

A CRITICAL ANALYSIS OF THE EXTENT TO WHICH THE NATIONAL LAND
COMMISSION ADDRESSES THE LAND QUESTION IN KENYA.

BY
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THESIS

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List of Statutes

The Constitution of Kenya 2010.

National Land Commission Act, 2012

The Land Act, 2012.

Land Registration Act, 2012

Case Laws

¹Abdulkadir Khalif vs Principal secretary and Others. Reference no. 479/2017, High Court

NLC vs AG & Others, Advisory Opinion. Reference no.2/2014, Supreme Court.

NLC vs Ex-Parte Leting Jr. No. 117/2016, High Court .

Foreword

This work examines various literature in relation to the Kenyan land question. Such are works written by renowned scholars in the field, who delved on conducting research on land issues and their persistence in relation to the communal response to land tenure security. Such look at the definition of ownership in pre and post European invasion of African land and the subsequent events. Additionally, the work looks at various other countries that have had issues with the land and the steps they took to address them. Such can be good prototypes if the land question is likely to be answered any time soon. However, still, through literature, the commission charged with taking care of land problems in Kenya can find myriad other suggestions.

The National Land Commission was created with the idea of bringing an equalizing solution to people who were suffering from land inadequacy and lack of tenure security. Security would ensure increased agricultural output since now, the farmers would not be afraid of dispossession of the land by the 'owners'. Additionally, squatter problems would also be sorted by the new commission, as well as, sharing out of various settlement schemes and giving out of title deeds to the people that claimed a part of them.

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Abstract

The land question in Kenya has never been solved. Land is a pertinent source of livelihood, the problem has persisted and in a number of years caused chaos as people grow impatient. Over time, there have been complaints from various communities and recently, the past governments have sought to listen to the ailing communities. The National Land Policy and the National Land Commission characterize efforts to remedy the continued situation bedeviling the African communities. A prominent feature of the problem was the sudden change of the existing mode of land ownership, whereby in Africa land was a communal property, to an individual situation whereby the rich could get more than the poor and the community's comment about it would be met with deafening silence.

Since the passing of the 2010 Constitution, the issue of land and the prospect of land reforms has been reignited. However, this time around, it has come with a heightened level of hope given the immense power given to the National Land Commission by the National Land Commission Act of 2012. In fact, the commission has the power to repossess disused land, control land use, and settle squatters. Such has been the major problems facing Kenyans since independence. With the new laws and the purposefulness shown by agencies given the power to manage land, there is hope on the eventuality of utterly settling the land question.

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A CRITICAL ANALYSIS OF THE EXTENT TO WHICH THE NATIONAL LAND COMMISSION ADDRESSES THE LAND QUESTION IN KENYA.

1.0 CHAPTER ONE: RESEARCH PROPOSAL

1.1 Introduction

Land is, in most societies, the most vital resources required for the creation of wealth and sustainability of life in the universe. As a consequence, good utilization of land brings economic power, which oftentimes the foundation of social and political power. The centrality of the land to Kenyans is the sole reason for the struggle for Kenya's independence. Land has always been the backbone of Kenya's economy, where a majority of its population survival is greatly pegged on land. This resource continues to have an impact on all development pillars. Therefore, its use in all its aspects is of great concern to all Kenyans.

The legal and institutional framework pertaining to land brought about tension, strife and litigation. The land, structures and principles adopted from the colonial times and developed in post-independence Kenya has largely failed to instill confidence in the land sector. The problems in land sector may be attributed to a number of factors, among them; colonialist approach, failed transition from laws that used to govern the ownership and use of land, socioeconomic patterns and demographic trends. Other factors that can be said to have contributed to the land debate in Kenya include minimal use of land, development of rural and urban areas, squatter problem, the quality and security of tenure and environment protection.

In order to streamline land management and administration, a sessional paper no. 3 of 2009 on the Nation Land Policy was developed through a review progression and subsequently passed by the parliament in December 2009. The main objectives of the policy were to guide the country towards an efficient, sustainable and productive use of land for the current and future generations. The policy puts in place a framework to look into the critical issues of land administration, environment degeneration, conflicts, urban sprawl, outdated legal framework and information management. The policy recognizes sanctuary of occupancy for all Kenyans. However, despite the enactment of the above mentioned statutes, land laws relating to tenancy have not been repealed. It is the sole intention that the reforms both legal and institutional in the land sector will lead to improved administration and management of the land resource. In this light, the National Land Commission had been touted as the body that will guide Kenya's land reforms that will in turn spur economic growth.

1.1.1 Background

In present-day Kenya inequality in economic opportunity, access to land and political power are the dominant issues behind the country's politics.¹ These issues, particularly the land issues grew out of the colonial era when the European settlers took control of the most arable areas in the Rift Valley and the central regions, lands oftentimes referred to as the White Highlands.² The colonization process completely altered the land systems and the way of life of the Kenyan populace. The alteration emanated from the introduction of land title deeds, which permitted some individuals to be individual owners. Consequently, private property began to replace the traditional mode of communal land ownership. However, as the demand of agricultural land rose, the availability of productive farmland was reduced by the colonial settlement.

The colonial period saw the alienation of land and the displacement of the local communities from their land to less productive parcels of land often times known as reserves.³ The colonial regime set in motion discriminatory policies that sought to maximize their exploitation of land resource because Africans were viewed as unequipped for owning land in the sense in which the idea of land possession is comprehended in the English law. The changes profoundly affected the social developments of the rising post-free state.

The land question ignited the struggle for independence. In fact, the land question was the central point during the Lancaster House Conference. After independence, it was expected that the independence regime would go on board and make a fundamental distribution program to relocate the peasants. Disastrously for Kenya, but the exploitative and undemocratic scenery of grand governments found expression in laws, policies and institutions that characterized the independent state.⁴ The independence government inherited the reforms initiated by the colonial government. Undoubtedly, logical patent inconsistencies and shameful acts in the pilgrim government made two classes of individuals, a favored class of racial oppressors and African followers on the one hand, and an excluded more significant part of African proletariat. The previous having amassed substantial tracts of land as well as forming the political class were

¹ Juma, C. & Ojwang, JB (eds). In *Land we Trust: Environment, Private Property and Constitutional Change*. (Nairobi: Initiatives Publishers 21995).

² Okoth-Ogendo, HWO. *Tenants of the Crown: Evolution of Agrarian Law and Institutions in Kenya*. (Nairobi: ACT Press 1996).

³ Okoth-Ogendo, HWO, *Terminology and land tenure in Customary law: An exercise in linguistic theory*, in *African Law and legal theory*, edited by Gordon Woodman and AO Obilade. (New York: New York University Press 1995).

⁴ Kanyinga, K.. *Beyond the Colonial Legacy: the Land question: Politics, and constitutionalism in Kenya*, in *Essays on land law: Reform debate in Kenya*, edited by S. Wanjala, Nairobi: (Clairpress 2000).

reluctant to initiate the necessary reforms hence the land question still exist even after the independence.

In contemporary Kenya, the land question spins around inquiries of control and access to arrive assets, arrive utilize goals, gender relations and rights to land, historical claims, cultural expression and foreign investment.⁵ It is noteworthy that the government has taken steps in a bid to resolve the land question. In 1999, it initiated an inquiry into Kenya's land tenure system and give recommendations as to the main principles of a land policy framework in the country. The commission charged with the task (Njonjo Land Commission) recommended that there was a need for a National Land Policy and a National Land Commission for better management of land. The recommendations of the commission have since then remained the core of the land question in Kenya. In fact, some of the recommendations found expression in the 2010 constitution.

The Constitution of Kenya 2010 was born out of the hard struggles hence it aimed to establish institutions that would promote the aspirations of the people based on equality, integrity, social justice and people's democracy. It dictates that each, individual has the privilege to possess property, which incorporates arrive either exclusively or in relationship with others of any depiction or any piece in Kenya. Articles 60 and 68 are dedicated to land. The most significant provision is the creation of the National Land Commission as a body charged with the role of addressing the land question and ensuring that the land question is addressed.

1.2 Statements of the Research Problem

Addressing the land question in Kenya is one of the primary reasons behind the formulation of a National Land Policy. The land problems began with the introduction of colonial rule in Kenya when the colonialists took the most productive tracts of land and left the locals in reserves. After independence, the politicians and the elite members of the society took the White Highlands, thus leaving a majority of Kenyans either landless or in unproductive land. The problem has been escalated by ineffective land laws. The absence of an efficient and accountable institutional structure led to an increase in squatters particularly in the Coast.⁶

The Land question rotates around inquiries of control and access to arrive assets, arrive utilize objectives, gender relations, and rights to land, historical claims, cultural expression and foreign

⁵ Juma, C. & Ojwang, JB (eds). In Land we Trust: Environment, Private Property and Constitutional Change. (Nairobi: Initiatives Publishers 1995).

⁶ Kanyinga, K..Redistribution from above: The Politics of Land Rights and Squatting in Coastal Kenya. Research Paper no 115, (Nordiska Afrikainstitutet Uppsala 2000).

investment.⁷ Land has continued to be an emotive issue since independence. In fact, it has been pointed as an obstacle to social cohesion given that it was one of the factors that contributed to the 2007 post-election violence.⁸ It was therefore imperative that Kenya should create a vibrant legal framework to mitigate the challenges posed by the land question. As such, the constitution of Kenya 2010 provided for the creation of the National Land Commission.

The aspirations of the Constitution have found expression in the National Land Commission Act that outlines the roles and functions of the commission. The dominant question, however, is whether the National Land Commission is adequate to tackle the land question. As such, the research will analyze the role of the National Land Commission to gain an insight into, whether it is sufficient and forward looking to address Kenya's land problems.

1.3 Justification of Study

This study is justified in a numerical ways. Although the National Land Commission is mandated to resolve challenges such as landlessness, community cohesion, food security, and sustainable development; the problems still abound. Therefore, the research seeks to clarify the role of the National Land Commission and to analyze whether the commission's legal mandate enables it tackle the land problems adequately.

The findings of this study will enable policy makers make wise decisions regarding the functions and challenges of the National Land Commission. The study will raise an awareness that will enhance initiatives to reduce the challenges facing the commission. It will also highlight the role of different stakeholders and the extent to which they can be active in strengthening the commission in discharging its mandate.

1.4 Objectives of the Study

1.4.1 Main Objectives

1. To determine the extent of the land problem in Kenya and establish whether the National Land Commission is effective in addressing the problems related to the land question.

1.4.2 Sub Objectives

- 1) To scrutinize whether the National Land Commission has faced any challenges in fulfilling its mandate. The study will scan challenges in the following areas:

⁷ Juma, C. & Ojwang, JB (eds). In Land we Trust: Environment, Private Property and Constitutional Change. (Nairobi: Initiatives Publishers 21995).

⁸ J. Wakhungu and Others. Land Tenure and Violent Conflicts in Kenya in the Context of Local, National Regional and Policy Frameworks (ACTS Press, Nairobi 2008).

- a. Administrative
 - b. Legal
 - c. Institutional.
- 2) To put forth proposals and recommendations on the best practice drawn from other jurisdictions on how the land problem can be solved in Kenya.

1.5 Research Questions

1. What is the depth of the terrain problem in Kenya and why is there a need for a legal framework to mitigate the problem?
2. What are the challenges faced by the National Land Commission of Kenya in tackling land injustice in Kenya?
3. What can Kenya learn from other jurisdictions in resolving the land problem?

1.6 Hypotheses

This research proceeds on the assumption that the National Land Commission has frailties which make it difficult for it to address land problems in Kenya. The foundation of the study is that government interference completely destabilizes the function of such commissions and denies the common man the rights and privileges clearly set out in law. It undermines the whole idea of having legal institutions in a country. The study assumes that the current legislation has shortcomings and could borrow from other countries' legislation.

1.7 Theoretic Framework

1.7.1 Institutional Theory

The institutional hypothesis proposes that the presence of a political group is attached to the choice of the sovereign who decide every one of the segments of the general public that are viewed as heterogeneous concerning the majority of the group.⁹ The consistency of the illustrations protected by the sovereign's choice is a state of the likelihood of any editorial type of life that generally would be demolished by the developing pluralism.

In his origination, Schmidt, illustrated an idea of social request that never again relies upon correct choices of the sovereign. The sovereign is under commitment to consider the social texture which is the veritable recipient of his/her sign. The institutional theory looks into the

⁹ La Torre, M. "Institutional Theories and Institutions of Law. On Neil MacCormick's Savoury Blend of Lega; Institutionalism", in M. Del Mar et al., (Law as Institutional Normative Order, 2009).

means through which structure, rules and norms become established guidelines of social behavior.¹⁰ The theory holds that in order for institutions to survive, they need to conform to prevailing rules and regulations acceptable in the environment in which they work because institutional conformity, both procedural and structural leads to its legitimacy. It is worth noting that the institutional theory has three pillars.

The notion of institution

The notion of institution refers to a particular legal device, for instance a contract, property or matrimony, which serves as a matter of reciprocal expectations, a coordinated scheme and adjustment to conduct. The concept of the institution may refer to all the beliefs and all the methods of lead initiated by the collectivity, which have a reality outside the people who, at each minute if time, fit in with it.

The notion of normality

Normality as the second pillar of institutional theory refers to concrete order. This may include a “normal man”, “normal situation”, or “normal concepts.” However, the term normal is oftentimes ambiguous hence the term normal according to Schmidtian perspective alludes to those practices and models that are shared by the full dominant part of a collectivity since just they can guarantee the communitarian arrange.

Each model and practice is to be more incorporated in a similar institutional texture in situations where the option hones open the organization to peril. Ordinary establishments are standard, familiar conventional places in which the reliable network of collectivity is established.

The notion of general clauses

General clauses refer to legal concepts such as proof beyond reasonable doubt and good faith. However, these definitions are often indefinite and vague, hence Schmidt rejects the forcefully normative notion that normative notions contain all that a judge needs to enforce and interpret them. Instead, Schmidt proposes a conceptualization of general clauses that is anticipated that would guarantee a general structure of qualities and standards ready to show the way standards are to be deciphered and authorized.

¹⁰ Scott, W. Richard. “Institutional Theory.” Encyclopedia of social Theory, George Ritzer, ed. (Thousand Oaks, CA: Sage 2004)

1.7.2 Lockean Theory of Property

John Locke is one of the most influential political thinkers. He is best known for his treatise on government where he pointed out that man By generation is escaped and equivalent against shellfish that God made all individuals frequently reduced to a leader.¹¹ He disputed that people have rights, for example, the privilege of life, freedom, and property that have an establishment of autonomy of the laws of a specific culture. His proposition emerges from the idea of social contract where individuals with the condition of nature restrictively exchange a portion of the rights to the administration keeping in mind the end goal to better guarantee the constant, agreeable delight in their lives, freedom, and property. The hypothesis holds that men are free and comparable as a component of the help for seeing right blue political government. In that capacity, it is occupied upon the legislature to ensure uniformity mainly as to property rights since its authenticity is pegged on the permission of the general population. Governments exist keeping in mind the end goal to secure the privileges of the general population and advance people in general excellent. Authorities that neglect to do as such can be opposed and supplanted by new regulations. Locke is therefore additionally critical for his safeguard of the privilege to insurgency.

1.8 Research Methodology

This study will be conducted through the library and desktop research. It will include analyzing of existing documents, data, published journals and articles, textbooks and online materials.

The nature of the dissertation renders quantitative research inappropriate because the information required can be best obtained from journals and articles evaluating the National Land Commission. Qualitative research is effective in studying subtle behaviors and attitudes in the social context. The main advantage of qualitative research is that it empowers the specialist pick up an inside and out comprehension of the examination question.

Another advantage is that it is flexible hence, a researcher can modify the research design at any time. The descriptive and non-experimental nature of the research methodology makes it appropriate for the dissertation topic. However, qualitative research involves a researcher's personal and subjective interpretation, hence a researcher should make sure his or her personal opinions and preferences do not skew the results. Therefore, the researcher will keep having an objective mind to achieve the desired objective.

¹¹ Rowley, C. Property Rights and the limits of democracy. Aldershot, Hants, (England Brookfield 1993).

1.9 Literature Review

The land residency framework and the usage of national strategies can't be comprehended without taking a gander at its transaction with the political, monetary and social structures that create and impact it. A significant collection of writing uncovers that land residency security assumes an essential part of influencing speculation choices of ranchers henceforth it has positive ramifications for natural suitability and agrarian profitability. Cheru brought up that absence of residency security is one reason, other than specialized components, which hamper farming advancement in African nations.¹² Likeness, an examination by Salami et al noticed that vulnerabilities related to arriving residency weakness and also lacking area get to assume a necessary part in blocking farming development.¹³

It is vital to understand that Kenya needs a vibrant land tenure system to counter the land problems that were inherited after independence in 1963. This will prevent the land degradation that is posing a serious challenge to agricultural development plans in the African continent and Kenya in particular. Indeed, Africa has about 500 million hectares of land with about 27% of it being moderately or severely degraded. If this is not fixed, the poverty rates will keep increasing. All things considered, absence of residency security has been referred to as the real explanation behind quickened arrive corruption through its negative consequences for long-haul advancement particularly for manageable land development. Moreover, security of tenure predicate to use of land as a security for advancing financing services such as loans to improve the capacity of individuals and take advantage of market opportunities. However, studies by Gray and Kevane have made known that the deficient of protection of tenure possibly will not result to diminished investment on land and the interplay between land conservation and land tenure is not necessarily unidirectional.¹⁴ Notwithstanding this argumentation, the need to improve land tenure system has continued to receive much attention, especially with regard to land degradation and lack of access to land.

¹² Cheru, F. *African Renaissance: Roadmaps to the Challenge of Globalization*. (Zed Books Ltd 2002).

¹³ Salami, A., Kamara and Z. Brixiova. "Smallholder Agriculture in East Africa: Trends Constraints and Opportunities" *Working paper Series 105* (African Development Bank Group 2010).

¹⁴ Gray, L. and M. Kevane. "Evolving Tenure Rights and Agricultural Intensification in Southwest Burkina Faso" (World Development 2011).

As a result, the government of Kenya has been cognizant of the need to ensure land tenure security, hence it has been engaged in developing policies geared towards enhancing land tenure security as the surest way of enhancing agricultural productivity and social justice and reverse the negative consequences of environmental degradation.

Land is the most important natural resource in Kenya and a major factor of production. It is the main source of livelihood owing to the fact that it plays host to all the natural resources, but it is the platform within which all forms of land development occur. About 80% of Kenya's landmass are either arid or semi-arid. As such, only 20% of the country has a medium or high potential areas for agricultural production. Consequently, most of the population settles on the medium and high potential areas, thus, leading to severe land pressure and fragmentation of land holdings in economic units. This led to deterioration of land quality because of poor land use that has led to low productivity and poverty.

The entrance of the National Land Commission has seen hope develop out of the prior hopeless situation. Various efforts conducted have seen a number of people gaining land ownership. Such a thing makes the economic stature of the owners far much stronger in comparison to the existing situation of squattership. In the areas where people have been accorded land by the government, people have a chance to revamp their economic power through capacitation given by the right to modify the lands, something that was impossible as squatters. The power also makes it possible for them to take loans to develop their other ventures different from agriculture.

There is much to be seen in the management of arid land given that over time, the country has left them in the mercies of natural occurrences. Rain remains the biggest hope in these areas. The National land commission in its capacity must come up with new ways to manage these lands. Keeping registers for unproductive land maybe its job, but ensuring that these lands are used in the best productive way possible should be its core objective. However, of the 20% arable land, much remain to be done to ensure 100% productivity. Given that the land tenure has always been problematic, the commission ought to come up with ways in which it can address the land tenure issue by developing laws that can be used to manage big productive chunk of lands, over segmenting land to an extent that it ends up becoming unproductive.

1.10 Limitations of the Study

The research paper is shaped by factors that are out of control of the researcher. The following limitations are identified due to their prominence in significantly influencing the outcome of the study.

1. The research is qualitative hence most of the data were obtained from secondary sources. As such, the sources carry the cumulative assumptions and limitations of data collectors.
2. The nature of self-reporting influences the research profoundly in the sense that the researcher's objectivity is subjective to his view of what objective reporting means.
3. The researcher was limited by time constraints which made it difficult to exploit diverse variations of analysis and specifically the variation that the researcher feels will provide the best snapshot of conditions being tested.
4. The analysis is limited by the assumptions made. This, however, enables the existence of a research problem to be put into perspective.
5. The research is limited to the land sector of Kenya and its findings cannot be assumed to apply in other sectors within the same economy.

CHAPTER BREAKDOWN

Chapter One: General introduction to the land question and the reasons behind setting up of the National Land Commission, problem formulation, and research questions, as well as, the methodology and scope of the research work.

Chapter Two: The National Lands Commission attempts to address the land question.

Chapter Three: Challenges in addressing the land question.

Chapter Four: International best practices in addressing the land problem.

Chapter Five: Conclusion and Recommendations.

2.0 CHAPTER TWO: NATIONAL LAND COMMISSION ATTEMPTS TO ADDRESS THE LAND QUESTION.

2.1 Introduction

The land question regards the existing unresolved concerns over land ownership, access to interest in the land and sustainability of the land resource. The problem began with the onset of the colonial occupation of the arable land in the Kenyan highlands. At independence, the issue became almost permanently embedded since the senior members took most of the land for themselves, leaving the remaining unproductive land to the rest of the citizens. As a result the citizens who had been displaced by the Europeans and put into reserves ended up not getting any land. The governments tried to resettle the people but since there were still other communities who had the problem and it had not been resolved, buying land in these areas added to the problems. Leaders have over the years been grabbing land and adding to the problem. The National Land Commission has the power to look into all these issues and give a comprehensive solution to the problem. The commission has all the needed resources necessary to solve the problem given various legislation.¹⁵

2.2 Land in the Pre-Colonial Era

Before the colonialists took over Kenya, communities lived in clusters. They would reside in one area while the rest of the land would be left for economic activities.¹⁶ Communities that did pastoralism would graze cattle on the communal lands, while the farming communities carried out their activities on the land with no tied ownership wrangles. The Maasai grazed their cattle freely as pastoralists. The farming communities in the highlands also would carry out their activities with no outside influence unless during barter trade.¹⁷ Only after the British occupation did the land get to be privatized and as such, land problems started engulfing Africans. At the time, the African communities would be concentrated on the reserves, mostly in the unproductive regions.¹⁸ They would be required to work on the white farms for meager wages.

¹⁵ The National Land Commission; The Progress Report March, 2013-January 2014

¹⁶ Session Paper No. 3 of 2009 on National Land Policy, 2009.

³ Okoth Ogendo, HWO, tenants of the Crown: Evolution of Agrarian Law and institutions in Kenya, Nairobi, ACTS Press 1996.

¹⁸ Ibid.

2.3 Land in the Colonial and Independence Era

Europeans disrupted the African way of life as they took over land from the communities and established large farms. Notably, they were the first to make the land look like an economic entity since the communities only held value for what they could grow on the land. The parting of Africans in reserves was the beginning of the squatter problem. When Kenya got independence, most of the Europeans that opted to leave the country sold the land to the government. However, while the civilians expected to have the land divided amongst them, the situation changed dramatically as the politicians and the elite members of the society took much of the land for themselves leaving the citizens as they were during the colonial era. In a way, what happened was a change of guard in the economic system, leaving the locals unable to take care of themselves.¹⁹ Then the land problem began. With the changing laws and the need for legal recognition of ownership documents being necessary, the communities that have their land yet to be adjudicated remain technically landless given that they cannot claim ownership of the land without the right papers. The discontent existing due to the governments of the day favoring their communities and not making as much effort as required to solve the land crisis once and for all. The failure to adjudicate land makes land grabbing easy since no one tends to have a legal claim for the same.²⁰

2.4 Present, Mapping of the Communities in Kenya

Many communities are localized in particular regions. While the Mijikenda, Pokomo, and Taita come from coast province, the Kambas reside in the lower eastern province, the Kalenjin resides in the Rift valley together with the Maasai and other majorly pastoral communities, Luhya in Western province and the Luo together with the Kisii in Nyanza region.²¹ The Kikuyu occupies the central province. While this may have been the original setting, the picture does not look the same anymore. People have moved to occupy areas initially occupied by other communities. While the movement may have been via a willing seller and a willing buyer setup, the former governments dished much of the land occupied out as a way to resolve the land problem amongst their communities in name of settling the landless. This is because the politicians and other rich individuals of the time had occupied the White highlands and displaced the original occupants

¹⁹ Supra n.3

⁶Ibid

²¹ Crown Lands Act of 1902.

from the communities that communally owned these lands before the British came and took the land from them.

The dispersion of tribes into lands owned by communities that have land grievances has added to the conflict. Fancy the Mijikenda community.²² A majority of them have been living in lands not belonging to them, while those that had land never got title deeds due to failure of the land adjudication process. Other communities who buy land in these areas get title deeds, develop the area and slowly take land that initially was communally owned by indigenous communities in the land. The fact that these other communities get to buy land and reside in these other areas makes the indigenous communities keep getting all the more disgruntled. If this problem was solved a long time ago, even when other communities go to areas traditionally belonging to another, then there will not be a problem. The issue here is that since these buying individuals have money, they tend to have for surveying and all at once, they get title deeds and the land becomes legally theirs while the locals still remain with their land unregistered.

The settlement schemes by the government have also been made to have a tribal outlook. The Lake Kenyatta settlement scheme is one of the prime examples of how ethnicity cropped into the settlements. The place constitutes people from Kiambu County settled there since the political elite had grabbed much of Kiambu and the “common citizens” had remained landless. The government had to do something to settle the landless. By acquiring land in areas predominantly owned by different communities, settling one community there came out wrong, especially if the people were settling in a land that had existed unresolved land problems.²³

As of now, what comes out clearly is that governments have failed to solve the land question. If they could have first settled the issues with the locals before settling any other community there, maybe the situation could have been different. However, with all the reforms, at the moment, the situation may be shifting towards favorable now that there is a constitution that sought to address the land problem, once and for all. The National Land Commission has made strides towards the solution of the land problem. On the other hand, the government of the day has been trying to solve the land question by fastening the land adjudication process for the people with no title deeds and settling the internally displaced during chaos in the country.²⁴

²² Supra n.3.

⁹Supra n. 1

²⁴ Ibid

2.5 Land Issue in Political Campaigns

The political landscape in Kenya sheds much light on the land injustice and the still unresolved question to date. Most of the people campaigning for political positions uses the idea of land as something to help them clinch votes in the target areas. For instance, before the 2013 elections, both Coalition for Reform and Democracy (CORD) and the now ruling alliance used settlement of the land problem as one of the campaigning points in their manifestos. As we speak, there has been a flurry of activity where people have been disgruntled concerning land ownership. The government has managed to give title deeds in some counties in the Coast region so far as they try to settle as many squatters as possible. Only the proponents can tell whether these are mere political cards being played or there is genuineness in the whole process. However, as they try to settle these problems, the eventuality of the total settlement of land issues has not come to light. From about the year 2000, there was a row over land owned by a person named Evans Kamau Waitiki in Likoni District in Mombasa County.²⁵ Settlers took over the land and divided it amongst themselves settling most of it and subdividing it even further. There were attempts aimed at pushing the settlers out of the land, which were met with resistance. People in the area talk of the land as having been gifted to Waitiki by the then president Jomo Kenyatta. Using that as an example, one can see how people who got the governance of the country from the colonialists benefited. They took the land for themselves, their friends, and their counterparts. As we speak, the government has settled the Waitiki land issue. However, as the government keeps trying to settle the issue of land, the national land commission still has not done much to give people what they actually deserve.

2.6 Post-Election Violence and Land Issue

Looking at the post-election violence in 2007-08, most of happenings focused on the groups residing in areas indigenously owned by other communities. The land issue may not have been the primary issue focused mentioned in the Waki Report, but it was one of the main reasons that there was a lot of dissent pointed towards members of other communities.²⁶ Take the Rift Valley, for example. Many people from the Central Region of Kenya reside there. While this is not the only community residing outside its communal land, a large percentage of the people who reside outside their initial community land come from the central region. Well, it is in the central region

¹¹Commission of Inquiry into Post-Election Violence, 2008

¹²Commission of Inquiry into Post-Election Violence, 2008.

that the white Highlands were situated; a huge portion of the land never fell in the hands of the locals. Much of this land belongs to corporations such as Brookside, Del Monte, Kakuzi and many others. As such, the locals sprawled to the neighboring Rift Valley, which is as productive as Central region. Now, the problem comes in when people, who would have predominantly lived in these lands came calling and asking for their land back. The post-election violence saw a large number of the Members of the Kikuyu community displaced from the Rift Valley by the Kalenjin community. Only areas far away from Rift Valley with less members of Kikuyu communities had peace since the communities there never felt threatened.²⁷ Well, most reports point to the land being offered to the communities by the ruling government in settlement schemes disgruntled the locals since they did not have their land problems settled.

With the violence, it is evident that a community resident in these areas still feel pressed by the other communities given the chance that they acquired the land as a result of favoritism from the government of the time. Every leader gave more focus to the community they came from leaving the unproductive areas occupied by other communities not catered for.²⁸ These communities feel neglected and in a way, resentment for the communities that the ruling elite comes from has kept growing over the years. The Kayabombo violence that erupted in the coastal province around 1997 was all related to issues to do with land issues. Mark you, the derelict land belonging to Waitiki started being occupied at that time and by 2010, the land had been segmented and sold to new owners. As of now, as prior indicated, the Waitiki land case has been closed due to a government bailout for the settlers on the land.²⁹

Even way back in 1992 there was violence and the force leading to the violence was still land issues. People were still not convinced that the resulting governments would settle the land problem. Ever since that time, the land problem has not been settled. The governments that have taken over have been trying to resolve the problem to no avail. However, if the title deeds that the government has been offering are anything to go by, then the problem is close to settled and the land question may finally be answered. Still, the problem may be something that politicians use to play with people's minds and it may be long from being resolved given the past years broken promises by the former governments.

²⁷ Ibid

¹⁴ Constitutional Petition No. 219 of 2014

²⁹ Ibid.

2.7 Towards the National Land Commission

The inquiries into the land question began a long time ago. However, strides towards the creation of a nationally acclaimed framework began in 1999 with the formation of *The Njonjo Commission*.³⁰ The Njonjo Commission was tasked with developing guidelines and principles that would lead to the creation of a National Land Policy Framework, a constitutional position of the land and formulation of a new institutional framework necessary in land administration. When Moi left the office and Mwai Kibaki took over, he instituted the *Ndung'u Commission* in June 2003. The commission's work majored on investigating land allocation irregularities and the root of the land problems in Kenya. *Ndung'u Commission* tabled the *Ndung'u report* something that both the government and the opposition were in agreement with. It captured the issues that were primal to the land problem. As such, the reforms by the National Land Commission currently are in lieu with the report.

In 2009, the parliament formulated the *Sessional paper No. 3 of 2009*. The sessional paper was intended to give a framework to address key measures prerequisite in solving land issues. It defined key issues in land administration, access to land, land use planning, environmental degradation, conflicts, and unplanned proliferation of informal urban settlements, outdated legal framework, institutional framework and information management, and *restitution of historical injustices*. The paper would look at constitutional matters regarding compulsory acquisition, development control and tenure. The policy takes note of the need to secure the landowners irrespective of their socioeconomic group. The policy also recognized marginalized Kenyans and those living as squatters and those in informal settlements.³¹

The National Land Policy enacted by the parliament in 2009 was one more step towards the creation of a solution to the land question. It was the first indication that the government would stop relying on the colonial regime land laws. The policy looked at the potential of the land to be used for posterity and posterity of the country. The policy gave a chance for the government and the general populace to dialogue on issues that make the land question; the present elephant in the room since independence, remain unresolved.³² The policy puts into focus the issues that are to blame for the land question namely:-

¹⁶ Supra n. 9

³¹ Ibid, Ss. 36-38

¹⁸ Supra N. 1, S.41

- I. Lack of capacity to gain access to clearly defined, enforceable and transferable property rights;
- II. Gross disparities in land ownership, gender and trans-generational discrimination in succession, transfer of land, and the exclusion of women in land decision making processes and ownership;
- III. Rapid growth in population in the small farm sector, breakdown in land administration and land delivery procedures, inadequate community participation, in governance, and management of land natural resources;
- IV. Rapid urbanization, disregard for land use planning regulations, and multiplicity of legal regimes related to land; and,
- V. Inadequate environment management and conflicts over land and land based resources.

However, much of the focus of the commission went into looking into historical injustices, and contemporary context in addressing issues to do with economic, social, cultural, governance, and political complications in land issues. This policy gave a road map towards creation of the National Land Commission.

2.8 The National Land Commission

The activities leading to the formation of the National Land Commission pointed to the former constitution's inability to offer Kenyans a framework under which they could have their problems regarding land resolved. The commission pointed out the various factors that the constitution of the time failed to address.³³ These included:

- i. Mass disinheritance of communities and individuals of their land;
- ii. Inadequate access to land for various groups such as children, women, people with disabilities and minorities;
- iii. Lack of government accountability, especially in cases of acute land mismanagement and illegal acquisition;
- iv. Protection of the constitution of people who acquired land illegally, but have acquired legal documents afterwards; and

¹⁹National Land Commission Strategic Plan 2013-2018.

- v. Lack or ineffective regulations on private property rights, as a result of which unplanned settlements and environmental degradation have become commonplace.

With the constitution being unable to cover all the areas that concern the land question, the National Land Policy had provided for the constitution to provide for the establishment of a National Land Commission. The National Land Commission would in turn carry out efficient, equitable, and sustainable land management. Based on the constitutional adoption, National land Commission stands as one of the independent commissions of the land. The commission has a number of functions bestowed on her by the constitution, the National Land Commission Act of 2012, the Land Act of 2012, and the Land Registration Act of 2012.³⁴ In the paper, the objective is linking the land question to National Land Commission and giving a picture of how the commission has been dispensing her responsibilities concerning issues to do with solution of land problems rather than her mandate to hire her own staff, and others that the concern operations of the commission.

The functions that relate well with the land problems, especially taking care of the squatter problem are listed under Article 67 (2), (3) of the constitution of Kenya.³⁵ These are managing public land for the government, recommendation of the national land policy to the national government, conducting research on land and use of natural resources making recommendations to the correct authorities, advising the government on comprehensive program for registration of title in land throughout Kenya, initiating the investigation on historical land injustices, and recommend right action and monitoring and having oversight responsibilities over land use and planning as well as, carrying out other functions as deemed fit by legislation. Other relevant functions, especially on the question of settling land problems include causing the creation of a register, making rules on land conversion, allocation of land on behalf of the national government and making regulations for land allocation. Additionally, the commission should buy private land whenever public land is not available.³⁶ Such a case happens when the government may be resettling people. The constitution and the above named acts of parliament also give the commission power to hold inquiries on the way to performing its functions.

³⁴ Constitution of Kenya 2010, Art. 68.

³⁵ No. 6 of 2012.

²²Ibid²¹

2.9 National Land Commission and the Squatter Problem

Given the mandate to look into past injustices, investigate those who may have acquired land illegally, and ensure maintenance of land register, the National Land Commission stands to be blamed if by any case a person who should be having their land registered is found contrary.³⁷

They also have the mandate to acquire private land for resettlement if there is no available public land according to Public Procurement and Disposal Act of 2005 and any other law allowing buying anything on behalf of the government. The commission also determines the money that the settlers should pay, as well as, administer the Land Resettlement Fund according to Sec.135 of the Land Act.³⁸ The commission is also mandated to reserve public land for resettlement programs, as well as, the mandate to help county and national governments to resettle people who have no land.

Concerning the same issue of squatters, the National Land Commission has power to regulate squatters in Kenya. The commission stands as the authority given mandate to manage the squatters are treated. When on an inappropriate land, the commission should work in ensuring that they are relocated. After relocation, she is the mandate of the commission to find land for them to be resettled. With all this authority, if anything, the squatter problem lies on the shoulders of the commission given the massive power the commission has concerning land in Kenya.

There is a lot of land in Kenya laying bare. Some of these lands should be used for settlement of the squatters. The Land Act gives the commission power to take over unused land belonging to absentee owners and use it for resettlement. Land as an economic resource should be used for productivity, however; so much is still unproductive since the owner's whereabouts has never been determined. With the power bestowed on the commission, the best way to manage this land would be used to manage yet another problem; settler problem. Since the commission has the power to advise the government on land matters, some of the things that must happen include a length of tenancy before the squatter permanently owns the land and effect the rule. By this, one is sure that most squatters sitting on land belonging to other people should be having the right to stay there. Some scholars who have tried to examine the squatter question in the coastal province have uncovered that some families have been residing on particular land for over fifty years.

³⁷ Supra n.16, Art. 63 (5)

²⁴Supra n. 28, S.5 (2)

Such should not be the case. Most of the families reported that they have been on a particular piece of land since 1970s only for a person to surface and claim the land.

The commission has been failing greatly, especially where it comes to coming up with the rules and policies meant to give the people that have stayed in abandoned land for a long time to an extent that even their children have settled there, gotten children, and the children still call that place their homes. The commission is the only way that people can be sure that the squatter problem is sorted once and for all. If the recent government activities are anything to go by, giving people title deeds is a single step towards the solution of the squatter problem. However, NLC must be on the forefront having the advisory position she holds on the squatter issue for the central government and the county governments.

The recent resettlement and the sanction of the county of Mombasa to pay the owner of Waitiki farm may be a step in the right direction. However, the NLC must look at the need to quantify the number of squatters so that they can create a plan to settle them without the problem recurring like it is normally the case.³⁹ The commission also has the mandate to settle the internally displaced persons according to the Land Act section 160 (2). They also manage refugee camps for the IDPs. The commission has offices in every county to make sure that they have the capacity to take care of the needs of the nationals in these counties. At the grassroots, the commission also stands to have an opportunity to reach the lands in the county, investigate where possible, and assess the squatter situation in these counties. The commission also stands a better place to advise the county administration when they have a team operating in the counties to carry out the mandate of the commission.

2.10 Conclusion

If one takes a deep look at the squatter problem in relation to the Lands Act of 2012, Land Registration Act of 2012, National Land Commission Act of 2012, and the National Constitution, one gets the clear idea that the mandate to offer squatters a place to stay resides with the National Land Commission. The ministry does not have as much power as the people may think and so does the national government. The commission being independent stands at a better chance to advise the government on land issues having conducted independent research. The power bestowed on the commission by legislation makes her the major power that can ensure dealing a final blow to the squatter problem.

²⁵ Achievements of the Commission, <www.nlc.or.ke/?page_id=675>accessed on August 20, 2016.

Another notable facet is that the directive at the formation was that the unregistered land would be registered within ten years of existence of the commission. While there is a ministry dealing with land, the chief land manager for the nation is the National Land Commission. Noting that helps put issues in proportion here. From getting royalties from leases, buying land for resettlement, managing public land, preparing ways for government construction, relocating and compensation, to removal of settlers from unsuitable land and negotiating with private owners for resettlement all are factors indicative of the national land Commission's extent of power on the issue of land in Kenya.

Other than the squatter problem, the commission stands as the only way to address the massive land injustices that have happened over the history. Additionally, there is land that has been acquired through corrupt. With the power vested in the commission, land adjudication, registering, streamlining storage of land information, and investigating corruptly acquired land can happen within a short time to make sure that the problem of land never hits airwaves again.

3.0 CHAPTER THREE: CHALLENGES IN ADDRESSING THE LAND QUESTION

3.1 Introduction

There are a lot of challenges that explain why, to date, no one has managed to solve the land quiz in such a long time. Kenya has been independent for more than fifty years with nations that got independence at the time being way ahead and only dealing with other issues having unified their people. Kenya is still trying to unify the people as some see other tribes as being overly privileged while they are maligned.⁴⁰ Corruption has been one concoction that has threatened a collapse of many public entities in Kenya. Sometime back, even going to the registration office would be a problem since obtaining a national identity card would still need someone to bribe their way to being identified as having come from a particular Kenya despite all evidence showing the obvious. Transparency International reports have not been any soft on Kenya as some indicate that a Kenyan has to bribe more than five times a month on average. While this may sound exaggerated, the corruption situation in Kenya is to blame for more than the accidents on Kenyans roads due to corrupt officers allowing unworthy vehicles, but also, stealing of public land and acquisition of legal documents. There are myriad other problems facing the land question even today, such as politicization and *tribalization* of every problem involving Kenya shifting attention from the real problems.⁴¹ Others include frameworks that never existed, although, in this case there is reprieve that there are frameworks in existence as we speak. Still, with all the frameworks and the paperwork, there is just too much paper and less ground work to talk about as people sit in their offices enjoying their salaries while doing so little for so many. However, the National Land Commission has been really working hard despite the hurdles to solve the land question.⁴² However, as the land question faces all these challenges, one standing issue regards the Kenyan Community customs and the land tenure system in Kenya.

⁴⁰ Alam, Mayesha. ‘The Truth, Justice, and Reconciliation Commission of Kenya: A Well-Mentioned Gender Policy Threatened by Structural, Cultural and Political Challenges’ in *Women and Transitional Justice; Progress and Persistent Challenges in Retributive and Restorative Challenges*, pp. 88-102. Palgrave MacMillan UK, 2014.

⁴¹ Act No. 6 of 2012 and the National Land Commission Progress Report (March 2013-January 2014) pg. 2.

⁴² The National land Commission Progress Report March 2013-January 2014 (Government Printers).

3.2. Land Tenure System

3.2.1 The Indigenous Land Tenure System versus the New land Tenure System

Kenya experience a shift from the old communal mode of ownership to people having to get titles for their land. While privatization came in as a way to make land more productive and useful, it left many people grappling to get this elusive commodity. Ogendo notes that some of the rights were paramount and held eminence while others took a slightly private turn. For instance, the case of cultivation would not supersede grazing as communities had land that they would set aside for grazing cattle.⁴³ Similarly, some lands would have a mixture of activities such as hunting and grazing at the same time. Notably, these two communal activities would not require someone to have a piece of land to graze. Ogendo posits that,

...a village could claim grazing rights over a parcel of land subject to the hunting rights of another, transit rights of a third and the cultivation rights of the fourth. Each one of these categories carried with it varying degrees of control exercised at different levels of the social organization. For example, while cultivation rights were allegedly allocated and controlled at the extended family level, grazing rights were a matter of concern for a much wider segment of the society (Okoth-Ogendo, 1976:153).

With these arrangements, Okoth-Ogendo went further to explain that this would mean that at least, some members of the social organization that did not have any land could still lay a claim to a part of the land on the fact that they communally had a right to a portion of the land.⁴⁴ The entrance of the British and the land was the beginning of the land question. As of now, the direct shift ensured that some people that yielded no power could not have landed even at independence. Just like in the communal setting where communal land existed, so that people could feel at least a sense of ownership, now that the British brought a new way of land ownership, those people who indigenously had to be protected via the existence of communal lands for a common purpose. In a later edition by Okoth-Ogendo, he notes that,

...the *raison d'être* of control was to guarantee these rights and to ensure their equitable distribution among all members of the community. This control, although exercise by

⁴³ Okoth Ogendo, H. W. O. "African Land Tenure Reform." *Agricultural Development in Kenya. An Economic Assessment.* (1976): 152-185.

⁴⁴ Okoth Ogendo, H. W. O. "African Land Tenure Reform." *Agricultural Development in Kenya. An Economic Assessment.* (1976): 152-185.

family, clan, or in some cases territorial sovereigns, did not entail (*de jure*) ownership... (Okoth-Ogendo, 1991:11).

Karuti notes that the lack of *de jure* land ownership would ensure that people were protected from being landless. It would also serve as a guarantee to equitable access to land by all members of the controlling community. Ownership, even in the cultivated land belonged to a collective authority. As such, even the community would chase some members who broke the norms of the tribe from the land they lived on and they would not stake a claim to ownership since the land belonged to the whole community. However, some land would be owned through first settlement whereby the pioneer occupant would be the owner of the land until a time when he dies and the ownership would revert to the community. As such, sons would keep clearing neighboring bushes so that they would not lose claim to land. However, no one would fence areas bordering salt rock, which were necessary for the animals, water points, or lowlands that could flood since these areas were green almost throughout the year and the community would need them for grazing. With low population, the acquisition of unsettled land was necessary. However, at the moment, the high population coupled with a change in land tenure offers a great challenge for people given the job of ensuring that people own the land.⁴⁵

The change in land tenure system is not the problem. Rather the premises of the shift followed by the ensuing actions from the Britons created the premises towards the beginning and the persistence of the land question to date. Their institution of reserves means that they rendered people, entirely with no land rights. At independence, since the government had to satisfy the international community of its capacity to run the country using economically viable means, she could not revert to the old system and the problem persisted. The 1.2 acres was not enough to cater for the millions who were landless.

3.2.2 Gender Consideration in Land ownership

There are many challenges that make solving the land question hard. The land tenure system stands as one of the problems that to date, make the effecting of land reforms something not yet near solving. Kenya happens to be majorly patriarchal in owning something that spans from the traditional mode of ownership embraced by most communities. P.K. Mbote notes that the patriarchy in ownership extends beyond the traditionally understood ownership by fathers to a

⁴⁵ Kanyinga, Karuti. Redistribution from above: The politics of Land Rights and Squatting in Coastal Kenya. Vol 115. Nordic African Institute, 2000.

state where any male takes eminence over the female counterparts.⁴⁶ Since time immemorial, Women have been fighting for recognition in ownership of units of production, most specifically land. In that, the husbands stood to dictate how things get run, and even in ownership, they hold a higher ground in obtaining land than their female counterparts. Each and every society in Kenya has gender roles attributed to the males and females in the society.⁴⁷ As such, when women would build houses among the Maasai while the males grazed cattle, in others, women could only do roles such as cooking and rearing children. However, there is a bit of uniformity when it comes to ownership. In lieu with this, as people go ahead to solve the land question, they must realize that the customary laws should not hold as much in comparison to what the constitution dictates regarding the rights to ownership. In regard to this, contravening customs could imply that the reforms do not serve the interest of the general public since most may want the laws to be enshrined within their societal provisions, although unwritten. Determining what to reform and what not to may be difficult given that the various societal expectations given the customary laws in the diverse Kenyan communities.

If by any chance there will be policies meant to solve the land question, recognition of the place of women in catalyzing economic growth is a must. Failure to honor the state of affairs in regard to the modern woman and the level of influence they yield will lead to problems. In as much as people want to solve the land injustices, one injustice that still remains regarding the down, trotting of women in respect to their right to have properties registered in their names. Many people may not regard that as injustice in the guise of their customary laws, but the new dispensation takes note of the law of the land that takes the males and females as equal. As such, the frameworks that must exist should pay clear attention to keeping the new found woman's voice as high as possible, giving them their right to family land. For the unmarried woman, ownership of land is not as simple as for the married women. The inter-linkage of customary laws, statutory laws, and the English doctrine of coverture all yield a different result in the cases of women. In cases of married, they stand a chance at ownership by the virtue of being married

⁴⁶ Kameri-Mbote, Patricia. "The Land has its Owners! Gender Issues in Land Tenure under Customary Law in Kenya." *International Environmental Law Research Working paper 9* (2005).

⁴⁷ Ikdah, Ingunn, Anne Hellum, Randi Kaarhus, Tor A. Benjaminsen, and Patricia Kameri-Mbote. "Human Rights, Formalisation and Women's land Rights in Southern and Eastern Africa." *Norwegian University of Life Sciences (UMB)*, Noragic, 2005.

to someone who owns the lands.⁴⁸ However, the single women, and divorced women always find themselves in a bad state as patriarchy takes a bad toll on their land ownership claims. However, the title deed gives them a right since the statutory laws tend to be least discriminant on genders.

3.2.3 The Land has its Owners

Christopher Leo in his book titled “Land and Class in Kenya” also take a look at the issue of land tenure system in Kenya giving emphasis on the fact that land in Kenya has come to be a determinant of class especially when it concerns the most productive land.⁴⁹ Majorly, then grabbed lands are the ones in the prime regions and not the ones lying in the semi-dry or dry regions. Leo Christopher notes importantly the level of respect given to ownership that places someone in the category of the “progressive farmers” rather than the rest, who happen to be private and a bit tied to their traditional means of production.⁵⁰ However, these same people tend to be the ones deprived of the right to own land. At independence, much concentration was given to these progressive farmers and as such, lead to creation of farms amidst locals that did not have any ‘legally’ acclaimed right to the land. The million-acre settlement scheme that had 1.2 million acres given to 35, 000 Kenyans a independence was something meant to change the tension and make the Kenyans at ease with the situation at the moment. As it stands, that was the beginning of the problem given the fact that only a few people benefited yet so many had lost their communal lands. If by any chance people would have an equal share of the million acres, then each would have thirty four acres of land. Even, a look at the few settlements that were created, most housed only a few communities yet so many were affected. That itself was a beginning of the tension. Somehow, since the white highlands were in the central province, most of the Kikuyus lost their land to the progressive farmers, and the others close to administrators.⁵¹ As logic would have it, they had to spill over to the lands outside their ancestral grounds the reason behind Kayabombo violence in coast (although it also encompassed many other communities), the 1992 clashes where the members of the Maasai community chased out members who had now started settling on their ancestral lands, and the main issue behind much of the violence in

⁴⁸ Kameri-Mbote, Patricia. “The Land has its Owners! Gender Issues in Land Tenure under Customary Law in Kenya.” *International Environmental Law Research Working paper* 9 (2005).

⁴⁹ Leo, Christopher. “Land and Class in Kenya.” (1984)

⁵⁰ Leo, Christopher. “The Failure of the ‘Progressive farmer’ in Kenya’s Million acre Settlement Scheme.” *The Journal of Modern African Studies*, 16, no. 04 (1978): 619-638.

⁵¹ Leo, Christopher. “Who benefited from the Million-Acre Scheme? Toward a Class Analysis of Kenya’s Transition to Independence.” *Canadian Journal of African Studies* 15, no. 2 (1981): 201-222.

2008 post-election violence.⁵² With the community ownership coming up as necessary to consider, large tracts of productive land going to just a few people, and the customary law sidelining women, the NLC has an uphill task when it comes to taking care of the land issue and settling the land question, once and for all. Karuti posits that there has been *tribalization* in the land solution since independence.⁵³ Many of the settlement schemes involved the Kikuyu community. Well, it is evident that much of their land had been taken by the British but still, other communities had been affected. One problem was that they settled the Kikuyu community in land belonging to other communities, communally speaking and these communities in respect of the old land tenure system were aggrieved. In the journal article titled “the Legacy of the White Highlands: Land Rights, ethnicity and the post-2007 election Violence in Kenya.” by Karuti Kanyinga, one thing that comes out is the part played by mis-allocation of the 1.2 million acres and *tribalized* settlements to the eventual violence.⁵⁴ While people may try to hide their heads in the sand and blame the problem to the politicians identified by Koffi Annan, it still comes out clearly that the rage had built up over time since some communities saw that they were being sidelined as others acquired land in their ancestral lands while their land problems persisted.

While the land tenure system is not necessarily a problem, the shock brought about by the system left a lot of people landless. Additionally, the institution of the new form of land ownership rendered the communal land private. While in the old system people had a chance to claim ownership by merely coming from a particular community, this case was different. This is a challenge that has yet to be addressed since it keeps accelerating the land problem. .

3.3 Corruption

Corruption refers to a situation where someone does something that is not right to get an advantage. When it comes to the land issues, corruption would refer to a situation where someone goes ahead to get real land documents through bribes or other manner of favoritism. While in some cases, someone can still use corruption to get their legal documents faster, some other scenarios regard people getting legal documents for lands that are not particularly theirs.

⁵² Anderson, David and Emma Lochery. “Violence and Exodus in Kenya’s Rift Valley, 2008: Predictable and Preventable?” *Journal of Eastern African Studies* 2, no. 2 (2008): 328-343.

⁵³ Kanyinga, Karuti. *Redistribution from above: The politics of Land Rights and Squatting in Coastal Kenya*. Vol 115. Nordic African Institute, 2000.

⁵⁴ Kanyinga, Karuti. “The legacy of the white highlands: Land Rights, ethnicity and the post 2007 election violence in Kenya.” *Journal of Contemporary African Studies* 27, no. 3 (2009):325-344.

Corruption has been a major player in most of Kenyan offices with the office of land not being left out in the melee.

In most of world reports, Kenya ranks top amongst the most corrupt nations of the world. Even settling the land question is faced with a lot of corruption. In the last five years, there have been efforts aimed at making sure that the land question is satisfactorily answered, once and for all. However, the knowledge that most of the documents presented by the people, purported to have acquired land illegally are really being a huge setback. Mostly, these people have acquired the documents from the land registration employees, from the ministry of land offices, making their legal claims to the ownership of the lands in a legal way.⁵⁵ However, as it stands, the land registry has been undergoing reconstruction to digitize it and have an electronic database to help in easing the process of sorting the land problems. Mostly, though, this can only solve the land adjudication issues and at least help in allocating people with title deeds. However, the corruption in public offices makes the people who own the lands illegally untouchable since they can easily pay their way out at any time.

3.4 Making the Land Question Political

One big problem about the land question is the politicization of the problems that people are facing concerning the land and all prior injustices. In a way, it becomes a hard thing to carry devoid of the political attachments. Personally, the situation where the president would tour the coast province giving title deeds is one case where instead of having completely separate sorting of issues people attach political interests in the same. It becomes hard when someone has nothing political to gain for them to delve deep into taking care of a certain problem.⁵⁶ Even the commissions made, people have to do with gimmicks by politicians that seek to forge ways for them to control the people in these commissions. While commissions do a good job while independent, trying to let them be all too independent may see some members abusing office. However, too much control ties the hands of commissioners making them unproductive. The idea of having independent land commissions goes line in line with the idea that they need more space for everyone to perform their mandate completely. However, the politicization of the land

⁵⁵ Chomba, Susan, Juliet Kariuki, Jens Friis Lund, and Fergus Sinclair. "Roots of Iniquity: How the Implementation of REDD+ Reinforces Past Injustices." *Land Use Policy* 50(2016): 202-213.

⁵⁶National Land Commission. Achievements of the Commission, <www,nlc.or.ke/?page_id=675>accessed on August 20, 2016.

question makes hard to go by without seeing members of parliament wanting to make regulations in the way the commission works, or the laws that the commission has to adhere to making it subject to parliamentary control.⁵⁷

In addition, politicians have been using various issues that concern Kenyans to gain political score. Long before the constitution in 2010, the campaigns would revolve around the constitution and reforms. Nowadays, the tune has changed to involve the unsolved land scenarios. However, the problems is that people will attribute the existence of the land problems to certain group just to get political score. In a way, when a government goes to work in a hostile zone, it is very hard to do it completely when people do not cooperate to give the required documents and details. This may be since they have been made to see the problem as political and something that can only be solved by a certain party, who may not be in the government at the time. Lack of support from others just because they want a stake and credit in solving a problem is quite detrimental.

However, at the moment, it is near impossible to have the two exist differently. Kenyan politics are tribal based at the moment with members taking up one political stance. As such, if the land problem would exist in a certain tribe, then, it will not just a social economic problem, but a political one. Solving the problem has been a big issue given the politics and the fact that bodies charged with working on the land cases tend to be influenced from political quarters.

3.5 Tribal Politics and Divisive Governance

Tribal governance in Kenya has been rampant since 1991 when Kenya gained multi-party democracy. In these tribal politics, leaders managed to organize their communities in small units that oppose or support the government. However, most of the long-standing situations involve most of the small tribes talking about having been maligned by the ruling tribes. Well, this is true given most of the settlement schemes started by the governments of the past never targeted tribes that were not in the ruling coalitions, or had at least supported the ruling party.

The land, being the most primary economic resource in Kenya is quite abused by the elite. For instance, the ruling parties go ahead and use the land as a way to pull in support. Going by the media reports on the opposition's claims concerning the governments dishing of title deeds to the coastal communities, it is easy to realize the politics of division and lack of trust in any due

⁵⁷ Manji, Ambreena. "The Politics of Land Reforms in Kenya, 2012." *African Studies Review* 57, no. 01(2014): 115-130.

process. Here, anyone assumes that what the other is doing has a political motive. The land issue in coast has spanned for a long time. May be, the main cause could be the difference in administration during the colonial era since the area was not a part of the protectorate, or that the ten mile coastal strip was not all occupied giving the coming government a big job to adjudicate land in the area. However, the problem of land goes deep into the Taita Taveta County, an area over 300 kilometers from the Kenyan Coastal line.⁵⁸

The existing settlement schemes are evidence of the existing tribal leaning in solution of land problems. Well, there are a few settlement schemes having the other tribes with most of the settlements having majorly Kikuyu. Notably, almost no cases have been documented where members of the Kikuyu community complain about their land issues. The first president, who hailed from the community, sorted most of the cases of lack of land by the members of the tribe. The rest of the tribes have not had their cases sorted as such. However, most arable land tends to have a lot of admirers, which explains why people from the Kamba community and the Somali community don't complain of their land being grabbed since there is less rain in their terrains. However, any eventuality of economic success is met with massive land grabbing as was the case when the LAPSET corridor plans were unveiled.⁵⁹ As it stands, it is as if every tribe waits for their time to eat, and by eating, going into areas of economic prosperity and taking land belonging to other communities, paying up corrupt officials and using their positions of authority to ensure that.

Concisely, the politics and the land question in Kenya are intertwined. Since the problem has taken too long, it is almost a national disaster at the moment given the way Kenyans address the problems that face them. First, with a concerted focus on their tribes, and then, maybe the others. If the former presidents focused on working with the rest of Kenya rather than just taking care of the needs of their tribes, the land question could be long answered. Additionally, a look at appointments also shows exactly what the paper has been talking about concerning tribal favoring. The land question faces the same challenge in Kenya. In a way, even leaders from

⁶⁰Ayodo, Harold. "Draft Law a Threat to Land reforms." Standard Digital. September 24, 2015. www.standardmedia.co.ke/mobile/article/200177401/draft-law-a-threat-to-land-reforms (accessed September 14, 2016).

⁵⁹ Ibid

various tribes try to dissuade their people from accepting government help in anything, which sometimes sabotages the work of the government.

3.6 Challenges of the Official Land Administration Bodies

3.6.1 Jurisdiction Conflicts between National Land Commission and the Ministry of Land.

There have been reported disagreements between the National Land Commission and the Ministry of Lands. Notably, in the last ten years, these two have been the forces behind the reforms that have been experienced so far. However, there have been much disagreement between the two bodies something that could plunge them into a state of unproductive⁶⁰. In 2014, the intervention of the executive saw the two brokers a deal to work together as reported by Standard. However, a look at the two bodies, there are battles as to who should be managing land resettlement, the establishment of land information management systems, and management of county land management boards since both parties have vested interest. Reports point to conflict where the county land management boards have been carrying out functions meant for the ministry. Even notably, resistance from the commission was visible in the public issuance of deeds in the coastal region, which was presided by the ministry.⁶¹ Well, the National Land Commission has the power to conduct all these but there is no way it can work as a lone wolf while the ministry still exists. The case NLC vs AG & Others, sought to check the way ahead regarding allocation of leases. Notably, they are majorly given out by the ministry of lands among other functions conducted by the ministry of lands.⁶² In a way, the commission tends to operate in a gray area given the lack of understanding of functions. The case of the power of NLC in relation to ministry of lands is also related to the case between Abdulkadir Khalif vs Principal Secretary and others with NLC as an interested party.⁶³ From the first case, leased lands were exempted from the hold of NLC given that they were non considered public lands at its assumption of office. However, the other case is yet to be determined.

These two bodies should work in harmony. Without harmony, addressing the land question may take longer than expected. The on and off relationship between the two may be one of the big

⁶⁰ Mkangi, George, C., & D. Parkin. *"The Social Coast of Small Families and Land Reforms: A Case Study of the Wataita of Kenya"*. Elsevier, 2013.

⁶¹ Linden, Gabriel. "From Constitutional Law to Reality: A Field Study on the New Kenyan Constitution's Effects on Land Conflicts." 2013.

⁶² NLC vs AG & Others, Advisory Opinion. Reference no.2/2014, Supreme Court

⁶³ Abdulkadir Khalif vs Principal secretary and Others. Reference no. 479/2017, High Court

challenges in the implementation of land reforms in Kenya. Lack of coordination could see each of the two trying to stump on the work of the other, standing in the way of others and ultimately causing more problems with the question. That being the case, every party must try their level best to make the two parties work together in harmony for the general good.⁶⁴

Problems remain relating to the levels of jurisdiction that NLC can assume. In the case of NLC vs Joseph Leting, the tussle over the prime land in Upperhill area was won by the defendant due to the fact that NLC has jurisdiction over public lands only.⁶⁵ This exposes the weaknesses that the commission has to contend with when it regards issues of land administration.

3.6.2. Challenges to the National Land Commission

In the past few years, the parliament has exhibited a certain level of control of the commission. The body should be independent and no one should interact with the way it works. The National land Act lays down the work of the commission, which includes appointing her own commissioners. However, the public service commission has been doing this job. In a way, it becomes as if the body is one of the many arms of the government under the public service commission. While yes, they should be servants to the public, interference of the three arms of the government with the commission's work has rendered the commission toothless.

At the moment, private ownership of land tends to take toll over the other forms of land ownership. As many other writers have shown, customary ownership should be in the cards given that at least, those who have no money to acquire private land can lay claim to the communal lands and as such, be involved in developing them. With a new system, inheriting the systems of land adjudication and ownership all the way from the colonialists is wrong. This is because it keeps disregarding the root of all the problems. As such, despite the much power given to the Commission, the land ownership system should be revised by the commission. Otherwise, the commission will have to make do with a lot of inadequacies in its predisposition. The inherent land issue meddling from the high and mighty coupled with inherent problems in the land tenure system. Other than that, to settle the squatters, much has to be done even to the point of pocking the elite where it hurts given they have the most unused land, yet they still lay hold of it.

64 Ayodo, Harold. "Draft Law a Threat to Land reforms." Standard Digital. September 24, 2015. www.standardmedia.co.ke/mobile/article/200177401/draft-law-a-threat-to-land-reforms (accessed September 14, 2016).

65 NLC vs Ex-Parte Leting Jr. No. 117/2016, High Court

When it comes to legislation, sometimes it becomes really hard solving something that looks already settled. In this case, the case refers to situations where a person has legal documents for lands that should belong to the community or other people. For instance, in cases where people had obtained legal documents for lands belonging to other people before the formation of NLC by the Act of parliament in 2012. Most squatters are settled on land belonging to other people. While some of the land is not documented, which implies they can have it if the NLC uses all the powers vested on her, some of the remaining land is documented and there are owners. With the corruption that exists in the country, one is never sure just how someone came to acquire such huge tracts of public land, or communal land. However, the difficulty in taking these lands comes because the owners tend to have legal documents for these properties.⁶⁶ The real problem in this case is proving that they never paid for the lands, or never used any other legal process to acquire the land that they own. For instance, in the case mentioned in the prior chapter about the Waitiki farm case, one may have asked how Waitiki came to acquire such a huge tract of land in such a prime area. Well, before 2000, the land was almost completely unoccupied. Not so many people were using the land, and even, the so many constructions that are in the area were not there. Based on the proximity of the land to the Indian Ocean, the land tends to be sandy and cannot be agriculturally productive due to its rocky nature. In such a land that never had inhabitants, which someone may link to its uncharacteristically unproductive derelict nature, one comes out to find that it had someone with a title deed and all the legal documents who would come to claim it when people have started to settle making the work of NLC even harder.

The problem facing NLC is the determination of the ownership of these lands by the people that own them. Just how did they acquire the lands? What of the legal documents? Is there a way that their completely legal documents can be disregarded without there being legal repercussions? Given the sound legal system in Kenya, taking land from someone will mean having to pay back, especially if 'the owners' can prove the ownership. The division of the powers of the executive, the judiciary, the legislature, and even the independent commissions means that each can go about what they are mandated by the constitution regardless of what the other feels as long as they do not contravene the provisions of the constitution. That part itself can hinder, and is a

66 Linden, Gabriel. "From Constitutional Law to Reality: A Field Study on the New Kenyan Constitution's Effects on Land Conflicts." 2013.

bottleneck to NLC to-date when trying to retake lands once owned by the communities. The judiciary would respect any arrangement that is legal according to Kenyan laws, especially if it is credible and does not show any signs of having been faked.⁶⁷ As noted earlier, with corrupt officials in most Kenyan public offices, it is not that hard to get an original document with the right connections, even for a common Kenyan. Now, take a politician or a tycoon and put them in that position. Their power and money can accomplish a lot, and that is the scenario that the National Land Commission has to contend with, every day in the course of accomplishing their mandate.

3.7 Lack of Functional Frameworks and Obstacles in implementing the existing ones

Before 2012, no legal frameworks had been constructed to deal with the problem. In addition, generally speaking, it is really hard to deal with the issue of land if there is no road map meant to help in curbing the existing problem. The fact that a lot of land in Kenya remains not adjudicated implies that there is nowhere to begin when it comes to addressing the squatter problem. Just how can you tell a land occupied by squatters does not belong to them if most of the land in Kenya has no legal documents to indicate ownership of the areas occupied by the squatters?⁶⁸

Similarly, statistics pointing to the concrete numbers of squatters are yet to be established. Existence of concrete numbers could at least mean that someone has gone out of their way to try and develop a mode of taking care of the basics while waiting for the rest of the job to be done by the right bodies. The structures such as the digitization of the land registry are a good thing that can help in making sure that the foundation has been completely built and all that would be required is building from there, onward.

The steps from 1999 have all been aimed at creating a mode of taking care of the land problem, once and for all. The framework that should be used to take too long to be implemented and now that there is light at the end of the tunnel now that NLC is fully operational National land

⁶⁷ Linden, Gabriel. "From Constitutional Law to Reality: A Field Study on the New Kenyan Constitution's Effects on Land Conflicts." 2013.

⁶⁸ Ayodo, Harold. "Draft Law a Threat to Land reforms." Standard Digital. September 24, 2015. www.standardmedia.co.ke/mobile/article/200177401/draft-law-a-threat-to-land-reforms (accessed September 14, 2016).

Commission was what Kenya was missing since 1963.⁶⁹ There is no way an executive order can help take care of a problem that has brought about tribal embattlement, conflict, deaths and chasing of various tribes from certain areas. Sound frameworks needed to exist, and no ministry could solve all these problems at once. As of now, the government has given the National Land Commission all the tools it needs to go ahead and cause a change in Kenyan landscape literally. There is a lot of unused land in Kenya that if good processes were initiated could be already being used to help someone start living a better life, build a permanent house, and have the children identify the same as their home. With the new outfit Kenya Land Commission, maybe the situation will not be similar to what keeps happening at the Kenya Anti-Corruption Commission, where leaders keep being forced to resign and as such affecting the working of the team.

Even with the existing frameworks and various practices render the organs charged to solve land issues not functional. Such include interference from the legislative and the executive department of the government and other people with vested interest in the work of the organs. Recently, the Majority leader in the Kenyan parliament tabled a bill that was meant to define the roles of the commissioners of the NLC according to his statement in parliament. The bill, dubbed Omnibus Land Laws sought to condense maximum and minimum acreage bill, historical land injustices bill, as well as, the eviction and the resettlement bill. As of now, the Public Service Commission hires the commissioners for NLC. This is wrong since the National Lands Commission Act gives the commission's mandate to hire the commissioners.⁷⁰ The bill also sought to revise reforms already made such as having consent of two parties in cases involving matrimonial property. This would take the land question backward yet there are still people who believed it is almost solved. This would take us back on the steps already made concerning land ownership by the females since it would make the consent of women unnecessary in off-loading matrimonial property.

⁶⁹ Session Paper No. 8 of 2012 on National Policy for the Sustainable Development of Northern Kenya and other Arid Lands.

⁷⁰ The Land Act 2012 (Government Printers, 2013).

Since the year 2010, Kenya has made great strides in enacting laws and other stipulations that form structures necessary in creating various bodies that work towards solving the land question. However, in most cases, they are always met by political infighting that in one way or another leads to the nation, not being able to forge ahead since effort of these bodies always get obstacles from political quarters. Taking for example the happenings that lead to the formation of the select committee that would see to the ousting of the Independent Electoral and Boundaries Commission, one cannot fail to see politics in everything. Even with the too much-hyped misdemeanors by the commission, the committee found nothing, only for them to try to find a way where they could still make them leave office to bring about political neutrality on how everyone viewed the election body. While that regards the elections, it translates almost similarly to other commissions. For instance, Mohamed Swazuri, the National Land Commission Chair is always faced with trouble from the political quarters whenever trying to look into past cases of land grabbing.⁷¹ However, their statistics concerning grabbed lands and their steps to return the public land back to the real owner may be commendable; but then, there is less than meets the eye when it comes to the solution of the land problem in Kenya.

3.8 Conclusion

To address the Kenyan land question, someone must really go deep to escape the major problems that run the Kenyan sphere. These are corruption, politicizing everything, tribal politics in resolution of issues, all the more corruption with only a few efforts at implementing the paper work. As of now, there is a framework that can help the bodies given the job to fully come out productively something that was not possible ten years ago. However, with the current climate, some of the above listed challenges keep showing their heads whenever the bodies charged with the work of answering the land question try to work. For instance, recently, the Mombasa Cement Company acquired about 1123 acres of land in Kilifi County.⁷² Later on, the acquisition was under investigation and the National Assembly Lands Commission came out seeking the Chairman of NLC to be conjoined into the case as a person with vested interest. In the case, the allegations pointed to Mr Swazuri as having barred the investigation of the case by his commission, going to the extent of replacing his deputy with another commissioner to make sure

⁷²Ibid

that no investigation would take place.⁷³ Now, with such already appearing, just how safe is the issue of land in the hands of the National Land Commission? It may as well be a case of the Ethics and Anti-Corruption Commission's leaders who over time have had to be removed from office for being pressured by parliamentary committees for allegedly being involved in what they should be protecting fellow Kenyans from experiencing.

Corruption may not be ending any time soon in Kenya given its extent. However, the Lands Commission can try and solve the problem despite the challenges. However, one has to be very wary of the tribal and political issues as they seek to solve the land problem at last.⁷⁴ The important place of land makes it a very sensitive issue as it is a primary unit of production. As such, the commission has to experience all these problems given their pivotal role in saving communities from a problem that has never been entirely addressed since independence. They hold a very big position of power with a very huge responsibility to Kenyans.

Even as the commission takes a look into the other problems such as corruption, tribal outlook on the land question, lack of operative frameworks and the sort, people must go deeper and start the solution of the problem from the roots. One of the problems that goes as deep regards land tenure, the customary laws and their relationship to ownership.⁷⁵ When one decides to look into the land question, they must start as deep as the source, and the source goes back to the time Kenya got independence. Then again, if corruption never started all the way from independence, then Kenya land reforms would not be necessary for the founding fathers of this nation would have ensured that at the time, the land left was shared equitably amongst the people that had faced the blunt of displacement by the white man. Additionally, noting all these challenges, one gets the capacity to have an idea concerning what may face them in the course of their work. However, some of these problems are too big to just have an idea about: in fact, one needs to create ways to subvert the challenges before they can embark on the real work.

⁷³ .The Land Act 2012 (Government Printers, 2013)

⁷⁴ The Land Act 2012 (Government Printers, 2013).

⁷⁵ Leo, Christopher. "Who benefitted from the Million-Acre Scheme? Toward a Class Analysis of Kenya's Transition to Independence." *Canadian Journal of African Studies* 15, no. 2 (1981): 201-222.

4.0 CHAPTER FOUR: INTERNATIONAL BEST PRACTICES IN ADDRESSING LAND PROBLEMS

4.1 Introduction

The land question has not only been a Kenyan issue. There are myriad problems that have been raised all over Africa by People that have been dissatisfied with the way their lands are administered. The beginning of the land problem in Kenya was the white man given that he destroyed the existing systems, gave themselves land by force and made it hard for the local communities to own land without buying it despite the fact that they owned this land before. A country like South Africa has been struggling with the case of land for ages.⁷⁶ A question that is asked majorly focuses on the fact that black people do not have land since it was taken by the white people and Mandela ensured that the country would be a rainbow nation with no white person expected to leave. As such, those that lost their land remained as such with the government trying in futility to resettle the squatters. The issue here has caused many people to wonder whether they should go the Zimbabwean way and risk global alienation.⁷⁷

A look at the other nations that had plantations run by the colonizers such as India paints a similar picture. In a way, even some of the most progressive areas tend to have certain communicates that claimed a sort of negligence from the agencies running these countries.⁷⁸ In most of these cases, the complaint is normally against the European-based land ownership in comparison to the traditional and native methods of ownership. The Chinese system that was abolished by Mao was not necessarily European instituted, but held a more caste-like manner, and the productivity, in this case, was not what everyone had sought. The changes that took place were groundbreaking, and most countries, see the Chinese land reform model as a good one if the communist and the execution of the landowners does not pop up.⁷⁹

4.2 Land Reforms in India

India was one another colony of Britain up to 1947. During this time, since the major resource was a land much of it was taken up by the Rich class, leaving the less arable land to the poor who

⁷⁶ Cliffe, Lionel. "Land Reform in South Africa." *Review of African Political Economy* 27, no. 84 (2000): 273-286.

⁷⁷ May, Julian, and Juby Govender. "Poverty and inequality in South Africa." *Indicator South Africa* 15 (1998): 53-58.

⁷⁸ Bandyopadhyay, D. "Land reforms in India: an analysis." *Economic and Political Weekly* (1986): A50-A56.

⁷⁹ Deininger, Klaus, and Hans P. Binswanger. "Rent seeking and the development of large-scale agriculture in Kenya, South Africa, and Zimbabwe." *Economic Development and Cultural Change* 43, no. 3 (1995): 493-522.

would pay exorbitant rents to till the arable land.⁸⁰ There existed certain tenure systems that always favored the rich people.⁸¹ Over the years there has been a revolution that has been pointed at making sure that the ordinary local folk can own land and conduct all sorts of business on the same. The landowners at the time could hire people and use them as slaves in the land paying them meager amounts of cash. That in itself was not only demeaning, but also made some of the people seem lesser than others within the population. At independence, the leaders had promised to equalize the way people accessed certain resources. One of these resources was land. With Jawaharlal Nehru comes to power, the main objective was to have the people of Indian descent satisfied with the way their government would be treating them and allocating resources to them. One of the agendas that lead to fighting for self-governance was so that people could manage the land and resources for themselves. Most of the Indians were found to have organized, although decentralized governments. The land title formalization was intended by Indians to be part of the New State Policy. One of the most hated systems was the Zamindari system also a feudal land holding practice. The major objectives of land reform in India were the removal of impediments so that the land could be highly agriculturally viable and removal of every aspect of exploitation visible in the agrarian system before India's independence. The removal of social injustices would ensure that the tiller of the soil was secured.⁸²

4.2.1 Response by the States

The Indian reform took four types reform. These were the removal of intermediaries; these were rent collectors who worked in the colonial land revenue system, tenancy regulation, the ceiling on landholding where the extra land would be distributed to the landless and consolidation of disparate land holdings. Two states had been entirely involved in land reforms namely West Bengal and Kerala. The reforms in West Bengal termed involved redistribution of the land by the communist party that ruled in the year 1977. It ensured that the poor people that were landless were paid in such a way that they could buy land, and some cases involved settlement with the government. The Operation Barge was so successful that people kept the party in power in the Bengali assembly up to the year 2011.

⁸⁰ Bandyopadhyay, D. "Land reforms in India: an analysis." *Economic and Political Weekly* (1986): A50-A56.

⁸¹ *Ibid*⁶³

⁸² Jha, P. "Land reforms in India." *Chennai: Madras School of Economics* (2002). 292-350

In Kerala, this was another state that the communist party took power and did a lot of land reforms. They ensured that they reformed agrarian, tenancy, and labor wage reforms in the State. They brought about social justice to people working on the farms.⁸³

4.2.2 Abolition of the Zamindari

Many laws were put in place in India in the fifties to curtail the land practices that were taking place pre-independence. Where the law puts in some limit on land, some leaders have gone ahead and created loopholes for people to keep owning land that is above the size approved by the law. The land reforms that were put in place were meant to ensure that there were no absentee landlords, by the year 1972, the Zamindari system had been abolished. Other laws put in place sought to remove the intermediaries between the farmers and the state. The owners of the expropriated lands were also supposed to be refunded. By 1972, over 20 million croppers had direct contact with the government of the area. However, the law was not talking about just compensation, but rather, compensation with no idea of justice in the process. As such, there was a bit of exploitation in the process.⁸⁴ Additional to the 20 million croppers, there were over 57.7 Lakh hectares that were left to be given to the landless. The Act that abolished Zamindari did not take note of the fact the rent-receiving class would remain, and that abolition of the intermediaries could not benefit the sub-tenants or those that shared land given that they did not have proven of land ownership.

4.2.3 Rent Regulation and Tenancy

People in various States paid rent in certain amounts. There are those that paid about 1/3 of the produce in Tamil Nadu, Andhra Pradesh only allowed 1/4 of the irrigated land, Rajasthan, Maharashtra, and Gujarat fixed the rent at 1/6 of the produce while Kerala the rent was 1/3-1/4 and Punjabi the rent stood at 1/3. These were regulated by the State and would change as the states deemed fit according to times and future deliberations.

In cases of security of tenure, various States enacted laws to ensure that tenants had security whenever they tilled land. These people had to be assured that no one would come midterm and demand that they leave. The States had to make laws that protected them. The laws passed to ensure that people do not get ejected unless the law is followed, that the owners can only take the land if they intend to cultivate the land personally, and that during resumption, every tenant

⁸³Gupta, S. C., and H. D. Malviya. "Land Reforms in India." (1954): 70-72.

⁸⁴Jha, P. "Land reforms in India." *Chennai: Madras School of Economics* (2002). 292-350.

would receive the prescribed minimum acreage. The Different States took up a certain interest to protect the tenants. First, the tenant would get full security to the tenant not being able to come and resume ownership. This statute applies in Delhi and Uttar Pradesh. Secondly, the owner could take up some part of the land for personal cultivation, but should ensure that the tenants have the minimum acreage required. This regulation is in operation in Assam, Gujarat, Punjab, Rajasthan, and Maharashtra. Thirdly, the owner can take up a limited part of the land with the tenants not being entitled to a part of it. This is in vogue in Jammu, Kashmir, and West Bengal. Some states allow an order for stays adjustment so that the tenants in these areas can be protected. There are laws that show the situations that a person can be ejected. These are the failure to pay rent, destruction of the land, having the correct ownership of the land and forthwith transfer of ownership to tenants, and state acquisition of the land.

4.2.4 National Involvement

Due to the above regulations, about 92% of the holdings are fully owned and sole-operated within the country. Ceiling on land had already been put in place by 1962.⁸⁵ The acreage differs from state to state and in cases of cash crop and food crop. Only one State allows ownership of land above 100 acres.⁸⁶ In some states, the acreage limit is per family basis while others have a capping made for the individual owner of the land. In 1971, a new directive came to power. The directive lowered Wetland acreage to 28 and any other form of land to 54. There was a change over the unit of determining land ownership to a family. It lowered the ceiling for a family of five. The law made it hard to get an exemption to adhere by the ceiling. In 1972, there were national guidelines that put acreage at the best 10 acres, 18-27 acres of the second class land, and 27-54 of the other land with a higher limit for deserts and hilly areas.

By the seventh plane, over 72 Lakh of land had been declared surplus, and 56 Lakh was under the government, and 44 Lakh had been distributed. 16 Lakh was declared surplus and left for government use. 518 Lakh hectares had been consolidated by the States after passing of the Consolidation of Holdings Act. This is only 33% of their arable land.⁸⁷

⁸⁵ Jha, P. "Land reforms in India." *Chennai: Madras School of Economics* (2002). 292-350.

⁸⁶ Mishra, Shobhit. "Land Reforms in India." *Research Journal of Humanities and Social Sciences* 3, no. 1 (2012): 131-135.

⁸⁷ Mishra, Shobhit. "Land Reforms in India." *Research Journal of Humanities and Social Sciences* 3, no. 1 (2012): 131-135.

The Land reforms in India can be said to be less than complete. The observation of social justice still places a lot of people at the mercy of landowners who demand a lot from them. Similarly, co-croppers or people who hire land together with others do not have a right over the land and as such can be abused. Economically, not all arable land is used, which translates to less and less income from the same. The economic reform of the released land cannot be said to have occurred completely.⁸⁸

4.3 The land Problem in South Africa

South Africa stands as one of the countries that black people suffered a lot at the hands of white people in Africa. In 1921, an ordinance was passed that made it impossible for black people to own land outside the reserves. Reserves were areas that white people forced black people to reside in during the colonial and the apartheid period. The idea behind the formation of the African National Congress was to enforce recognition of black people and allowing them to retake their lands. In 1994 when the nation got independence, the pledge was to ensure that people could get land and that there were land tenure issues that could be resolved. However, unlike Zimbabwe that did forced expatriation, South Africa that has been in the good books with the international community has not been able to totally take the African land and give it back to Africans. Over the years, the country has made several laws. These laws have been aimed at reforming land in the country.

The reform process has been focused on three main issues. These are restitution, land tenure reform, and redistribution. In restitution, the government has offered to give compensation to people that have been forcefully removed. However, the move was unsuccessful. At the moment, the country has shifted to ensuring that people get a secure land tenure system. In the initial stages, the government would buy land from the settlers and be given to the black people. The buying was, however, on a willing seller-willing buyer willing seller basis with the government being the willing buyer. The land was redistributed after buying. That aim here was to maintain confidence in the land market as the government sought to make fair compensations. This system was also taken up by the Government of Kenya at independence where over 1 million acres were distributed to the people but were not sufficient. The same case has been reciprocated, and the government has gone out to seek alternative means of land redistribution. However, in South

⁸⁸ Bandyopadhyay, D. "Land reforms in India: an analysis." *Economic and Political Weekly* (1986): A50-A56.

Africa, the reason behind it was not corrupt and rewarding of political friends. The fact that only a few white people were willing to leave meant that the land remaining for redistribution was small and the practice would be in futility.⁸⁹

The government of South Africa has not stopped at that since at the realization that it cannot manage the redistribution, in 2000 the process was decentralized to encompass the 47 districts. At this level, maybe the acquisition could not be watermarked with the problems that faced the national government. However, at this point, the government required agents accredited by the government to conduct land purchases.⁹⁰ Local elites have as such dominated the process, leaving the poor exposed and incapable of taking care of their needs. However, the government has tried to better the registry so that there are better identification means for identification of beneficiaries. The process could also see to a better planning process that will see to the establishment of far many production processes on the land than there exists at the moment. These reforms have not been fruitful given that at the moment. The white South African's enjoy a lot of lands and wealth created before the country got independence while the blacks have small land and many are in abject poverty.⁹¹

The 2016 fiscal report by the South African Finance Ministry put the amount of money invested in land reform at 60 billion Rand. 90 percent of the redistributed land has not been viable, and people have not been as productive as the former owners. At independence, South Africa had over 80, 000 white farms. Presently, only about 30, 000 farms are remaining. South African Authorities keep trying to make the reforms work as the state keeps making laws that are meant to convince white people in the country to let go of the land so that black people, who due to historical reasons had their own restricted can take up land and be productive. However, people may be needing land for reasons other than the ones foreseen by the government given that there is a shift in productivity every time land shifts ownership. The government has been trying to enforce the practice of making sure that people get enough financial backing to keep farming and

⁸⁹ May, Julian, and Juby Govender. "Poverty and inequality in South Africa." *Indicator South Africa* 15 (1998): 53-58.

⁹⁰ Deininger, Klaus. "Making negotiated land reform work: initial experience from Colombia, Brazil and South Africa." *World Development* 27, no. 4 (1999): 651-672.

⁹¹ May, Julian, and Juby Govender. "Poverty and inequality in South Africa." *Indicator South Africa* 15 (1998): 53-58.

being productive. However, the report clearly showed that despite too many efforts, the country has not been able to carry out the reform agenda as it should.⁹²

Politicians in South Africa, majorly, the left wing leader Julius Malema has been championing for the occupation of white farms by African Squatters terming it as the best solution given that it is impossible to unseat the white South Africans. However, it also remains the fact that many laid claims to the land they settled without necessarily having to buy it. The land in most cases may have been found fallow, but that does not necessarily mean that it did not have owners. The African land ownership system is way different from British land tenure. While they could not leave the land fallow due to land taxes, Africans never had such. A particular community would lay claim to land that they do not reside in, and other communities would respect that. What white people did when they came to South Africa was take communal land, which they may or may not have found lying unused. However, this land belonged to the black people. In the wake of things, it is almost certain that South Africa will not come from the land problems despite trying to reconstitute the land amicably without rattling either the white or the black people. What remains is maybe acquiring some farms and sharing them amongst the squatters. However, there may be identification problems like before. In the previous land reform practices, the government has tried to give land to black people while ensuring that it remains productive. However, this has not worked. The leftist politicians have now gained popularity in that they speak directly to the needs of the poor people who have never seen land justice take place. These are the ones demanding that the land must be redistributed with the white farms being subdivided so that they can have blacks and whites owning equal pieces of land or black people owning land. However, expropriation may only work if the government does not care much about maintaining productivity, which is not the case.⁹³

As it stands, while the intentions of the government to reform, land policies have been right, the system has not worked. That in itself may imply that it will never work since going the Zimbabwean way, just like the leftist leaders are demanding is out of the question. Similarly, if the land will be taken from white farmers, then they have to be compensated, something the government has been trying to do albeit in the name of redistribution and such. Since the process

⁹² Cliffe, Lionel. "Land Reform in South Africa." *Review of African Political Economy* 27, no. 84 (2000): 273-286.

⁹³ May, Julian, and Juby Govender. "Poverty and inequality in South Africa." *Indicator South Africa* 15 (1998): 53-58.

began, the land that has been bought over the years has been much. However, there has been corruption in the way the land has been redistributed.⁹⁴ The identification process has been flawed, and so many other cases of malpractices have arisen. However, if the process could be properly managed, the job would have already been done owing to the amount of land already bought. Every day the population keeps increasing, and the only way to ensure that the land question is settled is making sure that it is done as fast as possible. For instance, the young adults (18-22) years could not have found the problem in existence and could not be trying to force their way into reforms if they found it having already happened. Now there are more claimants to the government land than they existed before today. However, looking at the process, the government has been trying as much possible to settle the problem once and for all, but the problem has persisted. This is in comparison to the situation in Kenya, where the government has not tried as much to solve the land problem as the political elite keep stealing land with less or nonexistent systems to follow them up and take the land back.

4.4 Land Reforms in China

In China, land reform had been a problem for many years since, it would always turn bloody. By 1940, over a million Chinese people had died to try to get land. The Sino-American Joint Commission on Rural Reconstruction was meant to carry out land reforms in several Chinese provinces.⁹⁵ In the year 1946, the Communist Party tried to put in place land reforms that would give the peasants and the poor land to till. A lot of people began supporting the party in that period. Notably, before the formation of the People's Republic of China, the communist party had taken over some provinces and experimented on the new land reforms.⁹⁶ In the reforms, the landlord ownership would be abolished, and the land would be taken directly and given to the peasants and the poor. Every person would have a title to the land. Due to the move, many people started supporting the party. By 1949 the People's Republic of China was formed as the China Republic Royals were pushed to Taiwan. In 1950 to 1953, there were massive land reforms in the People Republic of China that culminated to executions of over a million

⁹⁴ Cousins, Ben. "Land reform in South Africa." *Journal of Agrarian Change* 9, no. 3 (2009): 421-431.

⁹⁵ Li, Ping. "Rural land tenure reforms in China: Issues, regulations and prospects for additional reform." *Land Reform, Land Settlement, and Cooperatives* 11, no. 3 (2003): 59-72.

⁹⁶ Lin, Justin Yifu. "Rural reforms and agricultural growth in China." *The American economic review* (1992): 34-51.

landowners. The peasant land ownership was put in place and now those that were considered the poor lay claim to the land.⁹⁷

One of the objectives was to industrialize China, and many in the government viewed social justice as one of the ways that the government of China could use a foot stone towards industrialization. As such, in three years the government went on a rampage dispossessing land the prior owners. Notably, the system being in power had been used for over thirty years, and people had gotten to a place where they were tired. Peasants were suffering and felt the need to change. As such, when it came to change, it was fast and swift. In three years, the country had already adopted a new form of land ownership. Presently, it is hard to see a Chinese claiming that there was unfairness in the distribution of land or that the system was incomplete. However, in the eyes of a capitalist, what happened in China was wrong and landowners ought to have stayed with their land or compensated. However, in socialist or Marxist eyes, what happened was fair and just for the common good.⁹⁸

4.5 Land Bodies in the Select Countries

The country of South Africa created a commission that was charged with seeking reprieve for the black nationals who owned nothing in terms of land in the vast country. Most of the arable land had been taken by the white men/women. The main aim of the restitution Act of 1995 was to put up a commission that would work towards the acquisition of land and redistribution of the same for the black farmers. Initially, the process involved willing buyer, willing seller deals. However, they did not work that much given that the white people were unwilling to let go of the land, which is a major reason that the country could not accomplish its goals at the time. The idea of land restitution has not been popular given that those who get the land do not maintain its productivity. Additionally, even when given money to buy land directly, it still does not work for the black farmers given that it is hard to convince someone to leave his farm for another person. With the idea of continued productivity, one fails to get a clear idea regarding the best way to handle restitution without facing reduction in productivity of land.

In India, the idea of land reforms was not nationalized. This means that the country did not need a commission or a body that could manage land since the process was devolved to the States.

⁹⁷ Jiang, Liang, Frances Plimmer, Peter Hibberd, and Stuart Gronow. "Land reforms in China." *Property Management* 11, no. 2 (1993): 146-154.

⁹⁸ Zhu, Jieming. "Local growth coalition: the context and implications of China's gradualist reforms." *International Journal of Urban and Regional Research* 23, no. 3 (1999): 534-548.

This led to a situation where states varied deeply in terms of the laws of the land that they made. The Communist States as noted managed to put in place land reforms where the others made reforms, but to a less than satisfactory status.

In the case of China, during the land reforms that spanned between the years 1950-1953, the law enacted to oversee this ensured that the feudal system of land ownership was abolished and in its place, the peasants could farm without paying someone with their harvest. The land fell in the hands of the collectives or the State. This way, peasants could be treated the same when it came to working on the land. The discontent in land ownership dissipated since everyone had almost a similar right to work on the land as the government started enforcing laws that made it mandatory to farm, whereby people from the cities would be sent to the countryside to learn how to farm.

All in all, the three examples present quite different cases. The communist governed areas arrived at an amicable solution faster than the capitalist counterparts. This can explain why South African restitution policy did not work given the reluctance of farmers to leave their land for the blacks. In the case of India, various States have worked to ensure that workers are not abused by landowners. However, there are no standing commissions here that determine how land is distributed. Rather, laws were passed by the States and followed to the letter. The Chinese case is also different from Kenya's given the reform was a law passed that did not put in place a commission, but a movement that led to hundreds of thousands of deaths of former land masters. Kenya and South Africa are almost in a similar level where land reform is concerned, although while South Africa has been struggling with unwilling white farmers, Kenya has been dealing with corrupt officials who prefer keeping the land for themselves and leaving the peasants stay unsorted.⁹⁹

Most people that got land from the South African government in the redistribution process made it worse than it was when they got it. Evidence point that many of these people keep getting employment from the commercial farms around since they could not keep the land they now own production. The shift from the large scale farms to subsistence holds have reduced the amount of output from a majority of South African farms that have been redistributed. In a way, redistribution may make people happy, but at the same time bears no economic sense. However,

⁹⁹ Deininger, Klaus, and Hans P. Binswanger. "Rent seeking and the development of large-scale agriculture in Kenya, South Africa, and Zimbabwe." *Economic Development and Cultural Change* 43, no. 3 (1995): 493-522.

what matters, in the long run, is the answering of the land question, and in Kenya, India and South Africa, the problem is far from solved.¹⁰⁰

4.6 Conclusion

The above three examples present cases that are similar but were worked out in a different manner. The Chinese model is the only that brought about satisfaction. Similarly, in India, for the states that had communist leaders, the systems put in place ensured that there was an equitable distribution of land bringing about contentment in these areas. In a way, a socialistic approach seems more viable compared to a capitalist approach that needs the state to give a lot of money to the owners. Capping off the amount of land that should be owned comes in strongly and in this case, countries like India and South Africa seem to lag behind on the fact that they have not put in place ways in which they can completely ensure that individuals have small pieces of land and as such consider other people in the equation. However, as in the case of South Africa and many other regions, this would mean that the subsistence farmers would make it hard for the country to reach her targeted agricultural output and as such failure in the food market.¹⁰¹

100 Borras, Saturnino M. "Questioning market- led agrarian reform: Experiences from Brazil, Colombia and South Africa." *Journal of agrarian change* 3, no. 3 (2003): 367-394.

¹⁰¹ Deininger, Klaus, and Hans P. Binswanger. "Rent seeking and the development of large-scale agriculture in Kenya, South Africa, and Zimbabwe." *Economic Development and Cultural Change* 43, no. 3 (1995): 493-522.

CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSION

5.1 Recommendation from the National Land Policy based on other Countries Studies

5.1.1 Immediate Remediations

Establishment of land ceiling

In various Indian states, there are landholding ceilings that have been put in place to ensure that land owners do not have so much land as to leave the other poor farmers without something for themselves. In Kenya, some families have very big chunks of land. Various reports point to some members of the political divide and former politicians as having land the size of counties, or districts in Kenya. It would be prudent if the government institute land ceilings for use in controlling land acquisition. Well, the Kenyan market is one of the most liberal in Africa, which means placing a ceiling on how much a person can hold may be tantamount to going against countrywide principles of open trade determined by forces of supply and demand. For instance, in Kerala, India, there are land ceilings based on number of owners with a 10 acres for up to five family members, and 15 acres for families with over ten members with lone individuals given a ceiling of ten acres. Tamil Nadu tends to have a ceiling of 30 acres for families of 5 people and 35 acres for above six people. Individuals in Tamil get 15 acres of land. Others, such as West Bengal have a ceiling of 24.7 acres for individuals. For each of these States, there is also a land ceiling for companies that goes above the individual land holdings. Given the ceiling, West Bengal that has 3% arable land in India redistributed 25% of all the land in India. Many people as such were satisfied with the new laws.¹⁰² The commission of lands should work towards establishment of a land ceiling for all land holders in Kenya.

Land Restitution

In case the government of Kenya feels that having land ceilings can hurt the economy by appearing socialistic, there should be land restitution. This system has been successful to an extent in South Africa. There are people that own land that they do not use in Kenya. Such include people who grabbed big portions of land in Kenya at independence and still have the land undeveloped. In South Africa, there are heightened acts of land restitution where people owning land have it bought by the government and later on redistributed to the landless people

¹⁰² Mishra, Shobhit. "Land Reforms in India." *Research Journal of Humanities and Social Sciences* 3, no. 1 (2012): 131-135.

within the nation.¹⁰³ The government of Kenya keeps a record of squatters in Kenya that can be used to determine the people that are in dire need of land as of now. Such may include people that have been living on land belonging to other people for decades without these people claiming the land back. Maybe, these people acquired the land and died before telling their children. However, determining the time land was fallow is totally another issued. Back on land restitution, the government should acquire land and redistribute to the people with no land as is the case with South Africa. Since 2009, South Africa has acquired 823 300 hectares of land and later on redistributing it to about 20 290 people. Also, 76 368 land claims that related to 2.9 million hectares of land acquired by the Land Restitution Program were also settled in 2010. There are many other claims that have been settled since 1994.¹⁰⁴

There are various pertinent issues when it comes to restitution. One major issue is a continuation of the productivity of land, or making the land productive if it was not in the first place.¹⁰⁵ The case of South Africa involves a big piece of land going to a few people so that if it was a farm, the new owners can continue the productivity of the land as a large scale producer rather than a small scale producer. This is meant to keep the production levels of farm produce at an all-time high. In 2011, South Africa began rehabilitating farmers in what it dubbed commercialization of farmers. This would ensure that farmers keep the lands as successful as they were at the time of acquisition. Also, there is an added cost to the government in form of support required by the farmers. However, the solution of the land problem holds the highest urgency and helping farmers could help alleviate the current food shortage in the country.

5.1.2 Medium Term Remediations

Taking Back the Fallow Land

Some people have been holding land without using it for years. Such are the types that have left the country in food shortage while their land could be in use and as a result give the country more food than it has at the moment. The National Land Act gives the National Land

¹⁰³ May, Julian, and Juby Govender. "Poverty and inequality in South Africa." *Indicator South Africa* 15 (1998): 53-58.

¹⁰⁴ Li, Ping. "Rural land tenure reforms in China: Issues, regulations and prospects for additional reform." *Land Reform, Land Settlement, and Cooperatives* 11, no. 3 (2003): 59-72.

¹⁰⁵ Kameri-Mbote, Patricia. "The Land has its Owners! Gender Issues in Land Tenure under Customary Law in Kenya." *International Environmental Law Research Working paper* 9 (2005).

Commission power to take back land that has been lying unused for a long time.¹⁰⁶ There are pieces of land that have never been cultivated yet there are people who claim ownership of these lands. Such should be taken and be given to landless Kenyans according to the law. If the land cannot be given totally to the new owners, then their families can be allocated tilling land that they can hold on a lease for 99 years. Thus, the land will be productive and the farmers will be prevented from selling the land. The determined undeveloped land can as well be bought by the government if it does not fall on the timeline determined by the commission that can warrant forceful acquisition. This is if the owner does not want to keep working on the land. However, the problem is that few people are willing to sell their land, while still unwilling to develop it as they wait for it to gain in value so that they can sell it later.

Digitalization of Land Records

This has been an ongoing process in the government. Over time, there have been people employed to convert land information from the hard copies to soft copies. As such, it will be easy to determine land ownership without having to peruse through mountains of files. Also, while people can put antivirus in computers to protect the files, it is hard to protect files from physical damage. Well, efforts can be made, but some things are inevitable if files have been stored for a long time. This does not imply that having soft files does not expose them to risk, but it is easier to protect them in a portable format than in a stationary mode where they have to be housed in a place that can be infested by rodents if not checked repeatedly. It is thus easy to remotely locate computer files such that they are away from possible connections. Protection of soft files could involve putting them in a remote server that are not connected to any WAN, LAN, or MAN connection. This means that it can only be fed manually, which means that it will be impossible to infect it or destroy files if the tools used to manually load data are not in any way infected. Also, there are tools used to recover files, which is not possible if a rodent eats a title deed. Thus, digitization will ensure accessibility, which will aid in noting areas that need to be adjudicated fast, and also, ensures security. The story of lost documents will be a thing of the past if the steps being taken are undertaken fully.

¹⁰⁶ The National Land Commission. The Progress Report March, 2013-January 2014 Session Paper No. 3 of 2009 on National Land Policy, 2009.

5.1.3 Long Term Remediations

Maintain a Goodwill with the Stakeholders

The Nation Land commission has been given a mandate to take care of land issues in the country. So far, there have not been visible obstacles that would appear in the line of satisfying the mandate of the commission. Recently, the Chairman of the commission was implicated with corruption during the acquisition of the Standard Gauge Railway line that is under construction between the city of Mombasa to Nairobi, and from Nairobi to Naivasha. That is a big impediment as Kenyans may lose faith with the commission and as such demand that officials be replaced as was the case with the electoral commission in 2016. Thus, commissioners should try as much as possible to steer clear of controversy so that they can discharge their mandate to the best level possible. This can only happen if the commission enjoys a political good will, as well as, the goodwill of the general population.

5.1.4 Further Research Areas

It is worth conducting further studies regarding better ways of land tenure systems. Such could be the benefits of a mixture of land tenure system that puts in place the existing land tenure aggregated with a small percentage of land being still under the traditional land ownership system. Such can see to creation of public lands for the sake of those who cannot afford land. The land can be used by the community for activities such as playing for children, farming for the landless, and grazing lands for the pastoral communities. Such will also help in making sure that nobody fails to get a small piece of land for farming, or development.

Further research ought to be conducted regarding the best ways to bestow arid lands with productivity. Notably, these lands form the biggest chunks of the country's lands. If they would be made productive, it would be possible to ensure that the country takes care of its own population. The research should involve good ways that the lands can be used such as better crops, and possible irrigation of areas near water catchment areas such as areas falling near Rivers Athi and Tana such as the Tana River, Kitui, Machakos, and parts of Kilifi county.

5.2 Conclusion

The state of the land in Kenya has not been solved for many years. Thus, it has played out as one of the most disparaging issues to date. This is partly because of the high number of squatters and the fact that many people leave knowing that politicians and influential individuals took what

they should be having in terms of land. Additionally, many communities such as the Maasai that owned big chunks of land have been losing their communal land every day as the new method of land ownership creeps in, their leaders learn about it and influential people amongst them keep taking land and selling it leading to heightened encroachment on the Maasai land.¹⁰⁷ Notably, very big chunks of land remain not adjudicated. This implies that as time goes by, if a person can claim the land, bribe land official and have it surveyed, regardless of who purports to own it, then, he or she will be the official owner. With too much land remaining undocumented, there is a chance that people could be stealing land all over the country, even in areas known to belong to certain specific communities. However, in the recent past, policies in the country have taken a positive nosedive creating growing positive expectations from the Kenyans. The government since 2013 also tried to solve the problem as it targeted issuing over 2.5 million title deeds to Kenyans in previously undocumented lands. Such, people get enough power to go about developing their land. The development process may entail even taking loans with the land as the collateral. Before the titles were given to the people, it was impossible to completely develop the land since people were technically squatters with only land numbers and no official documents to ascertain any claim they would be having.

Looking at the various raised issues, the land question comes out vividly against many of the proposed means of its management so far. However, with the big array of issues on the table, the best way forward would be the management of the existing Act to an extent that every tenet of the National Lands Commission Act is fulfilled to the most satisfactory level. Additionally, it would be prudent to borrow from those that have had similar scenarios in their countries and in the end, try emulating them for the success of the commission in answering the land question. Also, there should be a means to delimit various methods of land ownership. Thus, it would be possible to tell who owns what and to what extent such a method of land ownership goes. For instance, among the Maasai and other pastoral communities, there should be a way that comes to use to explain how much land they own. Also, there should be ways devised to ensure that none of their land is lost to unscrupulous individuals.¹⁰⁸ The communities with the lowest literacy

¹⁰⁷ Ibid5

¹⁰⁸ Kanyinga, Karuti. Redistribution from above: The politics of Land Rights and Squatting in Coastal Kenya. Vol 115. Nordic African Institute, 2000.

levels should also be protected since many may not be having an idea what having a title deed is all about when it comes to land ownership.

Other than the protection of the people that have less information regarding land ownership, the commission must at least ensure that as much land as possible is adjudicated before their tenure ends. Technically, many people have a problem because they have lived on land and have never been given exclusive rights to the land. Digitization of the land register helps determine areas of concern and as such take care of the communities and individuals that have not been sorted over a long period of time. However, given the new constitution of 2010, the organs created to deal with the land question if effectively managed can solve it once and for all. Additionally, having the political good will and non-corrupt land commissioners could help move the remaining miles in a total solution of this question. Countries like China that solved the problem fast and effectively, the country should adopt a method that takes note of the available bodies to effectively deliver a lasting blow to the cartels that have over time been thwarting efforts to restore order when it comes to the lands¹⁰⁹. However, the example of China is far more excessive in a democratic-market-liberal community like Kenya. However, a little bit of socialism in dealing with the land cases may be called for given that the willing buyer and willing seller never amount much. Thus, in cases of land acquisition for redistribution, it is only prudent if the government would be involved to facilitate the smooth running of such programs. Technically, the commission is in the government, albeit independent and as such acquisitions can be easy.

Looking at the recommendations and the evidence from the examined literature, it is possible to completely solve the land question. However, there are many bottlenecks that lay on the path, such as lack of understanding regarding the land tenure system amongst the communities as many still pre-suppose that they can use the old communal system that is indigenous to African tribes. Thus, there have been conflicts whenever the government has sought alternative means of land administration amongst certain communities.¹¹⁰ Generally, given the mandate of the commission, it would be possible to redistribute land, take land that has stayed unused for a long time, as well as, have clear records that allow troubleshooting to be carried out fast and effectively to solve arising land matters.

¹⁰⁹ Zhu, Jieming. "Local growth coalition: the context and implications of China's gradualist reforms." *International Journal of Urban and Regional Research* 23, no. 3 (1999): 534-548

urban land

¹¹⁰ Ibid

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