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This policy brief is divided into three parts: research findings, policy analysis, and recommendations.

## The Findings

These findings capture on one hand what people do with, in, and after violence, and on the other, the outcome of these as in what violence does to people, and as manifested in the people's aspirations, striving, relations, status, and view of each other.

Becoming Kenya was marked by the colonial conquest and the resistance that ensued; for instance, the Nandi resisted the British conquest from 1890-1906, for more than 16 years. This resistance was done by individual social – political formations (nations, e.g. the Nandi nation) known today as tribes. At the level of the conquest, these nationalities became subdued (they lost land and their political organization was destroyed). This is the first level of becoming Kenya, thus at this level, Kenya was being sketched. The main tool for defining Kenya at this level was violence with a few dots of negotiations. When this research was done, the violence experienced at this level was not even in the remote consciousness of some Kenyans. Some scholars like Karuti Kanyinga only imply this violence in their attempt to rebuff the Nandi and other Kalenjin groupings against their re-ignited animosity against the so called foreigners in the Rift Valley, the Kikuyu as it has been shown in the violence experiences in the 1990s and 2007/2008. Kanyinga's point is that, neither the Nandi nor the Kikuyu can, historically speaking, claim Eldoret as their ancestral homeland because Eldoret and Uasin Gishu are Maasai names; therefore, the Maasai who were evicted and involuntarily resettled at Kilgoris were the ones that had inhabited Eldoret at the inception of Kenya. Kanyinga goes further to point out that other ethnic groupings in the Rift Valley like the Iteso, Gusii, and Abaluhya, who

were once the servants of the white settlers in the Rift Valley, and consequently benefited from the White Settler land when the settlers left Kenya at independence, are not victimized as foreigners. The question then is why are the Kikuyu considered as foreigners in the Rift Valley? Kanyinga's response is that because the Kikuyu are the majority none-Kalenjin-owners of land for instance in Eldoret, and the blame should not be heaped on the Kikuyu, but on the independence government's implementation strategy of Africanization policies, that favored the Kikuyu against other Kenyans in accessing the White settlers' land. However, the post-independence governments have remained aloof to this observation of Kanyinga in terms of policy responses. Instead, these governments' policies have been reinstating the status quo. Consequently, this land-social-question has been left to politicians for soliciting support from the grass roots. As the findings of this research show, the contest now is between those who say, 'you took our land' against those who say, 'we bought our land'. This debate boils down to the contest between ownership of land by one's ancestral origin versus ownership of land by one's residence. These seem to be the implications of the first level experiences of violence when Kenya was being sketched with the pen of violence that created land inequality that has persisted to date. As such, Kenya has become a land of landless and large owners of tracts of land, as well as the land where ethnicity is employed not just as a weapon for fighting this social injustice, but also as an instrument for defending the social injustice. Nonetheless, the solution to this problem seems to lie in delinking land ownership from ethnic identity. This is the responsibility of governance and the government mediated by the intellectual imagination. It should be noted that creating opportunities that remove people's attachment to land on one hand and on the other boldly addressing the land injustices are not to be taken as substitutes, but complementary moves, and these moves need to be implemented concurrently.

At the second level of becoming Kenya, elites as products of colonialism emerged and started demanding for recognition in terms of equal rights with the colonialists and creation of autonomous spaces because they already had the education and culture of the colonialists. However, the Colonial government vehemently resisted the attempts of this elites. Consequently, these elites first started creating the ethnic identities. For example, Kenyatta and Odinga give us a picture of how they were becoming first Kikuyu (Kikuyu nationalism) and Luo (Luo Nationalism) respectively, then due to the weaknesses of these identities when considered independently at forcing the colonial government to grant them their demands,

these elites that were riding on these identities started reaching at other groups, consequently broadening their scope. In doing this, a sense of Kenya from the colonized perspective was emerging against the Kenya of the colonizers. However, these elites that emerged in the colonial period have persisted to date and they have taken communities hostage in their politics. These elites since their emergence during the colonial period have been patronizing their communities. The solution to this problem seems to lie in the institution of party democracy. Just like the previous observation, this also is a governance issue, whose responsibility lies with the government.

However, in reaction to the emerging broad resistance organized by the collaborating elites from all corners of the country, the colonial government took drastic measures of, for instance, involuntarily repatriating the Kikuyu who had earlier been dispossessed of their land from their ancestral home of central Kenya, and had been brought to work in the white highlands in the Rift Valley, back to central Kenya. David Anderson says that, "more than 100,000 Kikuyu squatters were forcibly 'repatriated'" from the Rift Valley between 1946 and 1952 to Central Kenya. This was a big mistake from the colonial government because they left this Kikuyu with no alternative other than taking arms to fight for a home. This marked the emergence of Mau Mau rebellion, which employed the available cultural technology of oath taking as a tool of conscripting everyone from the community into the resistance in order to ensure loyalty to the resistance by keeping the tenets of the resistance secret. At this level, the former disparate identity groups that had been crushed by the colonial conquering machinery, had now become desperate resisters of this machinery. The spirit of Mau Mau nor the oath taking did not die with the achievement of independence. It has persisted to date as it was experienced in the pre-2007/2008 violence experiences and with the transformation of Mau Mau to Mungiki. From this, it is clear that Kenyans have become desperate resisters of instances of injustice by falling back to the previous strategies that had worked. This seems to imply that these strategies have never been transformed and the course for these strategies has never been addressed completely. As it emerged in this research that there are still squatters in some farms in the Rift Valley, and whenever the owners of these farms want to sell them or have sold them, the squatters are put into big trouble of finding the last resort to fall back to. On the part of the current government, the solution does not lie in sub-dividing land to squatters but opening new avenues for livelihoods such as giving the youth micro-finance loans to start businesses. However, the question is, what if the business

fails, where do the squatter youth fall back to? By the way, these strategies are not targeting squatter youth specifically but all the youth in Kenya. This still leaves the gap between youths that hope in inheriting land from their parents, and youth that hope in inheriting the squatter-status in case everything else fails to help them graduate from squatter-hood to Kenyans that own land. At the social question level, Kenyans have become 'those that inherit and own land' and 'those without land to inherit, but can work very hard to buy and own land or remain with the squatters status'. The 'working hard' culture is part of this becoming. As mentioned earlier, the current government's move to creating alternative livelihood opportunities is welcome, but it should be treated as complementary to addressing the land question.

At the third level of becoming Kenya, towards independence, Kenyans were being introduced into party politics, but these parties were not different from the previous ethnic socializations. For instance, the Kenya African National Union (KANU) was a party of the mega identity groups, the Kikuyu and the Luo. This alliance between the Kikuyu and the Luo sent a chilling message to the minority social and political formations like the Maasai, Kamba, and the then splinter groupings of the current Kalenjin. Consequently, the minority groups started their own political arrangement, Kenya African Democratic Union (KADU) was the result. The major concerns for KADU were land and representation. The elites of the minorities like Moi (for the Kalenjin), John Keen (for the Maasai) were afraid that if the giant social and political formations that had allied under KANU take the government from the colonialists, their people were at risk of losing their land and being under represented. This marked the emergence of Majimbo politics (regional politics), which basically stated that the resources like land belong to only the people that hail from that region. The independence constitution captured this arrangement. However, after independence, this was abrogated, and the question of land access was left to the market values, willing seller, and willing buyer basis. This was a positive step to becoming and owning Kenya, however, it was limited to only those with the capacity to buy land. In addition, there was no transparency in letting out the information about the availability of White Highlands for sale to the locals. Even this idea of opening land for sale, while being conscious of the economic and social status of the majority of the citizens was a wrong move from the government. As such, land as a social question was not addressed fully, and it has remained unaddressed to date. Consequently, it has become a national question because most of the ethnically

instigated violence is linked to it at a national level. The contest of status by origin versus status by residence is always re-enacted when there is a major inter-ethnic clash. The solution to this problem seems to lie in addressing the land question.

At the fourth level of becoming Kenya, there has been a move away from the social question and a focus on the political question, which started with the one party system in the 1960s up to 2002, and this party was KANU – Kenya African National Union. Attempts in the late sixties to re-ignite the independence spirit of multi-party politics were thwarted with violent crackdown and imprisonment of instigators of multiparty politics. In 1982, after the failed coup attempt, the multiparty spirit was ‘laid to rest’ when Kenya transformed from de-facto to de-jure one party system. This, officially, thwarted the attention to address the social land question, and this attention was re-directed to addressing the political question. This effort bore fruit in the early 1990s when Kenya embraced multiparty politics, but this was costly. The cost was the instigated ethnic violence by the incumbent president, Moi, who was scared of losing power in the multi-party contest. The strategy that the then government employed was to make the pockets of opposition in the Rift Valley unsettled. These pockets of the opposition in the Rift Valley happened to be also places that were inhabited by non-Kalenjin – places like Molo that were and are still predominantly inhabited by Kikuyu. In addition, places like Kericho that have large tracts of tea plantations were highly destabilized because in such places, there are many non-Kalenjin working there. The assumption of this politics of destabilization by making the targeted unsettled was that non-Kalenjin were pro-opposition, and Kalenjin were pro-the incumbent’s party, KANU. Therefore, by making the non-Kalenjin unsettled, it meant that they could not vote, and as such, the incumbent was sure of a landslide victory in these areas. This worked out for the incumbent, and since then, this politics kept on being appealed to during the general and by elections. This politics has made Kenyans become apprehensive of each other, ‘those whose leaders are in government’ against ‘those whose leaders are in opposition’. However, after the elections, the situation gradually normalizes without much effort from the government, implying that the violence was just employed for a short-term end: winning elections. In addition, the Kenyan political terrain has also become a terrain of politics of coalitions based on ethnic identities. Together with this is the politics of big men, who lead specific parties and have kept their ethnic groups hostage in this parties, and this tendency has persisted since independence. As mentioned earlier, the

solution to this problem seems to lie in the democratization of political parties.

At the fifth level, there have been very interesting developments in the early 1990s violence and the 2007/2008 violence. During the early 1990s violence, the displaced persons started advocating for their cause, letting the world know their situation. This arrangement was successful to an extent that this organization remained intact without disintegrating even when the violence had dissipated. However, to justify its existence, it transformed itself into an NGO. For survival tactics, it moved its headquarters to Nairobi. This, in my view is interesting in that, out of violence, the people from the grass roots are beginning mechanisms that are somewhat sustainable in soliciting resources from within and abroad to fight against violent tendencies. One of the implications of this is that from violence, something positive can emerge.

In this line of thinking, during the 2007/2008 violence, there was another grass roots initiative. In this initiative, the grass roots people from the antagonistic identity groupings reached out to the other in order to make peace. This move was the beginning of what is today called the peace committees. Later, when the government saw the success of this initiative, they were structured from grass roots to national level. This research found out that it was the efforts of these committees that delivered the peaceful 2013 general elections. Nonetheless, this level of national consciousness is quite different from the pre-independence level of national consciousness. While in pre-independent Kenya, leaders from ethnic groupings reached out for leaders from other ethnic groupings to solicit synergies to fight against colonialism, in 2007/2008 - violence, ordinary Kenyans from different ethnic ascriptions reached out for the perceived adversaries for purposes of making peace.

A part from these grass roots initiatives, civil society especially the Church and NGOs have been active in giving relief to the displaced persons during the violence. However, the difference between CSOs and the grass root initiatives is that a spirit of defying moves of the perpetrators of violence is being formed among the grass root people, who normally bare the brunt of this violence. For me, this is a sign of hope for what Kenya is becoming: people are beginning to define their future directly, which is creating a tension between direct participation and representation. With this humble initiative, if this spirit is not hampered, which I think it has already been when the government incorporated this move into its ministries, the chronic social problem linked to land in Kenya may be addressed.



## Analysis of Relevant Policies

The 2010 Constitution of Kenya in a way reflects the independence debates of the majority-minority representation, and the devolved government question. However, it is different from the early 1960s debates in that it does not tie ownership of land to one's ancestral origin. As such it is progressive in that it has provided an institution, the senate, to protect the devolved governments. It has also given provisions to rectify the historic injustices through addressing regional disparities and marginalization, the land question, and the national cohesion question among others. This constitution is raising the hopes of Kenyans, and at the same time, it is tying Kenyans to their devolved governments – in a way, it is reifying the ethnic identities because the boundaries of most of the devolved governments coincide with the ethnic boundaries.

On the land question, the 2010 Constitution has created the National Land Commission to implement the land policy that seeks to address restitution issues, compensation issues, and addressing historic injustices. At the devolved governments level, the Constitution provides for the establishment of the County Land Commission, which is one of the dockets under the office of the County Governor. However, when this research was done, these commissions at the County level had not been established. Therefore, the two departments, that is, the land and survey departments that are supposed to be operationalized at these County level Commissions were none existent, mainly because parliament had not allocated enough funds to the National Land Commission.

Another observation is that, when this research was conducted, there was a fight between the Chairman of the National Land Commission and the Minister of Lands over signing of the land titles, and over supremacy. According to the 2010 Constitution the two institutions are autonomous, however they are supposed to cooperate in resolving the land question. This fight coupled with the insufficient funds allocated to the commission have kept the attempts to address the land question in abeyance.

Another observation is that, most of the 1909-2019 land leases of multinational companies that own plantations of cash crops like tea are expiring, and yet the institutions that are supposed to process these documents are not yet in existence. Nonetheless, something new is brewing from the ground: some Counties like Kericho are thinking of not renewing these leases. Instead, they want to revert the land to the County and divide it among the citizens that belong to the County.

It also emerged during the research that there have been attempts



to address the plight of the displaced people. In the beginning of these attempts, the displaced persons were given a small piece of land and ten thousand Kenyan shillings (Kshs. 10,000) to start off a new life. However, there were complaints from the resettled persons that they were being resettled in dry places like Naivasha. In response the government decided to resettle the displaced monetarily. Thus, four hundred thousand shillings (Kshs. 400,000) was given by government to displaced persons and they were left on-their-on to look for land for themselves. However, there was another complaint that the government was only compensating people whom the government had evicted from the forests and those that had land. As such, those who were squatting have not been compensated.

The other Commission that I would like to comment about is the National Cohesion and Integration Commission, which is enabled by the National Cohesion and Integration Act of 2008. This Commission's mandate as outlined in the Act is "to encourage national cohesion and integration by outlawing discrimination on ethnic grounds." One of the ways that this Commission seeks to encourage cohesion and integration is through ensuring that "all public establishment shall seek to represent the diversity of the people of Kenya in the employment of staff." However, in practice, this seems far from reality. In addition, the current government seems to interpret this provision to mean that there are some positions meant for specific ethnic groupings. For instance the former Inspector General of Police (IGP) was from the Marakwet community, and when he resigned the president appointed the current IGP from the same community.

Some of the provisions of this Act (2008) are difficult to implement. For instance, this provision: "No public establishment shall have more than one third of its staff from the same ethnic community."<sup>1</sup> The question is, what of counties that have one ethnic group, where will they go to search for this ethnic equation in order to get the required service providers? However, this makes sense in multi-ethnic places.

Nonetheless, this Commission seems to be inspired by the view that ethnicity in itself is harmless; it is only when resources are associated with it that it becomes harmful.

It is my view that this commission will make a lot of sense to Kenyans if it embraces the emerging national and social questions and takes them head-on rather than just focusing in naming and shaming of corrupt government officials.

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<sup>1</sup> *Ibid.* pp. 10.

## Policy Recommendations

The question of democratizing political parties needs to be addressed urgently. The government needs to come up with bold moves to bring sanity to the democratization process of political parties. For instance, there should be only two term limits for any Kenyan to attempt to become a president and to be a leader of a political party.

There is need for the government to address the land question in order to reduce bases that reify ethnic identities and violence. The government should take the available opportunities like the expiring land leases; the problem of squatters, and the perpetual election violence displacements to pursue the minority Kenyans owning large tracts of land to join the government in addressing the land question.

There is need for the government to build institutions that nurture the direct participation in governance of the country by grass roots Kenyans. In line with this, the peace committees should be delinked from the government ministries because they have been reduced to the role of government early warning system informers whereby the power to make decisions has been taken away from them. The spirit that brought these committees into existence should be allowed to thrive by making these committees autonomous from the government organs.

The National Cohesion and Integration Commission should be empowered to collaborate with other commissions in addressing national questions.

The government needs to strengthen county governments financially by having a 45:55 ratio division of the revenue between the devolved governments and the central government.

I conclude by saying the daily political and social processes determine what Kenya and Kenyans are becoming; and this becoming started with the colonial conquest and the resistance to this conquest. These processes have shaped the form of national consciousness of Kenyans. The social issues like land, employment opportunities and the nature of national politics mediate this consciousness. However, there have been persistent social and political issues that the government needs to take a decisive position in order to improve the quality of this national consciousness. Specifically, the government needs to address the persistent land question that seems to influence the ethnic and political dynamics in Kenya, and address the distribution of resources question between the central government and the devolved governments, and put in place strict laws to guide political parties to become democratic so that Kenya becomes a Kenya for all Kenyans not just by name but also in ownership, responsibility and accountability.



