiparty elections were introduced in 1992. The incumbent ruling party turned a section of opposition voters into scapegoats, and organised violence against them in ethnically-mixed areas in order to displace potential opposition voters. Poor smallholders living in the Rift Valley bore the brunt of discontent, spurred to varying degrees by members of the administration. Some 1,500 people died in 1992. Violence occurred again following incitement by Kenya African National Union (KANU) politicians during the 1997 elections, and hundreds of thousands of

people were forced from their homes. However, little was done to find long-term solutions to the displacement problem.

IN 2002, KANU leaders resisted the temptation to use violence following the electoral victory of the National Rainbow Coalition (NARC), headed by Mwai Kibaki. Unfortunately, the new government also failed to adequately provide for those who had been displaced in political violence, many of whom continued to live in terrible conditions. In 2003, the government stated its intention to identify land for settlement of victims who were unwilling to return to their stolen lands. This was never achieved. Meanwhile, tensions over land tenure in the slums resulted in violent clashes between gangs, or between gangs and the police.

The NARC government commissioned an inquiry into illegal allocation of land, known as the “Ndung’u Commission”, which recommended that the ultimate responsibility for land rests with a National Land Commission, rather than the President, and that a review of land titles be initiated, due to the huge number of irregular or illegal Deeds in existence. The findings of the Commission were largely welcomed. However, most of the report’s recommendations were ignored. While the fundamental and systemic aspects of the land problems identified by the Commission’s report have been left to fester, evictions of communities from ‘gazetted’ (protected) forest areas have been implemented with excess force and without resettlement of many of those evicted. In some cases, evictions exacerbated local ethnic and political tensions. Prior to the 2008 violence, groups such as the Sabaot Lands Defence Force (SLDF) killed over 150 people and displaced tens of thousands around Mt. Elgon. In the run-up to the elections in December 2007, the tensions became increasingly politicized. The military embarked on a violent large-scale operation against the SLDF in March 2008, resulting in many fatalities. But it is unlikely that these one-off operations will have sustainable results because they do not address the underlying causes of the land disputes. Thus attempts to deal with land conflicts in Kenya have continued to maintain a tenuous status quo rather than resolve the structural problems.

Land, like other natural resources, always contains a potential for physical violence especially in conditions where distribution is skewed. Homer-Dixon distinguishes between three forms of resource scarcity: demand-induced scarcity arising from population growth; supply-induced scarcity resulting from the depletion or degradation of a resource; and structural scarcity which originates from the distribution of a particular resource.⁵ Kenya’s land conflicts have been fundamentally informed by structural scarcity. Land ownership, access and use have been skewed since colonial times. Post-independence regimes exacerbated the problem through the excessive centralisation of power in the executive branch of government thereby largely reinforcing the structural anomalies of the colonial period. Given that Kenya is still largely an agrarian society, land has vital consequences for social-political organisation. In the year 2007, for example, agriculture and forestry contributed 22.7% of Gross Domestic Product (GDP), the largest contribution of an individual sector.⁶

The inability to adequately address the land question has implied that the basic needs of significant proportion of the Kenyan population are not met. The whole basis of law and order are likely to be threatened in situations where basic needs are frustrated since such needs are universal motivations.⁷ Given the linkages between human needs and violent conflict, the land question in Kenya is likely to continue to lead to violence unless its root causes are addressed. The land question will therefore remain high on Kenya’s political and development agenda. The nature and characteristics of the issues surrounding land are intricately intertwined with the country’s history and have been shaped by political and economic developments from the colonial period to the present.⁸

Project Rationale

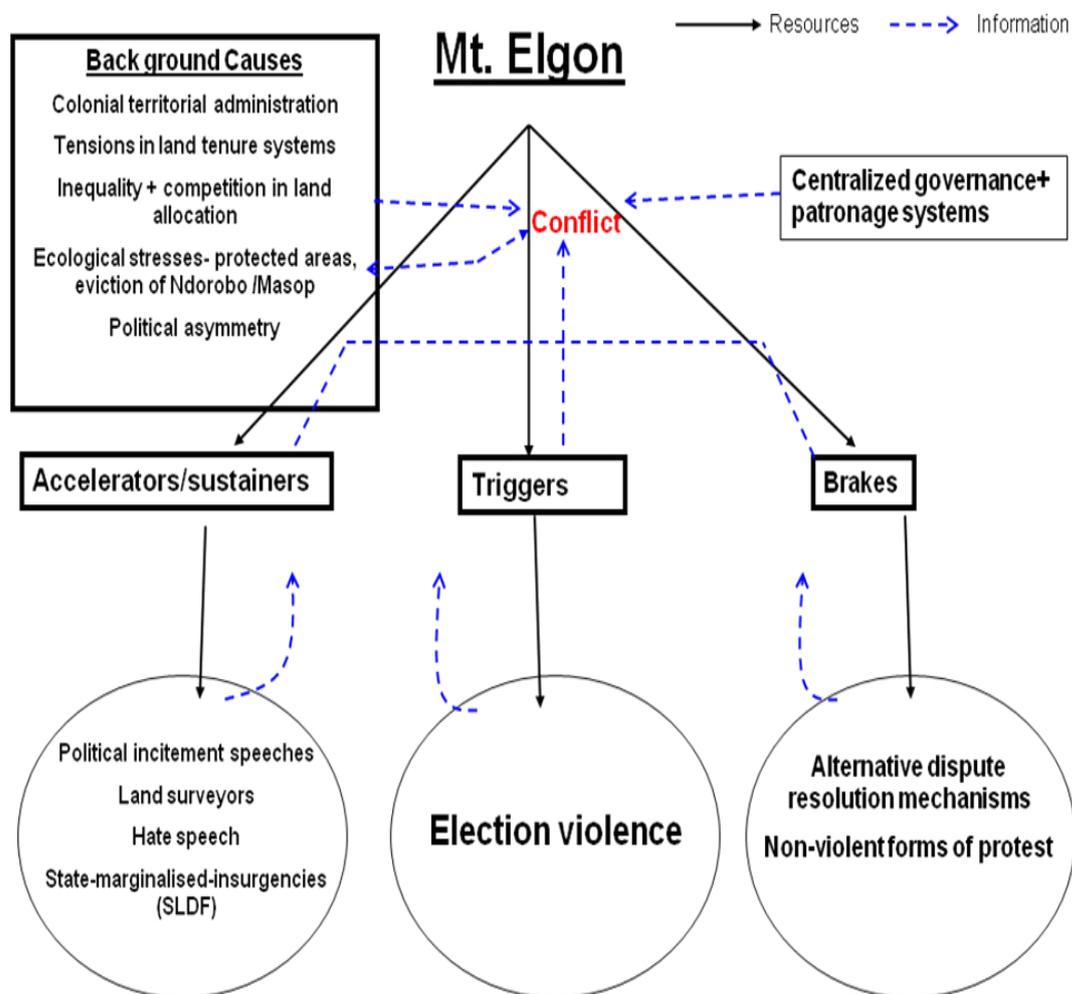
Despite its long experience with land reforms (especially adjudication and titling programmes), little effort has been made to design innovative land rights systems and complimentary institutional structures for the country. Issues related to land rights still remain the root causes of conflict in Kenya, and the country is unlikely to be free from tension or violence until these are addressed. In general terms therefore, not much has changed since 1938 even though a great deal of policy analysis and development has occurred. Furthermore, clear recognition has been given to the centrality of land policies in the management of sustainable development paradigms in Africa. For this reason, demands for reform will continue.

A number of organizations, from United Nations (UN) agencies to community-based organizations (CBOs), have in some way dealt with the issue of the housing and land problems arising from violence in Kenya. The majority of these efforts focused on the immediate challenges related to population displacement, with a focus on humanitarian assistance for displaced households, advocacy for the internally displaced persons' (IDPs) 'right to choose' whether to return to their houses and farms or whether to be resettled elsewhere, or reconciliation in conflict-affected areas in order to reduce the risk of renewed land-related violence. Some initiatives, often led by local human rights activists, focus on specific land disputes in particular parts of the country.⁹

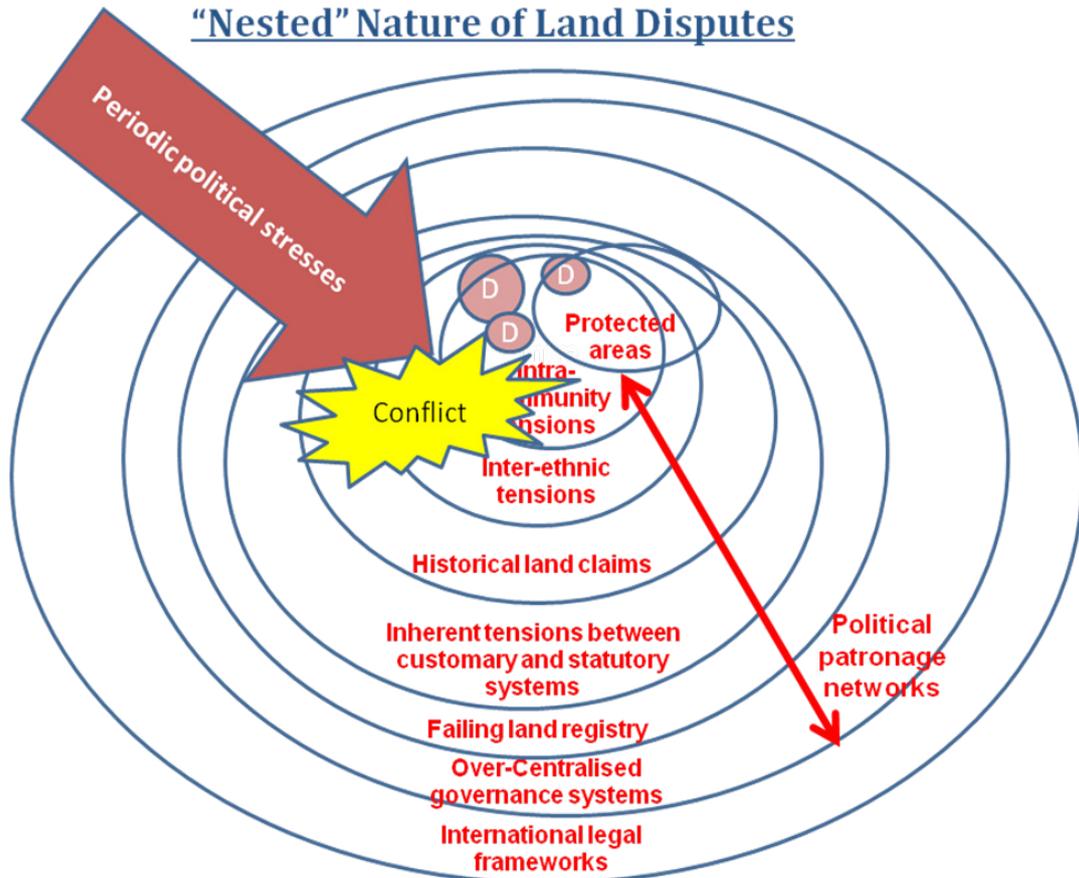
Most, if not all the major investigations into the violence have identified land issues as one of the root causes. However, relatively few efforts are being made to comprehensively analyse the role of contested conceptions of land tenure in recent violence across the country. Fewer still offer a useful contextualization of land-related violence within the existing interconnected laws and policies on land rights at the local, national and international levels. At the local level, customary land tenure regimes are in operation and form an important part of local people's conceptions of 'land rights' even as they are contradicted or curtailed by local bye-laws. At the national level, the existing land policies, laws, and administration systems are generally agreed to have been undermined by corruption and to be difficult, if not impossible, to implement. For this reason, efforts have been underway during the last few years to develop a new land policy, and various stakeholders (from major financial institutions to professional associations such as ISK) have called for radical changes to the present titling system. At the regional level, the UN Pact on Security, Stability and Development in the Great Lakes Region Conference, with its protocols on Property Rights and Protection and Assistance to IDPs obliges states "to adopt and implement the Guiding Principles as a regional framework for providing protection and assistance to IDPs in the Great Lakes Region", to "use the 'Annotations of the Guiding Principles on Internal Displacement'" as an authoritative source for interpreting the application of the Guiding Principles" and to "enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems".¹⁰

Presentation on Land Tenure and Violent Conflict in Kenya: Conceptual Models

Elvin Nyukuri



“Nested” Nature of Land Disputes



As can be seen from the diagram above, land conflicts are not isolated, but are linked to systemic disputes and tensions. Land conflicts are therefore best conceptualised as ‘nested’ within larger conflicts or tensions. The concentric circles in the diagram illustrate how the ‘local’ issue of land disputes in Mt. Elgon, are linked to intra-community tensions and unpopular gazetting of the forest, which are in turn nested within other conflicts. These include between Saboots and other ethnic groups, and between different kinds of land tenure systems. All of these conflicts are characterised by the misuse of political power for personal ends, through de facto patronage networks.

At the highest level, the tensions between state and local norms and international legal standards form a conceptual and legal conflict. Arguably, land disputes cannot be completely resolved without all of these tensions being addressed.

Presentation on Land Tenure and Violent Conflict in Africa: A Brief Overview

Chris Huggins, Consultant, ACTS

Definitions of Terms

In this study, we use the term ‘conflict’ to refer to situations which involve:

- a. significant use of violence; or
- b. disagreements over values, not just over interests

Land tenure systems define how property rights to land are allocated within societies.

Land rights are best conceptualised as bundles of different rights (the right to use, the sell, etc). Several different individuals or corporate groups may have different rights within the ‘bundle’ over the same piece of land, particularly in customary African systems. Under western title-based systems, most rights are vested in a single ‘land owner’. There are strong links between land rights and rights to natural resources found on the land, but these may be separated or limited by the state or society.

Land tenure systems incorporate social, environmental, technical, economic, institutional, legal & political aspects. Often, we tend to focus solely on the legal or technical aspects, leading to major problems related to local ‘appropriateness’, legitimacy, and implementation.

Land tenure systems depend on social acceptance. According to Weber, “Property arrangements are considered legitimate so long as a substantial portion of society believes so & is willing to respect ... the disciplines & burdens of maintaining the status quo.”

Land is often conceptualised primarily as an economic resource, but it has multiple dimensions, including territorial administrative aspects, emotional aspects, and spiritual aspects. For this reason, and due to the importance of land for livelihoods and identity in Africa, governance of land is at the heart of the state-society relationship.

Conflict in Agrarian States

In agrarian states, in which agriculture, livestock production, or other land-based occupations are the main economic activities, less than 10% of landholdings are typically registered in state-administered systems. Often, formal systems function in urban areas but often prove to be unworkable in rural contexts. This occurs for a variety of reasons, including the cost of registration, which is often beyond the means of the poor.

What pertains in such countries then is a situation of legal pluralism: religious, customary, and informal systems compete, interact and overlap with national laws. Citizens access different systems, often simultaneously, to attempt to maximize their claims to land, a phenomenon known as ‘forum shopping’. Generally, the wealthy have access to more systems than the poor, whose land rights are hence less secure.

Historically, African states have suppressed and subverted indigenous land governance structures, but this is slowly changing, as efforts are made to provide customary systems with a legal foundation, or to create new ‘hybrid’ systems. However, in most cases, statutory systems governing land access and use remain essentially undemocratic and remote from the majority of the population.

Many post-colonial agrarian countries inherited extremely skewed patterns of land distribution, including Kenya. Few agrarian states have been able to successfully alter these patterns of land accumulation by an elite, and scarcity amongst the poor. Land has thus been described as the “last colonial question.”¹¹

Given the difficult nature of the interaction between customary and state-run systems, the question ‘who owns the land’ is of massive political importance. It is perhaps not surprising then, that 75% of conflicts over the past 25 years took place in agrarian states.¹²

Drivers of Competition over Land

Competition and violent conflict over land in Africa and elsewhere in the developing world is generally increasing. This is perhaps one of the few points on which most analysts looking at such issues agree. A variety of factors are driving this trend.

Fundamental structural factors include “rapid population growth, environmental degradation, and slow rates of economic development”, all of which put more pressure on rural and peri-urban farmers and livestock-keepers to produce more food on a declining resource-base.¹³ As salaries, particularly in the public sector, fail to keep up with inflation, urbanites look to the land to provide for a second income or security for their retirement, or buy parcels for speculative purposes.

In addition, competition between land uses is an important factor as new conservation areas are demarcated or corporate access to minerals, timber, and other natural resources is privileged by governments over local farming or ranching interests.¹⁴ Particularly in areas under customary tenure systems, problems include, “insecurity of tenure, land subdivision, and informal land markets; land alienation and concentration, combined with externally determined land use changes; and undemocratic systems of local government to adjudicate and administer land disputes”.¹⁵

Conflict and Natural Resources – the ‘Greed’ Hypothesis

A combination of conceptual tools from the political science and economics fields has resulted in a political economy approach to conflict analysis, which has come to be extremely influential. It has proven to be particularly useful in analyses of the role of natural resources, such as timber and non-renewable resources like oil and precious metals, in conflict. Major studies have claimed that countries characterised by resource abundance, measured by primary goods exports, and low Gross Domestic Product (GDP), are more vulnerable to the onset of civil war. Many studies examine the ‘war economy’, and have become associated with the ‘greed’ hypothesis.¹⁶ While the idea that warring parties use violence primarily to further economic agendas is a “familiar theme in the history of warfare”, a significant evolution in thought has been evident over the last decade, when a number of systematic, evidence-based studies on war economies have been published.¹⁷

The ‘greed’ hypothesis was first cogently put forward by Collier and Hoeffler, who essentially argue that in certain situations, violence becomes an opportune way for elites to capture

resource rents. Due to a combination of geographic, demographic, economic and political factors, violent rebellion becomes a rational economic choice, particularly when the state is weak. Much of the theoretical foundations of this work stem from multi-country comparisons of national-level data, rather than micro-level studies.¹⁸ Proponents of this school argue that rebel opportunity to loot natural resources (“greed”) represents the main reasons for civil war. This may be the case, they assert, even when even in cases where rebel movements stress that they are fighting to redress particular political or social injustices. Discourses based on grievance are well-received by international and local stakeholders, and makes recruitment easier. In highlighting the role of ‘lootable resources’ in the mobilisation and maintenance of rebel movements, proponents of the ‘greed’ argument sometimes take an overly narrow view of ‘violence’ and discount the importance of ‘structural violence’.

Agricultural products, livestock, or other land-based economic products (including lease payments) do not figure very highly in the list of ‘conflict resources’. This is because they are not very ‘lootable’. They are not as profitable as commodities such as oil or minerals for example, and as they are ‘dispersed’ resources, they require major overheads and transaction costs to control; compared to ‘point’ resources which are concentrated in localised areas (oil, minerals).

The Grievance Hypothesis

The ‘greed’ school is contrasted with work emphasizing ‘grievances’ which may motivate actors to take up arms. The basic elements of the grievance hypothesis are by no means new, but recent examinations of horizontal inequalities within states (inequality between social, political or ethnic groups rather than the vertical inequality *within* groups) have strengthened theories of ‘relative deprivation’ developed by academics such as Ted Gurr in the 1970s. Studies of boundary-formation between social groups, informed by a range of ideas including anthropological theory and discourse analysis have shown how ideas of horizontal differentiation - “local” and “outsider”, “ally” and “enemy” - are (re)created, sustained, and altered over time. Vertical inequalities within society – which might take on aspects of class formation – are not necessarily strongly associated with organized violence.

Horizontal inequality is more closely associated with conflict because boundaries between groups facilitate the mobilisation violence against the ‘other’. According to proponents of this view, the nature of the indicator itself is less important than the idea of inequality: “What matters is the perception of change in the relative position of each ethnic group’s rival community”.¹⁹ Studies have shown that access to land may be amongst the ‘grievances’ involved in the mobilization of violence. Researchers have argued, for example, that greater landlessness significantly explains the intensity of conflict-related fatalities across different districts in Nepal.²⁰

Gratuitous Violence and Looting

Of those movements which do become organized around particular grievances, many seem unable to control their members or to remain focussed on the core objectives, as articulated. Many armed groups seem to (d)evolve over time, either into loosely-organized mobs of ‘bandits’, or into assassins who seem to be following an ethnic or political agenda unrelated to the original goal.

This is where ‘greed’ theories are often able to isolate particular illicit activities – such as armed robbery, extortion in the name of levying ‘taxes’, or smuggling of resources – which

sustain armed movement's access to guns, food, and various forms of power. By this time, some 'moderates' within the movement, opposed to the widespread use of violence or illicit fundraising activities, will have split from the group or have been killed. The original 'grievance' seems far from the minds of those wielding the local military or political power, and a 'greed' explanation seems more relevant.

However, there are several points of note:

First, the fact that movements have changed over time does not necessarily invalidate the significance of the original grievance which originally allowed the mobilization of money and recruits.

Second, the fact that the initial group has been taken over by purely criminal elements does not mean that the original grievance is forgotten.

Third, given the embedded nature of land conflicts within the socio-political milieu, it is perhaps unsurprising that groups may carry out seemingly unrelated activities. These might be conceptualised either as political tasks forming part of a wider strategy to secure land rights involving important political players, or as forms of 'social banditry'. The idea of the 'social bandit,' who maintains local support despite criminal activities, is contentious.²¹ However, some studies have suggested that specific African 'bandits' can maintain legitimacy associated with local interests, even while engaged in criminal behaviour for personal gain.²²

Preliminary Conclusions

Clearly, the 'greed' and 'grievance' hypothesis are not necessarily mutually exclusive. Given the 'messy' and fluctuating nature of African land conflicts – with multiple actors and multiple issues gaining more or less prominence at different times – there is no single 'meta-narrative' which can hope to explain them completely. Actors involved in conflicts over land may be motivated primarily by grievance, but may also make opportunistic choices to indulge their 'greed'. The wide variety of conflict types (ranging from chaotic localised clashes to prolonged civil wars involving highly structured insurgencies) also means that no single approach will be equally relevant to all conflicts involving land issues in Africa. It is perhaps more important to identify a menu of methodologies, from which several can be selected. The aim will be to result in an analysis which is sufficiently 'textured' to explain singular aspects of the local situation, but coherent and broad enough to generate policy-relevant conclusions.

Several potential tools and perspectives can be identified:

Narratives of conflict and cooperation

Within the land tenure literature, the importance of oral narrative has long been accepted. After all, "narratives play an important, even indispensable role in supporting property claims", especially in claims made under customary tenure systems.²³ Research into conflict has also made some efforts to record oral narratives, particularly of 'victims' of conflict, in order to give a human face to an enterprise that can often seem dehumanising, given its reliance on statistics and specialised terminology. Given the dominance of 'grievance' discourses by elites, it is important to analyse local narratives in order to understand the range of perceptions and nuances at play. The collection of narratives from informants at the local level can provide some empirical basis for studies of 'grievances' and the local perceptions of (il)legitimacy of violence over land. In some situations, narratives provided by suspected perpetrators have provided important insights.²⁴

Historical awareness

Land claims are often based on contested, and semi-mythical, histories of origin and migration. “Conflicts over land are fraught with competing interpretations of history, which both reflect and enrich Africans’ on-going struggles to engage productively with the past and the future”²⁵

In addition to acknowledging the importance of history, it is crucial to recognise the constant (re)interpretation of these histories and be aware of the problems related to the construction of a neat, all-encompassing ‘meta-narrative’.

Critical approaches to the contexts in which law and policy operate

Land and property regimes in many African countries are associated with inequalities and conflicts not only due to deficiencies in laws but because of the economic, political and social structures in which those laws and policies function. Further, the state in many countries has shown itself to be incapable of acting as a neutral arbiter of competing claims to property rights, meaning that ‘more law’ or ‘better law’ is not the only answer. Whilst benefiting from an understanding of legal claims and counter-claims, studies of land tenure and conflict should concern themselves with these wider issues.

Land Tenure and Violent Conflict in Kenya: A Brief Overview

Chris Huggins, Consultant, ACTS

Simplified Typology of *Violent Conflict* in Kenya

Speaking at a very general level, we can identify four broad varieties of violent conflict in Kenya (using our definitions of conflict from the previous presentation).

1. Pastoralist conflicts and rustling/banditry, particularly in Northern Kenya. These are often affected by land-use conflicts especially over key grazing and water resources (which might be alienated from community lands for the purposes of tourism or private ranching, for example), cross-border issues, and external markets for livestock in Nairobi and abroad. Ali Mazrui has therefore described remote parts of pastoral Kenya as being “between marginalisation & globalization”²⁶
2. Gang-related violence, especially in urban slums, over informal economic networks (such as Mungiki’s efforts to control the matatu trade), landlord/tenant relations, or party politics
3. So-called ‘Clashes’ related to elections, ethnicity and land, which will be examined in more detail in this presentation.
4. Occasional violence over access to protected areas, such as gazetted forests or natural reserves. These are often exacerbated by climatic variability and political interference.

All of these forms of conflict have some systemic links with political patronage systems. The state has generally failed to be a neutral arbitrator in these conflicts, generally taking the side of one party or another, or alternatively by abdicating its responsibility to mediate in conflicts. All of these forms of conflict arguably have some links to contested property rights.

Historical Summary

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 colonial period was characterised by the use or threat of violence to acquire land, population displacement, and oppressive rule. The concept that land in Kenya was ‘terra nullius’, and its citizens ‘tenants of the crown’, was at the heart of colonial land tenure system. According to this abhorrent legal argument, Africans did not have legal ownership rights to the land they customarily owned; instead, they had only user rights. This paradigm of dispossession and disenfranchisement has been fundamental to the history of land tenure in Kenya.

Every ethnic group experienced land losses, though some groups lost more than others. On the 10-mile coastal strip, the colonial regimes recognised the claims of the sultan of Zanzibar, at the expense of those he had controlled through force of arms and economic might. Only his only ‘subjects’ could register land. This meant that up to 25% of the indigenous population were turned into landless ‘squatters,’ unable to register the land that they had lived on for generations.

Africans were restricted to “native reserves” which formed the basis of rigid, ethnically-defined administrative units, which are the precursors of today’s districts and locations, most of which are ethnically-defined.

The fundamentals of the 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’*, remain in place to date. The draft land policy has been designed to radically overhaul these regressive aspects.

Mau Mau and Land

Massive seizures of Kikuyu land and forced the forced displacement of ‘labourers’ for settler production were major factors in the Mau-Mau revolt.

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. . . . The British Government must grant Kenya full independence under African leadership and hand over land previously alienated for distribution to the landless.”²⁷

However, it is important to state that Mau Mau was not only concerned with land – its concerns and its goals broadened considerably as the movement developed. To emphasise only the land aspect is, implicitly, to suggest that immediate socio-economic hardships were of primary concern. 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.

One of the reactions of the Colonial regime was to round up tens of thousands of Kenyan, mainly Kikuyu, Embu and Meru who were living outside of their home areas, and forcibly move them to the ‘reserves.’ Population displacement, used as a counter-insurgency measure, prompted such anger that it actually intensified resistance to the state.²⁸ Meanwhile, land and property were appropriated from suspected Mau Mau militants and their supporters. Between March 1954 and the end of 1956, the government ordered the confiscation of land belonging to a total of 3533 individuals, of whom between 25% and 50% were found to be already landless.²⁹ 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. “As the fighting began to subside, administrators increasingly came to see the villages as a valuable resource for the reconstruction of Kikuyu society... on a stable tri-class basis consisting of a wealthy elite, a solid and numerically dominant middle class of ‘yeoman’ farmers, and a lower class of landless artisans and labourers.”³⁰ The administration was keen to conduct consolidation as quickly as possible, whilst Emergency legislation gave them unchallenged powers, and the programme was completed in the three Kikuyu districts within six years. Unsurprisingly, with the suspected militants in detention or under a shadow of suspicion, the consolidation exercise was overseen by loyalists, who managed to appropriate a lot of land for themselves during the process, and the end result was an increase in the numbers of landless Kikuyu.³¹

The land issue was at the heart of politics at independence, and formation of KANU and Kenya African Democratic Union (KADU) (with KADU advocating *majimbo*, a form of federalism liable to benefit ‘sons of the soil’ rather than ‘immigrants’)

*At the Lancaster House negotiations, the UK Government pressured Kenya to accept a 'willing buyer, willing seller' approach to question of white settler farms and ranches, and Kenyatta's group acquiesced, despite pressure from some communities to refuse. Kenyatta wrote, in reference to the concept of restitution of land appropriated by the colonial regime, "They must mean that I should confiscate the property of one man, just to give it to somebody else. This would mean chaos, total injustice and would lead to the destruction of the state."*³²

Land purchase programmes were established to assist Africans with access to some capital to buy land from settlers. These were not available to the poor. By 1977, 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, also generally benefited those with some capital, rather than the landless. Elites with political connections soon accumulated very large landholdings, through legal and illegal means. Former Mau Mau militants, in contrast, found themselves ignored and marginalized by the government after independence. Most of them remained landless.

Migration within Kenya

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.

Evidence shows that the people originating in Central Province - the Kikuyu - were able to gain access to resettlement schemes across the country, in Coast, Rift Valley, and other locations. There were 'push' and 'pull' factors involved in this. They were land-poor because of colonial confiscation of land, consolidation policies, and population growth. At the same time, they were politically and economically positioned to raise capital. Many invested in land-buying companies. Given the key role of powerful Kikuyu's within Kenyatta's government, ethnic favouritism and political patronage also played an important role, as did out-and-out corruption.

Within areas of Maasai-land and in other 'common property' tenure systems, adjudication of customary land, and group-ranch legislation, led to the individualisation and sale of plots, often to 'incomers'. Significant numbers of smallholder farmers therefore moved into environmentally fragile drylands.

By 1989, immediately before the re-introduction of multi-partyism, 'incomers' comprised 35% of Rift Valley population.

The reality of migration, land acquisition and historical displacement is highly complex. Unfortunately, over-generalisations are common – with some actors emphasising 'sanctity of title' on the one hand, and ignoring the corruption and other problematic aspects related to migration; whilst other actors only emphasise the issue of ethnic patronage and irregularities, forgetting that many migrants invested all the money that they possessed in order to gain a title deed, as they were legally entitled to do. 'History' is (re)constructed and reinterpreted, often in politically expedient ways.

Alienation of Land from Customary Systems

Very broadly speaking, there are three kinds of land recognised by the law in Kenya.

- a. Freehold land exists in many parts of the country and more land is coming under freehold as a continuous process of adjudication and titling alienates land from customary controls.

- b. Government land, most of which was formerly known as ‘crown land’
- c. Trust land, most of which was formerly ‘Native Reserves’

Titling has its pros and cons. In general, it is clear that whatever benefits it construes on the title-holder, it tends to result in the dispossession of so-called ‘secondary rights’ holders, such as tenants and those with rights to natural resources (rather than agricultural resources) on the land. This has been a source of grievances in some areas.

In terms of government land, the President is legally empowered to make ‘grants’ of unalienated government land, including for auction. In other words, the President can alienate lands from public or customary systems in order to put them on the open market, especially in order that they be devoted to private agricultural production.

The management of 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.³³

Expression of Grievances

Communities with land-related grievances have used a variety of tactics. The evolution of the tactics used provides much insight into the ways in which violence has developed from increasing frustration within groups, or alternatively has been encouraged from ‘outside’ those groups. To take the case of a community of landless coastal ‘squatters’, as an example, they used a variety of tactics, over a period of decades³⁴:

1. Elected local councillors who articulated land issue
2. Launched formal legal challenges
3. Made appeals to a) politicians or b) administrators
4. Established squatter’s committees
5. Occupied ‘idle’ land (‘land invasions’)
6. Resisted eviction, sometimes violently

The community often employed several tactics simultaneously (e.g. administrative negotiations and civil disobedience). Given the long duration of the land disputes in this area, the tenacity of the community and its willingness to use ‘peaceful means’ which have become increasingly forceful over time, and the apparent lack of clear commitment on the part of the government, one must ask whether these problems are associated with the organized violence experienced in August 1997 in Likoni, Kwale District.

Election-Related Violence

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.³⁵ In cases where politicians attempted to restrain the members of their ethnic community from committing violence, less conflict tended to occur.³⁶ 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 spontaneous³⁷, there are reports of prior organization and planning. Indeed, the head of the National Security Intelligence Service (NSIS) reportedly warned other security agencies that there was a risk of violence, and that, “Indicators for potential violence included cutthroat competition for political offices, unfinished constitutional review business, the Majimbo debate and political zoning”³⁸ The concept of majimbo, in particular, is of relevance to land as a territorial resource. Though majimbo was not fully or officially defined by its proponents in the run-up to the elections, it is associated with local governance by the ‘sons of the soil’ and can be easily (mis)interpreted as leading to the marginalization of those who are an ethnic minority within the constituencies in which they live.

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. 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.

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 traditionally Kalenjin land. 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.³⁹ This farm was the scene of attacks by Kalenjin on the 29th October, 1991, causing all non-Kalenjin occupiers to flee. In or about June, 1992, the farm was surveyed and shared among local Kalenjin people, and titles were issued to them to the exclusion of those who had been forcibly displaced. Those who took over the property refused to reimburse the IDPs for the cost of their shares, arguing that it was ‘rent’ for land which really belonged to Kalenjin.⁴⁰ Owiro farm in Songhor location, Tinderet Division, is another property bought from a European by non-Kalenjin (Luo) individuals using bridging finance from the Agricultural Finance Corporation (AFC). The owners of this farm were also killed or forcibly displaced during the 1991 violence.⁴¹ This led the judicial commission which investigated the so-called tribal clashes to conclude that land was one of three principle causes for the clashes:

“the Nandi have over the years nursed the ambition of recovering what they think they lost when the Europeans forcibly acquired their land in Tinderet among other areas... Matters were made worse when after independence, people whom the Nandi consider as foreigners, though African Kenyans, acquired part of the land”⁴².

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 Olenguruone⁴³.

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.⁴⁴

It is clear that forced population displacement fulfils several goals. In addition to allowing local communities or attackers to use, ‘grab’ (on a permanent or temporary basis) or buy the land (at a low rate), it 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 results of that election. The resulting homogenous zone is a political resource used by power-brokers and strongmen to bargain for power with key political actors.⁴⁵ 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’. Under this perverse logic, the guilt for political and economic crimes – such as corruption, nepotism, or vote-rigging – is borne collectively by members of the ethnic group of the leaders responsible. The fact is that the victims of the violence are not the wealthy wheelers-and-dealers responsible for such crimes, but tend to be relatively poor farmers and traders.

Preliminary Conclusions

This brief overview of some of the pertinent issues allows us to draw the following tentative conclusions:

First, land-related grievances are real, in the sense that they are deeply-felt, and have been historically documented. Nevertheless, it is clear that these grievances are utilised in instrumental ways and that much violence is clearly organised for political purposes.

For example, in the Rift Valley much of the violence targeted settlement schemes with small-scale farms, not large landholdings, which would be easier to target if the aim was solely to acquire land through force. This suggests that the primary objective was to displace large numbers of people.

Second, it is likely that a vicious cycle has been created: ‘immigrant’ communities’ feel a lack of secure tenure, and are then discouraged investing in environmentally sustainable practices. This feeds into stereotypes that they are merely ‘milking the land’ which belongs to others. Expectation of attack and displacement may also prevent ‘immigrant’ communities from strengthening relationships with neighbouring ‘local’ communities. These weak inter-communal relationships contribute to tensions and more violence is therefore likely.

Thirdly, the legitimacy of land tenure laws has always been problematic in Kenya. Tenure security (under both customary and statutory systems) has been greatly undermined, through arbitrary decision-making, corruption, backtracking on the part of government, and lack of redress for those who have lost land through violence. ‘More law’ is not necessarily the answer. Better, more appropriate law is part of the answer – but it is equally important that lawmakers pay attention to perceptions at the local level and study obstacles to implementation of policies and laws.

Fourthly, profound changes are required in the relationships between the state and local communities, as well as between different communities, as regards land governance. The governance of land must be institutionalized and rooted at the local level through innovative structures of community participation.

Our final conclusion, unfortunately, is that periodic violence will continue in Kenya if the status quo regarding land and natural resources governance is maintained.

Mt. Elgon

James Ndungu, Saferworld

1. Mt. Elgon District Profile

- **Population 166,088**
- **Area: 936.75km²**
- **NB – 69% is forest & 31% is human settlement**

Background to the Saferworld (SW) engagement in Mt. Elgon (2 phases)

1. Building partnerships with stakeholders – government and CSOs led to a study tour of high level delegation of government officials to the United Kingdom in May 2007
2. SW/Catholic Justice & Peace Commission (CJPC) in October 2007 scoping exercise aimed at:
 - i. Understanding the context (conflict and stakeholders analyses)
 - ii. Identifying key areas of engagement
3. The main communities involved in conflict are the Soy (means lowland) and the Dorobo (means highland). Both belong to the Sabaot cluster
4. Land is the dominant causal factor of conflict in Mt Elgon

i. Key highlights of the land problem

1. 1932 – Colonial government moved Sabaot from Trans Nzoia to Mt. Elgon to create white highlands
2. 1948 – the government suggests removing Dorobo from highlands to protect forest
3. 1971/72 – the government moves the Dorobo from the forest and creates Chebyuk settlement scheme to resettle them in phases alongside the Soy
4. 1979 – Beginning of phase II of the settlement
5. 2005/6 – Controversy over Phase III settlement leads to conflict as further allocations meant those who held huge chunks of land would have to surrender some

ii. Historical problems related to land allocations in the district - these include

1. failure by previous governments to successfully conclude settlement of affected communities due to;
 1. ever-increasing population
 2. claims of huge chunks of land by traditional and spiritual leaders
 3. challenge of balancing between conserving the environment and meeting the needs of people

- iii. Political manipulation e.g. using land as a campaign tool. Recent notable events include the 2002 general elections, constitutional referendum in 2005 and 2007 general elections
- iv. Alleged irregularities in the allocation of land in Phase III in Chebyuk settlement scheme (Kopsiro Division)
- v. Availability of illegal arms that has enabled armed groups to emerge e.g. the Sabaot Land Defence Forces (SLDF), Moorland Defence Forces and Political Revenge Movement
- vi. Breakdown of traditional institutions of peace e.g. spiritual leaders playing active roles in conflict

C. The impact of the conflict

- Over 600 people have been killed
- Disruption of socio-economic activities particularly farming. Leading to food insecurity in the region as Mt. Elgon supplies food to other Districts such as Bungoma, and Trans Nzoia
- Disruption of education - closure of some schools
- Massive displacements of people
- Victims have been subjected to trauma
- Allegations of human rights violations both by SLDF and the Kenya military

Future peace building strategy in Mt. Elgon

SW and Partners' strategy for peace building in Mt. Elgon focuses on the following outputs :

- Establishment of viable grassroots peace structures for inclusive participation in restoring peace and security
- Enhanced community and government capacity to implement peace initiatives in Mt. Elgon
- Improved inter-ethnic relations and community safety in the District
- Increased awareness of the community and stakeholders on issues related to peace and security in the District
- Research and documentation of lessons learnt

Question and Answer

Noting that ACTS analysis was accurate, a participant said that it is necessary to identify innovative land tenure systems, which are designed to facilitate greater involvement of local people. One of the problems, he contended, is that local communities currently have “only half of the information”, only one side of the story. In order to reduce conflicts, capacity-building must be conducted at the grassroots and local people must be empowered to become more involved in the land-related issues affecting society as a whole.

One participant noted that the terms used to refer to different communities are very sensitive. In the case of Mt. Elgon, terms such as ‘Ndorobo’ and ‘Elgon Maasai’ are used, despite some local people seeing them as derogatory. For some Sabaot, the term ‘Somek’ is used to refer to those who have a background as hunter-gatherers. The Somek are seen as ethnic cousins to the Sengwer. It was explained that in terms of the Sabaot, the terms Masop (highland) and Soy (lowland) are used. It was asserted that these are purely ‘geographical’ terms, with clan-groups cutting across the highland/lowland categories.

One participant questioned whether those associated with corruption in the resettlement schemes were really surveyors. He explained that few (if any) of them are likely to be actual registered surveyors, as there are only 60 surveyors in the country, the vast majority based in Nairobi. He described a typical situation in which the land is first demarcated, the rights to each parcel are identified, and parcels are consolidated accordingly. But during these stages, local authorities tend to interfere with the process, corrupting it. At the last stage, when a surveyor is asked to map the parcels which have already been allotted, much corruption has already taken place. Then, public lands that the surveyors have set aside for development of schools, roads, or clinics, is grabbed. Those directly implicated in corruption, the participant argued, are not therefore trained surveyors but are rather untrained people, often linked to the local authorities.

Another participant contended that the presentation on Kenya should have drawn more attention to the Rift valley, where massive alienation of land took place during the colonial period. He pointed out that even in the early 20th century, the Maasai had launched a court case challenging the legality of the Maasai treaties with the British government, which shows how close to their hearts the land issue was, and still is.

Participants agreed that land has long been a source of political patronage in Kenya, with title deeds being ‘dished out’ in order to influence voters on the eve of elections. It was reported that patronage continues in the case of the Mau Forest evictions, as one prominent ‘politically-connected’ family associated with land-grabbing in the Mau Forest does not seem to be affected by the planned evictions.

Plenary Discussion

Several key themes emerged from the lively plenary discussion which followed. These can be broadly categorised as follows:

Land and Identity

Several participants raised issues pertaining to the different ways in which land is linked to feelings of identity and belonging in Kenya. One participant mentioned that place-names have great historic and emotional value for local communities. It was noted that when ‘immigrants’ from other areas arrive, they sometimes change place- names, giving settlements a different

ethno-geographical reference. This is taken as an insult by local people. This seems to be significant in land-related conflicts, as one of the first things that occurs after immigrants have been violently displaced, is that some local people change the name back, symbolically 'reclaiming' it for their ethnic community.

Another participant noted that the two forms of identity which are commonly expressed in Kenya are legal citizenship of the Kenyan state, and ethnic 'citizenship' of a particular community. It was observed that most Kenyans feel some sense of belonging on these two levels simultaneously. In response to this, one participant argued that conflicts around land are unlikely to end unless Kenyans focus on a national definition of citizenship, and foster a culture of inclusivity and nation-building.

Resettlement

There was a discussion over resettlement schemes, particularly those which were organized around independence and shortly afterwards. One participant contended that land transfers and resettlement schemes seemed to have disproportionately benefitted people originating from Central Province, even though they were not the only community affected by land alienation. It was alleged that this was discriminatory. Another participant disagreed with this viewpoint, contending that Central Kenya had already undergone land registration, which meant that there was little public or vacant land available in Central Province for the creation of settlement schemes. This meant that many people of Central had to be settled outside the Province. In addition, the participant noted that not all of those who had been displaced by the British were resettled, with some, originating from Kiambu for example, remaining as squatters.

Land Tenure and Competing Land Uses

Several participants highlighted the importance of bringing different types of land use into the discussion on land tenure. It was noted that the British colonial regime had a prejudiced "agricultural mindset" and a related focus solely on individual titles to land. Collective forms of ownership were either ignored or seen as very much second-rate. This focus on individual title has continued since Independence.

Participants emphasised that in looking at conflict, we should pay attention to the environmental issues associated with different land uses, and their affects on livelihoods. Some land uses work better in some ecological zones than others. It was argued therefore that people who migrate into dryland environments should adopt pastoralism rather than farming. Participants recalled that when a piece of land is converted from common pastoralist grazing land into farmland, this has an effect on the pasture as a whole. The ecological impacts of migration and settlement should therefore be factored into discussions about land rights. It was argued that the 'appropriate' land use for a particular piece of land should then dictate the kind of tenure system that is put in place on that land.

It was observed that pastoralists are often told that they 'must' adapt their pastoralist livelihood strategies. However a participant contended that pastoralism remains the most efficient utilization of dryland areas, from a multi-dimensional perspective. Unfortunately, due to alienation of land from customary pastoralist systems, pastoralism is now "on the brink" of disaster.

Addressing Violent Conflicts over Land through Negotiation

A participant noted that rather than responding with force, governments should address violent conflict through dialogue. He contended that it is impossible for a state to win a violent conflict with a rebel movement, and that international laws and mechanisms – including the International Criminal Court - should be used to ensure that human rights abuses do not continue in areas, like Mt Elgon, which are affected by violence.

Another participant agreed with the presentation on Kenya that if the land tenure issue is not addressed, Kenya will continue to experience violent conflict, which is likely to worsen over time.

The Draft Land Policy

Participants felt that the draft land policy has a number of useful aspects which, if implemented effectively, could resolve some of the problems under discussion. The aspects of the land policy mentioned in this regard were the special mechanism which will be established to address historical land injustices, the improvements to the land registry system to reduce confusion and corruption, the decentralization of powers from the Presidency to a 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, it was noted that some politicians were engaged in a negative campaign against the policy, in order to safeguard their own interests.

One participant drew attention to the fact that even with a new special mechanism to address historical land injustices, some historical claims are likely to be marginalised. The question of a cut-off date was raised – whether the mechanism deals with claims from 1910, or 1895, some claims will be excluded. It was noted that because all ethnic communities have migrated at one stage or another, it is very difficult for any community to definitively claim particular territories. This process is therefore likely to be highly controversial.

The Importance of the Constitution

Participants noted that centralization of power stems from the Kenyan Constitution, and that a deep-rooted constitutional reform could address some land issues, by providing a basis for institutional reform. Indeed, implementation of the draft land policy will require revision of the Constitution. However, some participants felt that it is not the constitution which is the main problem, but the lack of statutory laws which provide procedural guarantees of fair play. These checks and balances will be necessary to ensure that any National Land Commission will be effective, for example.

The Need to Encourage Positive Change

One participant noted that members of the political and economic elite want to maintain the status quo, and are unlikely to allow the land tenure system to change. There is huge opposition to the Draft Land Policy, he observed, from big landowners. For this reason, we should not optimistically hope that the Draft Land Policy will rapidly be approved and implemented.

Instead, we should ask ourselves how we can help drive the process forward. “We should drive the agenda”, he remarked.

Groupwork Results

The participants were divided into two groups, each with a particular set of questions to address. The questions were intentionally very broad, so that they were likely to engender debates between the participants. The dynamics of these debates were in many ways just as interesting as the results finally agreed upon.

Group A grappled with issues of tenure – whether freehold tenure was an appropriate form of tenure, or whether new collective forms of tenure should be introduced. It was noted that many conflicts are caused by feelings of fear and insecurity at the local level, due to the relative weakness of communities vis a vis the government in land matters. The concept of participation was also discussed, with participants agreeing that the right to local participation in land tenure issues should be guaranteed by law, rather than arbitrarily ‘bestowed’ or withheld according to the interests of the local administration.

Group B discussed the development of the Draft Land Policy, with one participant arguing that it had been one of the most successful consultative processes that Kenya has ever seen, and another participant disagreeing, on the basis that issues affecting pastoralists had not been addressed adequately in the draft. The validity of the land registry was also a topic of debate, with some participants arguing that it had been fatally compromised, whilst others maintained that it remains, despite some problems, essentially functional, and could be improved through computerization.

Group A:

1. What are the key issues involved in ‘democratizing’ and building legitimacy of land tenure systems at the local level?
 - Recognition of local community and society
 - Land rights of the community protected by law
 - Security of ownership
 - Reducing government influence
 - Remove land management issues from the political cycle (e.g. remove responsibilities from local councillors and others who use land issues to get votes)
 - Harmonise land use (socially and culturally accepted)

2. *How can some improvements be made even as we await pending approval and implementation of policies and laws?*
 - Awareness-raising and public education, including translating policies into local languages
 - Separate facts from perceptions
 - Acknowledge the history of local areas
 - Capacity building on land issues with accepted (traditional) community leaders
 - Research

- Initiate testing of elements of Draft Land Policy in pilot areas. For example: land information systems, land boards, participatory land use planning systems, environmental management systems, conflict impact assessments, Environmental and Social Impact Assessments, and dispute resolution mechanisms.
3. *How can state institutions involved in land issues (Ministries, local administration, etc) better address the multiple dimensions of land tenure (social, technical, economic, institutional, legal & political)?*
- Baseline surveys to identify stakeholders in every context
 - Multi-sector forum to discuss the issues and oversee/control local administration (at local and national levels)
 - Monitoring and evaluation of trends and future scenarios
 - Planning for climate change and coping strategies

Group B:

1. *What are the key indicators that would show whether land-related grievances are directly related to violent conflict in Kenya?*
- Number of displaced people (IDPs)
 - Number of land disputes reported
 - Number of land disputes resolved by District Land Boards
 - Number of squatters/landless households
 - Number of land disputes addressed through traditional dispute resolution at the community level (through Chiefs, etc)
 - Number of persons killed
 - Levels of inequality e.g. number of migrants in the area, ownership of land in hectares
 - Incompatible land use systems
 - Conflicting legislation
 - Poverty and forms of exclusion (social, economic, cultural)
 - Security of tenure
 - Ownership disputes
2. *How can research organizations and other stakeholders' best collect information on these indicators?*
- Historical/ anthropological studies
 - Data from the Central Bureau of Statistics
 - Data from the National Archives
 - Public Opinion data
 - Other sources of credible information, such as universities
 - Land records in the registry – though this may sometimes be suspect

3. *How can such research on land tenure and conflict best be translated into improvements in a) legal and policy instruments and b) changes 'on the ground' pending approval and implementation of laws?*
- By focusing on specific legal gaps.
 - Change must be pushed as part of an institutional reform agenda
 - There should be a focus on improving administrative justice and local-level justice in general
 - Participatory Fora
 - Findings should be translated into local languages and disseminated at the local level
 - Groups should be targeted for information dissemination and improved access to information in general
 - The media and the radio should be utilized.

Conclusion

ACTS ended the brainstorming session with a commitment to drafting the session report and circulating it to the participants. A follow up of the discussions will be done in the second phase of the project with a broader engagement of the relevant stakeholders.

Annex A. List of Participants

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Annex B: Consultative Session Agenda

Land Tenure and Violent Conflict In Kenya: In the context of local, national and regional legal and policy frameworks

Venue: Hilton Hotel, Nairobi, Kenya.

Date: 6 October 2008

8.00 - 8.30	Arrival of participants
8.30 - 8.45	Introductory remarks (Elvin Nyukuri, ACTS) and self-introduction by Participants
8.45 - 9.00	Project rationale and aims (Elvin Nyukuri, ACTS)
9.00 – 9.15	Land Tenure and Violent Conflict in Africa and Kenya – An Overview (Chris Huggins, Consultant for ACTS)
9.15 – 9.30	Saferworld's Strategy in Mt Elgon by (John Ndungu, Saferworld)
9.30 – 9.45	Land Tenure and Violent Conflict in Mt Elgon – Godfrey Kipsisey
9.45 – 10.00	Land Tenure and Violent Conflict in Kenya – Conceptual Frameworks (Elvin Nyukuri, ACTS)
10 .00 – 10.30	Questions and answers (clarifications) on presentations
10.30 - 10.45	Tea
10.45 – 11.15	Plenary Discussion on issues arising from Presentations
11.15 – 12.15	Groupwork on key themes arising from presentations
12.15-12.45	Presentation of Groupwork
12.45- 1.00	Final discussion and close
1.00	Lunch

Annex C: Kenya National Dialogue and Reconciliation Agenda Item 4

Kenya National Dialogue and Reconciliation

Agenda Item 4: Long-Term Issues and Solutions Matrix of Implementation Agenda

ISSUE: Land reform

ACTION POINTS

- a) Constitutional review to address fundamental issues of land tenure and land use.
- b) The development and implementation of land policies should take into account the linkages between land use, environmental conservation, forestry and water resources.
- c) Finalisation of the draft National Land Use policy and enactment of attendant legislations.
- d) Land laws to be harmonised into one statute to reduce multiple allocations of title deeds.
- e) Establishment of a transparent, decentralised, affordable and efficient GIS-based Land Information Management System and a GIS-based Land Registry at the Ministry of Lands including all local authorities.
- f) Land Ownership Document Replacement for owners affected by post-election violence
- g) Development of a National Land Use Master Plan, taking into account environmental considerations.
- h) Land Reform Transformation Unit in the Ministry of Lands to facilitate the implementation of the land reform programme as outlined in the National Land Use policy.
- i) Strengthen local-level mechanisms for sustainable land rights administration and management.
- j) Finalise the Land Dispute Tribunal Act.

TIMEFRAME

Land reform process to be factored in the constitutional review process within 12 months

FOCAL POINT: Ministry of Lands

Notes

- 1 See Annex B.
- 2 J. Galtung, "Violence, Peace and Peace Research" *Journal of Peace Research*, Vol.3 (1969) pp. 167-191.
- 3 M. Mwagiru, *Conflict: Theory, Processes and Institutions of Management* (Nairobi: Watermark, 2000) p. 25.
- 4 Constitution of Kenya Review Commission, *The Final Report of the Constitution of Kenya Review Commission*, Approved for Issue on 10th February, 2005, pp. 271-291.
- 5 T. Homer-Dixon, *Environment, Scarcity and Violence* (New Jersey: Princeton University Press, 1999).
- 6 Kenya National Bureau of Statistics, *Economic Survey 2008* (Nairobi: Government Printer, 2008) p. 27.
- 7 J. Burton, *Violence Explained* (Manchester: Manchester University Press, 1997) pp. 32-40.
- 8 Constitution of Kenya Review Commission, *The Final Report of the Constitution of Kenya Review Commission*, op.cit.
- 9 See e.g. Kapsobett (2007) "Tracing the roots of Mt Elgon Land Clashes".
- 10 Walter Kalin, (2007) "The Great Lakes protocol on Internally Displaced Persons: Responses and Challenges".
- 11 Okoth-Ogendo. THE LAST COLONIAL QUESTION. An Essay in the pathology of Land administration systems in Africa. A keynote presentation at a Workshop on Norwegian Land tools relevant to Africa. Oslo, Norway 3-4 May 2007. Accessed at <http://www.statkart.no>.
- 12 Eric Worby. A Redivided land? New Agrarian conflicts & Question in Zimbabwe. *Journal of Agrarian change*. Vol 1 issue 4 pages 475-509.
- 13 Berry (2002).
- 14 Peters (2004).
- 15 Moyo and Yeros, "Introduction" in Moyo and Yeros, eds. (2005).
- 16 Murshed, and Tadjoeeddin (2007) provide a useful overview.
- 17 Mats Berdal and David Malone, "Introduction", in Berdal and Malone, eds (2000).
- 18 There are of course exceptions to this – researchers such as Keen and Reno, for example, who have influenced the study of war economies in general, have conducted extremely detailed empirical research. See e.g. Keen (1998) .
- 19 Murshed and Tadjoeeddin (2007).
- 20 Murshed, S. Mansoob and Scott Gates, 'Spatial-Horizontal Inequality and the Maoist Conflict in Nepal', *Review of Development Economics* 9(1), 2005, cited in Murshed and Tadjoeeddin (2007).
- 21 Hobsbawm (1960).
- 22 In a study of independent armed guerrillas operating during Zimbabwe's civil war without the sanction of a political party, Ranger claims that some could claim 'social bandit' stature, especially those who plundered only European property. Terence Ranger, "Bandits and Guerrillas: the case of Zimbabwe" in Crummey (1986).
- 23 Caroline Lentz, "First-Comers and Late-Comers: The Role of Narratives in Land Claims", in Evers et al (eds) 2005.
- 24 Straus (2006).
- 25 Berry (2002).
- 26 Cited in Kagwanja, M. "Globalising Ethnicity, Localising Citizenship: Globalisation, Identity Politics and Violence in Kenya's Tana River Region", in *Africa Development*, Vol.XXV111,Nos. 1&2, 2003.

- 27 Cited in Mazrui (1987).
28 Berman (1990) pg. 349.
29 Berman (1990) pg. 365.
30 Berman (1990) pg. 366.
31 Mauhan-Brown (1985) pg. 186.
32 Kenyatta, J. *Suffering Without Bitterness* cited in Mauhan-Brown (1985) pg.199
33 B.Ndulu et.al (eds) 2008. The political economy of economic growth in Africa 1960-2000. Vol.2 Country case studies. Cambridge University Press.
34 See Kanyinga, K. (1998) Struggles of Access to Land. The 'Squatter Question' in Coastal Kenya. Danish Institute for International Studies.
35 Kenya National Commission on Human Rights (2008) pg. 7.
36 Kenya National Commission on Human Rights (2008) pg. 10.
37 Interviews, Nairobi, September 30, 2008.
38 Ombati and Omanga (2008).
39 The Kalenjin were seen as supporters of the governing party, KANU and incumbent President Moi.
40 Akiwumi (1999) chapter 1 pg. 7.
41 Akiwumi (1999) chapter 1 pg. 8.
42 Akiwumi (1999) chapter 1 pg. 9.
43 Kimenyi and Ndung'u (2007).
44 Klopp and Kamungi (2008).
45 Klopp and Kamungi (2008).