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ASR FOCUS:

THE POLITICAL ECONOMY OF DEMOCRATIC REFORM IN KENYA

Land Conflict and Distributive Politics in Kenya

Catherine Boone

Abstract: This paper argues that even with the incorporation of land policy provisions into Kenya's new constitution, there is every reason to believe that in the near future, highly politicized land conflict will continue. This is because land politics in Kenya is a redistributive game that creates winners and losers. Given the intensely redistributive potential of the impending changes in Kenya's land regime—and the implications of the downward shift in the locus of control over land allocation through decentralization of authority to county governments—there is no guarantee that legislators or citizens will be able to agree on concrete laws to realize the constitution's calls for equity and justice in land matters. This article traces the main ways in which state power has been used to distribute and redistribute land (and land rights) in the Rift Valley, focusing on post-1960 smallholder settlement schemes, land-buying companies, and settlement in the forest reserves, and it highlights the long-standing pattern of political contestation over the allocation of this resource. It then traces the National Land Policy debate from 2002 to 2010, focusing on the distributive overtones and undertones of the policy and of the debate over the new constitution that incorporated some of its main tenets.

Résumé: Cet article postule que même avec l'incorporation dans la nouvelle constitution du Kenya des provisions pour les réglementations d'allocation des terres, tout semble indiquer que dans un futur proche, les conflits hautement politisés autour de la distribution foncière vont se poursuivre. La raison en est que cette politique est un jeu de redistributions qui engendre des gagnants et des perdants. Étant donné le fort potentiel de redistribution engendré par les changements dans le régime foncier au Kenya et les implications de décentralisation des prises de décisions vers les gouvernements locaux pour les allocations de terres, il n'y a aucune

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garantie que les législateurs ou les citoyens seront capables de se mettre d'accord sur des lois concrètes permettant de réaliser les objectifs établis par le changement de la constitution sur l'équité et la justice des questions foncières. Cet article retrace le cheminement des choix dans les principes utilisés par le gouvernement pour la distribution et la redistribution des terres (et les droits affiliés) dans la vallée du Rift, en se concentrant sur les accords établis après les années 60 avec des petits propriétaires, les entreprises foncières, et les accords faits avec les réserves forestières. L'étude met l'accent sur la récurrence de longue date de la contestation politique sur les modes d'allocation de cette ressource. Elle retrace ensuite l'évolution du débat sur la politique foncière nationale entre 2002 et 2010, en se concentrant sur les tendances ouvertes et impliquées de la loi pour la pratique distributive, ainsi que sur le débat concernant les articles de la nouvelle constitution qui ont incorporé certains des principaux aspects de cette pratique.

“Sooner or later, land will yet again be the dominant issue in Kenya’s politics.” (R. M. A. van Zwanenberg)

“Kenyatta settled his own people in the Rift. That is the problem we are having now.” (Nairobi taximan, November 2008)

The land provisions of Kenya’s 2010 constitution call for the establishment of a new National Land Board answerable to Parliament, and the enactment of sweeping parliamentary legislation to enact a National Land Policy that is based on principles of justice and equity. It is heartening to view this as a clear advance over the highly politicized and often demonstrably corrupt land regime that has prevailed since the early 1960s (if not before). It is encouraging to think of Kenya’s smallholders and other land-users as a vast national constituency with a shared interest in disciplining a rapacious and self-serving elite, and a common stake in the clean, fair, and transparent implementation of a democratically sanctioned set of laws governing access to and use of land. Yet even if all or most Kenyans would benefit in the long run from clean implementation of democratically chosen land laws, there is reason to believe that in the near future, at least, highly politicized land conflict will continue.

This is because land politics in Kenya is first and foremost a redistributive game that creates winners and losers. Given the intensely redistributive potential of the impending changes in Kenya’s land regime, and indeed of the downward shift in the locus of control over land allocation (through devolution of authority to county governments), there is no guarantee that citizens will be able to coordinate a land-law reform strategy that improves the individual lot of each, or even most (see Frye 2007:950). This is especially true in the Rift Valley, the region of Kenya in which the allocation of land is most visibly politicized and most bitterly contested. This also hap-



pens to be a region of great geopolitical significance: since the 1991 elections, control over the Rift has tipped the balance in electoral struggles for control over the central state.

Unlike land politics in many African countries, which often centers on the use and abuse of ostensibly customary authority (and is thus “repressed” or bottled-up at the local level), the major land disputes in much of Kenya are focused on how the power of the central state has been used to allocate land (see Boone 2011b). Struggles over land are therefore played out as struggles to capture or retain state power. This makes the national public sphere a prime theater of land conflict. The drafting of a National Land Policy from 2004 to 2008, and the enactment of some of its main provisions

in the 2010 constitution, are the latest acts in an on-going drama over the structuring and use of state power to distribute and redistribute land.¹

This article focuses on the politicization of land rights in the farming districts of Rift Valley Province (Nakuru, Uasin Gishu, Trans-Nzoia, Nandi), which have been ravaged by waves of land-related violence since the return to multipartism in 1991 (see map). Approximately fifteen hundred people were killed and three hundred thousand were displaced in the 1991–93 and 1997 election periods. Deaths and displacements of approximately the same magnitude occurred in postelection violence in 2008 (although some observers argue that up to five thousand people were killed at that time).² Much of the world press reported these episodes as outbursts of ethnic violence. A deeper look confirms that for grassroots participants in many localities, the political issue at stake was not ethnic power per se, or as an end in itself. Rather, as Throup and Hornsby (1998:555) put it, “land ownership remained at the core of the argument.” Opportunistic politicians manipulated local issues and fomented violence for electoral gain, but the tensions they manipulated were, to a large extent, land-related and long-standing. These tensions, their origins and persistence, and how they cleaved rural society in the Rift Valley are the focus of the present analysis.

At the grassroots level, rival groups have often stood on opposite sides of a distributive conflict that has been structured and stoked by the land-allocation policies of Kenya’s governments, both colonial and postcolonial. All of Kenya’s governments have used their discretionary powers over land allocation in the Rift as an instrument of distributive politics, granting land access strategically to engineer political constituencies that would bolster them against their rivals. Much as in Pakistan, as described by Gizewski and Homer-Dixon (1998:158), control over and allocation of access to resources—especially land—is a “key means by which power and privilege are retained and expanded in the political system.” For this reason, disputes over access to land in Kenya are intertwined with disputes over how state power has been used to gain political advantage, lock in these advantages, and create winners and losers in the national political economy at large.

The first part of this paper traces the main ways in which state power has been used to distribute and redistribute land rights in the Rift Valley, focusing on post-1960 smallholder settlement schemes, land-buying companies, and settlement in the forest reserves. The second section highlights the long-standing pattern of political contestation over the allocation of this resource. Shifts in the locus of control over state power—from the colonial regime to the Kenyatta regime (1963–78), to the Moi regime (1978–2002), to the Kibaki government (2002–8)—have had redistributive consequences on the ground, and anticipation of these has raised the stakes of regime transitions. The third section traces the National Land Policy debate since 2002, focusing on the distributive overtones and undertones of the policy, and of the debate over the new constitution that incorporated some of its main tenets.

The analysis of land politics helps reveal the difficulty of Kenya's predicament. Like other African states, Kenya's state may be predatory and arbitrary in ways that may be restrained through the rule of law. But corruption that pits "state against society" is not the only problem. States are also imbricated in conflicts of interest that run deep in the currents of society, and even in civil society. If stable constitutions can be modeled as contracts or political outcomes that reflect a prevailing balance of power in society ("equilibria," as suggested by game theory approaches to institutional design, including constitutional design), then the analysis here suggests that when it comes to land issues (at least), such an equilibrium has not yet been found in Kenya.³

State Allocation of Land in the Farming Districts of the Rift

One Kikuyu farmer who was swept up in the 2007–8 land-related violence in Kenya said that "the government owns the Rift" (interview, Rift Valley Province, Nov. 18, 2008). If you base your judgment on the history of the last one hundred years, then you would agree.

Much of the Rift was expropriated from the Maasai and other peoples indigenous to this region by the colonial state, and allocated to European settlers in the early decades of the twentieth century. European settlers, including some white South Africans, created mixed farms, huge ranches, large plantations, and commercial estates, relying on African labor recruited from the African reserves—land units designed for African peasant farming or pastoralism. By the 1940s, many thousands of African "squatters" and laborers were living and working in the so-called White Highlands. A majority of these were Kikuyu. Attempts by the colonial state and white farmers to reduce the numbers of African farmers in the Rift farming districts (via expulsions), and to roll back farm laborers' rights to use land for farming on their own account, fueled the rise of the Mau Mau movement. In the 1950s agrarian radicalism fused with anticolonialism propelled Kenya's nationalist struggle (see Kanongo 1987; Furedi 1989).

Dealing with land questions in the Rift Valley was central to economic and political deals by which the radical (proto)nationalist movement was defused and Kenya gained independence from Britain. Between 1962 and 1966, approximately 20 percent of the land in the White Highlands was purchased through state-financed and state-run programs, parceled up to create settlement schemes, and transferred to Kenyan smallholders (see Leys 1975). High population densities in the former African reserves created land hunger that both the colonial administration and the Kenyatta government understood as a political problem which, if left unaddressed, threatened not only political stability but also Kenyatta's hold on power. In the 1970s more European-owned farms were acquired by the Kenyan government and then granted, sold, or otherwise transferred to individuals and companies in transactions that were financed by the government.

Of the Rift Valley land originally expropriated by the colonial state and then acquired by the Government of Kenya, about half was divided up and distributed to create small-scale farms for in-migrants to the Rift. For smallholders, there have been three basic modes of state-mediated access to farmland in the Rift.

Settlement Schemes

All together, land transfer programs created a total of 123 state-run settlement schemes, which generally ranged in size from five thousand to ten thousand acres (see Von Haugwitz 1972:12; Harbeson 1973:266–67). Most were designed as either “low density schemes,” which were divided up into parcels of 8–16 hectares that were designed for commercial farming, or “high density schemes,” which were subdivided into parcels of 4–6 hectares (in most places) and were designed for subsistence farming (see Odingo 1971:200–201). The 20 percent of the former White Highlands so transferred to African farmers totaled about 1.5 million acres, or about 65 percent of what had been considered to be the “European mixed farm area” (about 4% of the total area of the country). Through this process, the government settled about a half-million people on the land by 1970, out of a population of 11.2 million (Leys 1975:75)

State officials were in direct control of the allocation of plots to individual household heads, who were selected on a case-by-case basis by the official settlement authority. Settlers on the schemes accepted thirty-year mortgages, payable to the government. Harbeson (1973:282–85) explains that “the actual titles to the lands [were] held by the Central Land Board and [were] to become the possession of the settlers only when they [met] their financial and developmental obligations” to pay for their plots, financed on a thirty-year government loan at a 6 percent rate of interest and farmed according to conditions laid out in a Letter of Allotment. “The settlers . . . [had] no legal recourse in case the settlement administration [tried] to recall loans or repossess plots.” He describes the settlers as “in reality tenants on sufferance of the settlement administration.”⁴

Rates of loan repayment on the schemes were low, but evictions of defaulters were rare. In the Kenyatta era, the president intervened personally to ensure that settlers were treated with leniency. Indebtedness and low rates of titling, especially on the high-density settlement schemes, kept alive the direct political tie between the rights-holders and the state. In the Moi era, those without titles became (potentially) even more vulnerable. In the early 1990s many settlers on Trans-Nzoia schemes lacked title deeds, for example.⁵ A retired settlement officer who had worked on the high-density schemes in Uasin Gishu reported in 2008 that he did not remember anything about mortgages being paid off on these schemes (interview, Eldoret, Nov. 18, 2008).

Land Buying Companies (LBCs)

In the late 1960s and 1970s the Kenyatta government also encouraged the formation of private land-buying companies that were often headed by regime notables and politicians. Land-buying companies purchased or leased farms or estates in the former White Highlands from the government, often from the Settlement Fund Trustees (SFT), and then subdivided these holdings among individual (family) shareholders. Many ordinary Kenyan citizens, mostly Kikuyu and Luo, acquired land in the Rift by purchasing shares in the companies (see Berman & Lonsdale 1992b:460–63; Leys 1975:74–5). As Onoma (2008) explains, this process was often very politicized. Around Nakuru, for example, the SFT acquired estates and then sold them to land-buying companies headed by high-ranking members of the Kenyatta regime who had often received state financing for this purpose (see Republic of Kenya 2002 [1999]:138). The Akiwumi Report (Republic of Kenya 2002 [1999]) cited the case of a Member of Parliament who represented Laikipia West Constituency and later Molo Constituency, both in Nakuru District, and who owned private finance companies that provided loans for settlers to obtain plots on properties that he had acquired from the government and that lay in his own electoral constituencies.⁶ Those who settled the land in this way often became the political clients of those who controlled the land-buying companies. Under Kenyatta, individual titles were rarely issued to members of cooperative societies who received state financing to purchase shares in group farms.

Forests

A third category of government land that has been allocated to smallholders—often informally and basically illegally—is forest land. Approximately 2 percent of Kenya's total land area was classified as forest reserve in 2000. The vast Mau Forests Complex in Rift Valley Province, made up of twenty-two forest blocks totaling about 452,000 hectares in 2000, covered a land area approximately equivalent to 34 percent of the total area of Nakuru, Uasin-Gishu, and Trans-Nzoia districts combined (i.e., 13,057 km²) (see Government of Kenya 2009:5). Forest land can be formally redesignated for alternative use through the process of “declassification” or “degazetting.” Through this legal process or completely informally (illegally), governments since Kenya's colonial era have used these lands opportunistically as a state-owned resource that is available, virtually without cost or restriction, for arbitrary allocation to private users. In the 1940s and 1950s, for example, when the colonial government decided that there were too many African “squatters” on the white-owned farms in the Rift, part of this surplus population was forcibly resettled in the Olunguruone area of the Narok forest. Over the course of the 1960s and 1970s politicians, district officers, and the forestry service looked the other way as parts of the Mau

Forest in Nakuru District—around Londiani, Njoro, and Elburgon in Molo Division—were settled by Kikuyu squatters under the protection of the Kenyatta government. Given that settlement schemes were often bordered by forest reserves, this process could also have happened incrementally as families on the settlement schemes expanded and sought more land.

From 1986 on, under Moi, government forest lands became a *caisse noire* of patronage resources that were used to reward the ruler's friends and to build political support (see Southall 2005:149). Evictions of Kenyatta-era forest squatters, beginning in 1986, and the declassification of new forest land created a land frontier that Moi used to settle thousands of families from the Kalenjin and related communities that he actively cultivated as his political base.⁷ Once settled on government forestland, farming communities became constituencies that were dependent upon the discretion of regime dignitaries. In the 1990s the Moi government allowed large numbers of Kalenjin squatters to settle in the Anabkoi and Singalo forests of Uasin-Gishu District, in forest reserve areas that were often adjacent to the preexisting settlement schemes and LBC farms in this district. In the last year of the Moi regime (2001), in the run-up to the 2002 elections, vast tracks of the Mau forest reserve were cleared for settlement.⁸

The discretionary power of the state over land, exercised through the President's Office and the Ministry of Lands, was also used to allocate large farms and vast estates to members of the ruling elite (see Leys, 1975; Wasserman 1973; Klopp 2000; Southall 2005). The settlement schemes, land-buying companies, squatter settlements in the forests, and land grants to barons of the Kenyatta and Moi regimes thus created a prevailing land allocation was an explicitly political artifact. The logic of the situation was that land grievances that arose from the prevailing distribution of land would be focused on the central state, rather than blamed on "the market" or poverty, customary authorities, or fate.

Land Politics in the Rift as Distributive Politics

The state appropriation and allocation of land in the Rift Valley, starting in 1905, created clear winners and losers. The transition to independence under the Kenyatta regime introduced a clear bias in the allocation of farmland in favor of the core constituencies of the ruling party. Those who claimed these same lands as their ancestral birthright were at the losing end of Kenyatta-era land allocations. What they saw as their birthright was transferred by the government to settlers and immigrants from other parts of Kenya, regime dignitaries, and key allies of the ruling elite.

The option of opening the Rift to settlement by "all Kenyans"—that is, to those who could not claim ancestral or precolonial rights to these lands—was bitterly resisted in the 1950s and 1960s by politicians representing those claiming to be indigenous to the Rift. They had argued for restitution of land that had been taken from them by the British. The key plank of the main

opposition party, the Kenya African Democratic Union (KADU), was the *majimbo* constitution. *Majimboism* proposed that Kenya be governed under a federalist arrangement that would have institutionalized regional autonomy in key domains, such as land affairs, and thus transferred authority over land allocation from central state agencies to regional land boards. These regional boards would have been mandated to safeguard the land patrimony of peoples deemed to be “indigenous” to Kenya’s postcolonial territorial jurisdictions. The specter of *majimboism*, and the strong interest of KADU leaders in the preservation of “tribal land units” in which land access would be reserved for *indigènes*, raised the stakes in the drawing and redrawing of jurisdictional boundaries in 1960–63. The stakes were especially high around the perimeters of the White Highlands districts that would now be opened up to African landholders and the establishment of smallholdings or peasant farms (see Anderson 2005:558–60; Médard 2000:68–69; Harbeson 1973; Kenya Boundaries Commission 1962). Robert Bates (2005) and others are surely correct in arguing that to a very large extent, the struggle over the basic constitutional structure of the postcolonial state was driven by the actors’ assessments of how the choice between a unitary versus federal structure, and the drawing of jurisdictional boundaries, would affect the distribution and redistribution of land rights in the Rift.

Meanwhile, colonial administrators and ordinary Kenyans engaged in an on-the-ground struggle over the redistribution of land in the Rift. From 1960 to Kenya’s Independence Day in December 1963, the colonial administration sponsored schemes to settle landless and near-landless African families on Rift Valley properties that had been sold to the state by departing whites. Anderson (2005:552) wrote of “Kalenjin fear of Gikuyu colonization of the Rift Valley” in the 1950s, and by 1961 the outcome that they resisted was taking shape. In August 1961 the *East African Standard* reported on conflict over settlement projects that were already under way: People from Central Province “were being intimidated and told not to enter into settlement schemes [in the Rift],” but the chairman of the Settlement Board said that “desire for land would overcome intimidation,” and the minister for agriculture said that “the schemes would go on.”⁹ The Akiwumi Report (Republic of Kenya 2002 [1999]:116,163–64) spoke of “prophetic tensions” over land in Nakuru in 1961 and violent land clashes in Narok in 1967. Most of the settlement schemes violated or encroached upon the integrity of the tribal territories or “expansion areas” that were claimed by KADU politicians on behalf of peoples indigenous to the Rift, including the Nandi, Kipsigis, Maasai, and “the Kalenjin tribes.”¹⁰ The ruling Kenya African National Union (KANU) consistently rejected KADU’s position on the question of who was entitled to land in the former White Highlands. According to the KANU party chairman in Kakamega in 1960, the dominant party’s position “was that there should be no tribal boundaries and that land should be obtainable anywhere” (as reported in a letter from Kakamega District Commissioner to the Settlement Board, Nov. 19, 1960).¹¹

The *majimbo* option was a means toward the end of redistribution (restitution) of Rift Valley lands to indigenous communities. It was effectively foreclosed in 1964, when the leader of the Rift Valley coalition, Daniel arap Moi (along with some others), was co-opted into the KANU party by Kenyatta.¹² As vice-president of Kenya under Kenyatta, Moi towed the president's line on land issues in the Rift. Distribution of land to members of communities nonindigenous to the Rift—via programs described above, as well as by way of transfer of large estates to members of the ruling elite—proceeded apace over the course of the 1960s. According to Odingo (1971), the settlement schemes alone had transferred Rift Valley lands to approximately thirty-five thousand families by the mid-1960s.

Kenyatta consolidated his grip on the national government in the first five years of independence, and ran the country as a one-party state from 1969 until his death in 1978. He worked hard to suppress debate on the land question but was far from completely successful. Gatheru Wanjohi (1985:16) writes that after 1969—when opposition parties had been banned and the constitution revised to guarantee this, the key presidential rival, Tom Mboya, had been assassinated, and Kenyatta was confirmed as president in a noncontested election—“the country turned its attention to the substantive issues of economic growth and resource allocation. As one might expect, the important issue was land and the struggle for it was most intense in [the Rift Valley epicenter,] Nakuru District.”

In the 1970s, two highly visible moments in this process were the silencing of Jean-Marie Seroney, Member of Parliament from Nandi District and author of the infamous Nandi Hill Declaration, and the assassination of J. M. Kariuki, Member of Parliament from Nyandarua North.

Jean-Marie Seroney, born in Kapsabet in 1925, was MP from Nandi District, where bitter land disputes between the native Nandi and the central state went back to 1919. In that year, the colonial state expropriated approximately 17 percent of the land area of the Nandi Reserve in the Nandi Salient/Kipkarren area—land that was described to the Kenya Land Commission in 1933 as “some of the best agricultural land in the country”—in order to create a Soldier Settlement Scheme for European veterans of WWI. In the early 1930s some eight thousand Nandi living on alienated land were considered squatters. In testimony to the commission, according to its report, “the Nandi at Kapsabet regarded the question of the Kipkarren farms as a serious grievance” (Kenya Land Commission 1933:272, 277). These long-standing grievances were fueled by the settlement programs of 1960–66, in which much of the property that had been expropriated by the state in 1919, as well as properties comprising expatriate-owned sugar farms in the southern part of Nandi District, were reacquired by the government and then redistributed to outsiders with no ancestral claims to Nandi land.

Jean Seroney was elected MP for Nandi North Constituency (Tinderet) in 1963 on a KADU ticket and became Deputy Speaker of Parliament. Not silenced by the KADU–KANU merger in 1964, he carried forward his

mandate of “protesting the invasion of their [Nandi] ancestral lands by settlers” (Oyugi 2000). He published “The Nandi Hills Declaration” in 1969, denouncing Kenyatta’s sale of Nandi land to non-Nandi, branding the settlement schemes “Kenyatta’s colonization of the Rift,” and laying claim to all land in the district for the Nandi (see Leys 1975:229–30). For this Seroney was charged with sedition, convicted, and fined. Still the Nandi North MP, he was imprisoned in 1975 for denouncing the postcolonial land allocation to non-Nandi settlers and remained in detention until the end of the Kenyatta regime in 1978. The Seroney episode was one of the landmark cases of high-level political repression of the Kenyatta years, and as Walter Oyugi (2000:7) points out, “the matter never died and erupted in the fiery clashes of 1991 and [199]2. It recurred in 1997 and 2002.”

J. M. Kariuki, an ex-Mau Mau fighter, Kenyatta’s personal secretary from 1963 to 1969, and a populist Member of Parliament from Nyandarua North constituency (elected in 1974), was assassinated in 1975 in the Kenyan government’s most notorious political torture and murder of the decade. Kariuki gained huge popularity by denouncing in Parliament the unfair land distribution policies of the Kenyatta regime, and in particular for accusing Kenyatta of allocating the lion’s share of state-owned Rift Valley land to his cronies, rather than to the poor and those who had actually fought for Kenya’s independence.¹³

In 1978 Moi inherited the presidency. From the mid-1980s onward his regime became progressively more active in using land allocation and the land-restitution issue as tools to forge a cohesive ethnopolitical constituency out of the Kalenjin groups and the other ethnocultural groups claiming to be native or indigenous to the Rift Valley—the Kalenjin groups, the Maasai, Turkana, and Samburu, or KAMATUSA (Lynch 2008). Key to this effort was a shift in the bias of government land allocation to these Kalenjin-coalition constituencies. Most notoriously, the Rift Valley forest reserves were plundered for this purpose, especially the Mau Forest reserves, but so were state properties such as Agricultural Development Corporation (ADC) farms, which were supposed to be devoted to agricultural research, and Settlement Fund Trustees (SFT) properties that were recently acquired or had not been divvied up in the earlier period.¹⁴ Jacqueline Klopp (2000) and others have drawn attention to the fact that at the same time, barons of the Moi regime acquired huge Rift Valley estates. Throup and Hornsby (1989:198–89) write that leading members of the “Kalenjin ruling elite” were notorious land-grabbers in Nandi and Kericho Districts of Rift Valley Province, regions of “intense development of capitalist agriculture and increasing social differentiation, including landlessness caused by land-grabbing elites such as [MP] Biwott.”

At the same time, the Moi regime encouraged the airing of the land grievances of those who had lost out or been dispossessed in the land-allocation politics of the 1960s and 1970s, calling into question the legitimacy of settlement schemes and LBCs created under the patronage of Kenyatta.

This underscored and heightened the political contingency of the prevailing distribution of land in the Rift.

Demographic and environmental stress heightened the tensions and stakes in conflicts over land allocation (see Kahl 2006:ch.4). Closing of land frontiers in smallholder farming areas throughout Kenya gave many poor families few options for creating viable livelihoods in agriculture for their children. Drought, sedentarization, and moves into agriculture on the part of once largely pastoral people increased demands for farmland. Domestic legal challenges to the razing of forests and international pressure to curb corruption and lawlessness at the pinnacles of the Moi regime raised the costs of using the forest reserves as a new land frontier to settle Kalenjin farmers.¹⁵ These pressures made it harder for Moi to provide land for his own constituencies without directly attacking the acquired rights of those who had received land under Kenyatta. And as Klopp (2000) emphasizes, it was convenient to scapegoat Kikuyu and Luo smallholders as illegitimate settlers in order to deflect the wrath of land-hungry Kalenjin away from the vast properties of Moi's own cronies.

There were sporadic outbreaks of land-related violence in the Rift under the Moi regime in the 1980s, but these were contained and suppressed by the provincial administration and security forces. For example, Throup and Hornsby (1998:188) mention 1984 clashes between Nandi and Luhya in Kapkangani, describing these as "similar to the outbreak of violence in November 1991 on Miteitei Farm" around Tinderet in Nandi District, but they point out that the 1984 clashes were "quickly ended" by the local administration.

The introduction of multipartism in 1991–92 created new incentives for Moi regime politicians: it heightened their incentives to mobilize potential and likely supporters and to get these people out to vote, and also to reduce the vote share of the opposition by discouraging or preventing likely opposition-party voters from going to the polls. This confluence of factors brought questions of land distribution and redistribution to a crisis point (see Mutua 2008:78–79). Leading members of the Moi government campaigned openly on a platform of chasing settlers out of the Rift and reallocating land to the regime's own supporters.¹⁶ Starting in late 1991, peoples claiming to be indigenous to the Rift Valley—the Maasai and the Kalenjin coalition of smaller groups—were encouraged by ruling-party politicians to demand that "settlers" be dispossessed of their land and expelled. Politicians dangled the tantalizing prize of restoring land in the Rift Valley to the "original owners" who had been twice denied—first by the colonial state in 1905–20 and then by the ruling party of Jomo Kenyatta in the 1960s and 1970s. Political rhetoric that pervaded Nandi, Nakuru, Uasin-Gishu, and Trans-Nzoia Districts dwelt on how land lost to the Europeans was never recovered, and how under Kenyatta "foreigners" had been allowed to buy up land. Grassroots political discourse was filled with loud denunciations of Kenyatta's "land gifts" and demands for land restitution. The IRIN

reported that in Kikia in Molo, Nakuru District, where “most land belonged to Kikuyus in the early 1990s[,] . . . local Kalenjin politicians reminded people of the past ownership of the land” and encouraged them to reclaim it (IRIN 2007).¹⁷ In Narok, politicians rallied constituencies of “indigenous people” around the claim that the land titles of Kenyan settlers were worthless pieces of paper that had been illicitly allotted by corrupt agents of the Kenyatta regime.

In 1991 and 1992, pogroms targeted at settlers on settlement schemes killed hundreds and drove thousands off their land. The main victims of violence and displacement were rural families who had benefited from the Kenyatta-era land programs. Reports in the press, the Kiliku Report (of the 1992 Select Parliamentary Committee), the Akiwumi Report (of the 1999 Judicial Commission), reports of Human Rights Watch (HRW) and the Kenya National Council of Churches, and many others described these events in detail.¹⁸ Local leaders (sometimes obviously sponsored by higher-ups) supported a militia of “Kalenjin warriors” who attacked small-holder settlements, destroyed farm equipment and animals, burned down houses, and raped, maimed, and killed people. In Trans Nzoia District, gangs incited by Kalenjin politicians invaded farms and drove off settlers, declaring that it was time for the native people to reclaim land that had been transferred to outsiders under Kenyatta.

A notorious case in Kericho was that of Buru Farm (a.k.a. the Thessalia plot) in Kipsitet, Kericho District, which was notable for the high-profile role of government agents, the explicitness of the government’s claim to complete prerogative over the land, and the pre- and post-election time span of the violence. Occupation of Buru farm by Luo had been under dispute since 1972. According to the Akiwumi Report, attacks by Kalenjin warriors that had begun a few weeks earlier in Nandi District “spread” to Buru Farm and Kericho District on November 5, 1991. At Buru farm, Kalenjin warriors were aided by the government, which used armed policemen to “drive out the Luo from land which the government had decided to settle them on. . . .” In December 1993, after the election, the Luo who had moved back to Buru Farm were forced out again and their houses were bulldozed by armed policemen. They were told to leave “government land” and move to Nyanza (Republic of Kenya 2002[1999] [Akiwumi Report]:73–79, 99).

Human Rights Watch (1993) reported that approximately fifteen hundred people were killed and as many as three hundred thousand were displaced by Rift Valley violence that began in 1991 and continued throughout 1993 and 1994, with sporadic incidents in 1995 and 1996. Moi regime supporters moved into vacated farms and homes with the assistance and protection of the government. In some cases, land titles were issued to the new occupants. The politics of taking land in order to give it to regime supporters was explicit, confirming at least the second half of Suzanne Mueller’s (2008:188) observation that “Unlike Kenyatta, who could give without taking away, Moi had to take away before he could give.”¹⁹

The 1997 elections were marked by similar patterns of violence. Land-related skirmishes occurred in the settlement scheme areas of Coastal Province, which had been shaped by a similar history of land expropriation and top-down land reallocation (see Kanyinga 1998). By the end of the decade, what many observers considered to be a deliberate and permanent reallocation of land had taken place in the Rift. The Norwegian Refugee Council wrote that

A long-term effect of the violence is the lasting alteration of land occupancy and ownership patterns in the areas where “ethnic” clashes took place, and a significant reduction in the number of non-Kalenjin landowners, particularly in Rift Valley Province. The government has continued to pursue its politics of . . . allowing and cooperating in the illegal expropriation of land owned primarily by Kikuyus, Luhyas, and Luos. [This] benefits the Moi government. . . : it expects their [the beneficiaries’] political support by claiming to have got “their” land back. . . . (NRC-IDMC, n.d.)

In 2004 the council reported that more than a half-million people had been displaced in the 1990s. When the Moi regime ended in 2002, there were still 350,000 IDPs in Kenya.

Kibaki’s win in 2002 was not marked by violence, but for many small-scale landholders and squatters in the Rift Valley, and for those displaced by the 1990s violence, the specter of land (re)distribution hung heavy over the election. The candidate promised land restitution or resettlement to the hundreds of thousands of IDPs who remained.²⁰ As one local “peace committee” organizer in Kuresoi said, “2002 was a time of change of guard in the political alignments and the displaced families felt they [would] be protected to enable them to return home” (NRC-IDMC 2007). And once in office, Kibaki’s government began evicting tens of thousands of squatters from the Mau Forests, most of them members of Kalenjin constituencies who had been settled during the Moi years. *The Nation* (Nairobi) reported in June 2005, for example, that some thirty thousand squatters had been evicted (*The Nation* 2005b).²¹ Some Moi-era allocations of SFT land were also withdrawn—one example was the January 2005 revocation of three thousand acres of SFT land at Kanyarkwat in Trans Nzoia District, to the anger of Pokot farmers.²²

In April 2005, an article entitled “Kenyans are ‘Free to Live Anywhere’” appeared in *The Nation* (*The Nation* 2005a).²³ It opened with “Kenyans have the right to live anywhere in the country, the Government has reaffirmed. . . . Kenyans have a right to buy property, reside, conduct business, live and die anywhere in Kenya. Kenya belongs to all Kenyans.” The new government’s position was an explicit repudiation of the *majimboist* political platform that had been embraced by the KADU coalition before 1964 and was promoted by the Moi government in the 1990s. In both periods, *majimboism* had been a rallying cry to mobilize popular constituencies in the Rift

to reassert the primacy of indigenous land claims. In the 1990s and after 2000, battle lines in the geopolitically strategic Rift Valley largely followed this social cleavage.

Land Redistribution Politics in Kenya since 2002

Land politics remained near center stage in the Kibaki regime from 2002 to 2007, and from 2008 on they were central in the tumultuous drama unfolding over the vote on Kenya's new constitution in August 2010. From 2002 to 2010, it played out in many acts, from the issuing in 2004 of the Ndungu Report and the initiation of National Land Policy drafting process; to the voters' rejection in 2005 of the Bomas constitution, which contained important provisions of the Draft National Land Policy (DNLP); to the approval in May 2007 of a version of the DNLP by the Ministry of Lands (Republic of Kenya 2007). As the DNLP was poised to go to Parliament, Kenya descended into the catastrophic 2007 election, defined largely by land-related violence that shocked even the veterans of the land wars of the 1990s. With a coalition government erected under the auspices of the international community, the DNLP was approved by the Cabinet in June 2009. Then the main provisions of the still roughly drawn National Land Policy were swept into the draft constitution of 2010, which was ratified by voters in the August 2010 referendum (Republic of Kenya 2010).²⁴

In 2002 Kibaki was elected by a broad reform coalition that was mobilized to purge and purify a government thoroughly soaked in corruption and stained by human rights abuses on a vast scale. In June 2003 Kibaki appointed a twenty-member "Commission of Inquiry into the Illegal and Irregular Allocation of Public Land," chaired by Paul Ndungu.²⁵ The Ndungu Commission's report, released in December 2004, focused largely on the 1980s and 1990s, arguing, as Southall summarizes it, that in those decades "land was no longer allocated for development purposes but as a political reward and for speculative purposes" (2005:144). The report gave voice to what most Kenyans had long recognized as a fact of life that predated the Moi regime, and it riveted the attention of external donors, including Britain's Department for International Development, on the fact that Kenya's land politics were a powder keg of grievances and revindications that threatened the very survival of state and society. The Ndungu Commission focused much of its criticism of the status quo on the extreme centralization of land-allocation powers in the hands of the president and on the arbitrary use of these powers, especially in the former White Highlands, where the government owned or controlled so much land. Following what is now considered by the international community to be "best practice" in land law reform in Africa, the Ndungu Commission called for the drafting of a new, comprehensive land policy to establish basic priorities and principles that would serve as a prelude to the drafting of land legislation.²⁶

A National Land Policy Secretariat in the Ministry of Lands was charged with undertaking a “National Land Policy Process,” including the organizing of a National Civil Society Conference on Land to air issues and mobilize stakeholders to pressure the government for reform. The Kenya Land Alliance, with headquarters in Nakuru, formed circa 2004. Action Aid and other international land-rights NGOs established an active local presence in this area. As Norton-Griffiths, Wolf, and Figueroa (2009:12) explain it,

The National Land Policy Secretariat in the Ministry of Lands was responsible for developing the National Land Policy. . . . In the course of 2005–6, fourteen Regional Consultations were held in the country . . . [in order to allow for] broad public consultation. A final draft of the DNLP was approved at a “stakeholder symposium” in Nairobi in April 2007 despite the expression of significant reservations by some parties [such as the Kenya Landowners Association (KELA) and the Law Society of Kenya].

Provisions of a DNLP were included in Kenya’s Bomas draft constitution, which was put to a vote (in an amended draft, known as the Wako draft) in a 2005 referendum.²⁷ The opposition campaigned for a “no” vote and won, in part by focusing voters’ attention on the land provisions, which were intended to add momentum to the Ndungu Report’s calls for revocation of land grants that had been made illegally by the Moi regime (including both grants to privileged regime insiders and those made to smallholders in the Mau Forest). They also proposed giving women equal rights to men to inherit land.²⁸ Many observers argued that those opposing the new constitution distorted some of the possible implications of the land provisions to scare voters and thus kill the entire constitution.

The DNLP process continued, and was approved by the Ministry of Lands in May 2007. A central feature of the DNLP was a complete overhaul of the land administration machinery of the Kenya state and a review of virtually all land rights, deeded or not, that had been issued or confirmed by the state since 1963. The government’s stated priorities were to redress historical land grievances, ameliorate inequities, and safeguard minority rights. To these ends, the policy called for the creation of a National Land Board answerable to Parliament, both to restrict the power of the Executive in this domain (as Harbeson argues in this issue) and to replace district-level boards, which have been closely aligned with provincial administration and are deemed to have failed to protect the interests of women, families, and indigenous communities in land transactions.

Kenya’s DNLP was a mix of apparently populist and progressive tenets, on the one hand, and proposals that could expand state power in the land domain, on the other. It threw into question much of existing legislation governing farmland, wildlife, ranching, and mining, “seeming to ignore the past history of land legislation,” in the words of one interviewee who held land under a title granted in the Kenyatta era (interview, Nov. 21, 2008).

The tone of the policy and many of its provisions ran against the Kenyan state's long-established official stance in favor of a systematic (if gradual) process of land registration and individual titling, and emphasized instead the protection of communal rights, including those that had been violated by past land-allocation policies and programs. A great deal of attention was focused on problems that cut very deep into Kenya's modern history: historical injustices related to land, the need for protection of minority rights, the question of government repossession of ill-gotten land, and matters of land restitution. Meanwhile, the power of the state to expropriate land (with compensation) for public purposes was strongly affirmed and possibly considerably expanded (KELA 2008). Prerogative in policy domains that had long been dispersed across several ministries (land, mining, livestock and fisheries, environment and conservation) was to be concentrated in the Land Commission, which some Kenyans criticized as "a Super Ministry with infinitely greater powers than currently held by the Ministry of Lands" (*The Nation* 2007).

The DNLP made no further progress through the legislative process before the 2007 election, which deepened conflicts over land in the Rift Valley. In the run-up to the election, Kalenjin-coalition constituencies rallied behind William Ruto, the Rift Valley boss, and the opposition presidential candidate, Raila Odinga, who pledged in the months before the vote that those dispossessed by Kenyatta-era land policies would reclaim their land at the time of the election.²⁹ Some opposition party politicians campaigned in the central Rift on a platform that promised to "chase out black colonialists" (interview with Kibaki government advisor, Nairobi, Nov. 20, 2008). Sure enough, Burnt Forest, Molo, and other epicenters of 1991–93 and 1997 clashes were wracked by violence—house sackings and burnings, destructions of shops and schools, killings, land invasions—in the wake of the disputed election. Violence that was targeted at settlement schemes in the Burnt Forest area (on the Uasin-Gishu/Nandi District border) seemed to have been planned with the help of local officials and notables well before the election (see Republic of Kenya 2008:518).

The trauma of the 2007 election produced a coalition government forged under immense pressure from the international community (Chege 2008). The DNLP was passed by the "Coalition Cabinet" in June 2009, as per a Kofi Annan-mediated agreement which required that a new land policy be voted by the end of year. The Cabinet vote on the land policy came much to the surprise of some local observers and large-scale landowners who were alarmed by what appeared to be excessive populism and ill-considered challenges to existing property institutions. As one consultant for the Kenya Landowners Association described the situation,

Oh yes! The DNLP. Well it rumbled on and on and we had endless assurances from quite big Ministers [e.g., Mutula Kilonzo, now Minister of Justice] that it would never see the light of day. So we were not that surprised

to hear that it went through Cabinet in 6.5 seconds flat! It is now being drafted into law in the [Attorney General's] chambers, so I suppose the fight will continue once it gets to [Parliament]. (E-mail correspondence, Oct. 26, 2009)

The version approved by the Cabinet included the following provisions, as summarized in the Kenyan press: (1) the establishment of a National Land Commission to manage all public land, with members appointed by the president but vetted by Parliament; (2) a prohibition on the holding of freehold titles by foreigners, who may only hold land under 99-year leases, after being vetted, and in the case of agricultural land, with the approval of the president; (3) the conversion of all existing freehold titles and 999-year leases to 99-year leases; (4) an investigation of historical injustices relating to land and the establishment of mechanisms for resolving post-1895 land claims; (5) the repossession by the government of public land grabbed or acquired illegally (with all land titles subject to review); (6) the repeal of the Trust Land Act and the conversion of all former Trust land to community land; (7) the return to communities of land grabbed illegally from Trust Land (with “community” defined in terms of ethnicity, custom, ancestry, etc.); and (8) compulsory government acquisition of all land on which minerals are discovered, with compensation to affected communities and future government leasing of the land to interested investors. The Land Policy also recommended the termination of the Group Ranches, the establishment of maximum and minimum acreages for private landholdings, and the protection of the interests of spouses and children in transfers of private land (including the right of women to inherit land from fathers or husbands).³⁰

The Nation had reported in July 2007 that lawyers in the Kenya Law Society had taken the Minister of Lands to task for approving the DNL, dismissing it as a “flawed” and “strange” document that “focus[ed] on poverty reduction at the cost of wealth creation [in a way that was] fundamentally injurious to the future of Kenya.” These concerns resonated with those articulated more than a year later by the Kenya Landowners Association (KELA) and the Machakos and Makuani Ranchers Association, two organizations that represented groups that were only belatedly recognized as stakeholders in the process. They feared that core provisions of the DNL would go far in undermining private property rights in rural Kenya (see Norton-Griffiths, Wolf, & Figueroa 2009:16–17; Machakos & Makuani Ranchers Association 2007). Concerns about the affirmation of communal or “tribal” land areas were also raised by skeptics who feared that provisions related to community holdings could Balkanize the country and lead to discrimination against outsiders, or the nonrepresentation of their interests in local land decisions. The Kenya Land Alliance, for its part, replied to such concerns by saying that these were not intended effects of the new land policy and by arguing that there could be more bloody conflicts in

the future if perceived historical injustices were not dealt with openly and transparently, within a comprehensive legal framework (KLA n.d.).³¹

In May 2009 John W. Bruce, a Kenya expert and former director of the University of Wisconsin-Madison Land Tenure Center, pointed out that although the sweeping proposals contained many useful suggestions and accurate diagnoses of existing problems, the vagueness of the language and the scope of promises were cause for concern. In his view, many of the provisions were put in the DNLP “without really searching inquiry” (2009:19), without procedures for passing the broad mandates into law, and without due consideration for administration, implementation, and cost. On restitution and resolution of historical injustices, he writes that he was “concerned about the wisdom of making such broad promises. Failure to deliver on them, or failed attempts to deliver on them, could contribute significantly to ethnic resentment and violence. What is the redress of old injustices to one group is a new injustice to another. These are matters to be handled with great care and specificity, not broad promises” (2009:15).

Some of the main provisions of the NLP were incorporated into the proposed constitution of August 4, 2010, in which land issues were deemed by many to be “the most controversial” of the matters it considered (IRIN 2010).³² Lines of division in the vote on the new constitution closely followed the main cleavages in the struggle over allocation of land between indigenous and nonindigenous communities in the Rift, rather than the line of partisan cleavage that had developed in 2007. The main campaigners against the new constitution were those positioned as political bosses of Kalenjin constituencies in the Rift—past president Daniel arap Moi and William Ruto, minister of agriculture in the 2008 Coalition Government. It is telling that these leaders did not oppose the main land provisions *per se* in the new constitution (indeed, the calls for “redressing injustices” and “restitution” seemed designed to resonate with the land grievances of communities claiming to be indigenous to the Rift). Rather, the Kalenjin-coalition leaders focused their opposition on the proposed restructuring of the institutional locus of state power over land.³³

Under the new constitution, power over land allocation at the local level would be lodged in the forty-seven new, semi-autonomous county governments.³⁴ In many of the new jurisdictions in the Rift, Kalenjin would be minorities. Nakuru, for example, is 60 percent Kikuyu and only 16 percent Kalenjin-coalition, or KAMATUSA (Kimenyi & N’Dung’u 2005:145). Kalenjin-coalition leaders foresaw that creation of the new counties and county councils could translate into permanent loss of control over large swaths of Rift Valley Province, shrinking the territorial scope of their own political strongholds and cutting off their access to the state institutions that would be decisive in the distribution and redistribution of land.³⁵ As a Tugen (Kalenjin-coalition) government worker explained in an interview in Nairobi in November 2008, “The new constitution aims at taking away Kalenjin lands in the Rift. This is why we must fight it. The indigenous

landowners must have control over provincial and district administration. Government has control over land allocation, even if titles have been given" (interview, Nairobi, Nov. 21, 2008).

The anticipated distributional effects of the proposed changes were visible in the geographic pattern of support and nonsupport for the new constitution. The Rift Valley voted about 66–34 against approval, the only one of Kenya's provinces to return a "no" vote.

Conclusion

Throughout Kenya's history, land politics and policy have revolved around debates over whose rights are to be recognized by the state, and have raised the fundamental question of the legitimacy of past land allocations. The question of indigenous versus settlers' land rights (Kenyan settlers, that is) forms one dimension of this struggle over the distribution of land. Another dimension has to do with the use of state power to allocate land to the rich, as opposed to the poor. As noted above, many analysts have emphasized the government's readiness to focus popular attention on the struggle *among* common people, divided as they are into state-nurtured ethnic factions, in order to deflect attention away from the burning questions of class privilege and betrayal of the public trust (see Wasserman 1973; Leys 1975; Berman & Lonsdale 1992). These questions about the use of state power to distribute land are logically prior to, and seem to engulf and subsume, narrower land-administration questions, including the question of corruption in land administration.

"Broad consensus" around Kenya's new Land Policy may thus be more apparent than real. Denying the president arbitrary powers to give and take land is surely a step forward, but this does not mean that land-allocation will be depoliticized. Instead, the reform raises questions of who will control land in the president's stead and what rules or principles will guide land distribution and redistribution. As Kenyans asked themselves in 1960–64, should the National Land Board and the new county councils make land available to all citizens, following the principle that "Kenyans have the right to live anywhere"? Or should they safeguard the birthright of indigenous communities? Does economic development move forward with the expansion of private property, or should community lands be sheltered from the market? Should land ill-gotten in the past, but subsequently "laundered through the market," be reappropriated by the state? And if lands allocated illegally are to be reappropriated by the state, shall the dispossessed include both Kenyatta-era and Moi-era beneficiaries, and the poorest and most vulnerable of the forest squatters as well as Kenya's politically connected land barons? Shall new injustices be created in order to rectify the old? Kenya's NLP and the land provisions in the new constitution seem to have opened up a Pandora's Box of land issues having to do with state allocation of land rights. The review and reconsideration of past land allocations now has

legal footing, but this does not diminish the specter of redistributive conflict that this *fuite en avant* seems to invoke.³⁶

Because the politics of distribution and redistribution is affected by layers of claims and counterclaims, the search for a general solution to land-related conflict may be held hostage to demands to prioritize and resolve the grievances of particular groups and communities. The accumulation of land claims clearly creates daunting challenges for policy and legal reform. As of late 2011, a legal framework for implementing the national land policy was in the works. It remains to be seen whether this effort, in the context of the other reforms linked to the new constitution, can shift the dynamics and direction of land politics by channeling conflict into new institutions and political fora.

The legitimacy of the state itself, and its foundations in the rule of law, are at stake. A former mayor of a Rift Valley town (under Kenyatta) pointed out that “the state and the rule of law have a hard time being seen as legitimate when they have created such gross inequality” (interview, Rift Valley, Nov. 15, 2008). Kenya is one of a growing number of African countries embroiled in deep land-related conflicts that have wide implications not only for political stability, but also for state structure, citizenship rights, and the channeling of class tensions (see Boone 2007a, 2009; Boone & Kriger 2010). It is not obvious that the Land Policy tenets that have been incorporated into the new constitution can solve these problems. Injustices overlap and double back on themselves in ways that the law itself may not be able to untangle.

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Notes

1. A 2008 Kenya headline that captured the gist of the argument here read “Like all our wars, this too is about land” (Bernard Kwalia, SG, March 16, 2008, posted by “Chama Cha Mwananchi, Socialist: Kenya’s Leading Social Democrats” at <http://chamachamwananchi.wordpress.com>).
2. Some community representatives working with Rift Valley Internally Displaced Persons (IDPs) in November 2008 believe that up to 5,000 were killed in the January 2008 violence, rather than the officially reported number of 1,300.

The same source reported that 39,000 houses were burned down in Rift Valley Province in the 2008 postelection violence (interview, Burnt Forest/Timbaroa, Nov. 17, 2008).

3. See, e.g., Acemoglu and Robinson (2006), following North (1981). The purpose of this article is not to criticize the National Land Policy effort, or to suggest that some other (better) policy could easily solve Kenya's land conflicts. Rather, it is to analyze the structure of the problem.
4. He adds that their "security of tenure is substantially less than that of the Africans involved in the land-consolidation programs [in Central Province] and even of those who have access to land according to traditional rules of tenure" (Harbeson 1973:284–85).
5. On repayment rates, see Harbeson (1973:300); Migot-Aholla et al. (1993:129–30). On the low incidence of eviction of defaulters, see Leys (1975:79). On repayment relief, see Harbeson (1973:300–301). On the lack of title deeds on Trans-Nzoia schemes and some LBCs, see, e.g., Republic of Kenya (2002 [1999]:62–63, 210). On the political ties between rights-holders and the state, see Migot-Adholla (1993:125), who found that in two settlement areas surveyed in 1988, 34% and 58% of parcels (and the vast majority of land as measured by area) were still held by those who had received the allocation directly from the government. In each area, rates for this mode of acquisition were higher than rates for other modes of acquisition. In the reserve areas surveyed, by contrast, the major mode of land acquisition "continues to be inheritance."
6. According to the Akiwumi report, this MP, Dixon Kihika Kimani, "wields a lot of influence in the two areas, largely because of his past role in assisting the majority of the residents to get land there" (Republic of Kenya 2002 [1999]:160).
7. Interviewees said that that expulsion of Kenyatta-era Kikuyu settlers from the Mau forest began in 1986. As one put it, the forest evictions of 1986 "were the start of all these problems." They were evicted from forests around Londiani, Njoro, and Elburgon. "Then, this land was given to Kalenjin" (interview, Eldoret, Nov. 18, 2008). Another interviewee added that "Kalenjin" were settled in the 1980s in the Anabkoi and Singalo Forests (interview, Timbaroa, Nov. 17, 2008). The Kikuyu owner of a small plot and house located between Turi and Molo—a retired postal worker—said that "most Kikuyu were expelled from the Mau in the 1980s. Kalenjin moved in." Many Kalenjin were allowed to settle in the Mau Forest area south of Njoro. "They clear-cut and started farming." He added that others were settled on ADC farms acquired by [Moi ally and Minister of Roads from Buret] Franklin Bett (interview, Molo, Nov. 16, 2008).
8. In 2001, 27.3 percent of the SW Mau Forest Reserve (22,797 ha.) was degazetted. According to UNDP/KWS (2008), "This excision was challenged in court and orders were given by the high court to stop it, but settlement went ahead and the area is now settled." Also in 2001, 54.3 percent of the E. Mau Forest (35,301 ha.) was degazetted. "This excision was challenged in court and orders were given to stop it, but settlement went ahead and most of the area is now settled, although with varying densities." See also ERMIS Africa (2009). The Ndungu Commission (2004) reported that approximately 39% of the officially gazetted forest had been illegally excised (according to aerial surveys), and recommended that most of the illegally allocated land be revoked.
9. Kenya National Archives, clipping from the *East African Standard* (Aug. 9, 1961), "Settlement Schemes: Land Development and Settlement Board Papers, 1962

- [PC/NZA/4/14/9]. In the same file, a circular from the Settlement Board to “all permanent secretaries” (Aug. 30, 1961, #166/3) spoke of the huge rush to get as many settlers on the ground as possible between 1961 and June 30, 1963, which would be six months before Independence Day.
10. The Kenya Regional Boundaries Commission of 1962 refers to these groups in these terms, and was guided by the principle of “taking into account tribal affinities and historical claims” in accordance with peoples’ wishes to “avoid domination by others” (Kenya Regional Boundaries Commission 1962:4).
 11. Kenya National Archives, PC/NZA/4/14/9, Correspondence.
 12. There were some land concessions to the Kalenjin in exchange: Kenyatta resolved a Luhya–Kalenjin conflict over land in favor of the latter, and state funds for land purchases was set aside for “the Kalenjin.” Leys (1975:229) notes that this is how Moi himself came to own sixteen large properties in the Rift, including his Rongai property.
 13. Kariuki is remembered for arguing that “Kenya has become a nation of 10 millionaires and 10 million beggars” (quoted in Githinyi 2000).
 14. See the Ndungu Report summary provided by Southall (2005); and Gisemba 2008 about the Settlement Fund Trustees’ (SFT) acquisition and reallocation of land. See also Lynch (2006) on ADC farms allocated to Kalenjin-cluster groups in 1993.
 15. Onoma (2010) explains that in the early 1980s, Moi promoted the conversion of some land-buying company titles to individual titles in the effort to break patron–client links between smallholders and the politicians who had established themselves and land purveyors under Kenyatta. See also Gisemba (2008). One by-product of this process, perhaps unanticipated by the Moi regime, was heightened anxiety among those claiming rights to the same land on the basis of indigeneity. Throup and Hornsby (1998:198–99) describe how these two dynamics—demands for restitution and the titling of “ill-gotten” land—formed a combustible combination at election time: “In several settlement areas, the process of land registration was underway [as provided for in preceding and existing national land policy in Kenya]. Individual titles were being issued to local residents, replacing earlier communal [i.e., cooperative or company] title deeds. If Kikuyu, Abaluhya, Gusii and Luo settlers could be driven out of the Rift Valley borderlands before the process was completed, small-holdings could be appropriated by their Kalenjin former neighbors and they would forfeit all claims to the land.”
 16. Reintroduction of the “*majimbo* system of government” was an explicit part of this platform as articulated by KANU politicians in Kapsabet and Kaptatet rallies; *majimboism* was presented as an alternative to multipartism. See Akiwumi Report (Republic of Kenya 2002 [1999]:212,223) and Kahl (2006:142–43.) The argument presumes that multipartism would take the presidency away from Moi and the “minority tribes.”
 17. This source also reports that Keffah Magenye, national coordinator of the IDP Network, a Kenyan NGO, said in 2007 that “90 percent of the IDPs are Kikuyu.”
 18. See HRW (1993); Oucho (2002); Republic of Kenya (1992, 2002[1999]); Boone (2007b); Kimenyi and N’Dung’u (2005); Anderson and Lochery (2008); Boone (2011a).
 19. On the 1993 expulsions from Enosupukia in Northern Narok, for example, see Throup and Hornsby (1998:542–43); Klopp (2002). On the timing, see

- Akiwumi Report (Federation of Kenya 2002 [1999]) and NCKK (1993–96) for 1995 and 1996. On the titling of land to new occupants, see NRC-IDMC (n.d.). On the political uses of land distribution, Kahl (2006:146) points out that “the prospect of gaining access to land was used by KANU elites as a powerful selective incentive to encourage individuals to drive away their neighbors.” Citing Jacqueline Klopp’s dissertation on land politics in Kenya, Kahl writes that “cleared land opened up new resources to buy support through patronage and raised the stakes in the fight for change. By effectively taking land claimed by others, Ntimama’s supporters [, for example,] now had a stronger stake in maintaining KANU and Ntimama in power” (2006:147–48).
20. The promises were not kept, however. The IDP Network said in 2007 that most of the 400,000 they estimate to have been displaced in the 1990s land conflicts “remain landless” (IRIN 2007). As of January 2008, there were still 50 “volatile” IDP camps (“congested sites”) in Molo, full of displaced people from Molo itself (IRIN 2008).
 21. Amanda Pinkston (2008:43) notes, however, that “as public outcry grew, and particularly as the constitutional referendum drew near, some of the evictees were allowed back to their farms for the harvest, and promises were made that all legitimate title holders would be resettled.” She cites *The Nation* (2005c). See KLA (2005b).
 22. Local officials defended the decision by saying that the land was disputed and violence (10 deaths) had already occurred; it was necessary to bar the farmers from the land to avoid triggering more violence (*The Standard* 2005).
 23. The 4-C Model Constitution included almost this exact clause (see Mutunga 1999).
 24. On the land provisions, see ch. 5, part I, sections 60–68.
 25. In November 1999 Moi had appointed a “Commission of Inquiry into the Land Systems in Kenya” (the Njonjo Commission), and in 2002 he launched the Constitution of Kenya Review Commission. Liz AldenWiley (2003:5) wrote that the formation of the Ndungu Commission in 2004 “chastened [the sitting land commission] into producing its findings and recommendations after sitting for four years.”
 26. See, e.g., Deininger and Binswanger (1999:249); Manji (2001); Boone (2007a). For the Rwandan case, for example, see Gready (2010:645), who explains that Rwanda’s national land policy is supposed to provide “a directive line, general principles” on land management, while the law is the detail, or “instructive application,” according to Rwanda’s Director of Lands in 2006.
 27. See Mutua (2008:227–31). On the 1990s civil society–driven constitutional reform movement, see Mutua (2008:102–37) and Mutunga (1999). Moi co-opted this initiative, deferring the taking-up of constitutional reform until after the 1997 election.
 28. See, e.g., the statements in *The Nation* from the housing minister, Amos Kimunya (2005d), and from the former agricultural minister, Bonaya Godana (2005e). Kimunya campaigned for a “yes” vote; Godana campaigned for a “no” vote. Two Tugen (Kalenjin-coalition) government workers explained in an interview in Nairobi in November 2008 that the Ndungu Report called for government’s repossession of idle land, and the draft constitution that was rejected in 2005 called for enforcement of this provision. In other words, the Kibaki govern-

- ment and the new constitution aimed at taking away Kalenjin land in the Rift. This is why it had to be rejected (interviews, Nairobi, Nov. 21, 2008).
29. Leaflets distributed in Likia, Molo District, in May 2007 read: "Warning! . . . to the people who are not from this region! This land is ours from before! Time has come for you to leave our land and return to yours! Whoever disobeys will die! The Rift Valley Land Owners and Protectors army is ready to fight for its right till the last drop of blood is shed!" (IRIN 2007). See Chege (2008:134–35); Parker (2008).
 30. A summary of the land policy reforms was printed in the June 26, 2009, issue of *The Standard* and also posted on KTN (Kenya Television Network). Norton-Griffiths, Wolf, and Figueroa (2009) argue that the 2007 DNLP was essentially the same as the land chapter included in the "Bomas Draft" constitution that was rejected in 2005.
 31. The KLA argued, *inter alia*, that customary and communal tenure (including the communal access arrangements for pastoralists and others) had to achieve recognized legal status in Kenya, and that the land rights of local residents (residents of localities) had to be acknowledged and protected, ensuring that basic human rights and the constitutional principles of equity and equality were respected. See KLA (2005a).
 32. The Government of Kenya sent 15,000 extra policemen to Rift Valley Province in the weeks before the vote.
 33. On *majimboism* in the 1990s and 2000s and the high stakes of devolution and nativism, which some saw in the 2005 draft constitution as threatening to create a "bantustan" system of ethnic autonomy, see Mutua (2008:188–96, 268–73). See also Kagwanja and Mutunga (2001).
 34. Of these, fourteen will be in the Rift Valley. The link between control over land allocation/access and control of local administrative posts and the local police (and political posts, including the posts of MP) was a constant theme in the "ethnic clashes" of the 1990s. See, e.g., Republic of Kenya (1992:48).
 35. See Wrong (2010).
 36. Mutua's (2008:196) observation regarding the devolution clauses in the 2004 draft constitution seem apposite here: "These were legitimate questions on which the delegates did not fully deliberate because of the complex matters they raised or due to their distrust of the critics" [of the proposed reform]. See Mueller (2011), who argues that institutions have been so deliberately weakened in Kenya by the political class, and that public trust in institutions is so low, that legal reforms and fixes are unlikely to go far in resolving Kenya's underlying political conflicts.

