

HISTORY OF LAND CONFLICTS IN KENYA

Kenya



Kenyans line up to vote in national elections, December 2007. Much of the violence that followed the elections was linked to long-standing land disputes. *Photo: Ian Schuler*

By Peter Veit

INTRODUCTION

Kenya drew international attention in 2007 when widespread violence broke out following presidential elections, resulting in the death of 1,300 people and the displacement of as many as 600,000 individuals. Much of the violence was linked to long-standing land disputes. Kenya has endured a long history of land conflicts, dating back to its colonial period when first the Germans and then the British promulgated policies and practices that alienated people from their customary land and pitted one ethnic group against another. These policies were extended after independence. Ethnic divisions, especially over traditional land, were exploited for short-term political ends. Kenya's new Constitution of 2010, however, provides hope that some historical injustices will be addressed.



MAP



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Tea estate in Kericho, Kenya. Photo: Swetawriter

TERRITORIAL CLAIMS BY COLONIAL POWERS

In the early 1800s, Zanzibar was a base for European trade and exploration of Africa. On 7 August 1885, German warships arrived in Zanzibar, demanding that Sultan Barghash cede his mainland territories to the German emperor. At the Berlin Conference of 1885, Britain suggested that the two nations have separate spheres of interest over the territory stretching inland to the Great Lakes. The compromise was accepted by Germany, and the British consul persuaded the Sultan to sign an agreement ceding his mainland territory. This excluded a 16 km-wide strip of land on the Kenya coast, over which Germany set up a protectorate. In November 1886, a line was drawn inland of the Sultan's coastal land to Mount Kilimanjaro and on to Lake Victoria at latitude 1° S; the British sphere of influence was to the north, the German sphere was to the south.

In 1887, the British East Africa Association, led by Sir William Mackinnon, claimed concessionary rights to the Sultan's strip of coastal land. In 1888, the Association became the Imperial British East Africa Company


(BEAC), receiving a royal charter from the British government, and the original grant to administer the territory. In 1890, Germany formally handed its coastal holdings in Kenya (and all claims to territory in Uganda) to the British in exchange for German control over the coast of Tanganyika and other territory. The colonial takeover of East Africa met with some strong local resistance. On 1 July 1895, following BEAC financial difficulties, the British revoked BEAC's charter, proclaimed the East African Protectorate, and established direct rule over the interior as far west as Lake Naivasha. In 1902, the border was extended to Uganda.

To promote development in the neighboring Uganda Protectorate, the British built the "Uganda Railway" to give Uganda access to the sea. The first section of the railway was started in 1895 and the entire railway—from coastal Mombasa, the administrative center of the East African Protectorate, to Kisumu on Lake Victoria—was completed in 1901. In 1905, Nairobi became the new capital of the East Africa Protectorate. Railway extensions, such as the Nairobi-Thika and Konza-Magadi lines, were constructed to link other towns in the East African Protectorate. The railways

opened up the interior to white farmers, missionaries and administrators, and various government programs.

Economic development was needed to pay for the Uganda Railway and make it profitable, and to speed up modernization in Britain's Uganda and East Africa Protectorates. In 1902, the British government granted the private East Africa Syndicate 1,300 km² of land in the Rift Valley and surrounding highlands to promote white settlement and establish export agriculture. The temperate fertile highlands - the White Highlands - became the enclave of white immigrants (some Britons, but mainly white South Africans) engaged in large-scale farming and dependent on African laborers who were mainly Kikuyu, but also Kalenjin, Luhya, Masaai, and Luo. Settlers with 1,000 British pounds in assets could receive 1,000 acres (4 km²) for free. Many settlers established coffee plantations, which required expensive machinery, a stable labor force, and a wait time of four years before the crops began producing. Other settlers established large-scale tea plantations.

Settler agriculture entailed the dispossession of Africans, mainly Kikuyu, Maasai, and Kalenjin across the Rift



Beginning in 1941, the British embarked on a series of resettlement schemes involving forceful evictions and repatriations of Kikuyu, Maasai, Kalenjin and other tribes, back-and-forth between the central highlands and Rift Valley.



The British colonial empire routinely brutalized 90,000 Kenyans during the nationalist Mau-Mau movement from 1952-1960. (Above) Mau Mau prison camp. Photo: *The Prisma*, UK

Valley and Nyanza, Western and Central provinces. In 1897, the British declared all “waste and unoccupied land” in the East African Protectorate to be “Crown Land” vested in the imperial power. In 1899, the colonial power declared that all land, irrespective of whether it was occupied or unoccupied, had accrued to the imperial power simply by reason of assumption of jurisdiction, making all land available for alienation to white settlers. The British government considered Africans to be “tenants at the will of the Crown.”

TENUOUS LAND RIGHTS

The British considered the customary tenure arrangements practiced by the majority of Africans to be inconsistent with development and modernization, and colonial policy envisioned the eventual disappearance of traditional systems. By declaring all land to be Crown Land, the land rights of Africans became highly tenuous. Land was easily alienated from customary systems, usually without compensation.

The British also established a tenure system which only accorded recognition to land rights secured by individual

freehold title. While ideal for securing the private estates of settlers, customary tenure involved a complex system of nested and overlapping individual and group rights derived from kinship relationships that did not lend itself to concepts of absolute individual ownership. As a result, most customary land was left unregistered and vulnerable to appropriation and transfer to settlers.

In 1904, the British introduced a policy to settle Africans on “native reserves.” This formed the basis of ethnically defined administrative units, the precursors of today’s districts and locations. Native Lands Trust Boards were established to administer land in the reserves. However, land reserved for African use remained Crown Land and available for alienation at any time.

The Maasai and other groups negotiated “treaties” for the reserves, but these too were not capable of protecting land. In 1938, a clear separation in colonial law was made between Crown Land on which private titles could be granted, and native reserves which were to be held in trust for African use. Reserve land, however, continued to be alienated.

ETHNIC GROUP LOSSES

During colonial rule, every ethnic group in the Protectorate experienced land losses, although some groups lost more land than others. By 1934, the 30,000 white settlers in the Protectorate—less than 0.25% of the total population—controlled about a third of the arable land. When the settlers arrived, the central highlands were home to a million or more Kikuyu. Many of those displaced moved west into the Rift Valley. When the settlers also moved west and expropriated this land, the Kikuyu (as well as many Maasai) were made their tenants. As tensions between “squatter” farmers (about two-thirds of whom were Kikuyu) and their white landlords heightened, the settlers began pushing the Africans off the land. Beginning in 1941, the British embarked on a series of resettlement schemes involving forceful evictions and repatriations of Kikuyu, Maasai, Kalenjin and other tribes, back-and-forth between the central highlands and Rift Valley.

Land losses by the Kikuyu and other ethnic groups were exacerbated by the commercialization of the local economy, which led to the emergence of a wealthy landowning class of

Kikuyu. Commercialization was spurred by the British who (along with the settlers) criticized African farming as backward and sought to modernize local agricultural practices, especially from 1920 to 1945. The British imposed a number of changes in crop production and agrarian techniques, claiming to promote conservation and “betterment” of farming in the native reserves. While many areas were commercialized, Africans, especially Kikuyu farmers, in other regions engaged in widespread resistance to the colonial State’s agricultural reforms.

The Maasai also lost much of their customary land to settlers and the colonial government, including for the creation of protected areas. When the settlers arrived, the Maasai occupied an area of about 155,000 km² in the central Rift Valley, from Mt. Elgon and the Lariyu Plateau in the north to Kibaya in Tanzania in the south. In 1904, the British moved the Maasai to two reserves. In 1911, the northern reserve (the fertile Laikipia plateau) was eliminated and the southern reserve (the semi-arid Ngong) was expanded. In 1913, the Maasai were restricted to 40,000 km² of the southern Loiet plains. Beginning in 1913 and continuing into the 1950s, farmers, particularly Kikuyu, moved into Maasailand and cropped

in higher potential areas, which were crucial Maasai dry-season grazing lands.

The ethnic groups on the coast lost their land through other means. The British recognized the claims of the Sultan of Zanzibar on his 16-km coastal strip. Only the Sultan’s “subjects”—mainly those with some ancestral links outside the Protectorate—could register land in this area. As a result, up to 25% of the indigenous “*mijikenda*” were turned into landless squatters, unable to register the land they had lived on for generations. The *mijikenda* (“nine homes” or “nine homesteads” in Swahili) are the nine ethnic groups—Digo, Chonyi, Kambe, Duruma, Kauna, Ribe, Rabaj, Jibana and Giriama—residing along the coast from the border of Somalia in the north to Tanzania in the south.

As their contribution to the economy grew, the settlers sought a greater voice in government. In 1906, the British established the Legislative Council (LEGCO) in the East African Protectorate. The LEGCO’s first recorded sitting took place on 17 August 1907. Some settlers were appointed and others elected into the LEGCO. Over time, the number of settlers on the LEGCO increased, although most powers remained with the Governor. As a result, the settlers began lobbying to transform the Protectorate

into a Crown Colony, which would bring them more powers. Except for the Sultan’s coastal strip which remained a protectorate, the East African Protectorate became a Crown Colony on 23 July 1920, named the Kenya Colony.

FACT

The Young Kikuyu Association, Kenya’s first African political protest movement, was established in 1921 to assert African rights and, specifically, to recover Kikuyu land.



More than a million Kikuyu lived in the central highlands before the arrival of white settlers. By 1934, the settlers controlled about one-third of arable land, and many Kikuyu were forced to move to the Rift Valley—where they were later made tenants of white settlers. (Below) Aerial view of the Rift Valley. Photo: Nisi Creativ



In the Kenya Colony, the settlers were allowed to elect their own representatives to the LEGCO and quickly moved to establish policies designed to advance their interests. To protect their land, the settlers banned the growing of coffee by Africans, introduced a hut tax, and granted landless Africans less land in exchange for their labor. As the ability of Africans to provide a living from the land dwindled, there was a massive exodus to the cities. Beginning in the late 1930s, the government further intruded on ordinary Africans through marketing controls, stricter educational supervision and additional land changes.

The settlers opposed demands for political representation by the Africans, Indians and Arabs. In the Devonshire Declaration of 1923, the Colonial Office declared that African interests (over 95% of the population) must be paramount. In 1924, a white clergy man was nominated to represent African interests in the LEGCO. In addition, five Indians and one Arab were elected into the LEGCO. The British brought indentured laborers from their Indian empire to construct the railway in Kenya, encouraging Indian traders from the East African coast into the interior. Africans were excluded from direct political participation until 1944, when the first Kenyan was admitted in the LEGCO.

The creation of the Kenya Colony gave rise to African political activity, including the Young Kikuyu Association (later renamed the East African Association) and Archdeacon Owen's "Piny Owacho" (Voice of the People) Movement. The Young Kikuyu Association, Kenya's first African political protest movement, was established in 1921 by Harry Thuku to assert African rights and, specifically, to recover Kikuyu land. It advocated civil disobedience over new taxes, reduced wages and the continued loss of land to settlers. These political activities gave a sense of nationalism to many Kikuyu, widely believed as the Kenyan ethnic group most affected by colonialism. In 1925, the colonial government suppressed the Young Kikuyu Association, although its members quickly regrouped as the Kikuyu Central Association. In 1928, Jomo Kenyatta became the general secretary of the Kikuyu Central Association and the editor of its newspaper, *Mwigwithania*



Kenya's first president, Jomo Kenyatta (far right), in a ceremony.

(The Unifier). During the 1930s, Kenyatta peacefully campaigned on a range of issues, including land rights, access to education, respect for traditional customs and the need for African representation in the LEGCO.

In 1944, Harry Thuku founded the Kenya African Study Union which, in 1946, became the Kenya African Union (KAU). KAU demanded access to settler-owned land and acted as a constituency association for the first African member of LEGCO, Eliud Wambu Mathu. Mathu was nominated by the Governor in 1944, making Kenya the first East African colony to include an African LEGCO member. KAU was soon dominated by Kikuyu and, in 1947, Jomo Kenyatta became its president. In response to rising African pressures, the British broadened the LEGCO membership and increased its role. By 1952, the LEGCO's elected members included 14 settlers, 6 Indians and 1 Arab elected, plus 6 Africans and 1 Arab chosen by the Governor.

Despite these reforms, great economic and social inequality persisted. In October 1952, the Mau Mau militant group staged an uprising directed principally against the colonial government and settlers. It was the largest and most successful such movement in British Africa. Although efforts were made to attract other ethnic groups, the protest was supported almost exclusively by Kikuyu. The seizures of Kikuyu land and the forced displacement of Kikuyu laborers for settler production were major factors in the Mau Mau revolt: "We are fighting for all land stolen from us by the Crown...according to which Africans have been evicted from the Kenya Highlands...." In response to the revolt, the British declared a state of emergency, restricted African political organizing, and arrested Jomo Kenyatta. Kenyatta was charged with leading the uprising and, in 1953, was convicted and sentenced to seven years in prison. The British also forcibly moved thousands of Kenyans, mainly Kikuyu, Embu and Meru into reserves, and, from March

FACT

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1954 to the end of 1956 (when the worst violence ended), confiscated land belonging to 3,533 suspected militants. The state of emergency was not lifted until 1960. About 11,000 Africans, mainly Mau Mau fighters, died—some by British forces, others by militants as the movement was also an internal struggle among the Kikuyu. About 100 Europeans died in the violence.

The British made a number of concessions in response to the Mau Mau revolt. They embarked on agricultural reforms that empowered Africans and stripped settlers of some of their protections, such as allowing Africans (with a license) to grow coffee, the major cash crop. Membership of the LEGCO was altered to accommodate eight Africans elected under a weighted franchise based on education. In 1958, this was increased to 14 elected African members, while four of the 12 Specially Elected Members chosen by the LEGCO were Africans. But this did not appease African nationalists, who demanded democracy on the principle of “one man, one vote.”

In January 1960, the British convened the first of several Lancaster House Conferences in which Kenyans—for the first time—were party to constitutional negotiations as a step toward independence. A proposed Bill of

Rights to the Constitution guaranteeing property rights proved among the most controversial provisions. The African nationalists wanted land reform and resettlement, but the settlers argued that their land rights should be protected. There were fears that Kenya’s landless would reassert the land redistribution aims of Mau Mau movement. To protect settlers, it was proposed that the taking of private property by the government could only be for public purposes and required just compensation. A modification added a right of appeal directly to the highest court in Kenya. The question of which “public purposes” justified government acquisition was not resolved.

In subsequent Lancaster House conferences, the British pressed Kenyans to accept a “willing buyer, willing seller” approach to distribute land from settler farms to Africans, and provided a small loan to assist in this effort. Many nationalists, former Mau Mau militants and communities opposed this, arguing that there was no justification for Kenyans to buy land that had been forcefully taken from them. Jomo Kenyatta, president of the Kenya African National Union (KANU), acquiesced to the British position. The Kenya African Democratic Union (KADU), the other emergent African political party, advocated *majimbo*, a form of

federalism in which regional assemblies (based on ethnicity, given local government boundaries) would oversee land administration (some politicians warned that *majimbo* would amount to “ethnic balkanization” of the country).

In the early 1960s, on the eve of independence, a program of settlement schemes, including the “One Million Acre Scheme,” was established to defuse tensions, but also ensure that the colonial land-holding structure dominated by large farms could be preserved without a radical redistribution. Most of the schemes negotiated by the departing colonizers were designed for relatively small numbers of carefully selected farmers. In contrast, the 1962 One Million Acre Scheme was designed to accommodate 35,000 land-poor and landless African families. The colonial administration negotiated terms for the purchase of approximately 1.2 million acres of land from white settlers at a cost of 25 British pound million. Many white settlers sold their farms and left Kenya either before or shortly after independence.

In December 1963, Kenya achieved independence with KANU winning the majority of the seats in the Parliament and Jomo Kenyatta as Prime Minister. A year later, under a new constitution, Kenya became a republic with Kenyatta

→ Nairobi’s growth has been partly fueled by people displaced from their land. Photo: Nisi Creatv



elected as president and a one-party state established. Once in power, however, Kenyatta swerved from objectives of nationalism, including widespread restitution of land to Kenyans and communities. Although considerable policy development occurred after independence, in practice, not much changed.

The fundamentals of the colonial land tenure system remained in place, including the unequal relationship between statutory and customary tenure, the retention of de facto ethno-territorial administrative units, and the unaccountable powers of the executive branch over land. Kenyatta maintained the system of freehold land titles and did not question how the land had been acquired; individual private ownership rights continued to derive from the sovereign—now the President—just as in colonial times. Government programs to systematically adjudicate rights and register land titles persisted and continued to undermine customary tenure systems.

After independence, much of the colonial-era “Crown Land” was categorized as government land. The native reserves became Trust land, but were still governed by statutory trustees—the County Councils and the Commissioner of Lands—rather than directly by traditional institutions. New legislation required that the interests of customary land occupiers should be a primary concern affecting decisions to alienate or otherwise deal with Trust land, but, in practice, this land was often treated as government land.

The Kenyatta government also established the Settlement Fund Trustees (SFT) to facilitate the purchase and distribution of settler farms to landless Kenyans. The high-density settlements provided some land to landless households, but the schemes were based on a market system and principally benefited Kenyans with the financial means to purchase land. Those who had customarily owned the land generally did not have access to the needed capital, or refused to purchase land which they considered to be theirs. Kenyans who purchased such land were seen as “immigrants” or “incomers.”

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Ethnic favoritism and political patronage also played an important role in land acquisitions, as did corruption. Given the role of powerful Kikuyu politicians in Kenyatta’s government, the system favored wealthy Kikuyu (and their land-buying companies) with political connections, at the expense of other ethnic groups, such as the Luo, Maasai and Kalenjin. Kikuyu gained access to settlement scheme lands in Coast Province, Rift Valley Province, and other locations across the country. Kenyatta himself illegally acquired large tracts of settlement land. By 1989, “incomers” comprised 35% of the Rift Valley population. Other ethnic groups were outraged, a source of long-term ethnic animosities.

Land tensions were exacerbated by President Daniel Arap Moi, Kenyatta’s successor, who held office from 1978 until 2002. Moi is Kalenjin, one of Kenya’s smaller ethnic groups. Like Kenyatta, Moi used land to reward loyalists and achieve short-term political ends. He offered sizeable parcels of prime land in Trans Nzoia, Nandi, Uasin Gishu and other Rift Valley Districts to loyalists largely drawn from his Kalenjin community at well-below market prices. Much of this land had been in protected forest reserves or in the hands of parastatals such as the Agricultural Development Corporation (ADC) and Kenya Agricultural Research Institute (KARI).

Meanwhile, a large number of landless or land-poor people (an estimated 10% of Kenya’s population in 1990), including many former Mau Mau militants, their descendants and members of ethnic groups residing on the coast, remained without land or compensation for colonial-era and post-independence alienations. Significant numbers of these landless or land-poor farmers have moved onto Kenya’s arid and semi-arid lands, particularly in Rift Valley Province. This has led to land-use conflicts, competition over water and water

sources, environmental degradation, reduced agricultural productivity and products, and declining wellbeing.

With the exception of the 2002 elections, all elections held since multi-partyism was re-introduced in Kenya in 1991 have been marred by land conflicts, violence and population displacement. In an effort to deflect the political threat of multi-partyism, President Moi portrayed the opposition as Kikuyu-led and focused on controlling land. He evoked *majimboism*, which, while not fully or officially defined, was interpreted as a “get the land back issue.” To recover “stolen” land, Kikuyu were evicted from areas where they had settled in the Rift Valley and western Kenya. Much of the violence was centered in areas where so-called “immigrant” groups were located. Clashes throughout the 1990s left thousands of people dead and over 350,000 displaced. Ethnically charged land-grabbing further undermined customary tenure arrangements. Political manipulation of land grievances, however, helped Moi win elections in 1992 and 1997.

FACT

After independence, the basics of the colonial land tenure system remained in place, including the retention of de facto ethno-territorial administrative units, and the unaccountable powers of the executive branch over land.

During the 2007 elections, accusations of irregularities sparked widespread post-election violence from 30 December 2007 to mid-2008 that left about 1,300 people dead and as many as 600,000 displaced from their homes. For many of those displaced, it was their third or fourth experience of displacement. While some of the violence appeared to be spontaneous, there were reports of prior organization and planning. As in 1992 and 1997 elections, *majimboism* was evoked and historic land grievances were used to stir up ethnic tensions. Violence was centered in areas where “immigrant” groups were located such as the Rift Valley. A government enquiry into the violence noted that “there was an expectation of the eviction of non-Kalenjin people from South Rift long before the elections were held... they expected that, as a result of the enforcement of *majimbo*, other communities would have to leave the Rift Valley.”

Most analysts believe the recurring ethnic violence and displacement that have followed Kenya’s elections under

multi-partyism (and the constitutional referendum campaign) stem in large measure from unresolved and politically-aggravated land grievances. Districts with the highest percentage of land expropriated by government or Trust land (e.g., Kajiado, Laikipia, Trans Nzoia, Uasin Gishu, Nakuru and Kwale) have been the epicenters of violence over the past 15 years. Experts have estimated that some 95% of recent violence in the Rift Valley has occurred in areas where settlement schemes are located. Simply focusing on facilitating the return of the displaced, in the absence of efforts to address the underlying structural causes, risks creating the conditions for further rounds of violence and displacement.

In August 2010, Kenyans approved a new Constitution which ushers in significant changes to land governance and tenure. It states all land belongs to the people of Kenya, land is public, community or private, establishes a National Land Commission, and allows non-citizens to hold land only on the basis of leasehold tenure. To address land grievances, the Constitution (Article 40(6)) denies

protection of property ownership and use rights to those who acquired public land illegally. It also authorizes repossession of public lands illegally acquired by private persons (Article 68(c)(v), read together with the National Land Commission’s functions in Article 67(2)(e)).

Whether Kenya’s land conflicts based on historical injustices will finally be addressed depends on how these Constitutional provisions are implemented and enforced. In the coming years, the government is expected to review existing laws in light of the 2010 Constitution, and prepare new legislation to implement the land provisions. Already, the government has established several task forces to review existing legislation, including one to review Kenya’s land laws. Further, the Ministry of Lands has developed a draft Public Land Bill and a National Land Commission Bill which will soon be made available for public comment. These developments are encouraging and bode well for Kenya’s future.

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