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Commission

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# Land Politics under Kenya's New Constitution: Counties, Devolution, and the National Land Commission<sup>1</sup>

by

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## Abstract

Kenya's new constitution, inaugurated in August 2010, altered the institutional structure of the state in complex ways. The general motivation behind reform was to enhance the political representation of ordinary citizens in general and that of marginalized ethno-regional groups in particular, and to devolve control over resources to the county level. In the land domain, reform objectives were as explicit and hard-hitting as they were anywhere else. Reform of land law and land administration explicitly aimed at putting an end to the bad old days of overcentralization of power in the hands of an executive branch considered by many to be corrupt, manipulative, and self-serving.<sup>2</sup>

Kenya's 2010 Constitution and the 2012 Land Acts produced three types of institutional restructuring that were designed to touch directly on land rights and land administration: devolution to 47 new county governments would be more accountable and responsive to local interests, and directly responsible for administration of community (ex-Trust) land; separation of powers at the pinnacle of the national political system to extinguish the president's arbitrary authority to allocate

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<sup>2</sup> The former constitution empowered the president to “make grants or dispositions of any estates, interests or rights ...in land.” As the Ndung’u Report and inquiry into the Irregular/Illegal Allocation of Public Land documents, the president’s authority was perpetually abused. See Harbeson 2012.

land while placing oversight and regulatory authority in the hands of a non-partisan, transparent, and law-governed National Land Commission (NLC); and deconcentration of the NLC to give this non-partisan, independent agency a strong watchdog, advocacy, and decision-making role at the local (ie., county) level.

This research asks how these significant reforms are changing land control and governance in rural Kenya. The question is of acute importance for the economic and political future of both Kenya and East Africa as a region. In 2005, approximately 70% of all Kenyans lived in the rural areas, and 60% of all employment is in agriculture (WB 2009: 2, 6 [2005 data]). Today, an estimated 65% live in the rural areas, and agriculture accounts for 30% of GDP. Land pressure is acute for smallholders and pastoralists, due to a vector of forces that includes a long history land grabbing on the part of the rich and powerful, starting with colonial expropriations in the early 20th century and continuing under successive postcolonial regimes, demographic pressure on the land, rising land values, forest destruction and conservation, wildlife conservation efforts, and the slow growth of non-farm rural livelihoods and jobs. Since the 1980s, the process of land accumulation on the part of the ruling elite has been matched by progressive immiseration of the ordinary farmers, pastoralists, the rural landless, and the urban poor.<sup>3</sup>

There is much in Kenya's new constitution and the Land Acts that aimed to have a direct impact on the land interests of ordinary citizens. Constitutional reforms gave devolved county governments and the NLC new powers over untitled land (over 60% of all land in Kenya), land held under title by family farmers, public land in rural areas, and pastoralists' land, as well as powers aimed to curb rural "land grabbing" and even recover land grabbed in the past. The Constitution and the Land Acts thus set the stage for a contentious politics of institution-building and reform that would be shaped by conflicts of interest and powerstruggles. Struggles unleashed in the implementation of

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<sup>3</sup> Klopp and Lumumba (2016: 3) cite World Bank (2009: 18, 105): writes that "there has been a rapid worsening in land inequality in most parts of the country over the past decade (1995-2005, approximately) -- at a rate of change that suggests that land inequality is becoming more serious in objective terms as well as in terms of political salience." These processes are the outcome of market forces, demographic increase, particular features of the institutional context of landholding and agriculture, changing policy over time, and also *ad hoc* manipulation, corruption, and illegal land dealings. See Appendix 2 on land inequality in Kenya.

these progressive reforms could answer questions -- and raise new ones -- about the politics of devolution, and land politics, in Kenya.

The study adopts a subnational perspective, leveraging in-county variation in an attempt to understand how struggles around the supposedly non-partisan powers of the NLC and the CLMBs would be shaped by the partisan, center-periphery, and ethnic factors that previous scholars have identified as salient in understanding the politics of devolution in Kenya. Focusing on eight counties that capture much of the partisan, ethno-regional, and economic diversity of Kenya's new counties, we sought to probe the explanatory power of existing arguments (theories) of the politics of devolution.<sup>4</sup> The passing of key implementing legislation was stalled, the NLC and the executive branch were locked in bitter turf-wars, the NLC was under court challenge, and powerful groups had introduced new legislation to undo key provisions of the new land dispensation. The county-level case studies show how the old and new land powers of government were being used in a context of open conflict over both institutional structure and process.

Part I reviews existing scholarly work on devolution in Kenya to extract four distinct (but not-mutually exclusive) hypotheses about how devolution could transform the nexus between land and politics. Part II shows that the NLC 's powers have been reduced by bureaucratic obstructionism and executive branch claw-back. In Part III, the county cases show that the history of land use/politics/tenure in each county goes far in determining the salience of land issues in defining political alliances/cleavages between the county government, the national government, and the NLC. The case studies show that the use of the NLC's powers at the county level have been largely subordinated to larger political logics. Part IV returns to the four hypotheses outlined in the first part of the paper. The conclusion summarizes and draws implications for devolution.

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<sup>4</sup> The case studies were selected to (a.) capture some variation along the important dimensions mentioned above, and (b.) take advantage of the research specialization of members of our research team. The sample of counties is thus non-representative and non-random. This is a pilot study. Research was undertaken in the first half of 2016, when Kenya was in the throes of an unexpectedly-long and chaotic period of institutional transition. It involved interviews with academics, national-level land sector actors and NGOs in Nairobi; secondary and gray literature reviews; and approximately three-four weeks of fieldwork in each of the eight counties that focused on interviews with county government officials, County Land Management Board members, local real estate agents and land advocacy NGOs. There were two 2-day workshops in Nairobi that included participants from the Kenyan media, the National Land Commission, the University of Nairobi, the Land Governance and Development Institute, the Kenya Land Alliance, and others.



## Part I. Predictions about devolution in Kenya

Existing work offers four distinct predictions about how devolution would change Kenya politics. First is the theory that "institutions determine the rules of the game," whereby institutional redesign would shift power balances, politicians' incentives, and accountability relations in the land sector. Devolution would create elected county governments with significant budgetary autonomy and significant land powers in land use planning, in managing unregistered community land [ex-Trust Land] and urban and rural public land. They would be downwardly accountable to citizens.<sup>5</sup> A new body at the national level, the NLC, would check the executive branch's (especially the president's) arbitrary and unilateral control over land allocation. Its deconcentrated units at the county level, the County Land Management Boards (CLMBs), were to be the leading edge of the drive to inventory and repossess public land illegally or irregularly acquired by politically-connected persons and their associates, revoking ill-gotten land titles where this was necessary. With newly empowered institutions and checks and balances on the old ones, solutions would be found to long-standing and divisive local and national land issues (theft of public land, theft and illegal enclosures of community land and county land, resettlement of IDPs from land-related electoral violence stretching from 1992 up to 2008, historical ethnicized conflicts over land, destruction and occupation of forests, etc).

A second prediction was that with devolution, pre-existing patterns of patronage and corruption in Kenya politics would be replicated many times over at subnational level. Ethnic groups excluded from access to "the national pie" under the previous, overcentralized, constitution could now win control of their own counties and receive their own slice of the national cake (not less than 15% of the national budget to now go directly to the counties [or USD 2.6B in 2015]).<sup>6</sup> This idea is captured by D'Arcy and Cornell as "Everyone's turn to eat?" (2015). They argue that "governors and Members of County Assembly (MCAs) have used their offices and the newly devolved resources both to provide patronage to their ethnic communities but also as a rent seeking opportunity for

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<sup>5</sup> See Ndegwa 2002, Juma, Rotich, and Mulongo 2014, Cornell and D'Arcy 2015, Cheeseman et al 2016: 7-9, and Dyzenhaus 2017 for reviews of the literature on decentralization in the developing world in general, and African countries in particular. These show that many previous empirical studies provide evidence of the weak effect of decentralization on downward accountability.

<sup>6</sup> Cheeseman et al, 2016: 13.

themselves" (2015: 17).<sup>7</sup> In the land domain, one could predict a devolution of land-grabbing as a new "sub-layer" of elites was created and empowered to grab land at the county level.

Third is the institutional perspective offered by Cheeseman, Lynch, and Willis (2016), which focuses on the question of whether Kenya's powerful executive and national government would be able to recentralize control. These authors see devolution as creating a two-level game in which county politicians are strongly incentivized to use their local powers in ways that mobilize local voter support, thus reducing the likelihood they will be coopted by the center at the expense of local interests. The authors conclude that this dynamic locks-in devolution against central claw-back (p. 5). However, they anticipated that governors aligned with the ruling party would have strong incentives to cooperate with the central government, and that devolution would thus be unlikely to undermine partisan alignments that link national politicians to party coalitions, and to party machines in the counties.<sup>8</sup> Opposition governors (about half of the 47 governors elected in 2013) were predicted to be more resistant to cooptation. In the land domain, one hypothesis derived from this is that county executives aligned with opposition parties would use land politics to build-up local support at the expense of the center, thus possibly pushing more reform-oriented land agendas and cooperating more with the NLC to challenge vested interests at the local level.

Fourth is the most ominous-sounding scenario whereby devolution creates "tribal kingdoms" in which county governments dominated by single ethnic groups claim the counties as ethnic homelands.<sup>9</sup> Burbidge (2015) noticed a clear ethnic bias toward what he called the "the main ethnic group" in county political appointments and elected offices. In land politics, one could expect that ethnic groups would seek to assert ethnic claims to land against ethnic outsiders or so-called foreigners, perhaps even moving to "take back" land previously acquired by ethnic outsiders.

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<sup>7</sup> They predicted that devolution would generate local vested interests and attendant lock-in effects, and thus be resistant to the national government's attempts to recentralize power. Such attempts were quite visible in 2013 and 2014 struggles over the budget (D'Arcy and Cornell 2015: 22).

<sup>8</sup> This idea, derived from Putnam (1988) predicts that only outcomes acceptable to both domestic and international audiences represent stable equilibria.

<sup>9</sup> Burbidge 2015: 5, 26, D'Arcy and Cornell 2015: 24, 26; Boone 2011; see also Carrier and Kohore 2014. The smaller the "main ethnic group" is, the more prone it is to be overrepresented in county government. See also Erk and Anderson 2009, cited by D'Arcy and Cornell 2015: 24, n. 103.

The research design afforded by our Kenya study offered one way to probe these hypotheses: we studied variation in effects across subnational jurisdictions that have all been exposed to the same "institutional treatment." Section III reviews national-level politics around the scope and limits of the NLC's powers. Section IV is an analysis of land politics under devolution in the eight Kenyan counties.

## Part II. National-level institutional structure and institutional battles in the land domain

Longstanding tensions and conflicts, including historical grievances dating back to the early colonial period and land-related electoral violence of 1991-1992, all contributed to very high levels of pressure for land law reform in Kenya. A series of presidential commission reports and official policy review processes -- the Report of the Commission of Inquiry into the Land Law Systems of Kenya of 2002 (the Njonjo Commission Report), the Commission of Inquiry into Illegal/ Irregular Allocation of Land 2004 (the Ndung'u Commission Report), the Commission of Inquiry into Post- Election Violence following the December 2007 General Election (the Waki Commission Report), and the National Land Policy formulation process itself -- clearly pointed at a chronic pattern of land abuses of the executive branch, often conflict-inducing.<sup>10</sup> In post-electoral violence in 2008, more than 1000 people were killed and over 300,000 displaced in violence that was partly land-related. This brought Kenya to its lowest point since Independence, disgracing the ruling elite and adding impetus to longstanding calls for political reform (Wolf 2010). The result was approval of a new National Land Policy in 2009 after more than a decade of civil society activism on the land issue, the 2010 constitution, and the 2012 land laws.

One of the targets of the new constitution and to a lesser extent the 2012 land laws was to deal with the politicized and corrupt "den of thieves" that was the old Ministry of Lands (MoL). Although the new land laws in 2012 did less to achieve a radical overhaul of the Ministry of Lands than many had hoped, some important changes were made. The Ministry was divested of some of its key land

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<sup>10</sup> The former constitution empowered the president to "make grants or dispositions of any estates, interests, or rights" over public land. As the Ndungu Report and Inquiry into Irregular/Illegal Allocation of Public Land revealed, the president's authority was perpetual. See Harbeson 2012, Klopp 2000, Kanyinga 2009, Manji 2012 inter alia, and others.



powers -- control over the registries, control over the allocation and management of public land, control over resettlement, powers to revoke title deeds found to have been acquired illegally -- and renamed the Ministry of Lands, Housing, and Urban Development.<sup>11</sup> Many important powers of the old MoL were transferred to the NLC by the National Land Commission Act 2012. The NLC would establish its presence on the ground through deconcentration, via a County Land Management board (CLMB) established in each county. Country-level secretaries of the CLMB are appointed by the NLC and paid by the NLC. The 7-9 Board members are appointed by the NLC but subject to approval by the County Assemblies with the governor appointing one member from the county lands ministry. Deconcentration thus intersects with devolution, imposing an element of local democratic control over the CLMB (and introducing a possible contradiction in its mandate).<sup>12</sup>

The 2010 constitution and the 2012 Land Laws also transformed the old legal category of Trust Land into "community land." Trust Land was unregistered land managed by the old county councils (controlled mostly by the ruling party, with some falling under opposition control after the return to multipartism in 1992). Now this land was to be registered and assigned to registered communities, who would manage it themselves, all by procedures to be specified in a "Community Land Bill" that was to be written and passed into law by 2015.<sup>13</sup>

The net effect was envisioned as a radical and progressive restructuring -- decentralization, dispersal and democratization of control, bringing land administration under the rule-of-law -- of authority and political control over land. Manji (2015) argued that it was soon very clear, however, that the ambiguities and limitations of the land laws would be obstacles to the kind of "real land reform" envisioned by land activists and civil society groups who had pushed for the 2009 National Land Policy and the 2010 constitution. First, as groups such as the Katiba Institute's Consortium on Land headed by the former Chairperson of the Constitution of Kenya Review Commission, Professor

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<sup>11</sup> Later renamed again, to become Ministry of Lands and Physical Planning.

<sup>12</sup> Kenyans have debated over whether the CLMB is a decentralized instance of a technocratic arm of government, or a "democratically decentralized" forum for making land management more participatory.

<sup>13</sup> The Constitution and the 2012 land laws left open the question of the Land Control Boards, which controlled land transactions on adjudicated family land in "land control areas" (coinciding mostly with administrative divisions). The LCBs are part of Kenya's powerful Provincial Administration which answers directly to the President.

Yash Pal Ghai, pointed out at the time, the proposed bills provided a poorly drafted legal framework that would be very hard to implement.<sup>14</sup> Second, the 2012 laws pulled back from "real land reform" in decisive ways -- the laws were neoliberal and market-oriented, rather than redistributivist and embedded in participatory democracy.

Yet even in this diminished form, potentially significant powers were given to the new NLC. The NLC is supposed to manage and administer public land in the counties, in collaboration with county-level land-use and physically planning committees. A key responsibility was to recover public land that has been irregularly or illegally allocated, a mandate that extends to the investigation of private land that might be found to have been acquired illegally. The Ndungu Commission had revealed that nearly 200,000 illegal land titles had been created between 1962 and 2002, 96% of these in 1986-2002, under President Moi (Manji 2015: 6). These titles are held by politicians, high ranking civil servants, members of the judiciary, military officers, and lawyers, among others. County governments also had unclearly defined but potentially significant rights over some of the land within their counties, including power to manage ex-Trust Land before and until it was registered as Community Land under the provisions of the new land laws.

After 2012 the land arena was the site of institutional battles over almost every aspect of the new dispensation (see Bassett 2015; Klopp and Lumumba, 2016).<sup>15</sup> At the national level, the MoL and the executive branch battled the NLC in almost every conceivable way, including by starving it of funds, failing to turn over relevant information, blatant obstructionism such as insisting on housing the embryonic NLC in the same building as the Ministry, and openly defying the constitutional provisions that were to transfer powers to the NLC. Critically, the NLC has not been able to get access to inventories of public land or land registries. This means that it cannot identify titles or allotment letters that have been issued for holdings on public land.

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<sup>14</sup> See the Katiba Consortium on Land for presentation to the Parliamentary Committee on Land and Environment.

<sup>15</sup> A Min. of Devolution draft policy paper (2013) listed the main weaknesses facing devolution as weak collaboration between stakeholders, weak monitoring and evaluation systems, insufficient legal frameworks, inability to develop quality legislation, challenge of attracting and retaining staff, absence of information systems, inherited staff from local authorities, unstructured public participation, uncoordinated planning, duplication and conflict of roles and functions, and tokenism in public participation (ROK, Min. of Devolution and Planning, 2015: 28).

The NLC took its case to the Supreme Court, seeking its arbitration in institutional battles between the MoL and NLC on powers of land taxation; control of the land registries, registrars, and surveyors; and control over land registration and the issuance of titles. The Court issued an Advisory Opinion that actually confirmed the MoL in many of its powers, including land titling, but obliging the MoL to "share information" and calling for the two institutions to "work together" (Manji 2016).

The controversial 2015 Community Land Bill was rolled into a The Land Laws (Amendment) Bill 2015 which, inter alia, transferred control over the land information systems back to the MoL and proposed to disband the CLMBs that the NLC had succeeded in setting up in 44 of the 47 counties. This morphed into a 2016 "Omnibus Bill" that reformers saw as "undermining devolution" and a complete claw-back of powers by the ex-MoL.<sup>16</sup> It was passed by the National Assembly but stopped in the Senate in June 2015. This legislation later passed the Senate and was signed by the president in August 2016, just two weeks before the constitutionally-mandated deadline for passage of this enabling legislation.

### Part III. Eight Counties

At the county level, a range of responses and initiatives have played out in a situation of institutional "chaos" (Bassett 2015:14). Where the new land institutions have been created, they have layered onto the old (rather than displacing them), and the number of veto points and players in land administration and land politics at the county level is very high. Poorly drafted legislation has created overlapping, unspecified, and conflicting mandates. Yet in some areas, the new institutional structure has created some new arenas and venues that have been used by aggrieved citizens to re-open debate over existing land disputes.

The history of land use/politics/tenure in the county goes far in determining the issues at stake and alliances/cleavages that emerge in the relationship between the county governments and the NLC. The case studies below trace these logics. They are structured as follows. First, we sketch out the

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<sup>16</sup> Ramadhan Rajab, "Proposed lands bill 'will kill' devolution," *The Star*, 11 Sept. 2015. Rajab is paraphrasing Muhammad Swazuri, Chairman of the NLC, in testimony to parliament on June 23, 2015. According to the news report, Swazuri added that the new bill was unconstitutional (at [http://www.the-star.co.ke/news/2015/09/11/proposed-land-bills-will-kill-devolution\\_c1203147](http://www.the-star.co.ke/news/2015/09/11/proposed-land-bills-will-kill-devolution_c1203147)).

main land issues in each country. Second, we briefly report on the political profile of county government, focusing on variables that we hypothesize to affect county government's strategy in dealing with the NLC and the CLMB. These variables include the county governor's position in national partisan and coalitional politics, as well as the partisan affiliations of MCAs; a county government's connections to local elites of the pre-devolution era (who are likely to have been beneficiaries of shady land dealings in the past), and the land-related concerns of elected county officials' main constituencies (including concerns linked to ethnic insider-outsider status). Third, we identify and discuss the NLC's role in dealing with the main land issues in each country (as summarized in Table 1). On this basis, we provide a political (electoral/partisan/factional) context for interpreting the scope and limits of NLC action in each county.

#### **i. Kiambu: All power to the county**

Kiambu County is part of the former Central Province. Its old administrative divisions of Thika, Ruiru, Gatundu, Githunguri, Kiambaa, Lari, Limuru, Kikuyu and Kiambaa were part of the former White Highlands. Most (80%) of the land is arable -- it is prime farmland planted mostly in coffee and tea. Smallholdings predominate in the upper parts of Kiambu (Gatundu North and South, Kiambaa, and Kikuyu constituencies). Largeholdings are concentrated in the southern and eastern parts of the county (in Juja and Lari constituencies). According to the county government, 85% of holdings are titled. In the last decade, the southern reaches of Kiambu have opened up for commercial real estate development. With Kiambu Town only 22 km from Nairobi, developers have invaded prime land to build homes either for sale or rent to a burgeoning Nairobi population.<sup>17</sup>

By Kenyan standards, Kiambu is a wealthy and highly urbanized constituency. Its population is 60.8% urban. The overall county poverty rate is 27.2%, far below the national average of 45.2%.<sup>18</sup>

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<sup>17</sup> In southern Kiambu, farmers have been uprooting coffee, once the biggest economic crop, to set up rental flats and new suburban subdivisions like Migaa, Edenville, and Suraya estates, where palatial homes fetch huge returns. Multi-billion real estate projects are replacing acres of coffee, which farmers say are no longer profitable (from team interviews with Kiambu District Lands Administration Officer, Feb. 2016).

<sup>18</sup> *Economic Survey 2014*, quoted in Rawlings Otieno, "Report lists counties with highest levels of poverty," *Standard Digital*, 30 April 2014, posted at <http://www.standardmedia.co.ke/sports/article/>

Yet as the Kiambu County Peace and Conflict Profile (2014) describes, it is a county marked by stark inequalities and painful memories of a painful history of land expropriation by white settlers and of a colonial-era insurgency and counterinsurgency (ie. the Mau Mau guerilla war of the 1950s). These issues remain an undercurrent in Kenya politics to this day.

In the early 1960s, large tracts of land previously owned by Europeans were distributed to selected individuals. Many of the top members of the Kenya elite thus acquired large landholdings in Kiambu (CPCP, Rutten 1992, James Karuga, IDS). Today, "large swaths of land are owned by politically-powerful absentee landlords."<sup>19</sup> Large commercial estates on leased public land (Del Monte Kenya, Sasini Coffee and Tea) exist in the lower parts of the county, especially in Juja constituency and the upper highlands in Limuru and Lari constituencies. Tea and coffee processing industries in Thika employ thousands of largely non-Kikuyu workers. In the 1960s and 1970s, some of the large estates were divided up and sold as joint share companies, or Land Buying Companies in Ruiru District and elsewhere. Mboi-Kamiti and Nyakinyera Farms are two examples. Again, the buyers were well connected Kenyans and/or those with political sponsorship to become land acquirers.

Smallholdings predominate throughout most of the rest of Kiambu county, even in some of the periurban areas around Kiambu Town and other southern reaches of the county. In the smallholder areas, land adjudication started in 1956, mainly as a counterinsurgency strategy to title Kikuyu loyal to the government during the Mau Mau war (Sorenson 1967). By the county's official count, 85% of smallholders have land titles.<sup>20</sup> These family holdings, originally consolidated and registered in holdings of four acres or more, have been subdivided two or three times since the original demarcation and registration. This process of fragmentation has created many very small parcels (an acre or less, with an average smallholding size of .36 acre according to official county reports) that fall below the threshold of economic viability for commercial farming -- many are

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2000110595/report-lists-counties-with-highest-levels-of-poverty  
<http://www.standardmedia.co.ke/article/2000110595/report-lists-counties-with-highest-levels-of-poverty>,  
 accessed 20 September 2016).

<sup>19</sup>Kiambu County Peace and Conflict Profile (Kiambu CPCP).

<sup>20</sup> Kiambu County Integrated Development Plan 2013. Many of the titles on small holdings in rural Kiambu are not transferable (they are not up-to-date -- "the main challenge is the unfinalized unbundling of rights" (from interviews with county land officers in Kiambu).

basically residential plots with gardens. Many families in southern Kiambu have turned to owning dairy cows and depend in part on incomes and remittances from off-farm jobs, including jobs in Nairobi. Much family land has been sold or lost through default on bank mortgages. There is high rural poverty and de facto rural landlessness in many parts of the county, including "high landlessness in former Mau Mau hotbeds including Lari and Gatundu."<sup>21</sup>

Settlement schemes cling to the ledges of the Rift Escarpment on the western side of the county, including the crowded Ndeiya, Nachu, and Lari settlement schemes where land remains untitled. The national government plans to resettle IDPs from the 2008 post-election violence and Mau Forest evictions in "border lands" between the existing settlement schemes and the forest.<sup>22</sup>

Population and landholding is thus spread very unevenly across rural Kiambu.<sup>23</sup> Tensions associated with poverty and high rates of landlessness are compounded by rapid urbanization, and conversion of farmland to housing estates and other commercial. As the Kiambu CPCP reports, pressure from landless people, land poor, and "squatters" around the borders of large commercial estates and large private holdings fuels conflicts over encroachments and debate over how much agricultural land to preserve in the face of periurban sprawl. Some of the LCBs are mired in controversy and even violent conflict between farm directors and managers over farm mismanagement, unauthorized land sales, double allotments, etc. These conflicts have come to a head in the current context of intensified land speculation. There are large areas with pockets of urban squalor in Kiambu and Thika, with Thika's slums merging with those on the northern reaches of Nairobi. This is the home territory of the Mungiki.

The stakes of land management under devolved county government are high in a county with high pressure on the land, rapidly rising land values, and high social tensions around jobs and land.

What are the land priorities and land powers of the Kiambu county government? For those who want to flex the county's land powers in Kiambu, the key constraint is that most rural land is registered, adjudicated, and titled (private). There is leased public land, and public land that is

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<sup>21</sup> Kiambu County Peace and Conflict Profile, CPCP, 2014:15.

<sup>22</sup> The NLC does not appear to be involved, although "resettlement" and public land were both part of its original mandate.

<sup>23</sup> Average population density of 638 persons km<sup>2</sup>

claimed as private land but that is actually held under allotment letters. The gaze of county officials is on asserting control over public land at the expense of the NLC and of some current users of public land whose claims can be challenged by the county government. The public land that seems to be the focal point of county authorities is (a.) land held under allotment letters, (b.) public land in smallholder areas that is currently used as road reserves, commons, or "public utilities" such as schools and government buildings, (c.) and public land leased to corporate actors.

*Political history and profile.* Kiambu is Jubilee Alliance/TNA territory. All of its 12 MPs are members of TNA. There is nonetheless a distinction between the powerful Kiambu elite who are founding members of the Mt. Kenya Mafia and closely aligned to the Kenyatta family at the very center of government (the Kenyatta family is from Gatundu, Kiambu), and the Governor, \_\_\_ Kabogo, who rose up as a "self-made man" to become an MP, and was then elected governor in 2013 (Cornell and D'Arcy 2014). He rallied the lumpenproletariat of Kiambu's sprawling slums to elbow his way into the Governorship, out-campaigning a respectable middle-class candidate who promised good governance and was endorsed by Uhuru Kenyatta late in the 2013 campaign. This makes the Governor an outsider or "newcomer" who has a volatile, populist base among the young lumpenproletariat. Some reports allege that the governor's personal fortune is linked to the illegal drug trade (see Cornell and D'Arcy 2014). The governor now faces a vigorous challenger in Kabete MP Ferdinand Waititu.

*Kiambu Politics in the land domain.* The County government executive has taken a position of direct confrontation with the NLC. This is visible in three ways.

First, The Governor and the executive branch of the county government have almost completely shut out the NLC. The NLC nominated CLMB members, but the executive branch of the county government refused to bring these names to the County Assembly for a vote. The county government has thus blocked the formation of the CLMB in the face of the vigorous opposition of the majority of MCAs, who passed a motion in December 2015 demanding that the Governor release the names of the seven persons nominated to the Kiambu CLMB. This has not been done, however.

Second, "the county government claims that it, not the national government and especially not the NLC, owns public land in the county."<sup>24</sup> Therefore, all expired leases and recovered public land should go to the county government, not the national government. As Catherine Gateri (p. 12) put it, "The County Executive Officer insists that the National Land Commission has no powers to come in and tell them what to do with their land, since they are the planners and they are the ones who know their land use needs. Therefore, when a lease expires, the County Government should determine whether to extend it or to take back the land. The NLC, for its part, argues that once the lease has expired, the land reverts back to the Government: It is public land and thus theirs to manage.

Third, the county government argues that regulating change-of-user on private leasehold land and authorizing subdivision of leaseholds is their function, not the NLC's. "Since they are the planners, they should be entitled to accept or refuse any change of user." They argue that on subdivisions, the NLC can only deal with public land, usually only forest or vacant land. Yet in the opinion of the county government, even this process should involve the County officials "because the land falls under their jurisdiction."<sup>25</sup>

The county government has thus undertaken to pursue its land agenda without interference from the NLC, and without close cooperation with officials in the Land Registry (linked to the MoL).<sup>26</sup> It has taken charge of Kiambu's high capacity and professionally-qualified land bureaucracy,<sup>27</sup> and taken over the planning function formerly under the national government (but now by law supposedly a function that is "concurrent" between the county and the NLC). It is working to locate untitled land throughout the county, thus identifying public land that the county government can reclaim. The county government is trying to document public land as "they are not aware how much of it exists."<sup>28</sup> The NLC has no records for any of the 47 counties: the Transition Authority did

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<sup>24</sup> Team interviews with county lands officers (in county executive) in Kiambu, Feb. 2016.

<sup>25</sup> County Lands Officer, Kiambu, in interviews with team, March 2016. The county is vigorously processing sub-divisions of private land.

<sup>26</sup> The Land Registry office complains that they are marginalized and not consulted by county government (team interviews with land registry officers in Kiambu, March 2016).

<sup>27</sup> Kiambu, long a leader in Kenya for local tax collection, is updating and consolidating its urban land valuation rolls with the aim of applying new rates. The county has tried to raise taxes on small traders in Thika town, provoking popular protests in Thika. The national government invalidated the new taxes on the grounds that the county failed to comply with the law requiring public consultation.

<sup>28</sup> Team member interviews with Kiambu county land planners.



not provide this information "because they also do not have it."<sup>29</sup> The process of developing an inventory of public land is surely highly political. The holder of such an inventory, were it to exist, would be in a position to identify letters of allotment eligible to be upgraded into leases or freehold title, letters that are invalid (making the properties subject to appropriation by the county or the national government, depending on the outcome of the current powerstruggles), expired leases which are subject to take-back by the state, and many illegally acquired parcels.<sup>30</sup>

Letters of allotment. The county is reviewing allotment letters, with the formal goal of repossessing land that has not been put to use (as stipulated in allotment letters). "Most of those allocated public land never bothered to process the leases and have been holding the allotment letters as proof of ownership. Processing leases takes a long time and is expensive, and the allotment letters have long sufficed as proof of legal landholding. The county government is honouring allotments, but only in the case of developed parcels. Under the previous regime, undeveloped land reverted back to the allotment authority, but this condition was rarely implemented. The county now intends to enforce this rule, and is arguing that all such land reverts back to the county, not the central government."<sup>31</sup>

Squatters on public land. The county is also seeking to "take-back" untitled lands that have come to be used by others, evicting those found to be "squatters." The county has used this logic to reclaim land being used by schools and land used for playgrounds, and a land-buying company has been charged with encroaching on forest land that belongs to the county. (Members of the LBC went to Nairobi to enlist the support of the NLC in their defense.)

Leases. The new constitution converted 999 year leases granted during the colonial period to 99 year leases (as from the date of first issue). This means that some expansive leases have come up for

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<sup>29</sup> Team member interviews with Kiambu county land planners.

<sup>30</sup> Team members' interviews with former Local Authority officers indicated that some of these, fearful for the security of their jobs, endeavored to hold-back this information from the Transition Authority. Land Control Boards remain and are based in the County Commissioner's office (former DC office). The Kiambu County Government is paying the LCB members' allowances, even though these were supposed to be covered by the national government.

<sup>31</sup> Interview in Kiambu County land offices, March 2016.

renewal in various part of Kenya, including the Delmonte Estate in Kiambu. The Kiambu government (along with that of Murang'a) has blocked its renewal, demanding 50% of the land (the portion adjacent to Thika town) as its condition for doing so. The county government claims that this land is needed for urban expansion, and that it will use the land it acquires to build housing that will be rented or sold "to the public." The case is now in the courts. As far as we know, the lease application has not been forwarded to the NLC in Nairobi.<sup>32</sup>

*Conflict between County Exec. and County Assembly members.* The MCAs want an active CLMB to check what they see as the land grabbing activities of the County Governor over the last 3 years (since 2013). As Gateri put it (p. 13), Kiambu County MCAs were quoted as saying they will pass a motion compelling the governor to reveal the names nominated by the NLC Chair Swazuri in 2014 and initiate a vetting process of the CLMBs. Ngewa MCA Karungo was Thang'wa was quoted as saying "What we see is an ostensible move by the County Government trying to grab land ... the names have continued to remain secret up to date." Limuru Central MCA Njenga Murugami seconded the motion to employ a legal mechanism to compel the county government to make known the names and put the Board in place. "We need the board to check what has been happening for the last three years in Kiambu County in regard to land matters and also issue title deeds." Karungo added that "residents of Ndeiya, Nachu and other areas in Kiambu are suffering because they do not have the title deeds yet."<sup>33</sup> Gateri (p. 30) reports that for its part, the NLC "feel that the Kiambu county government wants to control the alienation and allocation of public land in their county, and that is why they have refused to constitute the CLMBs."

In conclusion, it seems that the Kiambu county executive wants to ring-fence control over land in the district, and clearly sees the NLC as an enemy to thwart, foil, and defeat. They do not seem to be advancing an agenda aimed at protecting or expanding land access or the land rights of

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<sup>32</sup> See for eg "Kenya: No extension to Del Monte lease," *The Star*, 30 Sept. 2015; Brian Wasuna, "Mwangi wa Iria accuses Del Monte of killing, dumping trespassers in dam," *The Nation: Business Day*, 28 September 2015; and John Gachiri, "Surveyors warn governors Kagogo, Chepkwony on foreign leaders," *The Nation Business Day*, 26 July 2015. There are other lease renewal cases in Siaya, Taita Taveta [sisal estates owned by Greeks with 50% Kenyatta family ownership at some point in the past], Kericho, Bomet, Nandi, Murang'a.

<sup>33</sup> Pharis Kinyua, Kabongo [may be] compelled to release names of 7 Lands board members," *Kiambu County News*, 3 Dec. 2015 ([www.hivisasa.com/kiambu/news/99953](http://www.hivisasa.com/kiambu/news/99953)).

ordinary smallholders. Rather, the county government seems focused so far on expanding its own land powers and the amount of land under the direct control of county government.

## **ii. Machakos: No need for the NLC**

Almost 50% of Machakos's population of 1.1 million is counted as urban. It is concentrated in southwest corner of the county (in the Athi River/Mavoko area, bordering Nairobi and basically an extension of its industrial zones, commercial areas, suburban development, and slums), and in Machakos city, approximately 35 km to the east.<sup>34</sup> The rest of the population is rural and largely very poor. Machakos is a semi-arid district in which only 50% of the land is considered arable. Much of this is developed as small agricultural holdings, including settlement schemes created for Kikuyu settlers (ex-Freedom Fighters) in the 1960s. There are 3 company-owned ranches, 3 group ranches, and 25 individual private ranches. County statistics put just 28.5% of the land under title deed in 2014. Over 90% of the population is Kamba and ethnic issues are not politicized (most resident Maasai are registered as voters in Kajiado country.)

Machakos is marked by vast disparities in wealth between its northern sub-countries, with rates of poverty 25% higher than the national average, and the prosperous southwest, with poverty rates 25% lower than the national average.<sup>35</sup> Yet land questions do not coalesce into a set of structural issues that dominate county politics, define a prominent set of structural cleavages, or generate volatile conflicts. The settlement schemes do not seem to have been politicized. Rather, land politics seems to be dominated by a set of low-key historical issues pertaining to particular properties (including squatters on land leased to industrial/mining companies), and by opportunities for land speculation and investment created by southwestern Machakos' proximity to rapidly growing Nairobi, including possibilities for large scale investments in industrial parks, etc. This is the future home of one of Vision 2030's megaprojects, the Konza Techno City, a new city on 5,000 acres located 60 km.

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<sup>34</sup> Gangs including the Mungiki have a strong presence in Athi River Township. Land in the southwestern corner and all along the line of rail (Mombasa-NBI/Uganda Railway line) was alienated and held as private land in individual parcels as far back as the 1920s (British Library map WOMAT/AFR/BEA/275). Land to the east and north was the Machakos Native Reserve.

<sup>35</sup> Machakos County Peace and Conflict Profile 2014.

southeast of Nairobi. This "technology hub" project was announced in 2013 but got off to a slow start (and now seems to have ground to a halt).<sup>36</sup> Land speculation and land fraud are high-profile issues in the southern parts of the county, where land values are rising.<sup>37</sup>

Machakos politics has been dominated by the rivalry between two leading figures, Kalonzo Musyoka (who is the Wiper Democratic Movement party leader and who served as vice-president under Mwai Kibaki, 2008-2013, becoming Odinga's running-mate in the CORD coalition in 2013) and Charity Ngilu, former Kitui-Central MP and cabinet minister under Kibaki who backed Jubilee in 2013. The Governor of Machakos, Alfred Mutua, former Government Spokesperson under Kibaki, entered elective politics as a protégée of Kalonzo and was elected with 86% of the vote with the Wiper Democratic Movement Party, one of the parties within CORD.

With the Jubilee victory in 2013, Kalonzo was side-lined, while Ngilu was awarded with the post of Cabinet Secretary for Lands, one of the most powerful offices in the cabinet and the eye of the storm of the institutional/constitutional conflicts around land law reform.

Once in office, Governor Mutua "leaned toward Jubilee" and forged a close working relationship with the MoL and especially with Ngilu,<sup>38</sup> for the promotion of ambitious plans for new state-led industrial parks and a techno-city in Machakos (thus boosting his political profile). He has become a visible ally of President Uhuru Kenyatta. For their part, the MCAs are mostly WDM (71%). They appear to have followed the Governor in the land politics domain; they have not appeared as an independent force in Machakos land politics.<sup>39</sup>

#### *Machakos politics in the land arena*

This evolving balance of political forces in Machakos has directly impacted the role of the NLC and the CLMB. In the land domain, the alliance between national executive and county governor has come at the complete expense of the NLC. Almost all of the county level land actors (physical

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<sup>36</sup> Lillian Ochieng, Kenya: Investors Raise Concerns over Multi-Billion Konza City Plan, *Daily Nation*, 26 Jan. 2016. <http://allafrica.com/stories/201601260141.html>

<sup>37</sup> Team interviews, Siaya, Feb. 2016

<sup>38</sup> until she was ousted from this post over corruption allegations in 2015

<sup>39</sup> The county's 8 MPs are divided between WDM, CCU, IPK, Ford-P, and Muung.

planners, etc.) appear to be hold-overs from the pre-devolution era. Under devolution, no new structures have been created, and no new staff have been recruited. A CLMB exists, but is constituted by sitting members of the county land administration bureaucracy, who now wear two hats. This means that two agencies that are supposed to check each other and represent distinct interests operate as one-in-the-same ("they share staff," Gateri was told in interviews with Machakos county land officials). In Machakos county, according to officials interviewed in March 2016, the same person can give approval to, say, the renewal of a lease on public land on behalf of both the MoL and the NLC. This process has completely neutralized the CLMB as an actor in county politics. It is operational but plays no distinct role. For rural land, the Land Control Boards are operating at the local level "under the old system" (Gateri, 16). One piece of public land has been repossessed.

In contrast to the situation in Kiambu, the county government "has a lot of land" (Gateri, 16). In Machakos as in counties throughout Kenya, a good share appears to have disappeared in the transition period when the former county councillors privatized and sold off much of what was under their jurisdiction.<sup>40</sup> Many of these people remain in office in the new county government, according to county government officials.

Development megaprojects. The governor has sought to use public land under both county and central government control for development projects. In an early dust up, Mutua teamed up with the CS Ngilu, to allocate 2,000 acres of land for the "Machakos City Project" aimed at attracting investors to fully serviced industrial sites on tax-free land. Problems emerged when Agriculture, Livestock and Fisheries Cabinet Secretary Felix Koskei accused the Machakos county government of grabbing a section of his ministry's land which was using it for livestock disease surveillance, disease control programmes, an animal genetic centre and gene bank, and a livestock demonstration ground for farmers and trainees. By then, the Machakos county government had already constructed structures

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<sup>40</sup> Patrick Lang'at, "How counties lost Sh 143bn property: Idle land and vehicles were shared out before the 2013 General Election," *The Nation*, 5 Sept. 2016. This story reports that "most of these assets were in the form of land ["owned by the defunct county councils"] that had not been surveyed and had no titles." 4,085 pieces of land were at issue -- they were to be audited and handed over to the Transition Authority, but instead were "transferred to" and "shared out among" "unscrupulous individuals assisted by errant former local authorities' officials (ibid).

and a tarmac road and had dug boreholes which Koskei demanded be destroyed.<sup>41</sup> It appears that later, with the intervention of MoL, Machakos acquired the 2,000 acres.<sup>42</sup> Land for the Konza City megaproject (spanning Machakos and Makueni counties) was purchased by the national government from the officials of a land buying company who were later sued by members for fraudulent dealing. This land dispute has ended up on court, and the project is stalled, now for want of investors, also.

Renewal of leases on public land. The county reviewed and renewed the lease of the East African Portland Cement Company (EAPCC), a defunct mining site in the Athi River area. The Machakos CLMB approved this. In doing so, it rejected the petitions of Athi River squatters who sought to reclaim this as Kamba 'ancestral land'. Del Monte Kenya also has large holdings in Machakos, but lease renewal in Machakos has so far been devoid of controversy, in contrast to what is going on in Kiambu and Murang'a.<sup>43</sup>

Titling on Settlement Schemes. One clear demonstration of the close alliance between the Machakos governor and the national executive is the national government's titling initiative in this county.<sup>44</sup> Machakos was one of three counties (with Meru and Kilifi) targeted for the wave of smallholder titling in Spring 2016 as part of the national government's plan to issue 3 million title deeds before the 2017 elections. In a high profile visit to Machakos, the new Lands cabinet secretary, Prof. Jacob Kimenyi, announced 86,000 title deeds for Yatta and Masinga subcounties. Of these,

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<sup>41</sup> "Row over land now threatens county's big day," *Daily Nation*, November 5, 2013, <http://www.nation.co.ke/counties/Machakos-county-land-Felix-Koskei/-/1107872/2062134/-/view/printVersion/-/g250mpz/-/index.html>.

<sup>42</sup> In another skirmish over public land, the National Youth Service has tried to reclaim 500 acres of public land in Machakos that were grabbed by former Vice-President Kalonzo.<sup>42</sup> This is perhaps a textbook case in which an active NLC could have stepped in to act in the public interest, but that did not happen. Charity Ngilu, now suspended as CS MoL following corruption charges, defended Kalonzo, arguing that the land belonged to the Kamba people, not to the national government.

<sup>43</sup> The difference may have to do with lower population pressure on the land in Machakos, lower salience of historical land grievances, less of a perceived need on the part of the political leadership to highlight the issue for political gain, lower value of the land in Machakos (lower opportunity cost of use of the land by Delmonte), and the Narok governor's possible links to Delmonte's national government allies. These reasons are not mutually exclusive, of course.

<sup>44</sup> Note that in formal, partisan terms, the governor is in the opposition. He won in 2013 by riding Machakos' pro-WIPER/Kalonzo wave, based on his previous senior position within Kabaki's government, and has now moved closer or into Jubilee.

6,000 were in Kathakakai settlement scheme, a former cooperative farm in southern Machakos that was sub-divided into individual parcels in 1995. It borders the Konzo City development buffer zone. Issuing titles shores up the Machakos governor's political base, as well as support for the Jubilee government.<sup>45</sup>

Mismanaged group ranches: Disputes around mismanaged group ranches (managers vs. members) has led to the establishment of ad hoc task force within the MoL to explore means of resolving them. However, neither the CLMB nor the NLC is involved.<sup>46</sup> This seems to be more evidence in support of the argument that the MoL and the Machakos Governor have closed ranks to shut out the NLC. (By contrast, in Narok [see below] and Kadjiado, the NLC and the CLMBs, respectively, are deeply involved in resolution of group ranch conflicts.)

In Machakos, therefore, the creation of a NLC and its deconcentrated local emanations, the CLMBs, has apparently had minimal impact on land politics or administration. Devolved authority itself has been exercised in the land domain (as in the creation of investment parks), but these initiatives have been undertaken hand-in-hand with actors in the executive branch of the national government. The county government looks as if it is an extension of the national government in the land domain. The inherited land machinery appears to be the county's preferred bureaucratic instrument in the land arena. In these ways, Machakos is the opposite of Kiambu, where the county has established an adversarial position vis-a-vis national government actors in the land domain.

### **iii. Narok and the NLC: ADR for "family conflicts"**

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<sup>45</sup> "Machakos area County Commissioner Matilda Sakwa has also called upon the residents to take advantage of the deeds rather than rush to sell their lands at a throw away price." Annette Munyao, "Kaimenyi to issue 86,000 title deeds in Machakos," Machakos County News, 8 May 2016.

<http://www.hivisasa.com/machakos/news/137111>

<sup>46</sup> The president has issued a directive that all group ranches should be subdivided.

Land questions dominate Narok politics, sometimes escalating into violent clashes.<sup>47</sup> There is high potential for land-related conflict in the 2017 elections. Land issues in this county revolve in large part around the insider/outsider cleavage that has come to separate the Maasai pastoralists in the lowlands from the successive waves of Kikuyu and Kalenjin who have settled on large estates and farms in the county's northern highlands, including in the Eastern Mau Forest. As large-scale commercial farming spread to Narok's fertile lowlands, pastoralists have been pushed further and further south. For the Maasai people, Narok is a "Maasai county," and perhaps the largest question looming over all others is to what extent they will be able to control county politics to assert effective control over the land. (By official count, Narok is 51.4% Maasai.) Answers to this question are complicated further by the question of which Maasai clan shall dominate. The clan divide pits the long-dominant Il Purko against several minority Maasai clans and in particular against the Sirira clan. Further complicating this situation is the fractures that exist *within* clans, which find expression in struggles over and within group ranches. These intra-clan conflicts pit politically-powerful group ranch managers against poorer community (i.e., sub-clan) members who fear continued marginalization and dispossession. These issues define the major stakes in county politics writ large, as well as the ways in which the current county executive is seeking to use the NLC and CLMB.

Most land in Narok was county-council held Trust Land in the 1960s. In 1968-74, the process of carving this land up into group ranches began.<sup>48</sup> Throughout Maasailand, boundaries of "adjudication sections" were demarcated. Group ranches were carved out of the sections, and group ranch committees with elected managers were constituted. This led to the setting up of 33 (of Kenya's 159) group ranches in Narok, covering 5,420 km<sup>2</sup>, or about 30% of the area of Narok district. Under the 1968 Land (Group Representative) Act, elected group representatives act as the legal trustees of land to which group members hold joint title, and act on the group's behalf to govern the collective

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<sup>47</sup> As recently as Dec. 2015, 2,000 persons were displaced from Maasai Mau Narok forest in Narok South sub-county in clashes between Maasai and Kipsigis. See George Sayagie, "Violence forces hundreds to spend Christmas night in the cold," *Daily Nation*, 27 December 2015. <http://www.nation.co.ke/news/Hundreds-of-families-displaced-in-ongoing-Narok-clashes/-/1056/3010532/-/aqniqoz/-/index.html>

<sup>48</sup> Establishment of group ranches have been the principal means through which county-council held Trust Land in Maasai areas has been transformed to titled holdings with the rights and responsibilities of land ownership vested in ranch members.



holdings. According to Owino (p. 8), one purpose of the group ranch system was to stem or contain the encroachment of farmers of other ethnic groups onto Maasai land. Another was to check the allocation of land to elite Maasai. If this is the case, then it is not clear that either objective has been attained -- indeed, one could say that Narok has undergone massive transformations in the opposite direction.<sup>49</sup>

Original processes of group ranch demarcation, corresponding delineation of sub-counties by clan, and the selection of ranch trustees was conducted by the central government, which sought to institutionalize (political and economic hierarchy among and within Maasai clans on the one hand, and territorial/administrative boundaries between them on the other. Through the processes of demarcation, allocation, and privatization of group ranch lands, elite Maasai have acquired vast ranch holdings (Rutten 1997).

Unsurprisingly, these processes generated opportunism, gross inequities, bitter grievances, and political intrigue. By the mid-1970s many group ranch were plagued with corruption, mismanagement, and violation of trust in the governance of the collective holdings. These problems permeated and accelerated the subdivision of the ranches into individual holdings and the private titling of properties. Group managers and allied powerful elites were able to allocate not only the most, the best, and the largest parcels to themselves, sometimes by swindling other group members out of their allotments, but also by appropriating common areas and public goods, such as water points and land set aside for public use (for schools and roads, for example), as their own private holdings.<sup>50</sup>

Other land allocations in Narok have also strong political causes and effects. Starting in the 1960s, non-Maasai acquired private title over much of the best farmland in Narok. In 1991-92, powerful politicians in the Moi regime whipped up a violent backlash against the 'outsiders' (aimed almost entirely at non-elites). This resulted in the violent expulsion of approximately 30,000 Kikuyu smallholders from the Enoosupukia forest area of Narok, the area led by one of the most powerful

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<sup>49</sup> See Rutten 1997, Mwangi 2007, Veit 2011.

<sup>50</sup> Veit 2011; Mwangi 2007, Rutten 1997.

lieutenants of the Moi regime, MP William Ole Ntimama.<sup>51</sup> Mau Narok Forests were then cleared to create settlement schemes for victims of the 1992 violence. Many of those who eventually settled on these Narok schemes were Kalenjin (Kipsigis) evictees from other parts of the Mau Forest.

In the 1990s and early 2000s, vast tracks of forest land in the Transmara and South Mau were illegally sold-off by Narok elites and land brokers in cahoots with district government officials, the Narok Land Registrar, and politicians. This brought in waves of settlers. Most were small-scale Kikuyu and Kalenjin farmers, many with land titles (Owino writes of "land for votes" schemes, p. 25), but elites also acquired huge holdings.<sup>52</sup> Today, commercial tea estates flourish deep in the ex-forest land. They are owned by some of the leading post-independence politicians of Narok and powerful Moi-era elites, including members of the Ole Ntimama and Ole Ntutu families. An estimated 107,000 ha of forest, or approximately 25% of the Mau, has been destroyed since 1996. The Ndungu Commission Report of 2004 documents much of this process.

There was a new wave of encroachment into the Mau Forests in the first 100 days following the 2013 elections, following the change in government. Dispossession of Maasai and destruction of the forests fuel the insider-outside divide. It is fanned by rival politicians who promise to either expel or protect the offending settlers.

Narok politics in the pre-devolution period was dominated by the Il Purko clan, which was very closely aligned with the former ruling party, KANU, in the Jomo Kenyatta and Moi eras. The county council, controlled by these interests, had wide powers over trust land in the pre-devolution period. It was deeply implicated in the land administration malpractices and misdeeds that have fuelled anger against the elite. Members of the Il Purko clan are said to control as much as 85% of the land in Narok (Owino, p. 5).

Members of the defunct county council also took advantage of their official positions to "massively allocate" (Owino, p. 32) urban properties to themselves.<sup>53</sup> Former county councillors own most plots and properties in Narok Town (pop. 38,000) and other town centers in Narok. Most of

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<sup>51</sup> Galaty 2005: 114; Klopp 2001; Kahl 2008

<sup>52</sup> Galaty 2005.

<sup>53</sup> Team member's key informant interview, County Land Management Board Clerk, 4 March 2016

these persons now serve in the new county government at various levels. This represents a formidable obstacle to any attempt to clean-up the urban land register or constrain further illegal sales and speculation.<sup>54</sup> Today, Narok Town, like most other urban centers in Kenya, completely lacks public land for utilities and common space. Many private structures have been built haphazardly in road reserves, on waterways, and in public spaces earmarked for public use.

### *Politics and land issues in Narok*

Narok's governor, Samuel Ole Tunai, ran on the ticket of Deputy President Ruto's United Republican Party (URP), but as an underdog candidate from the minority Siria Maasai clan (from Transmara).<sup>55</sup> He was able to take the top position in county politics from the long-dominant Il Puko clan for two reasons: the Puko split their vote between two rivals, and Tunai mobilized the support of the non-Maasai, including URP-aligned Kipsigis (representing perhaps 16,000 URP votes) residing in the 1990s settlement schemes in the Mau Forest, from which Tunai himself is said to have acquired large tracts of land. His economic and political fortunes are thus linked to those of the settlers.

Narok county voted 50.28% ODM and 46.38% TNA/Jubilee in the 2013 presidential election., a strong sign of the county's divisions. Four out of six Narok MPs are URP. One of the MPs aligned with the dominant Puko faction, Patrick Ole Ntutu of the URP, is a close ally of the Deputy President, who appears to have a strong hand in Narok politics. Ole Ntutu is likely to be one of Ole Tunai's main rival for the Governorship in 2017.

Pre-devolution land administration actors and institutions are very active in Narok County. These include the Land Registrar, surveyors, the former county councillors [some now members of the CA], and the LCBs, which are under the complete sway of the deputy County Commissioner. The old institutions operate alongside the post-devolution institutions, including the NLC and its local emanation, the CLMB.

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<sup>54</sup> Key informant interview by team member: Former Mayor of Narok Municipal Council, 7 March 2016. This can help explain why some were quick to support CLMB nominees who they felt would support their interests. This was noted by one Hon. Tunai Kijape during a County Assembly Debate of 9th April 2015 on the vetting the of CLMB members.

<sup>55</sup> In the official reckoning, there are 4 major clans (including the Purko and Siria, each of which is divided into 4 sub-clans, as well as approximately 4 minority clans.

The setting-up of the CLMB in Narok became mired in disputes over its membership. The County Assembly rejected three out of the seven members nominated by the NLC (on this, more below). A majority of the nominees were from the Il Purko clan. Minority clans, including the Governor's Siria clan, objected that they were not represented. Siria clan members filed a court petition, challenging the process of setting-up the board on the grounds that it lacked transparency.<sup>56</sup> The result was a stalemate: Narok County has a CLMB secretary, who is appointed directly by the NLC in Nairobi and assisted by clerks in Narok, but no CLMB members.

Even in reduced form, however, the CLMB secretary (*de facto* the agent of the NLC in Narok, since the board was not constituted) and the NLC have been active in Narok. The CLMB secretary has received many requests from citizens and from MCAs representing their constituencies for CLMB/NLC intervention in longstanding group ranch disputes.<sup>57</sup> In response, the CLMB secretary and NLC representatives from Nairobi have been active in Alternative Dispute Resolution (ADR) on the group ranches.

Four Group Ranch Examples. In the case of the 120,607 acre Maji Moto Group Ranch in Narok South sub-county, the NLC acted in response to a complaint from group ranch members, supported by the local Narok South MP and the local MCA, against former ranch officials. The NLC intervened, investigated, and found that group ranch officials had misappropriated tens of thousands of acres of community land.<sup>58</sup> In January 2016, it revoked approximately 100 ill-gotten title deeds on this ranch alone. Many of these titles were issued illegally by the Narok Land Registry to individuals claiming private ownership of school lands, road reserves, community centers, and land allocated for other

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<sup>56</sup> Hansard Report, 9 April 2015, County Assembly Debate, "Vetting of nominees to the Narok County Land Management Board."

<sup>57</sup> For example, a letter/petition from Maji Moto group ranch members to County Government & National Land Commission, 22 December 2015, read, "*We refuse to believe that your respectable office could be an accomplice in this unparallel impunity of mega grabbing of community land, and in light of the emotive nature of this matter and the high tensions at the community levels, we urge your esteemed office to provide conclusive response and redress of this matter within the week to avert any further agitations and speculations. Finally, we invite your office to visit the ground (Maji Moto Ranch) and provide clarity on the matter.*" (letter provided to team member in interviews).

<sup>58</sup> George Sayagie, "Swazuri revokes titles deeds in Narok County," *Daily Nation*, 17 January 2016. <http://www.nation.co.ke/news/Swazuri-revokes-title-deeds-in-Narok-county/-/1056/3036796/-/r5all6/-/index.html>

public infrastructure. The embattled group ranch managers rushed to obtain a court order to halt the process, claiming that the action represented an abuse of power by the NLC and an overstepping of its jurisdiction. (See Appendix 1 for details.)

On the Oletukat Group Ranch in East Narok, group ranch members requested that the NLC lead an Alternative Dispute Resolution (ADR) process to resolve the following issues: subdivision irregularities, need to elect new group ranch officials, and the grabbing of public utility land, including that of Entekere Spring Community land and the Eor-esimu primary school. This was successful: community land was returned and title deeds were revoked.

On the Olombokishi Group Ranch, the community was able to repossess a cattle dip, primary school, and a community center that had been illegally transformed into individual holdings, with titles issued by the Narok Land Registry. The complaint filed with the NLC alleged that the land-grabbing occurred at the behest of the former DC, now deputy county commissioner.<sup>59</sup>

On the Limaret Group Ranch, the NLC found that (1) group officials had held only three General Meetings since the ranch was created in 1973; (2) that no official survey had ever been done, and that boundary demarcation had been done by hand by group ranch officials, (3) that many group ranch members had been swindled out of their land, and that 30 non-members had been allocated holdings on the ranch, and (4) that public land had been grabbed, rather than set aside for public use. In January 2016, the NLC ordered a new survey, and new lists of group ranch members and non-members, and registration of public land. Those who had grabbed land were to return it immediately. The county executive committee (CEC) member for land was appointed chair of a committee to oversee these processes.<sup>60</sup>

The weakness of the implementation/enforcement measures (ie. no legal action taken) seems to be striking indication of the limits of the NLC's power – its bark may be worse than its bite. Owino (2016) notes that most of the title revocation cases involve minor actors on the Narok scene, not the most powerful players.

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<sup>59</sup> National Land Commission, January 2016 Minute, Limanet Group Ranch.

<sup>60</sup> National Land Commission, January 2016 Minute, Limanet Group Ranch.

These operations and the functions of the CLMB office have been perceived as a threat by many group ranch officials, surely due to the very large number of complaints made against them.<sup>61</sup> The Oletukat, Limanet, Ratia21A and 30B, Olombokishi and Maji Moto Group Ranch all have one common theme -- complaints against officials' irregularities. The scenario is prevalent in many group ranch disputes -- the officials feel threatened by presence of a CLMB. One interviewee who works at the CLMB office described how a group ranch chairman from one of the disputed ranches was shocked after realizing that CLMB office was operating, despite the court petition: "You must not be operating because there is a court petition challenging your establishment in this county, so stop what you are doing."<sup>62</sup>

Members of the II Purko clan, having extensive land interests in the county, have been party to disputes in the most conflictual areas and have been a target of NLC/CLMB inquiries. However, complaints against influential Siria clan members are also rife on Siria group ranches. Transmara highlands, home to the Siria clan, is a conflict hot-spot, due to corruption and theft in land management and administration, including allocation malpractice by group managers, county officials, government land officers, chiefs, local adjudication committees, and other land actors over many years. The NLC/CLMB has taken up some of these disputes as well. The effort to avoid the worst such outcomes is presumably why Siria clan representatives sought to either ensure strong influence over the CLMB or to neutralize it completely.

Meanwhile, ADR on the group ranches is not the province of the NLC alone. The Deputy County Commissioner (former Deputy DC, the top member of the provincial administration at the sub-county level, similar to a sous-préfet in francophone countries) is also leading some ADR initiatives in some group ranch disputes that have led to violent clashes. Ntayia Group Ranch is one example.<sup>63</sup>

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<sup>61</sup> Team member key informant interview, Clerk CLMB, Op. cit.

<sup>62</sup> Team interview, officer in CLMB Office, 6 April 2016.

<sup>63</sup> The Land Tribunals, the fora in which such grievances might be heard in the earlier era, have been dissolved. Local elders had tried to take the Ntayia Group Ranch grievances to the courts on several occasions.

Mau Complex Allocations and Settlement Schemes. In Narok, the NLC does not touch the most dangerous and electorally-charged conflicts – i.e., issues involving the Mau Complex settlements. This issue is festering and threatens to become a major card in the 2017 contest for Narok governor, and in the TNA (Jubilee's) struggle to retain its hold on power at the national level.

Some Narok leaders, including Narok North MP Moitalel Ole Kenta, a member of the Il Puko clan and one of the Narok governor's leading rivals from the TNA, have taken up the land dispossession issue. Kenta has called for the revocation of (mostly Kipsigis-held) land titles issued by the Narok County Council after 1998 for group ranch extensions that encroach into the Mau Narok Forest in Olulunga and Motiok sub-counties. Some Narok politicians, possibly including the governor, also have holdings from this wave of forest encroachments. The CS for Lands has joined the battle by ordering the Chief Registrar of Land to cancel all titles involving group ranch encroachments in the Mau Forest.

Also slated for title revocation and eviction are tens of thousands of settlers on swaths of forest excised to create settlement schemes, such as 28,500 hectares carved out for the Nessuit and Kaptagich SS for which 18,516 title deeds were issued. The prospective evictees were ruled to be eligible for a Ksh 3B compensation package. Calls for fresh evictions are escalating tensions between DP Wm. Ruto and Maasai leaders in the lead-up to the 2017 elections.<sup>64</sup> Local MPs and the URP Senator (from the Il Puko clan) are turning up the heat by calling for justice in the Mau (via evictions). Land-related conflicts promise to fuel a very nasty electoral fight in 2017.

It is clear that devolution in Narok has fractured old alignments, allowing a minority clan to elect a leader to the governorship (in alliance with outsiders) due to factional splits in the long-dominant Il Purko clan, straining or fracturing the Kalenjin/Kipsigis-Maasai pact brought together under Moi and now led by W, Ruto, and giving voice to grievances within Maasai communities over land-related abuses carried out by their own powerful elites, in cahoots with the national government, over many decades. Huge excisions of Mau Forest lands by outsiders and powerful Maasai politicians

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<sup>64</sup> George Sayaie, "Narok MP Moitalel ole Kenta demands scrapping of over 19,000 Mau Forest titles," *Daily Nation*, 5 April 2016 (<http://www.nation.co.ke/counties/MP-demands-scrapping-of-Mau-titles/-/1107872/3146462/-/a609lu/-/index.html>).

have fanned the flames of Maasai grievances over dispossession. Owino (24) writes that under devolution, Maasai elected leaders now feel more heat to advance properly Maasai interests. As in other Kenyan counties, rising land values raise the stakes not only in the rural areas, but also in cities and towns, where land prices are driven up by an influx of investors and the creation of new institutions related to devolution.

#### **iv. Meru: The MoL retains a political advantage as issuer of titles**

Meru County is a former district on the eastern slopes of Mt. Kenya. The current population is estimated to be about 1.5 million.<sup>65</sup> It is divided into distinct ecological zones as Mt. Kenya's steep mountain slopes give way to highland zones suitable for small scale, intensive farming. As one continues north and east, this more fertile farmland gradually gives way to semi-arid lowlands. Large coffee estates occupy some prime land on the northern slopes of the mountain. Smallholdings dominate much of the rest of the arable highlands and midlands. These date to the adjudication and registration processes begun by the colonial government under the Swynnerton Plan in 1954, undertaken to combat the insurgency in Central Province, of which Meru was then a part. In 1956, Meru was administratively separated from the Kikuyu homeland of Central Province in order, according to Thomas, to reassure the Meru that their land would not be used to relieve Kikuyu landlessness.<sup>66</sup> Today, 50% of the land in Meru county is titled, much of it a legacy of this era.

Population growth in these parts of Meru has led to the progressive fragmentation of family lands. There is a widespread experience of acute land scarcity as land is subdivided into ever-smaller, often economically unviable, units. Population density in these rural parts of Meru county reaches 400

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<sup>65</sup> Kenya National Bureau of Statistics 2009 census.

<sup>66</sup> Thomas 2003, p. 84; Parsons 2012: 76; sa. 73, 75, 84. In 1956, Kikuyu, Embu, and Meru were divided into 3 different districts. The Kenyan government recognizes 9 (7) Meru "subtribes" or clans. The main ones are the Imenti (the majority, on the fertile midlands), Tigania, and Igembe, who have "exclusive electoral and administrative units," or "enclaves" (Meru CPCP, p. 9, 10). The Igembe inhabit the eastern, more arid, reaches of the county. Along with the Tharaka (a Meru clan which, along with the Nithi, are now in neighboring Tharaka-Nithi county), they have grievances over their perceived marginalization (ibid). Longstanding border disputes divide the Igembe and Tharaka clans in southeastern Meru. The county CPCP reports that there is also a significant Ameru "settler population" in neighboring Isiolo County, where Ameru control significant business activity (p. 11).



persons/sq.km. Twenty-five percent of Meru county's land area is forest (10 gazetted forests and 19 non-gazetted forests) and these are subject to extensive encroachment by farmers.<sup>67</sup>

The lower areas are drier and give way to semi-arid terrain. The colonial administration considered most of this to be grazing land (Parsons 2012: 71). This includes parts of the lower midland ecological zone, including much of Tigania and Imenti sub-counties, where there is much unsurveyed/ untitled family land. (As Tigania and Imenti are considered to be "subtribes" of the Meru, the administrative boundaries double as internal borders between sub-ethnic groups.") Along these Meru sub-county borders (and along the border between Meru and neighboring Tharaka County), land disputes over borders are very common (and considered to be ethnic disputes as Tigania/Tharaka and Igembe/Tharaka are all considered "subtribes"), sometimes finding expression in localized violence.

Gargule writes (p. 9) that in Meru as in much of Kenya, land issues drive politics. The 2013 gubernatorial elections in Meru County were marked by promises of new investments and new projects, as well as promises to tackle land poverty. Both the APK candidate for governor, Peter Munya, and the larger Jubilee Alliance of which APK was a part, promised to bring land titles to Meru.

Munya won the governorship and the APK is in firm control of the Meru County Assembly. He was also elected the second head of Kenya's Council of Governors. From this position, he has taken a dramatic public stance against DP W. Ruto and the Jubilee Alliance by opposing the dissolution of Jubilee's affiliate parties, including the APK, to form the new Jubilee Party. Apparently in retaliation, the President and the DP have publicly backed Senator Kiraitu Murungi, the ex-MP from Imenti South, in his upcoming bid to unseat Munya as the Meru governor in the next elections.<sup>68</sup>

Meru forms part of the GEMA voting bloc, and is generally presumed to be securely part of this longstanding informal ethno-political coalition. Munya however is resisting toeing the Jubilee

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<sup>67</sup> Meru County Government 2013.

<sup>68</sup> "Meru MPs support Senator Kiraitu Murungi's bid to unseat Governor Peter Munya," *Daily Nation*, 25 January 2016 (at <http://www.nation.co.ke/counties/meru/MPs-support-Kiraitu-bid-to-unseat-Munya/-/1183302/3047906/-/ggy4f6/-/index.html>). Five MPs have supported Murungi in this bid. They are from Tigania East, Imenti North, Imenti Central, Igembe South, and Igembe North.

line, rejecting national interference in Meru, and blaming the national government for trying to undermine devolution in Meru County. He has declared an interest in running for president in 2022 against presumptive Jubilee candidate, DP W. Ruto.

Tensions between the Meru County government and the national government are clearly visible in the land domain, with land titling a political football. The Meru governor and County Assembly strongly opposed the MoL's selective issuance of about 135,000 title deeds in Meru County as part of the Jubilee government's agenda to deliver 3 million titles countrywide before the 2017 election. In March 2016, titles were distributed in the lower midland wards of Imenti South (Senator Murugi's constituency), Tigania West, Igembe, and in Tharaka North (the constituency of MP Mhuri Muiru, chair of the Parliamentary Lands Committee), as well as in informal settlement areas ("slums") of Meru Town (3,161 of the total).<sup>69</sup> The Meru County government attempted to block this action, citing collusion between the Members of Parliament and the Ministry of Lands.<sup>70</sup> It was able to secure postponement of release of the title deeds twice, protesting the MoL's/CS' actions as undermining devolution, showing lack of respect for the political autonomy of the county, and ignoring the government's obligation to consult the NLC. Titles were issued, however, starting in Imenti South. As Gargule concluded, "The president and his men need to ensure that the 2017 election goes well."

Predictably, the Meru county government has regarded the NLC as a "friendly institution" (Gargule interviews with Meru county officers). A CLMB was established in 2013 without disputes or challenges to NLC nominees. The county's own land administration infrastructure seems to rank high in terms of technical and professional capacity. They are digitizing records inherited from the Meru Municipal Council and have employed new technical staff.

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<sup>69</sup>Ibid.; Ministry of Lands, Urban Development and Housing (MLUDH), "Grabbed land to be repossessed, NLC says," 14 March 2016 (<http://www.mygov.go.ke/?p=7477>); MLHUD, "Lands CS to issue title deeds in Meru and Tharaka-Nithi," 7 March 2016. Oghenda Lumumba of the Kenya Land Alliance (author's interview, Nairobi, 22 June 2016) doubts that all these titles are all really properly issued and thus legal and transactable, calling the mass titling ceremonies "political showmanship." Most claimants were told that their titles would be available for collection at the Land Registry. There were cases of double title deeds, deeds for three or four times more land than the claimant actually held, and deeds issued in the names of deceased forefathers.

<sup>70</sup> If Meru's population of 1.5 million includes about 750,000 adults and 375,000 households, then this titling wave should reach almost 1 in every 3 Meru households.

Meru has provided the CLMB and the NLC with what it sees as a full list of ill-gotten public lands in the county, including Meru Town, where the county government claims that 200 prime plots belonging to the county have been grabbed by political heavyweights.<sup>71</sup> Meru County officials have been frustrated with the NLC and the Meru CLMB, however. In February 2015, Martin Bikuri, County Executive for Planning, Lands and Housing, accused the NLC of failing to act on evidence of massive land grabbing... and not taking the matter seriously,<sup>72</sup> leaving Meru County in limbo, unassisted in its efforts to recover ill-gotten public lands that were grabbed by "top people in government in the 1990s and up to 2000." County leaders argue that the land is now needed for new investors, county development projects, and new county buildings. "To crown it all, the land earmarked for the construction of county headquarters is also in the hands of grabbers" (ibid). Where the county government had gone after grabbers directly, "the grabbers had rushed to court." Bikuri called upon the NLC to help "name and shame the big fish" involved. He also argued that land-grabbing was rife in Nyambene and Buuri sub-counties, where adjudication [presumably to update old titles] is going on. In March 2016, the NLC did indeed announce that it would "repossess [over 200 plots of] public land that have been grabbed by private developers in Meru County, regardless of the social status of the grabbers."<sup>73</sup>

There has been national-government push-back against Meru County rapid urban development plans. Meru has been sanctioned by the courts for trying to initiate large projects without sufficient local participation. In the Meru case, the initiative had to do with the governor's and the new Meru County Investment and Development Corporation's (MCIDC) plans to construct a Ksh 2.5 B multi-use commercial office tower and retail center by evicting tenants and demolishing

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<sup>71</sup> Team members interviews with county officials in Meru, April 2016.

<sup>72</sup>David Muchui, "Land Shortage hits towns as individuals grab 200 plots [in Meru Town alone]," *Daily Nation*, 24 Feb. 2015. <http://www.nation.co.ke/counties/Land-shortage-hits-town-as-individuals-grab-200-plots/-/1107872/2634448/-/153kkia/-/index.html>.

<sup>73</sup> This may include some people very close to the State House 'Mafia' who ruled Kenya under Jomo Kenyatta and Kibaki. Peter Munya was an MP for one of the Tigania constituencies in the Kibaki era, and was very much part of this group before becoming governor. His rival, Murungi, is closer to Uhuru Kenyatta.

structures at Angaine Estate without public consultation, bypassing the proper county-level planning agencies, and securing financing -- incl. 30% public debt -- without legal approval.<sup>74</sup>

On another front, there is full-scale border dispute between Meru and Isiolo. It is alleged that powerful business people with interests in the LAPSSSET project are driving Meru-Isiolo boundary dispute, which has devolved into localized outbreaks of violence and threatens to flare-up in the 2017 election. The NLC has played a role in ADR aimed at resolving this conflict.

Meru county government is locked in a rivalry with former allies in the Jubilee coalition. As in Bomet, this has direct land-related implications. The MoL (MLHUD) is using land titling to mobilize support for its local ally, Senator Kiraitu, who is contesting the governorship of Meru.

Meru also underscores the scope and limits of the NLC "new broom" role, both in terms of its geographical and political scope. The NLC has attempted to pursue grabbers of public land in Meru Town, but its preferred mechanism has been the symbolic one of "naming and shaming," rather than in legally pursuing criminals in and outside of government. But it is not involved in the politically-charged rural titling campaigns. This is the outcome of a major defeat for the NLC: in 2014-15, the NLC had challenged the MoL directly over which institution had the authority to issue titles, and lost..

#### **v. Siaya: CLMB in Checkmate**

This western Kenya county is part of the former Luo Reserve, and most land is adjudicated smallholder land. The percentage of land reported as "private" is 80%, but due to the high cost of land sub-division, much of this is still registered in the names of deceased forefathers. There are a few rural areas that have not been adjudicated, including land in Nyan'goma and Usigu divisions of Bondo sub-county and several community lands (ex-Trust land) in the Got Abiero Hills, due west of Bondo Town, and the Yala Swamp wetlands. There is an on-going national controversy over development of the ecologically-strategic Yala wetlands that has engaged local politicians, county politicians past and

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<sup>74</sup> Team member interviews in Meru, April 2016 and *Daily Nation*, "High Court Stops Meru County Gov'ts Sh2.5bn building project after residents object," 3 Feb. 2016.

present, and national actors (Lumumba 2014). Siaya's municipal/town areas, formerly under the unilateral control of the old county council and the Ministry of Local Government, are the site of much land intrigue.

Devolution has fuelled a spurt of urban growth in Bondo Town, which includes the new Jaramogi Oginga Odinga University of Science and Technology (c. 15,000 students, almost all of whom must find accommodation off-campus), and a medical training college.<sup>75</sup> This is driving an urban land market boom. The new county government itself is acquiring a great deal of land for its the new county government facilities and infrastructure investments .

Siaya has historically been an opposition stronghold. Even so, like most of the areas in Nyanza that have voted for Raila Odinga and his CORD/ODM party, it has prominent local political cleavages despite the unified national political front. In Siaya before the 2013 elections, there were many political machinations within ODM. One of the major political actors in the county, James Orengo, the former Minister for Lands, ran for and won the senate seat. The original ODM favourite for governor, Wm. Oduol, fell out of the party's favour and was replaced by Cornel Rasanga on the ODM ticket. Rasanga, who had not previously held elected office, is a much-respected civil servant with degrees in economics and law, a long career in the national administration, and close ties to the Odingas. Oduol, now off the ODM ticket, ran anyway as the candidate for the largely unknown National Agenda Party. He lost narrowly to Rasanga (officially, by about 4,000 votes) in a disputed vote count, successfully challenged Rasanga's marginal victory in court, but lost in a second ballot in October by a much greater margin (by about 40,000 votes).

The new Siaya County Government now finds itself struggling against the old county elite of the pre-devolution era. The goal of the county government is to have all land registered and titled within five years. It appointed a CLMB without drama and is working with the NLC to review past land allocations to uncover illegalities and charge responsible individuals, including those responsible for some cases of privatization of land that had been donated to the government for local development

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<sup>75</sup> This began in 2008 when Raila Odinga served in the Coalition Government led by Kibaki and was a promoter of Bongo's development.

projects in the 1980s.<sup>76</sup> Ouma reports that the county government is attempting to inventory all public and community land. It is "intent on reviewing land allocations by the previous local authorities, to unearth and reverse some irregular transactions and possibly charge the responsible individuals" (p. 5).<sup>77</sup>

Many of those caught in the cross-hairs are members of the defunct Siaya County and Bondo County Councils, or their associates, are linked to the still-operating Land Control Boards. At the centre of these allegations of past land-grabbing lies the so-called 'Gang of Four,' a collection of elite and connected individuals with large land holdings, allegedly including the land upon which the county government offices stand. They find political representation in the county government through the former mayor of Siaya Town, a current MCA and head of the county assembly's Lands Committee, James Otare. Otare is said to informally control the LCB in his sub-district and thus oversees many land transactions. But while Otare is related to Rasanga by blood and is a powerful local player, Rasanga has implied that he has no fear of going after his well-connected relative if he is found to be implicated in shading dealings.

According to Ouma, the MCAs without ties to the former councils are against Otare, and did not want him to chair the lands committee. This has created a split in the assembly. Those tied to the former council are prevailing. Some members of the former council and some MCAs are said to be living on on grabbed public plots.<sup>78</sup>

Reviewing public land: In Bondo Town, where land values – and therefore speculation – have skyrocketed, there are many allegations of land-grabbing. At the centre of these allegations lies the aforementioned 'Gang of Four.' However malpractice seems continuing and rife. Ouma reports (p. 5) that there are shady dealings being conducted by the Bondo lands registrar, where parcels are being sold for below-market prices, which include some fraudulent (coerced) sales that people have

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<sup>76</sup> Team interview in Siaya County government, April 2016

<sup>77</sup> Team interviews, Siaya, April 2016. The County Government website states the government's intention audit all public land. Republic of Kenya, County Government of Siaya, Lands, Physical Planning, Surveying, and Housing: Projects, avail. at. [http://www.siaya.go.ke/?page=attraction&attraction\\_id=4&place\\_id=29](http://www.siaya.go.ke/?page=attraction&attraction_id=4&place_id=29)

<sup>78</sup> Team interviews in Siaya with a nominated MCA and others, Feb. 2016.

complained about. Some of the old staff of the MoL and senior officials of the defunct County Council set themselves up as "surveyors" to collude with the registrar to defraud unsuspecting locals of land parcels (and then resell them on the booming local land market).

Other public land. As in other parts of Kenya, certain individuals "donated" land for public infrastructure (schools, grazing, churches) in the 1970s and 1980s. In many cases, their heirs are now seeking to re-claim these parcels in the context of rising land scarcity and land values.<sup>79</sup> In the Got Abiero Hills, some families now want communal grazing lands to be sub-divided.

Yala Swamp. In 2003, with the support of the Kibaki administration, Dominion Farm (DF), an American agribusiness firm, negotiated a 25-year lease (renewable every five years) for 17,000 acres of land in the Yala swamp. It planned to plant rice and devote 2000 acres for fish (native tilapia) farming.<sup>80</sup> The land was community land (Trust Land), leased to the company by the Bondo and Siaya Councils, acting in their capacity as Trustees. Under the original lease agreement, hiring was to be done such that Bondo Council allocated 20% of the jobs, Siaya council 50% and the other 30% to local individuals, with each employee being paid a minimum of 300 KSH/day. In 2015, amid controversy over lease renewal, environmental concerns (i.e., loss of wildlife including fish diversity, use of harmful pesticides), complaints by locals, encroachment onto neighboring community lands (Kadenge village), etc., Dominion Farm pursued a new initiative to reclaim 5,000 acres at Ulungo (in Bondo sub-county) for sugar cane farming and processing (with sales of locally-processed sugar to be protected by a 130% tariff on the domestic market).

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<sup>79</sup> Team member interviews in Siaya with county officials and real estate agents, Feb. 2016.

<sup>80</sup> George Ngigi, "American Firm to invest in a sugar milling and 5,000 acre cane farm," *Business Daily*, 15 June 2015. <http://www.businessdailyafrica.com/Dominion-Farm-to-invest-in-sugar-milling-and-5000-acre-cane-farm/-/539552/2753114/-/12ypure/-/index.html>; Tim Siegenbeek van Heukelom, "State of Affairs: Dominion Farms and Food Security in Kenya," *farmlandgrab.org*, 10 June 2011, posted at [farmlandgrab.org/post/view/19072](http://farmlandgrab.org/post/view/19072); Silas Appolo, "Investor, residents in tussle over Yala swamp land," *Daily Nation*, 8 November 2013. <http://www.nation.co.ke/counties/Counties/Tussle-over-Yala-swamp-land/-/1183322/2064992/-/rbab1b/-/index.html>; GRAIN, *Harvest of Hardship: Yala Swamp land grab destroys Kenyan farmers' livelihoods.* 23 October 2014; Lumumba 2014

Concerns, arose, however, over exactly how much land the agricultural production is meant to occupy, with many citing environmental concerns if the project reclaims too much land. When Dominion attempted to push through the construction of a sugar processing plant in 2015, locals objected. Five local MCAs and the area MP, Omondi Muluna, led protests, claiming that the farm had failed to live up to its agreement to employ locals and develop the area.<sup>81</sup> Further, they alleged that the company was authorized to reclaim only 3000 acres rather than 5000, and that the factory would bring further environmental degradation.

The National Assembly Committee on Lands is the lead institutional actor in the Dominion Farm controversy. County politicians are split on the issue. It appears that the Odingas are not very supportive of the farm, and in early 2016 the governor was characterized in the national press as siding with the local communities in calling for termination of the Dominion Farm's lease. (Yet on occasions the governor has offered public support for Dominion Farm as a source of jobs and revenue, and good for the county.<sup>82</sup> The governor has complained about the National Assembly Lands Committee's lead role in the controversy. (It is commonly believed that the company funds one Siaya MP, and that he is the voice of the company in the National Assembly.) The National Assembly Lands Committee visited the Swamp in March 2016 and were snubbed by the Siaya governor, who did not respond to their official invitation to meet.<sup>83</sup> The committee alleged that the governor was fuelling the dispute by siding with local communities in calling for the revocation of Dominion Farm's lease.

This is a case of a long-running controversy on leased public land. Given their mandate to manage public land, the NLC or the Siaya CLMB might have been lead actors. They are not playing a lead or visible role in the dispute, however.

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<sup>81</sup> Tom Otieno, "Proposed sugar firm splits Siaya County leaders," *Daily Nation*, 9 September 2015. <http://www.nation.co.ke/counties/Counties/Proposed-sugar-firm-splits-Siaya-county-leaders/-/1183322/2863664/-/vyujnvz/-/index.html>

<sup>82</sup> Nelson Odhiambo, "Investor to put Sh8.5b into sugar cane farming," *Daily Nation*, 2 March 2015. <http://www.nation.co.ke/counties/Investor-to-put-Sh85bn-into-sugar-cane-farming/-/1107872/2640550/-/3umhhpz/-/index.html>; Emeka-Mayaka Gakara, "I will turn Siaya into a Breadbasket: Rasanga," *Daily Nation*, 17 May 2014. <http://www.nation.co.ke/news/politics/I-will-turn-Siaya-into-a-breadbasket-vows-Rasanga/-/1064/2318628/-/1oyeyd/-/index.html>

<sup>83</sup> Kevine Omollo, "Parliamentary committee takes on Rasanga over Yala row," *Standard Digital*, 16 March 2016, posted at <http://www.standardmedia.co.ke/article/2000195044/parliamentary-committee-takes-on-rasanga-in-yala-row>.



### Issuance of titles for adjudicated land

The county government has not yet articulated an agenda with respect to issuing titles for smallholder lands. This does not appear as one of its priorities, even though there is adjudication of unregistered lands to be done, in addition to readjudication and possibly redemarcation of holdings on lands that were registered in the 1960s (dealing what one lands officer in Kiambu called "the unfinalized unbundling of rights"). This may reflect the Jubilee government's firm control over this process at the national level, and it's apparent to use titling in areas in which Jubilee wishes to shore up electoral support.

Land politics in Siaya reveal a divided local political scene in which a new governor seeks to use the county's land powers, including the possibilities offered by the CLMB, to humble the leaders of the county's *ancien regime*. He is checked, however, by the still-powerful position of the old county elite, which is now ensconced in the County Assembly. Significantly, the old-guard faction controls the assembly's Land Committee. There are deep cleavages but these may not come to the surface in Siaya's politics in 2017 if voters fall in line behind candidates backed by Raila Odinga.

### **vi. Isiolo: Clearing the way for Megaprojects: NLC not needed here**

This is the poorest and most arid of the counties in our study, with rural population density of only 6 persons per sq. km and a 2009 population of only 143,294 (2009). It is a pastoralist zone with a long history of economic marginalization and neglect. Eighty-percent of Isiolo is Trust Land (now called community land). Five major nature (wildlife) conservancies, two private and three community-owned, cover 10% of the land area. The conservancies were carved out of Trust Land by the former county council and are a cause of considerable grievance -- the conservancies are considered by locals to be competitors for land and resources.<sup>84</sup> Enclosures and displacement have restricted access for the pastoralists' livestock and, together with population growth, contributed to the

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<sup>84</sup> The 2009 census reports that 70% of households derive their income from pastoralism. Recent academic surveys put this figure at about 45%. See Abbink et al., 2014.

precariousness of pastoral livelihoods. Re-drawing of the Meru-Isiolo district boundary under the powerful Kenyatta-era Lands Minister Jackson Harvester Angaine was also a blow to Isiolo pastoralists; this festers as a longstanding political grievance. Another form of encroachment endured by pastoralists over the decades is use of Isiolo grazing lands and permanent water sources as a fall-back in drought periods by "foreign pastoralists" from Kenya's more arid regions, including parts of what are now in Samburu and Wajir counties. Most of the private land in the county is in Isiolo Town, located in the extreme south, near the border with Meru County (and Isiolo South sub-county).

Isiolo sits at the borderline of 'high potential' central Kenya and the arid north, long considered 'barren' with no or very little potential for national economic growth. But the ASALs are now Kenya's new frontier with seemingly boundless opportunities for mineral exploitation, infrastructure development, and world-class tourism facilities. Isiolo has become the launching pad for development of northern Kenya, especially with the launch of Kenya Vision 2030's largest infrastructure megaproject, the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor Project.<sup>85</sup> These plans include a new international airport at Isiolo and a new wildlife conservation-tourism center ("Isiolo Resort City") intended as a magnet for private sector investment. The resort city is to be supplied with water collected by the damming of the Ewaso Nyiro River, another megaproject in the Vision 2030 blueprint.

The historical marginalization of the north, arbitrary conversion of Trust Lands to competing uses, and ethnic and clan competition for political power, grazing land, and water all play into the "new politics" in Isiolo and the other ASAL counties. At the heart of such politics in Isiolo is a long history of intercommunal tension and conflict. The largest ethnic group, the Borana, have long dominated county politics, and are resented by Turkana, Samburu, and other "minorities." Competition and conflict around territory and land control is the major source of tension. Local clashes over power-sharing and resource access have aimed at ethnic cleansing in disputed areas. The lethality of these conflicts is intensified by the availability of illegal small arms and light weapons. In 2013, there was violence in Isiolo Town against the Turkana and other non-Borana people, including

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<sup>85</sup> Browne 2015.

against Meru "settlers" who control much of the local business activity. The NGO Saferworld (2015: 4) noted that Isiolo politicians have long been accused of using land as a political tool, making promises to ensure control over or access to contested tracts of land, and to protect certain (mostly Borana) communities from dispossession in exchange for political support.<sup>86</sup>

Carrier and Kochore (2014) argue that devolution and the wider changes of the new century have transformed politics in this region. The new governorships have emerged as focal points of local competition. Rising land values and the goals set out in Kenya's Vision 2013 have promised new investment, including various mega-projects, heightening the stakes of local politics. Among ordinary citizens, there is heightened awareness of the threat of enclosure.<sup>87</sup> Discourse among advocates for pastoralists' interests is shifting from securing "access to land" to one of securing *control* for present and future generations.<sup>88</sup>

Isiolo's entire county government (the governor, MPs, Senator, Women's Representative, MCAs) is strongly aligned to the URP side of the Jubilee coalition. It campaigned on a unity agenda of overcoming the long history of ethnic and political divisions in Isiolo, bringing together the various ethnic communities with the goal of protecting community land for pastoralists. In spite of the unity pledge, however, the long-dominant Borana actors have tightened their grip on county politics since 2013 at the expense of other communities. This logic is visible in the land domain. The CLMB duly appointed by the governor and the assembly was an entirely Borana slate -- all members of the Governor's own sub-clan. This group also controls the County Assembly.<sup>89</sup> Appointment of the CLMB did nothing to quell ethnic tensions around land. It was widely viewed as an example of excessive politicization of a CLMB, and later, two non-Borana were added.<sup>90</sup> Gargule (2016) concludes that "Borana have made it clear that Isiolo belongs to them."

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<sup>86</sup> Saferworld Briefing, Isiolo Conflict Analysis, 2015: 4.

<sup>87</sup> See White et al, 2012.

<sup>88</sup> Team member interviews in Isiolo, Jan. 2016

<sup>89</sup> Team interviews in Isiolo county, Jan. 2016. The Kenyan government officially-recognizes six Isoilo Borana sub-clans.

<sup>90</sup> According to interviewees in January 2016, there is uncertainty over the Governor's intentions to pursue 'Boran' perpetrators of land dispossession and displacement from Isiolo Town during the 1992, 1997 and 2008 elections. This heightens the sense of insecurity within minority communities in Isiolo Town, especially among the Turkana.

The Isiolo government showed no signs of willingness to constitute a CLMB that was independent of the county executive. In 2015 and 2016, CLMB had no visible activity, other than running a few publicity workshops. As for the Isiolo county government itself, it has not taken a publicly-visible lead on any of the major land-related issues facing the county. There is suspicion among some civil society and political society actors that the county elite are positioning themselves as future leading beneficiaries of the "opening up" of Isiolo.<sup>91</sup>

The Community Lands Bill of 2015+? This bill is of paramount importance to the future of community (ex-Trust) lands in Kenya. It will provide for the transfer of the authority over ex-Trust (now community) Land from unelected county councils (and their successors, the elected new county governments) to members of the land-holding communities. As the a draft of the bill was debated in the National Assembly in June 2016, the fear among advocates of pastoralists' rights was that it would eventually be passed in a form that would put registered community lands in the hands of one or two community members at the expense of other registered members of the community. In the worse scenario, unaccountable community leaders, politicians, and county governments will be able to sell-off or lease community land without community consultation. In Isiolo, these fears are heightened by pastoralist communities' previous experiences, which have shown that access rights negotiated prior to land use change (for conservancies) are hardly enforced and respected. Fears are also heightened by current efforts to open up northern Kenya as the next economic development frontier, which is seen as threatening to strip communities of their land in the pretext of development. The LAPSSSET project is a prominent case in point (Browne 2015).

The fear that the Community Lands Bill will be designed to facilitate this process is real. One early draft of the Community Lands Bill gave power to dispose of community lands to the Cabinet Secretary for Lands. Some subsequent versions -- one commissioned directly by the ex-MoL -- retained this provision, even though activists and Kenyan lawyers saw this as unconstitutional. In February 2016, the Marsabit CA Speaker declared (at an FAO-sponsored land workshop) that the

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<sup>91</sup> Team interviews in Isiolo, Feb. 2016.

Community Land Bill showed that "the national government is after community land in northern Kenya." The Speaker argued that "the central government has said that it will not let go of community land."<sup>92</sup> Some civil society organizations active in Isiolo report that many Kenya officials have embraced the disempowering stereotype of pastoral livestock production being "of a lesser potential" than alternative use of ASALs. (The term "land grab" was used by five of Gargule's interviewees.) In ethnically-diverse Isiolo North, the current MP and an MCA warned of loss of land to LAPSET under the December 15, 2015 version of the bill. Their worries are heightened by the fact that Borana closely aligned to the central government dominate the county government (team interviews in Isiolo, February 2016).

There is also worry that the demarcation and registration of community lands to named communities, as foreseen in the draft versions of the Community Lands Bill, will disrupt current arrangements for pastoral land management. As former Trust Land, the previous county council was the formal manager of ranges, and territories were informally claimed by ethnic groups and clans. There was negotiated movement across these informal borders, allowing for negotiated access to accommodate seasonal weather changes such as periods of drought. Such arrangements will be very difficult, if not impossible, to sustain under the kinds of demarcation and enclosure envisioned by various draft versions of the bills.

Meru-Isiolo border conflict. In May 2014, a inter-ethnic group calling itself 'Movement for the Survival of Indigenous Isiolo People' (MOSIIP, founded circa 2005 to mobilize against the leasing government-run natural reserves to private contractors, presented a petition to the Isiolo County Assembly. Among the allegations raised by MOSIIP was that by initiating development projects along the Meru-Isiolo boundary, the Meru county government had committed territorial aggression and consequently had violated a previous resolution adopted by representatives of communities on both sides of the border. However, the Isiolo county government, including the CLMB and its parent

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<sup>92</sup> Team member interviews in Isiolo, Feb. 2016.

at the national level, the NLC, do not seem to have been involved. The county government generally regards the CSOs as promoting political fragmentation.

In Isiolo, the NLC does not have a visible presence as an actor in key land issues. The Isiolo county government, for its part, appears willing to facilitate the further opening up of Isiolo to outside investors. There is a scramble for land in this county. So far, the devolved land institutions do not appear to be doing much to reverse the trends of CPR dispossession and subsequent impoverishment of the local pastoral communities. Community land remains a highly vulnerable target of large-scale resource grabbing.

Meanwhile, the prospect of loss of land (and loss of control over territory) to "foreigners" in both ethnically-diverse Isiolo North and Borana-dominated Isiolo South has become a mobilizing tool for Borana politicians. Meru landowners in both urban and rural areas in Isiolo South (some of whom were born there) are criticized as outsiders and for selling alcohol in town. There is thus wide scope for further territorialization of ethnicity and further politicization of land issues in Isiolo. This is the type of situation that Kenya land activists in the 2000s imagined as ripe for intervention/mediation by a neutral body such as the NLC, but in fact, apart from the Meru-Isiolo border conflict mentioned above, the NLC does not seem to be present in Isiolo.

#### **vii. Nakuru: Electorally-sensitive land issues "beyond the jurisdiction of the NLC"**

Nakuru County is large, politically strategic, and mostly rural (62% of population of 1.6 million in 2009). In many ways it remains the epicenter of Kenyan politics. It is the heart of the former scheduled areas or ex-White Highlands, where land acquired by the Kenyatta government in the early 1960s (about half of the ex-White Highland total) was used in facilitating the creation of a new Kenyan elite. Of all this land, about half was allocated as large land holdings. About half of the remainder acquired by smallholders via settlement schemes and members of land-buying companies. Approximately 72% of Nakuru landholdings are "believed to be titled" (Owino, 3), although smallholdings are often encumbered by disputes over the legality of first registration, the status of allotment letters, and/or the legal transferability of many of these holdings. From independence, the

government itself retained very large holdings as public land, and much of this has been subject to politically-motivated allocation over the years. Most of the Mau Forest complex lies in Nakuru, including part of its 100,000 ha of forest that was cleared and allocated via informal and formal settlement schemes in the 1990s and thereafter.

This history of land occupation accounts for the ethnic diversity of the farming districts of the Rift, including Nakuru County, which is now about 50% Kikuyu and approximately 20% Kalenjin. In the early 1990s, land-related grievances arising out of the previous (Jomo Kenyatta-era) allocation of state-controlled lands to "non-indigènes" (mostly Kikuyu) crystallized as one of the most divisive issue in Kenyan politics. With the return to multipartism, President Moi and politicians linked closely to his regime whipped up electoral support by promising land to the land-hungry ethnic groups indigenous to the Rift (Kalenjin, Kipsigis, Maasai) by taking it back from Kikuyu and other smallholder "settlers" (the vast landholdings of elites of all ethnic stripes remained untouchable).<sup>93</sup>

This politics exploded into the election-time violence of 1992, 1997, and 2007-2008, in which settler populations were violently expelled from their farms and communities. Thousands were killed and hundreds of thousands were displaced.<sup>94</sup> In the most violence-affected areas, the central government (under successive leaders since 1992) has basically confirmed the transfer of land possession from Kikuyu, Luo, and Kisii "settlers" to members of Kalenjin and Kipsigis communities linked to KANU under Moi and then, Wm. Ruto. Since the 1990s, the government has undertaken to not only resettle large populations of internally-displaced persons (IDPs), but also to distribute "new land" (ie., not formerly cultivated by smallholders, not sites of the violent election-time evictions) to aggrieved groups who backed the Moi regime. In the 1990s, much of this new land was found by allowing illegal colonization or formally degazetting parts of the Mau Forest complex. The national government has also sought to compensate some IDPs with cash, instead of resettling them on their original land. "Yet often, as Owino 2016 writes, when the money is gone, the claims return" (Owino).

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<sup>93</sup> Ownership of businesses was also an issue -- Kikuyu business owners were stereotyped as refusing to vote for Moi/KANU, despite offers to bring them into KANU.

<sup>94</sup> Killed and displaced in 1992 were 1,000 and 300,000, respectively (Anderson and Lochery 2008: 328). Killed and displaced in 2007/8 were an estimated 800-2,000, and again over 300,000 respectively. There is a very large literature on these events. See also Klopp, 2011; Boone 2014, Southall 2011.

The Jubilee government that came to power in 2013 rests on an alliance of the protagonists in these land-related, ethnically-polarizing struggles.<sup>95</sup> Nakuru County politics is 'ground-zero' for the governing alliance at the national level. Devolution has not changed this at all. Nakuru county government is run under the iron fist of Governor Kinuthia Mbugua, former head of the paramilitary Administration Police. The County Assembly was carefully gerrymandered by national elites to produce a delicate balance of the partisan and ethnic forces, with wards and MP constituencies designated by national elites as either URP or TNA before any balloting took place.

In this tightly controlled environment, a CLMB was appointed in May 2015 (with delay and political strategizing that ensured the board was not too independent), but it has been largely sidelined. The CLMB in Nakuru, like the other CLMBs, has an underequipped and understaffed office and has not been visible in land matters. (One exception occurred in June 2016 when the Nakuru CLMB secretary himself was suspended and alleged to have been involved in corrupt land deals). Some Nakuru MCAs have appealed to the NLC for support to address long-standing, festering issues around landholdings in former land-buying company areas in Kuresoi (Chepakundi, in Olenguruone Division), where titleholders evicted in 1992 election-related "ethnic clashes" want to be properly bought-out by new occupants, but this is on the margins.<sup>96</sup> (The NLC is not acting in these cases; it is deferring to the political actors. A Parliamentary Commission was appointed in Sept. 2015 to look to the Kuresoi issues.)

This is not the outcome expected in 2012, when powers over the management of public land, settlement and resettlement, and IDP issues were transferred from the MoL to the NLC. The MoL has blocked the transfer of these functions, however, and its actions seem to have been upheld in the Supreme Court advisory opinion (mentioned above).

Limits to the role of the CLMB/NLC can be seen in the following areas:

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<sup>95</sup> Ethnic tensions around land seem to be tempered or "contained" within the structures of the Jubilee Alliance since 2013. Kikuyu farm owners in the violence-affected NDEFFO Njoro settlement scheme said in June 2016 interviews with team members that they take comfort in the fact that the Jubilee alliance seemed to be maintaining unity. The dropping of the ICC court cases prompted interethnic thanks-giving gatherings in this area.

<sup>96</sup> Nakuru County Hansard, 4 December 2014, p. 3-4.



IDP hot spots and settlement schemes. Of those displaced in the election-related violence in 1992-3, 1998, and 2008, some have been resettled on land purchased by the government for this purpose or have been absorbed into the general population. In 2013 when the Nakuru county government came to power, large numbers remained in IDP camps awaiting resettlement, and many still intended to either reclaim land for which they hold title or to be properly brought-out by the new occupiers of the land. On the Banita and Barina Farms in Rongai (owned by members of the Kenyatta and Moi families), for example, there is on-going tension and some violence between "insiders" and "outsiders." IDPs settled on these properties have built only semi-permanent structures, while those expelled from these farms in 2007 have not been resettled elsewhere. In hot spots, intercommunal tension is high. Many of the IDPs in the camps were reluctant to try to return home because of fear of being attacked. Five hundred and sixty-five (of a total of 885) of the Kikuyu evicted in 1992 from Kuresoi-Chepakundi (mentioned above) were resettled in Kapsita A in Elbagon and Kapsita B in Molo ("as a political settlement during the 2002 pre-election period"), but the majority still possess their Chepakundi title deeds and claim ownership of Chepakundi land.<sup>97</sup>

A top priority of the Uhuru-Ruto government has been to empty all the IDP camps before the 2017 election and to pay-out compensation to those listed as entitled to indemnification for destroyed property. IDP resettlement on lands purchased by the government for this purpose began in 2009. The government has acquired approximately 17,000 acres from private owners.<sup>98</sup> This process has continued under the Jubilee government. Owino 2016 cites Paul Sygga in noting that many of properties purchased for IDP resettlement has been identified in the Ndungu Report (2004) as illegally or irregularly acquired; the commission had recommended repossession by the government.

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<sup>97</sup> Team interviews with county officials in Nakuru, Feb. 2016. Meanwhile, 165 of the victims of 1992 evictions did not receive land earmarked for them in Kapsita A and B -- it was "fraudulently shared by senior government officials and politicians [and] the committee has their names," according to the testimony of a Nakuru County government investigating committee, quoted in the Nakuru County Hansard, 4 December 2014, p. 5.

<sup>98</sup> A 2009 news story reports that 3,000 IDPs were settled on the 1,170 acre Gicheha Farm in Rongai, which the government purchased from the first family ("Kenya: IDPs settled on Kenyatta Family Land," *Daily Nation*, 19 October 2009; <http://allafrica.com/stories/200910200038.html>). The Rift Valley Provincial Commissioner stated in December 2009 that 8,232 acres had been acquired in Nakuru, Molo, and Ol Kalou for resettlement of the approximately 181,000-200,000 IDPs in Kenya. See also Cyrus Ombati, "Land parcels Identified to resettle 17,000 IDPs [by December]," *Standard Digital*, 21 October 2012, p. 4 ([http://www.standardmedia.co.ke/?articleID=2000068902&story\\_title=Land-parcels-identified-to-resettle-17,000-IDPs](http://www.standardmedia.co.ke/?articleID=2000068902&story_title=Land-parcels-identified-to-resettle-17,000-IDPs)). This initiative targets 10,000 PEV victims and 7,000 forest evictees.

Many of the still non-integrated IDPs are in Nakuru, as are many of the resettlement sites.<sup>99</sup> In Njoro in 2009, the national government purchased the 1,100 acre Kisima farm from a Jomo Kenyatta-era notable in order to resettle IDPs from postelection violence. The beneficiaries were families from Kuresoi who remained in the Nakuru Showgrounds IDP camp. There has been conflict over this property since 2012 at least. Nakuru MCAs teamed up with an MP and other actors to back counter-claims to part of the land by the former farm workers (now "squatters").<sup>100</sup> The Nakuru governor is now also claiming a part of the property, as are some Kalenjin illegally occupying forest land along the farm's northern border. Land acquisitions linked to IDP resettlement in this case are seen by the political elite as a potential resource through which to gain legitimacy and voter support (and an opportunity for enrichment for some). Not far away, the Ngiwa IDP resettlement scheme was built on 1,000 acres excised from the vast Rongai holdings of the Kenyatta family. Here, the local MCA has actively cultivated the 400 IDP families resettled in 2014, offering them water, food and support when they arrived. (Nakuru-based IPD advocates noted in interviews that the electoral base of an MCA was about 1,500 votes.)<sup>101</sup>

Maasai claims to ancestral lands on private ranches, state land, and settlement schemes. Owino (2016) provides a list of disputed "peripheral areas" near the Nakuru-Narok border and communal areas where conflict is festering. Many of these areas involve conflicts between developers, the Nakuru county government and Maasai who claim ancestral rights to these lands. These include: Oloropil boundary issue; the 60,000 acre property formerly owned by Sir Humphrey Slade in Kidong Valley, stretching from Mai Mahiu to Suswa; the 24,000 acre Utheria Lari Farm; the 16,000 acre Ngati Farmers Cooperative Farm in Naivasha, purchased in 1965; and the 8,000 acre Njoro Muthara

<sup>99</sup> Team member interviews with IDP advocates in Nakuru Town, June 2016.

<sup>100</sup> From team interviews in Kisima Farm in June 2016. Anon, "Fight erupts as squatters block poll violence victims from new homes," Daily Nation, 23 October 2012, p. 34. Anon, MP wants squatter families resettled with IDPs, Daily Nation, 6 May 2014.

<http://www.nation.co.ke/counties/MP-wants-squatter-families-resettled-with-IDPs/-/1107872/2306362/-/15r3hogz/-/index.html>

<sup>101</sup> Some older violence-affected settlement schemes in captive constituencies as trying to make due and hope that violence does not flare up again. In the NDEFFO Njoro settlement scheme, established for ex-Mau Mau fighters in the 1960s, the local TNA MCA does not involve himself with the formerly displaced community and leaves them to fend for themselves.

Farm owned by the late MBiu Koinange. Around Naivasha, for example, plans to exploit natural gas reserves on private or state land mean developers (KenGen) want to expel the current Maasai occupants. The Nakuru governor is believed to hold part ownership in the gas venture. He has mobilized violent gangs to assist the police in expelling Maasai.

The NLC has adopted the ADR mechanism to help find a peaceful resolution of some of the issues involving Maasai claims. (by working with the Nakuru [intercommunal] Council of Elders to get the Maasai elders to accept the status quo boundaries, get over historical injustices, accept compensation offered, and integrate).<sup>102</sup>

Ill-gotten public land. The long history of government allocations and re-allocations of land means that the NLC/CLMB mandate to review all public land allocations threatens many established interests at both the county and national level. However, there appears to have been no such efforts. Team members' key informant interviewees in Nakuru argued that all public land in Nakuru town (est. pop. 393,000 by 2017) was 'grabbed' by former county councillors who now occupy strategic posts in the new county government. They are well-positioned to block any would-be challengers. Some public land grabbed by elites in 1992, including some forest land, has now been sold (back) to the government since 2012 and used to settle IDPs. Meanwhile, some of the newly-acquired public land obtained for IDP resettlement has been grabbed by prominent persons.<sup>103</sup> As some interviewees in the Nakuru county government complained, land-grabbing has continued apace under the devolved government structures.

National leaders of the Jubilee coalitions need to keep a lid on the county's explosive and divisive land issues. Such issues have acute political ramifications. Government at both levels -- county and national -- will be evaluated on its ability to protect the interests of the Jubilee communities – i.e., the Kikuyu and the Kalenjin. Evidence from the land domain suggests this is coming in part at the expense of the Maasai, who have gained any traction on their Nakuru land

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<sup>102</sup> Team member interviews with Nakuru CLMB members, March 2016.

<sup>103</sup> The well-publicized Mau Forest Task Force (officially launch by the Prime Minister on 22 July 2008; report submitted in March 2009, approved by Parliament on 15 Sept. 2009) reported that very prominent individuals had acquired land in the forest catchment area that had been set aside for IDP resettlement.

grievances under the new county government. The NLC has played a very marginal role in Nakuru land issues. As Owino summarized it, the functions of the CLMB have been hindered by lack of independence and vulnerability to political forces at both the county and the national level. In Nakuru, land-related issues that touch on electoral politics are, in practice, beyond the jurisdiction of the NLC.

### **viii. Bomet: Eviction of the CLMB**

Bomet County, on the western side of the Rift Valley, was part of the former Kericho District. It is divided into five administrative sub-counties (the former districts) namely: Chepalungu, Sotik, Konoin, Bomet Central and Bomet East, of which were part of the former “scheduled areas” of European settlement. About three-quarters of the total land area is arable. Of the rest, a large share is comprised of the gazetted forests of Tinet and Chepalungu. The Kipsigis people consider Bomet and Kericho their home counties.

Bomet's Konoin sub-county is home to large, foreign-owned tea estates, which employ workers from the former Nyanza, Western, and Central provinces in addition to local Kipsigis. In other sub-counties of Bomet, smallholdings predominate. Much of this land is adjudicated -- 86% of the land in Bomet is counted as under private title. In smallholder areas, there is rising population pressure on the land; average farm sizes have shrunk from 5 ha in the 1980s to 2 ha today.<sup>104</sup> Land in the towns of Sotik and Bomet is public land that has been leased to private users by the now-defunct county council. Many of these leases are held by individuals with political connections to the former local authority itself (as we have seen in the other counties). About 2% of the county population is officially considered to be landless, including many Kikuyu who were displaced by post-election violence in what is now Nakuru county.

The most politically-visible land-related issues in Bomet since devolution are the Governor's crusade to gain recompense for historical injustices linked to the expropriation of land by British colonists (now held as tea estates owned by multinational corporations), and allocation and the

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<sup>104</sup> Bomet County Integrated Development Plan, 2013.

reallocation of (mostly urban) public land among rivalrous, well-connected beneficiaries, past and present. These land issues are deeply entangled in both national and county politics.

On the national stage, there is a struggle on the stage between the South Rift governors, Issac Ruto, Governor of Bomet, and Paul Chepkwony, Governor of Kericho, on the one hand, and Deputy President (DP) William Ruto, on the other. The Bomet Governor is challenging the DP by trying to maintain his autonomy at the country level, and by resisting incorporation into the new Jubilee party). He has created a new political party, the Mashinani Development Party of Kenya. Deputy President Ruto appears to be fighting back by mobilizing networks of local politicians both in the county itself and among national-level politicians from Bomet) who are backing the Konoin MP, Sammy Koech, in his 2017 bid to unseat Issac Ruto as governor of Bomet. In addition to this emerging contest with Koech, the governor is locked in struggle with a good part of the CA, who criticise his alleged efforts to monopolize power and run the county “like family property.”<sup>105</sup> The Governor's CEC for Lands (later suspended by the governor, supposedly for siding with his rivals, especially Sotik MP Joyce Laboso, also an aspirant for the governorship) is singled out for particular ire by some influential CA members. The bad blood between the Governor and the Assembly is also manifest in the several unsuccessful attempts by the latter to impeach the former.

These conflicts were highly visible in the appointment of the CLMB in September 2014, a process that was mired in controversy and ended in failure. The Governor's strategy was evident in the first proposed slate of six nominees that he submitted for approval, which included two names from the Governor's home constituency (Chepalungu, for which he twice served as MP: 1997-2002, 2007-2013), but none from Konoin. The Bomet CA rejected this as biased. A stalemate ensued.<sup>106</sup> The CLMB Secretary thus worked in an office with a couple of staffers, but was then withdrawn completely from Bomet (and transferred to Vihiga in November 2015).<sup>107</sup> Bomet's land politics have

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<sup>105</sup> Bomet county interviews by team member, March 2016.

<sup>106</sup> Another attempt to nominate members in early 2015 also failed.

<sup>107</sup> A third attempt to constitute the CLMB was underway in 2016. Three of the original three nominees sought a court injunction to block the new recruitment process (which was issued on 22nd April 2016).

thus played out in the absence of the NLC, even though the leading issues fall squarely within the NCL mandate.<sup>108</sup>

Tea Estates in Konoin sub-county and colonial land alienation. The governors in Bomet and Kericho have focused public attention and political pressure on the tea estate lease-holders over renewal of their soon-to-expire leases, demanding better deals. This taps into a long-standing grievance in South Rift Kipsigis politics. Issac Ruto's own gubernatorial campaign featured the demand that this land should revert to the county (70% of of the leased land that is targetted in this dispute lies in Bomet). DP Ruto and Konoin MP Koech have taken a more accomodative position vis-a-à-vis these international tea interests, which include Finlays, Unilever, Williamsons Tea, and Sotik Highlands. Both camps want the tea estates to make concessions to satisfy some of the rising local land hunger. For their part, the companies are believed to be funding political activities in parlimentary constituencies in both counties to stave off these pressures. Some are also engaging in 'corporate social responsibility activities', for the same purpose. (Finlays is constructing a stadium in Bomet, for example.)

During 2013 and 2014, the Kericho and Bomet county governors pursued a second avenue of redress for the historical injustices linked to the tea estates. They brought a court case against the UK government over 1930s land alienations in what is now Kericho County and Bomet's Konoin sub-county. A majority of those displaced settled in what is now Bomet County. Third and fourth generation descendants of these families -- 150,000 persons named in the lawsuit -- are seeking compensation for these injustices in addition to the return of their lands once the current leases expire.

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<sup>108</sup> The county government is relying on a committee within the County Executive Department for Lands for handling of land matters such as planning approvals. Land Control Boards in each subcounty continue to operate as in the pre-devolution era, chaired by the respective deputy county commissioner. "There are no meaningful changes being felt by the members of the board; the structure remains the same for them" (Ouma, p. 2). The Land Registry in Bomet, a body long tainted with corruption charges, is crippled because the Registrar was suspended (as of March 2016) following corruption charges.

They are working with the Deputy President's former lawyer at the ICC, Karim Khan, to file the case at the International Court of Justice.<sup>109</sup>

### Public land allocations in Bomet

The review of public land allocations -- affecting mostly the two urban centers where there are leases and some cases of privatization of public land, as well as numerous cases of multiple allocations of the same parcel -- is playing out largely in the political arena and in the courts, rather than through the CLMB. For example, there is a high-profile dispute over the site for the construction of a branch of Moi University College within Bomet County. President Uhuru Kenyatta issued a title deed for its construction in Bomet Town (even though the parcel number apparently had earlier been allocated for construction of a stadium, which was already underway).<sup>110</sup> The Bomet Governor opposes this site, preferring that it be built in Chepalungu Sub-County, in his home town of Sigor. Meanwhile, there are conflicts over parcels of public land in Bomet and Kericho owned (or claimed) by national-level politicians linked to the URP, including DP. Ruto and the Energy CS (and former Kericho Senator), Charles Keter. They, among others, are attempting to acquire urban parcels as private property (having been allocated these parcels by the previous county councils). The Bomet Governor appears to be thwarting this, suggesting that "external actors" would attempt to use the CLMB for their own ends.<sup>111</sup>

In Bomet, the NLC's powers have yet to be harnessed to the tasks assigned to it in the 2010 constitution or the 2012 land laws. The NLC lacks a natural political base or constituency at the county level (such as might be found in civil society organizations that are active around land issues, or rule-of-law associations that might be active in soliciting NLC support in land-related issues). Land issues are highly salient, however, both in legitimacy-seeking strategies of the elected

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<sup>109</sup> V. Mabatuk, "Lawyers to sue Britain over land injustice," *The East African Standard*, 15 October 2010; T. Kemei, "Ruto's Lawyer to file case against colonial injustices", *Daily Nation*, 20 December 2015; P. Kipkemoi, "45,000 join Sh2trn case against the UK," *The Star*, 25 April 2016. Bomet county has also sought to sue the Kenya Tea Development Authority for its alleged unfair treatment of small-scale tea farmers. The tea growers rejected this initiative, however.

<sup>110</sup> G. Rono and T. Kimei, "You misled President over Bomet varsity Land, CS told," *Daily Nation*, 21 May 2015; G. Rono, "Now Sh500m varsity college to be set up in Bomet Town," *Daily Nation*, 26 May 2015.

<sup>111</sup> Team member interviews with Bomet county officials in March 2016.

politicians, interpersonal rivalries among them, and in the struggle among individuals to acquire and hold onto valuable assets and opportunities for speculative gain. The Bomet governor himself is certainly using land issues as a "two level game" to court local popular support and fend off political opponents at the national (and local!) levels, as predicted by Cheeseman, Lynch, and Willis (2016).

#### IV. Discussion

Although our sample of counties is too small (N=8) and too heterogeneous to test any of the hypotheses laid out in Part II in a rigorous way, we can ask, Do politics in the land domain in the eight counties *disconfirm* any of these hypotheses?

The only hypothesis we can disconfirm, based on analysis through late 2016, is the first. This one asked, Would the new land institutions bring about the effects they were designed to produce? Our study shows that in 2014-16, the NLC and the CLMBs were not able to fulfill the constitutional mandate (or the role envisioned in the 2009 National Land Policy) to be a politically-independent (non-partisan) and law-governed agency to manage public land and redress past land-grabbing in this sector.

On the "our time to eat" hypothesis, it seems clear that devolution has indeed increased the number of political actors competing to appropriate property for themselves in a time of rising land values, as D'Arcy and Cornell anticipated. Land is a major currency of personal and political reward and enticement for the new county political elite (many of whom are carry-overs from the now defunct local authorities).

Rumblings of the micro-majimboism, as anticipated by the "tribal enclaves" hypothesis, are audible in almost all the counties. In Nakuru, Narok, Isiolo, Bomet, those claiming to be indigenous clearly want devolution to work for them in this way. In ethnically heterogeneous counties, there is open struggle over what devolution means for claiming land on the basis of indigeneity. Nakuru shows that "indigenous" groups who do not have the political upper-hand at the county level will be frustrated in efforts to advance such interests. In Narok, there is competition between elites representing dominant clans and leaders of subordinate clans who have mobilized "outsiders" on their



side. In Isiolo, the long-dominant Borana have closed ranks to secure their hold on county government and guarantee themselves the upperhand in Isiolo's high-stakes land issues. In Bomet, a mostly Kipsigis county, indigeneity discourse has been mobilized to claim compensation from Britain for land expropriated from the Kipsigis (and Nandi) people 100 years ago. In other Kenyan counties (Baringo, other Arid and Semi-Arid Lands (ASALs) counties, the Coast), there is no question that in the popular and sometimes the official mind, devolution means that indigènes should "take back the land."

What about Cheeseman et al.'s institutionalist hypothesis? Our analysis, limited though it was to the land-related aspects of devolution, suggests that electoral struggles in Kenya have become more complex than these authors suggested. Devolution has ushered in inter- and intra-partisan competition for county governorships and assembly seats at the sub-county (ward) level that produce some unexpected vertical alliances and rivalries national and county-level actors, as well as the national-county rivalries that Cheeseman et al. highlighted. There is no clear pattern of county actors lining up against national-level actors, or counties aligning "for" or "against" either the MoL or NLC, as a partisan-alignment model would predict. Bomet and Meru governors, both of the Jubilee coalition, have rebelled. The Machakos governor, officially in the opposition, has aligned with the center.

A look at *de facto* political alliances, rather than partisan per se, shows that counties squarely controlled by central politicians and aligned tightly with the national elite have indeed shut out the NLC and the CLMBs, as one would predict (Nakuru, Isiolo, Machakos).<sup>112</sup> And so-called "reform" governors (Meru, Machakos), opposition governors (Siaya, Machakos), governors who do not represent the old county elite (Kiambu, Narok), and "autonomy-seeking governors" (Bomet, Meru) -- if we use some existing characterizations of cross-county differences -- do not share a consistent stance vis-à-vis the NLC or the CLMBs.

These dynamics, again perhaps *contra* Cheeseman et al's main prediction, has not necessarily worked to lock-in devolution. On the contrary, over 2014-16, the national-level executive branch successfully clawed-back many of the land powers of the NLC. As this was happening at the national

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<sup>112</sup> Meanwhile, fraying of the Jubilee Alliance itself means that some counties that are presumed to be part of the ruling coalition have been at odds with the national executive branch on land matters (Meru, Bomet).

level, several of the county executives and assemblies acted as veto players to neutralize the ability of the NLC to operate as an independent actor. It is clear that politically-powerful actors in many different positions within the Kenyan state -- national and county level, pro-government and opposition-leaning -- had strong (but varying) incentives to obstruct attempts to build a non-partisan and thus politically autonomous institution in the land governance sector.

With a few exceptions, citizens and civil and political society groups -- presumably the constituent elements of a "reform coalition" that could have provided a counterweight to the well-positioned institutional players -- did not in fact constitute a counterforce to this reaction. In some counties with strong civil societies, MCAs have tried to invoke the powers of the NLC or the CLMBs in land matters (Nakuru, Kiambu, Narok), either in cooperation with the governor (Narok) or against the governor (Nakuru, Kiambu). County Assemblies, however, have not been united enough to overpower governors when governors want to shut-out the NLC and the CLMBs. In practice, prerogative to open or close the door to the CLMB rests with the governors.

County governors are seeking to expand their land prerogatives. Governors in Bomet and Kericho are seeking to extract concessions from the British government and/or foreign investors in the name of righting historical land injustices against "the Kenyan people." County governments are claiming public land *for themselves* not only against multinational corporations (Kiambu, Bomet), but also against the national government (Kiambu), and even against "squatters" on public land (Kiambu). There are other lease renewal cases in Siaya, Taita Taveta [sisal estates owned by Greeks with 50% Kenyatta family ownership at some point in the past], Kericho, Bomet, Nandi, Murang'a.

Where the NLC and CLMBs have acted in the land domain in most counties, the scope and nature of NLC interventions have been determined by political (electoral) struggles and calculations both within counties and between county- and national-level politicians.<sup>113</sup> Land politics and government initiatives in the land domain remain tightly imbricated in electoral politics, and focused on both micro-level land grabbing and on the larger questions about land's political and constitutional status that the new constitution was supposed to resolve.

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<sup>113</sup> The 2009 World Bank report (2009:10) describes the general political environment in Kenya as "manipulative and predatory." This captures much of what we observed in land politics.

The NLC and some CLMBs have become involved in some alternative dispute resolution (ADR)(Narok, Meru, Nakuru, Machakos [and Kajiado]), and have indeed been involved in some take-backs of ill-gotten public land, but such action seems to be tightly limited to situations which are low-stakes in the game of partisan politics. Some aggrieved citizen groups and their advocates, including MCAs in some cases (Kiambu, Nakuru, Narok), have tried to harness the possibilities and promise of the NLC in most of the 8 counties in this study, but done so with limited success (which could, however, be quite meaningful for particular individuals and communities).

### Conclusion

This study taps a persistent question in the democracy and decentralization literature, indeed, in institutionalist accounts of development and the reform agendas that they have influenced: Do new institutions produce political effects on their own, or are such effects the result of deeper social or economic conditions that produce both the new institutions and the observed outcomes? Our limited study (limited in both in its timeframe and geographic scope) provides the basis for provisional conclusions for land tenure reform in Kenya. Clearly, as of 2016, the attempt to create a politically-neutral technocratic or "above politics" (judicialized) unit, the NLC, to control land and take it out of politicians' hands appears, has not succeeded. The Land Acts, including the Community Land Bill, passed on 31 August 2016, dismantled the CLMBs, returned control over public land and non-registered community land to the central government, asserted central government control over settlement schemes, and in a variety of other areas drained the NLC of powers that were granted to it under the 2010 Constitution and 2012 land laws. The new laws have been challenged in the press as unconstitutional, marking the beginning of a new phase of political struggle over land control in Kenya.

From the vantage point of late 2016, the effort to achieve meaningful reform through constitution and law appears to have been an excessively "institutional fix."<sup>114</sup> It (i.) relied heavily on the statutory power of institutional change to autonomously bring about a decisive redistribution of

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<sup>114</sup> as anticipated in Manji's 2015 critique of the 2012 Land Laws.

power in practice, and (ii.) overestimated the capacity of ordinary citizens and the courts, at least in the short run, to use the new laws and institutions to hold elites (at both national and county levels) to account. At least in the short term, the new land institutions seem to have been absorbed into (or smothered by) other, more multi-sided struggles for advantage (electoral and partisan, national-county, development mega-projects, private land acquisition, territorial rivalries between mobilized groups, the conquest of the frontier and the remaining public lands ). These political forces combined to restructure and even subvert the new land institutions (rather than vice versa).

This deepens and nuances existing attempts to theorize about devolution in Kenya, adding evidence from politics in an economic sector that is highly politicized in every single county of Kenya. Our findings could generalize to land and devolution politics in multi-party countries with very significant endowments of high-value public land, and especially to cases in which political authorities have wide powers and prerogatives to allocate (or appropriate) public land. Many African countries fall within these parameters, creating possibilities for generalization and/or broadening testing of some of our preliminary hypotheses.

The most dramatic developments in the land domain in Kenya since 2013 are initiatives of national government and/or governors that *bypass* the NLC. National government leaders have resisted any diminution of their prerogatives in the domains of land titling and resettlement. President Uhuru Kenyatta has embarked on a highly publicized initiative to issue 3 million title deeds to smallholders, focusing on regions where such action could shore-up support for the ruling party (e.g., Meru, Machakos), erode support for the opposition (Machakos and the Coast). Land has been given to IDPs where this is vital to Jubilee's chances of maintaining peace at the local level (Nakuru, possibly Narok as well).

A fuller analysis of land politics since 2013 in Kenya would have to take into account other salient forces that are acting on land politics in Kenya, perhaps overwhelming the direct effects of the land provisions of the new constitution and related land laws. These include: accelerated accumulation on the part of the national elite, continuing population growth, the looting of government assets, including public land, in the counties in period of constitutional transition, the land- and opportunity-grabbing opportunities afforded by Vision 2030 megaprojects and

consolidation of the EAC, invigorated government spending and new investments at the national and county levels, and rising land and real estate prices and opportunities, including those stoked by devolution itself.

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Appendix 1  
Details on Maji Moto Group Ranch Case

In December 2015, the CLMB received complaints from members of Maji Moto Group Ranch that former ranch officials had used their authority illegally to allocate to themselves parcels of land meant for public utilities. In addition, the ranch officials had failed to allocate land to 57 ranch members, thus denying them their rightful share. Group ranch members' initial search of the status of a number of former public utility parcels within the ranch indicated serious malpractice and illegalities on the part of some group ranch officials. For instance, the public water point of Enkoyiankankalani and the Iitalala borehole had been allocated to individual holder, along with parcels designated for schools, including those allocated to Nchaishi Primary, Olchorro-onyokie Primary, and Oloolua Primary ("A letter from the Concerned Ranch Members to County Land Institutions," 22 December 2015, from land sector actor interviewed by team member). See National Land Commission, 15 January 2016, *Minutes on NLC Officials, Ministry of lands officials and concerns parties held at CEC Land Narok County. NRKCLMB/M/016*. Ranch members demanded, first, the cancellation of all title deeds for public utilities that had been illegally acquired. Second, they called for halting of all land transactions related to the group ranch and re-allocation schemes, as the sales were aimed at benefiting powerful individuals. Third, they demanded clarification of the legal basis upon which a few individuals who had initially registered only once on the primary registry had ended up with multiple land parcels, and of how titles were issued. The "Concerned Members" invited the CLMB office to provide clarity on the issues affecting the Maji Moto Group Ranch and to help in addressing their grievances.

In response, the NLC commenced investigations. It visited the Maji Moto Group ranch on various occasions and examined the records held by the Ministry of Land, Housing and Urban Development. The NLC's main focus was the validity of the ownership documents held in respect of all the affected properties, to ascertain if there was fraudulent acquisition of the said properties by any party, including the former group ranch officials. After confirmation of this allegation, the NLC was to ensure enforcement through legal means of any directive regarding the property to ensure that the property is vested in the legitimate beneficiaries of the Group Ranch. The NLC issued a seven days' ultimatum to title holders to submit their ownership documents along with any maps, survey plans, receipts of payment or any other relevant historical document. Upon failure to produce legitimate records, the NLC pledged to institute legal proceedings against the board members (National Land Commission, 9 February 2016, Letter to Maji Moto Group Ranch officials). On 14 January 2016, the National Land Commission Chair revoked more than 100 Maji Moto Ranch title deeds, disbanded the ranch's management committee, and called for the election of a new committee within seven days. This prompted the embattled group to rush court to obtain a court order stopping NLC from revoking the titles. In response, the NLC chairman made it clear that, "Whether people rush to court to stop us from repossessing public utility land is immaterial because we shall be guided by the law. Nobody will be allowed to continue occupying land meant for public use" (George Sayagie, "Swazuri revokes titles deeds in Narok County," *Daily Nation*, 17 January 2016).

## Appendix 2: Land inequality in Kenya

Masters et al. (2013: 158) observe that as average farm sizes in Kenya shrunk between 1997 and 2010, farms in the top quartile of landholdings actually became *larger*, and that in addition to commercial land purchases, "violent conflict and political power may have played a role" in this process. See also Jayne et al, 2014, and UNFAO. This is not captured very well in the land gini for Kenya cited by Jayne et al. (about 5.5, compared to 5 in Senegal and almost 7 in Nigeria). However World Bank 2009: 102-3) gives a much higher land gini for Kenya of .83 for the entire population for 2005/6, which they describe as high by international standards. Inequality in household consumption in Kenya is also high by African standards. "In 2005/6, the ratio of consumption between the top and bottom ten percent stood at 20:1 and 12:1 in the urban and rural areas, respectively. This compares to 5:1 in Tanzania and 3.3:1 in Ethiopia, for example" (WB 2009: x). (See also WB 2009: 104.. Jayne et al (2014) report that the families of Kenya's first three presidents own 1/6 of all land in the country.

Sourcewatch reported at "Settlement Schemes in Post-Colonial Kenya" that by 1980, just 0.4 percent of farmers controlled over half of all Kenya's farmland, apparently calculated from Njonjo 1981. [http://www.sourcewatch.org/index.php/Resettlement\\_Schemes\\_in\\_Post-Colonial\\_Kenya](http://www.sourcewatch.org/index.php/Resettlement_Schemes_in_Post-Colonial_Kenya)

## Appendix 3: County Party Profiles, 2013 Election

County	Governor	Presidential	NMCAs	MPs	Senator
Nakuru Gov	TNA: 77% ODM: 20%	TNA: 80.19% ODM: 17.14%	TNA: 14/19 URP: 4/19 ODM: 1/19	TNA: 6 KANU: 2 URP: 1 ODM: 1	TNA: 50% ODM: 12%
Narok Split between Gov and ODM. CA split	URP: 37% ODM: 23%	ODM: 50.28% TNA: 46.38%	URP: 7/17 KNC: 4/17 TNA: 3/17 ODM: 2/17 RBK: 1/17	URP: 4 TNA: 1 KNC: 1	URP: 41% Indep: 33%
Kiambu	TNA: 63% NARC: 31%	TNA: 90.21% ODM: 7.89%	TNA: 26/27 Agano: 1/27	TNA: 12	TNA: 74% KANU: 10%
Machakos Assembly Split.	WDM: 71% CCU: 25%	ODM: 85.89% TNA: 9.58%	WDM: 10/19 CCU: 3/19 OTHER: 8/19	WDM: 3 CCU: 2 IPK: 1 FORD-P: 1 Muung: 1	WDM: 69% FORD-P: 22%
Isiolo County Assembly split by party.	URP: 39% TNA: 33% APK: 27%	TNA: 55.41% ODM: 29.61%	URP: 4/10 TNA: 2/10 ODM: 2/10 OTHER: 2/10	URP: 2	URP: 47% ODM: 30%
Meru County Assembly split	APK: 44% TNA: 43%	TNA: 89.41% ODM: 7.55%	APK: 7 TNA: 7 GNU: 3 NARC-K: 3 OTHER: 4	TNA: 4 APK: 2 ODM: 2 Indep: 1	APK: 87% ODM: 12%
Siaya ODM	ODM: 49% NAPK: 48%	ODM: 98.47% TNA: 0.31%	ODM: 17/18 FORD-K: 1/18	ODM: 5 WDM: 1	ODM: 94% Indep: 6%
Bomet	URP: 61% KNC: 33%	TNA: 92.68% ODM: 4.61%	URP: 10/10	URP: 5	URP: 51% KANU: 43%

Alliances between the main parties:

ODM + WDM = Opposition Alliance

TNA + URP + APK = Jubilee Alliance.