

**A CRITICAL ANALYSIS OF THE ROLE OF AID
AGENCIES IN THE KENYAN LAND POLICY
PROCESS (1999-2012)**

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Abstract

Land is central to development policies globally, including with reference to Africa, but the land reform strategies and modalities often pursued by international development agencies are controversial in terms of their potential and actual impact on questions of land rights, possession and access as well as poverty reduction and economic development. In the current era of global neoliberal restructuring, as indeed in the past, international aid agencies (or donors) have identified the formation and reform of national land policies in Africa and elsewhere as crucial in terms of facilitating systematic and successful land reform measures.

A practical example of this is the case of Kenya. In this context, this thesis seeks to critically analyse the role of development (or aid) agencies in the land policy-making process in Kenya from 1999 to 2012. In this regard, the thesis does not focus on the product of the policy process (i.e. the land policy) let alone the implementation or impact of the policy. Rather, it treats the policy process itself as worthy of investigation and analysis, and thus delves into the policy processes leading to the product (the Kenyan land policy).

The involvement of aid agencies in land policy in Kenya is part of a broader pattern of development cooperation with the Kenyan state over an extended period of time. Despite this long-term integration of Kenya in the international development system and the direct and pronounced involvement of global donors in the land policy-making process in Kenya, land policy outcomes in Kenya cannot be reduced simply to the influence and power of these donors. While the thesis analyses in detail the various forms of donor input into the land policy process, it also highlights that other (Kenyan-based) actors were centrally involved in the land policy formation process in the country, including state bureaucrats and national politicians but also a diverse range of interests embedded in civil society. Development agency involvement in the land policy process can be only understood in relation to these other actors.

In Kenya, donors in fact interacted with these other actors in complex and fluctuating ways as they sought to maximise their influence in the national land policy process, and the thesis examines these dynamic and sometimes turbulent social and political interactions. These interactions were further complicated in Kenya because of the highly-ethnicised character of national politics and the fact that the constitution-review process was taking place at the same time as the land policy process. Together, this meant that the land policy process at nation-state level in Kenya became both a focus and site of struggle between state and non-state actors (including donors).

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For those who are working hard to ensure land becomes a *true* basis of livelihoods for the majority of the rural communities, and to ensure that land is equitably distributed, take comfort in that yours is a good fight!

Acronyms

CKRC	Constitution of Kenya Review Commission
CSO	Civil Society Organisation
DAC	Development Assistance Committee
DFID	Department for International Development
DPGL	Development Partners Group on Land
ECA	Economic Commission for Africa
EU	European Union
FAO	Food and Agriculture Organisation
GDP	Gross Domestic Product
GNP	Gross National Product
IMF	International Monetary Fund
ISK	Institute of Surveyors Kenya
JICA	Japan International Cooperation Agency
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KAU	Kenya African Union
KELA	Kenya Land Owners Association
KLA	Kenya Land Alliance
KLS	Kenya Law Society
KNDRC	Kenya National Dialogue and Reconciliation Committee
LDP	Liberal Democratic Party
LIMS	Land Information Management System
LSNSA	Land Sector Non State Actors
MLLR	Market Led Land Reform

MoLS	Ministry of Lands and Settlement
NAK	National Alliance Party of Kenya
NARC	National Alliance Rainbow Coalition
NGO	Non-Governmental Organisation
NLC	National Land Commission
NLP	National Land Policy
NLPFP	National Land Policy Formulation Process
ODA	Official Development Aid
ODM	Orange Democratic Movement
OECD	Organisation of Economic Cooperation and Development
PEF	Policy Engagement Framework
PNU	Party of National Unity
PRSP	Poverty Reduction Strategy Papers
RoK	Republic of Kenya
SIDA	Swedish International Development Authority
SLLR	State Led Land Reform
STF	Settlement Fund Trustees
TJRC	Truth Justice and Reconciliation Commission
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Emergency Fund
USAID	United States Agency for International Development
WB	World Bank
WBWS	Willing Buyer Willing Seller

Chapter 1: Introduction and Methodology

1.1 Introduction

The main goal of the thesis is to critically analyse the role of aid agencies (or donors) in land sector reforms, and specifically in the formation of the national land policy, in Kenya from 1999-2012. This involves an analysis not only of aid agencies themselves, but also of the state and political elites as they were of course also central to the land policy process. Additionally, civil society organisations were involved in the policy process, and their interactions with aid agencies will be examined. While the content of the finalised national land policy is important, the main emphasis throughout the thesis is the policy process itself and the ways in which donors became involved in and sought to influence and shape the process over an extended period of time and in diverse ways.

1.2 Land Reform Policies and Aid Agencies

Land reform is able (at least officially) to promote democratisation, economic growth and poverty alleviation, though these aims may not be consistent with each other (El-Ghomey 2003, Deininger 1999, Sobhan 1993, Mendola and Simtowe 2015, Muyanga and Jayne 2014, Kohler 2015). The efficacy of a particular land reform initiative depends upon the suitability and soundness of specific national land policies and programmes given the prevailing social and historical context, as well as the basis on which the policies were initially formulated and then implemented. Suitability, soundness and efficacy of land reform measures cannot be taken as a given, as there are as well numerous debates within the land reform literature (on Africa and elsewhere), including those relating to land redistribution and land tenure reform, about what will most likely lead to democratisation, economic growth and poverty alleviation. Indeed, the very goals of land reform, and hence of national land policies, are subject to significant controversy.

A range of social groups often becomes involved in formulating a national land policy based on various interests and agendas, as happened in the case of Kenya. The interactions between these groups (including aid agencies) involves contestations based on power dynamics, and are marked by cooperation and alliances but also tension and conflict. In this sense, national land policy processes (as with all policy processes presumably) should not be understood as a straightforward unbiased and technical process as they are profoundly political and characterised by complex and sometimes convoluted tendencies. And the ways in which these kinds of interactions work themselves out invariably affect in a significant manner the

land policy content, as each social group stresses particular land reform aims (for instance, economic growth versus poverty alleviation) and ways of achieving these aims (Bruce 2009). Though formulating a national land policy provides a useful opportunity to reflect on the past and present as well as look into the future in terms of bringing about land reforms in a coherent manner, providing an analysis of a specific land policy formulation and formation process requires in-depth case study as this thesis seeks to provide.

Apart from government and the state, aid agencies – certainly in the case of Africa – are pivotal to the land policy formation process. This thesis thus focuses specifically on the work of donors in the land reform policy process in Kenya, and provides a critical analysis of this donor involvement. Donors, or aid agencies, influence policies in a variety of ways including budget support, technical assistance programmes (including providing land consultants) and funding a range of national policy processes. Of significance as well are the ways in which donors offer discursive representations around land, democratisation, economic growth and poverty alleviation, as a basis for justifying their particular interventions. Such discursive efforts often treat land policy processes in an ahistorical way, conceal the politics embodied in their policy interventions, and valorise the importance of scientific expertise in formulating land policies and resolving land challenges. At the same time, this is pursued based on their positioning within the global political economy and international development system which are currently marked by neoliberalism.

In terms of land reform, the policy debates are centred around the following historically-rooted controversies (Boulding 1968, Okun 1975, Barraclough 1999) which continue to resonate throughout Africa: the appropriateness of state versus market based reforms, the proper mix of agricultural growth and land redistribution measures, private-held freehold land title versus communal landholdings, the weighting of tenure reforms against redistributive initiatives, and small-scale versus large scale-farm productivity (AU/AFDB/UNECA 2009). In seeking to intervene within a particular land policy process at nation-state level, aid agencies ultimately adopt particular positions on at least some of these controversies, with the neoliberal restructuring taking place globally over the past few decades profoundly impacting on these positions. In this sense, land policy spaces at national level are deeply entangled with global policy debates around land, as this thesis shows.

With specific regard to land policy, aid agencies acknowledge the significance of land reform in Africa and have sought to influence the direction and content of land policies and their implementation. Donor agency involvement in land policy has a long history. For

example, in the context of state-led development in the 1950s and 1960s, donor involvement with developing countries took the form of support for modernising agricultural development schemes (Ghezze et al. 2009) but often with a pronounced focus on broad-based rural development. However, with the neo-liberal period emerging in the 1970s, state-driven reforms gave way to market-led agrarian and land reforms. This became embedded in a broader process of ‘deregulation’, privatisation and marketisation of state activities (Williamson 1994). And, in this respect, land reform and land rights became conceptualised and articulated by aid agencies as critical to the neo-liberal good governance agenda.

This is manifested for instance in the publication of policy papers on land reform by major donors such as the World Bank and the European Union (EU) (Sikor et al. 2009) and in efforts to organise all-inclusive land conferences and workshops. For example, in February 1999, DFID brought together policymakers and other stakeholders from Africa for a workshop on *Land Rights and Sustainable Development* in the United Kingdom (Toulmin and Quan 2000). But it has also involved more intrusive forms of intervention. Thus the EU’s *Land Policy Guidelines* of 2004, in highlighting the significance of land reform, argues that donors can contribute more directly to the land policy-making process by engaging in institutional and capacity building of relevant state apparatuses, and monitoring and evaluating processes of implementation (IIED, NRI and RAS 2004).

Donor involvement in the land policy-making process in Kenya must be positioned in the first instance, with reference to a broad macro-understanding of global capitalism (particularly its current neo-liberal variant) and the ways in which donors form part of (and indeed are central to) the international development system. International development policies and practices in the era of neo-liberal restructuring focus on democratisation and poverty reduction within a framework of ‘good governance’. Countries in Africa, such as Kenya, are currently integrated into the global capitalist political economy and the development system in a dependent (or neo-colonial) fashion and this raises critical questions about nation-state sovereignty in peripheral capitalism (Mosse 2005) and the capacity of such nation-states to formulate land policies which go contrary to the demands and interests of powerful international aid agencies. Undoubtedly, because of economic and political dependence, national policy formation processes in peripheral capitalist states like Kenya are subject to global forces and influences (Sulbrandt 2000).

This significantly inhibits nation-state autonomy over its own local social, political and economic spaces, though the extent and form of this challenge to autonomy is subject to

considerable debate (Scholte 1997, Doombos 1990, Jones 2000). In this regard, the Economic Commission for Africa (ECA) speaks about the gradual loss of sovereignty for African nation-states due to (for example) the increasing influence of multilateral financial institutions and donor agencies on policy design, implementation and monitoring (ECA 1989). This shapes not only what is present in national (including land) policies but also what is absent from them. For instance, in the case of land questions, certain options and possibilities are taken “virtually off the [policy] agenda” (Stallings 2001: 27) in the face of global neo-liberal pressures, such as land expropriation without compensation. Redistributive land reform, as Borrás et al. (2009) highlight, becomes synonymous with market-led reforms and the protection or consolidation of private-held land rights.

The World Bank, the Organisation for Economic Co-operation and Development (OECD), the United States Agency for International Development (USAID), the Department for International Development (DFID), the Swedish International Development Agency (SIDA) and other donors have over a number of decades played a critical role in influencing the direction of state policies in Africa and beyond. Indeed, as Jones (2011) argues, influencing state policies and programmes is a crucial dimension of aid agency interventions and the international development system more broadly (Corkery et al. 1995, Maetz et al. 2008). As indicated, such interventions are designed to shape policy in a particular direction in terms of both the very character of the policy formation process and the concrete product (i.e. the policy itself).

Besides global donors and the nation-state, local civil society organisations (which are often funded by global aid agencies) sometimes play a critical role in these policy processes. Indeed, they regularly internalise the language of neo-liberalism (Dunford 2000) and act in conjunction with aid agencies in advocating around national policies. In many cases, as Pollard et al. (2005) argue, civil society groups become so closely aligned to aid agencies that the latter set and control the terms of the former’s engagement (Lewis 1999, Hulme and Edwards 1997, Huddock 2000, Ottaway and Carothers 2000, Petras 1997).

The claim that the land policy-making process in Kenya, which is being studied in this thesis, must be located in the context of the global political economy and the international development system, with donors being crucial in this respect, does not imply that the land policy process is reducible to the machinations and interests of global interests. The extent to which donors dictate land policy, and the extent to which local interests (including state and civil society) are able to articulate and incorporate their views into the process must, in the end,

be the focus of in-depth case studies, as in the case of this study of the national land policy process in Kenya.

1.3 Land Reform in Kenya

Kenya's land problems are rooted in both the colonial period and the post-independence period (Omuodho 2006). The colonial period was characterised by the dispossession of land from indigenous peoples by and to white settlers. The post-independence era has not fully addressed the legacies of the former settler colony in Kenya such that land imbalances continue to exist as witnessed by the prevalence of landed elites (Klopp 2001). As it stands, even currently, 17.2 percent of Kenya's total landmass is held by 80 percent of the population (Omuodho 2006) and problems of access to land are particularly prevalent amongst women.

The process of formulating a national land policy in Kenya was spearheaded by an umbrella network of civil society organisations committed to effective advocacy for the reform of policies and laws governing land in Kenya. This grouping is called the Kenya Land Alliance (KLA). The KLA was founded in 1999 and registered as a trust in 2001. It was borne out of the realisation that the policy, legal and institutional land framework created in the 1950s under colonial conditions was no longer sufficient to deal with contemporary global and national dynamics. A number of aid agencies, including DFID, SIDA and USAID soon became involved in various ways in the national land policy process (USAID Kenya 2009). Indeed, the KLA itself received funding from DFID, SIDA and other aid agencies. As well, SIDA, USAID, DFID and other aid agencies provided technical assistance to the Ministry of Lands (including for the development of a land information management system). Overall, the national land policy process was funded by grants from DFID, Irish Aid, SIDA and USAID through a basket of funding managed by the United Nations.

The formulation of the National Land Policy (NLP) by the state itself started in February 2004 with the first draft of the policy being produced in December 2005. Cabinet approval for public dissemination and debate of the NLP occurred in September 2006. The revised draft, which incorporated feedback from a series of public debates and consultations, was finalised in March 2007. The revised draft was then discussed by over 600 participants (including representatives from civil society groups, both community groups and non-governmental organisations) during the National Stakeholders Conference in April 2007. The draft was approved by a second national stakeholders meeting held in May 2007. While the document was presented to Cabinet for deliberation and approval through a cabinet

memorandum in October 2007, the tense political situation in Kenya at the time caused a delay in the adoption by Cabinet of the document. The document was finally adopted by Cabinet on 25 June 2009, and the policy was later passed by Parliament as Sessional Paper No. 3 on 3 December 2009.

Closely linked to the formation of the national land policy was the enactment of a new constitution which was the subject of intense contestation over a number of years, and was finally promulgated in August 2010. The constitution included provisions which spoke directly to questions of land reform such that the constitution-making and land policy processes spoke to and fed into each other. Both processes took place at a time of intense political violence, and often ethnic-based violence, notably the 2007/2008 post-election violence. In fact, Hakijamii (2012; 5) argues that “[i]t is possible that had the 2007 post-election debacle not occurred, and in particular the intense pressure the political class was subjected to, we would not have had a National Land Policy and a new Constitution”. For this reason, the thesis examines the constitution revision processes as well as attempts at national dialogue and reconciliation in the face of party-political struggles over national power.

1.4 Theoretical Framing

The thesis is framed analytically by a number of theories. First of all, because of the focus on aid agencies and their impact on national policies in peripheral capitalist nations, it is necessary to set the broad global political economy context for the thesis topic. This entails a recognition that capitalist development can be understood in two senses. First of all, capitalism is a political and economic system with its own immanent processes of development which alter over time, including the current neo-liberal moment. This development is invariably uneven, which has led to the existence of both advanced capitalist nations and undeveloped (or underdeveloped) capitalist nations in the periphery which are incorporated into the worldwide capitalist system in a dependent and subordinate mode. The thesis examines this by reference to a range of Marxist-influenced theories, such as dependency, underdevelopment and world-systems theory. Secondly, ‘development’ also is understood in terms of the international development system (driven in large part by multilateral and bilateral aid agencies) and, in this regard, development refers to intentional interventions in the affairs of peripheral capitalist nations, such as becoming involved in national land policy processes in Kenya. This dimension of capitalist development is likewise analysed in a critical manner, drawing upon the Marxist

theories but also post-developmental theories which highlight the global discourses underpinning the international development industry.

While necessary to the analysis of Kenyan land policy processes, these macro-level theories are insufficient for understanding the policy process itself in all its complexities. For this reason, the thesis draws upon more middle-level theories which speak more directly to the intricacies and nuances of actual policy processes. It is crucial to engage with a particular policy process (as a legitimate object of inquiry in its own right), otherwise the temptation is simply to read a particular policy process from macro-level claims about the inevitability of nation-state dependence upon global processes and dynamics. With reference to national policies in peripheral capitalism, any form or level of state autonomy vis-à-vis global forces is only detectable when a thorough investigation of policy processes is undertaken concretely.

There are numerous theoretical frameworks focusing on national policy-making (Gilson and Raphaely 2007). In criticising any straightforward linear model of policy-making which assumes a technical process driven by a-political rationality, the thesis brings to the fore analytical frameworks which consider the power and political intrigues involved in the policy process and the competing interests and complex discourses embedded within it (Neilson 2001). Examining the politics of policy-making includes a focus on the role of a multiplicity of agents in the process (or ‘policy communities’) such as ‘issue networks’ (or policy activists well-informed about a particular issue), epistemic communities (such as networks of professionals) and advocacy coalitions. In this way, policymaking is understood as both a focus of struggle and a site of intense struggle which incorporates non-state agents (Buse et al. 2008). Policy-making then becomes a ‘function’ of internal contestations within the state, competing policy communities and the broader political economy (Start and Hovland 2004).

In adopting both macro-level theories of capitalism and middle-level theories about policy-making, this thesis seeks to provide an innovative structural- and agency-based understanding and explanation of policy-making processes with specific reference to land policy and aid agencies.

1.5 Thesis Objectives

The main objective of the thesis is to critically analyse the role of aid agencies in the land policy-making process in Kenya from 1999 to 2012. The specific objectives include:

- Examining and explaining the rationale for, and modalities of, aid agency participation and intervention in the land policy-making process in Kenya including the positions they espoused;
- Examining and understanding the role of the state bureaucracy, elected politicians and political parties in Kenya regarding land policy-making;
- Examining and understanding the participation of the Kenyan Land Alliance and other non-state actors in the land policy-making process in Kenya; and
- Investigating and understanding the complex interface between aid agencies, non-state actors and state officials/elected politicians/political parties during the land policy process.

1.6 Research Methodology

The study for this thesis is based on a case study research design. The case study for this thesis is pursued within the context of an interpretive sociological methodology. A basic premise of this methodology is that humans are active agents in the construction of their world in which they live and exist, and the ways in which they define and give meaning to situations is the basis on which they act. This premise, at least as formulated for the purposes of this thesis, accepts though that agents act under social conditions not necessarily of their own choosing and that these conditions are both enabling and disabling in the context of power differentials. In this way, the interpretive methodology underpinning the thesis recognises the complex interplay between structure and agency when it comes to the land policy-making process in Kenya.

This case study design makes it possible to conduct in-depth examination of concrete events including by (for this thesis) analysing documents and conducting interviews (Gerring 2006). Through the case study design, the empirical inquiry of a phenomenon is done within its real-life context; and this is especially important when the “boundaries between phenomenon and context are not clearly evident” (Yin 2009: 18). Case studies provide for in-depth, detailed and intensive understandings of social processes in ‘messy’ real-world settings marked by complex, fluid and fluctuating social interactions and patterns (Keen 2006, Robson 2011). Of critical importance to this thesis is that the case study design is particularly “suitable for answering questions that start with how, who and why” (Meredith 1998: 4), in this case with regard to policy formation processes. Thus, through the case study, it is possible to focus on processes (how things happen) and outcomes or products (Yin 2014), with the former being of particular importance to this thesis. There is no claim to the effect that the case study is in

any representative statistically of other similar cases (for instance, national policy processes in other nations), but no doubt a particular case study provides a representative array of the kinds of intricate social processes about which a researcher needs to be sensitive in pursuing similar studies.

Stake (1995) argues that there are three main types of case studies, namely intrinsic, instrumental and collective. Whenever the researcher seeks to learn about a particular phenomenon in-and-of-itself, the intrinsic type is being used. In this instance, there is a need to clearly understand the specificities of the phenomena under investigation, without necessarily identifying its unique attributes or qualities (though this may be pursued). The instrumental type is undertaken when a researcher investigates a particular case in order to gain an understanding of a broader set of similar cases, such that generalisations are often sought. Lastly, the collective case study entails the study of several cases at the same time or in a sequential manner with an objective similar to an instrumental approach, that is, to gain a broader understanding of a particular phenomenon. This allows for a stronger basis for generalisation.

The thesis study is largely aligned to the intrinsic and instrumental approaches, and particularly the former in that the specificities of the land policy process in Kenya are identified and understood. There is strong reason to believe that the Kenyan policy process has dimensions which are unique to it at least in terms of how they combine to shape and characterise the process, including its pronounced white settler presence, early independence (in 1963), long history of donor involvement, tribal composition, political patronage and so forth. But, based on the study of Kenya alone, there is no strong foundation for claiming that land policy processes elsewhere are a merely duplication of Kenyan experience. At the same time, as a former white settler colony, it may be that land policy processes in other such former colonies (such as South Africa, Zimbabwe and Namibia) have similarities with those in Kenya, such that the thesis may provide useful empirical and analytical pointers for making sense of these processes. Though this is not a goal of the thesis, the Kenyan case study hence may have an instrumentalist dimension or implication.

George and Bennett (2004) highlight the need to clarify the case to be studied. The process of clarifying what the case is about assists the researcher in specifying the body of knowledge required as background to the study (or the context for the study). It is also likely that the case may be redefined during the actual study as further evidence become apparent. This was certainly the case with this study of Kenyan land policy-making. Initially, the study

had set out to examine the role of one particular donor (SIDA) in the land reform policy processes in Kenya. But, following interaction with various stakeholders in the policy process, it became clear that the role of a particular donor could not be studied in isolation from other donors (such as DFID and USAID) as their roles entailed formation of alliances and closely working together. The case study thus became donors or aid agencies as a whole. This relates back to the point about the difficulties in distinguishing, in a case study, between the phenomena under study and its context. In studying aid agencies as a whole, there was a fluid, cascading and ever fuller context which was continuously kept in mind and which constantly intertwined with the activities of aid agencies, involving local agents (such as the state, political elites, landed property-owners and progressive civil society groups) as well as the global political economy of capitalism.

In using the case study approach, I adopted primarily qualitative research methods. These key methods were key informant interviews, primary documents and focus group discussions.

Semi-structured key informant interviews (Kitchin and Tate 2000) are meant to obtain evidence from persons that have knowledge about the issues being studied, based on professional training and/or their role in particular organisations (Warheit et al. 1978, Von Korff et al. 1992). Central as key informants for this study are of course donor agencies, notably SIDA, DFID, USAID and the World Bank (as well as ActionAid). The researcher was able to interview officials from these organisations. There were also interviews with three officials of UNHABITAT, an organisation which chaired and formed the secretariat of a crucial donors' partners group on land (see the appendix for list of interviews). Key informants interviewed from the Ministry of Lands included the former coordinator of the land reform formulation process (Rosemary Wachira) during the state presidency of Mwai Kibaki. Interviews were also conducted with an official of the National Land Commission (Dr. Fibian Lukalo, Director of Research and Advocacy). Interviews were carried out as well with representatives of Kenya civil society organisations especially the Kenya Land Alliance, RECONCILE, Community Initiative Action Group-Kenya, ActionAid, professional associations such as the National Association of Surveyors and Land Development and Governance Institute and, lastly, with academics. The interviews took place from December 2014 to October 2015. Appendix 2 provides a list of all interviews.

The researcher reviewed and analysed a huge quantity of primary documents related to the land policy formation process in Kenya. The documents include publications (by the Kenya

Land Alliance, the Ministry of Lands and the National Land Commission), legislation and government commission reports, official Briefing Notes coming out of the land formulation process, position papers (including from the Kenya Land Owners' Association and the Machokos Ranges Association), and minutes of Meetings especially from the Donor Partners Group on land.

Focus group discussions normally consist of between 6 and 12 participants discussing selected topics with the guidance of a facilitator (Johnson and Christensen 2004) and are a qualitative research method which prioritises group interaction and dynamics (Liamputtong 2011). The purpose of the groups is often to validate evidence gathered through interviews with key informants (as well as from various documents analysed) and to stimulate ideas and thoughts in a group setting. The researcher did not have classic focus groups but rather arranged for a workshop on 22 June 2015 with a fellow student conducting research on land issues in Kenya at the French Institute in Nairobi (IFRA) which was attended by members of civil society organisations, officials from the National Land Commission and academics. As well, the researcher took part and presented key findings of the study at another IFRA-organised workshop on 22-23 June 2016 in Nairobi (see appendix 3 regarding these workshops). This second workshop was attended by civil society groups within the East Africa region (including the Uganda Land Alliance and Kenya Land Alliance), donors such as FORD-Kenya, and academics/researchers from Kenya, Tanzania, Uganda, USA and France. These workshops facilitated a deeper and more refined understanding of the national land policy process in Kenya, as I was able to interrogate some of my provisional findings in the light of the workshop discussions.

The major challenge experienced during the research was that some of the people who were actively engaged in the land policy reforms in Kenya had left the country or had moved onto other programmatic activities (and completely out of the land sector) and, because of this, a few of these were inaccessible for purposes of interviews. This was coupled with the fact that land is a sensitive political issue and, in the case of Kenya, the land policy process and the contestations within it are still fresh in the minds of many of those who were involved. One example of this is the tension which remains between the Ministry of Lands and the National Land Commission regarding the roles each institution should play in the ongoing land reform process. As a consequence, some potential respondents especially in Government were not willing to be interviewed or, if interviewed, were not willing to express their views on certain contentious issues. However, the land policy process in Kenya generated considerable attention

and interest (and over an extended period of time), such that it was possible for instance to reconstruct the policy process in great detail by reviewing and analysing existing documentation.

Lastly, I am fully aware of all standard research ethics and protocols of Rhodes University, and I abided by these throughout the thesis process. Permission for the fieldwork was obtained from Kenya's National Commission for Science, Technology and Innovation which is the authority responsible to approving research in Kenya. All the documents which were analysed have been appropriately referenced. The interviews raised issues at times regarding confidentiality and I have sought to ensure anonymity of interviewees when requested to do so.

1.7 Thesis Outline

The thesis consists of nine chapters. Chapter two provides the theoretical framing for the thesis, including examining capitalist development both as an immanent process and as a form of development intervention, along with analysing policy-making processes. Chapter three focuses more specifically on the international development system, including its history and modes of operation. Chapter four examines land reform and land reform policy debates with a particular focus on Africa. After this, chapter five provides a historical and political analysis of the land question in Kenya specifically, including both the colonial and post-colonial periods. The following three chapters focus on the case study of the national land policy process in Kenya. Chapter six offers a temporal overview of this process and how it relates to the constitution-making process and, in doing so, raises some of the themes covered in chapters seven and eight. Chapter seven chronicles, unpacks and analyses the discourses and roles of aid agencies in the Kenyan land policy process. Chapter eight then focuses on the state and civil society organisations (or non-state actors), and considers the ways in which aid agencies interacted with both the state and civil society during the land policy process. The concluding chapter (chapter nine) provides a synthetic overview of the case study findings and draws linkages between the theoretical framing for the thesis and the case study of Kenya.

Chapter 2: Theoretical Framing – Capitalist Development and Policy-Making

2.1 Introduction

This chapter provides the main theoretical framing for the thesis. It provides a critical analysis of the worldwide capitalist system (particularly in the age of neo-liberalism) and goes on to examine, again critically, the international development system (sometimes called the development industry) within which aid agencies or donors exist and act. The chapter also considers theories pertinent to understanding policy-making processes particularly at nation-state level. The overall objective of the chapter, then, is to frame – theoretically – the case study of the land policy process in Kenya by drawing upon both macro-level and middle-level theories of particular relevance to the study. In doing so, the theories used when combined facilitate a sensitivity to structure and agency (and their interplay) in understanding complex social processes.

2.2 Development Theory

Broadly speaking, it is possible to distinguish between two notions of ‘development’. First of all, small ‘d’ development refers to the development of capitalism as a political-economic system, which takes on various forms over time (such as today’s neo-liberalism) and is uneven in its character and effects spatially. Secondly, big ‘D’ development refers to the international development system which, particularly since the 2nd World War, has involved a range of development interventions (such as foreign aid) in the national economies and politics of developing nations (Cowen and Shenton 1998).

While the first notion highlights immanent processes intrinsic to the trajectories of capitalist development, the second brings to the fore the existence of intentional and directed development interventions and practices. Clearly, small ‘d’ development is a broader social process which incorporates big ‘d’ development, such that the current period of neo-liberal capitalist development is characterised by specific forms of big ‘d’ development interventions (for example, structural adjustment programmes). In a sense, widespread socio-economic problems in developing nations exist as a consequence of immanent development (i.e. the development of capitalism), including unemployment, poverty and inequalities, and these problems are often tackled through deliberate development interventions. This thesis, given its objective, is primarily concerned with development as understood in the big ‘d’ sense (and theories about this), but I also address small ‘d’ development theories.

In the following sub-sections, I discuss both sets of theories, with small ‘d’ theories being macro-theories about capitalism per se (and its historical and contemporary trajectories), and big ‘d’ theories – in the context of the former theories – involving more middle-level theoretical understandings. Undoubtedly, in the case of both big ‘d’ and small ‘d’ theories, ideology, politics and explanation are entangled together (Ish-Shalom 2006), as specific theories embody political and ideological commitments. Because of this, particular theories about big ‘d’ development invariably lead to establishing and justifying certain priorities, policies and programmes for intervening in the political economies of developing nations.

Irrespective of how critical (analytically) small and big ‘d’ theories are about capitalism as a system and corresponding forms of intervention in developing nations, these theories tend to perpetuate the neo-colonial division of labour in the production of academic knowledge (Slater 2004) in that they invariably emerge from ‘the centre’ of the capitalist world system. I note this last point though only in passing, as addressing it is beyond the scope of the thesis.

2.2.1 Capitalism and Small ‘D’ Development

I start by discussing theories related to small ‘d’ development (such as modernisation and underdevelopment theory) before considering big ‘d’ development theories (such as post-development theories).

2.2.1.1 Modernisation Theory and Neo-Liberal Discourse

Based on a notion of social evolution, modernisation theory sets out to identify and explain the social and political conditions which are necessary for economic development in developing nations, and this is based on an analysis of the transformation of Europe and the United States from agricultural to industrial societies. In this sense, it is posited that the pinnacle of development is exemplified by advanced capitalist societies, so that developing nations need to emulate what exists in these societies (as well as follow the path they travelled in becoming developed). The theory speaks about developing nations as being *undeveloped* rather than as *underdeveloped* (as in Marxism), with this status of un-development arising almost independently from the development of advanced capitalism. This is founded on a dualist portrait of the world as a social system, with (notably advanced) capitalism marked by a range of social, political and economic characteristics and the rest of world devoid of all these characteristics and defined in terms of what it is not. Sociologically, this theory derives from for instance the work of Herbert Spencer and more recently Talcott Parsons (Parsons 1961).

But is also found more explicitly and most famously in the economic analyses of Walt Rostow from the mid-20th century. Rostow (1990:2) spoke about five stages of economic growth, with these stages meant to answer several crucial questions:

Under what impulses did traditional, agricultural societies begin the process of their modernisation? When and how did regular growth come to be a built-in feature of each society? What forces drive the process of sustained growth along and determined its contours? What common social and political features of the growth process may be discerned at each stage? And in which directions did the uniqueness of each society express itself at each stage? What forces have determined the relations between the more developed and less developed areas?

It was Rostow's conviction that all existing nations and societies could easily be slotted into one of the five stages of development, namely, traditional society, preconditions for take-off, take-off, drive to maturity, and age of high mass-consumption. The final stage was associated with advanced capitalism, which is particularly clear given that he labelled his economic analysis as 'a non-communist manifesto'. Any movement from the traditional stage, and also movement along the evolutionary path, required 'diffusion' (or assistance) in the form of ideas, technology and capital from nations further along the path (Rostow 1990:10). On this basis, the path to progress was clear and economic development was guaranteed though it might be a prolonged process. Specific social characteristics and dynamics were linked to specific stages of economic growth, similar to the broader claims made by classical sociologists (and Parsons) about the distinction between capitalist and non-capitalist societies. Thus Bert Hoselitz (1952), in examining some of Rostow's earlier work, spoke about the path towards full economic development involving increasing shifts to relationships characterised by universalism, functional specificity and achieved status, and away from particularism, functional diffusion and ascribed status.

Several features run through all modernisation theory. The unit of analysis tends to be the nation-state in isolation, and detached from the universal system of capitalism. This means that if a particular nation is undeveloped, then the causes for this are largely internal to that nation and not located in the relationship between notably developed and undeveloped nations. This also means that the relationship between these two sets of nations, when they interact, is marked by harmony and cooperation rather than domination and conflict. As well, the emphasis is on economic growth as a signifier of progress rather than on broad-based development

involving equity. It becomes clear that modernisation theory argues for, and legitimises, big 'd' interventions in developing nations.

In this context, Crewe and Harrison (1998) argue that the stages and dualisms, as formulated by Rostow and sociologists such as Parsons, constitute a Eurocentric view of examining development, as the ideal state of development is advanced capitalism. They also note how this relates to big 'd' development:

Whichever political theory accompanies it, evolutionism [based on modernisation] has rhetorically justified intervention in 'backward' countries since European colonisation (and, of course, other previous or concurrent forms of imperialism), through the presupposition that the influence of more advanced outsiders will enable traditional societies to catch up with them (Crewe and Harrison 1998:28).

Gore (2000: 2) likewise highlights the implication of categorising particular countries as undeveloped or even developing, as these countries become a development problem and the target of "international practice" under the umbrella of the international development system.

Modernisation theory does not discriminate between different forms of capitalism in that its general claims about the existence of advanced capitalism are applicable irrespective of the dominant form prevailing. For instance, the time in which Parsons and Rostow were writing, Keynesian thinking and practices based on arguments for social democracy were readily apparent in advanced capitalist societies but, since then, neoliberal discourses and economic practices have flourished. In this regard, Crewe and Harrison (1998:27) argue that "[n]eo-liberal evolutionism can be traced from current manifestations of modernisation theory".

Neo-liberalism restructuring of the global political economy arose from the 1970s to soon become the basis, as well, of a new development orthodoxy. A constellation of factors is behind its rise, including deepening contradictions within Keynesianism, the debt crisis of the 1970s and growing political conservatism within advanced capitalism. In characterising neo-liberalism, Colclough (1991:7) argues (quite generally) that "[i]f there were to be a single statement which symbolised the fundamental message of neo-liberalism, it would be this: in settling matters of resource allocation, imperfect markets are better than imperfect states". Overall, neoliberalism entails not state de-regulation but state re-regulation of the economy. Neoliberalism highlights the positive role of the market mechanism for economic growth (and development more broadly) and argues against unnecessary and obstructive interventions by the state in the market; rather, the state should simply establish the necessary conditions to

facilitate the smooth functioning of market dynamics (Thorsen 2009, Plehwe 2009). For neoliberalism, “the central objective, economic growth, is to be achieved through deregulation, liberalisation and privatisation, which are to roll back government and reduce market-distorting interventions” (Pieterse 2010: 7).

In terms of the depiction of neoliberalism by Harvey (2005:2), the state intervenes in order to create efficient markets but, once that is achieved, the state should withdraw as “[t]he state cannot possibly possess enough information to second-guess market signals (prices) and because powerful interest groups will inevitably distort and bias state interventions (particularly in democracies) for their own benefit”. Of course, Harvey disputes that neoliberalism in any way inhibits the existence of powerful interest groups controlling the state. At the same time, though individual freedoms and rights seem to be of great significance to neo-liberalism (including strong private property rights), its relationship to political liberalism is not unproblematic (Plehwe 2009: 2-3). Historically, neoliberal restructuring has been associated with a number of authoritarian regimes (such as in Latin America) such that neo-liberalism in its economic form (*laissez-faire* economics) is marked by spatial and historical variations in its political form(s) (Blomgren 1997).

Neoliberal restructuring has led to revisions in development cooperation globally (or big ‘d’ development), as exemplified in the Washington Consensus from 1989. This consensus involved ten economic policy prescriptions which were meant to constitute a reform package for developing countries facing economic crises. As per the arguments of modernisation theory, these crises were not posited as caused in any way by the international political economy. Indeed, the multilateral agencies central to the global architecture, notably the World Bank and International Monetary Fund, spearheaded the reform package. This package, which in effect existed prior to 1989 (as embodied in structural adjustment programmes during the 1980s) (Gore 2000) included fiscal policy discipline, the minimising of state subsidies for social services (as these were seen as unproductive investments), trade liberalisation, promoting direct foreign investment, privatisation of state enterprises, and legally-protected and clearly-defined property rights (Palley 2005).

Of critical importance for this thesis are the neoliberal emphases on stable property rights (including with regard to land) and privileging the market mechanism (such as land markets). In the case of property rights, and with reference to the claims by foremost neoliberal thinker Hernando de Soto about the crucial significance of these rights, Symoniak (2010: 16) argues that

Well defined private property rights have six effects: fixing the economic potential of assets, integrating dispersed information into one system, making individuals accountable to their commitments, making assets fungible, networking individuals, and protecting transactions. Simply stated, property rights allow for the drafting of binding contracts and the transfer of property from one party to another.

Of course, the transfer of property such as land entails ensuring unhindered and vibrant (land and other) markets. Williamson (2004:11), in a lecture in the series “Practitioners of Development” delivered at a World Bank conference in January 2004, highlighted the importance of de Soto’s thesis on property rights, and argued that secure individual property rights are key to poverty alleviation, increased government revenue through taxation, and increased access to credit.

However, because of the glaring negative consequences of neoliberal packages subsequent to early structural adjustment programmes, economic reforms were softened or humanised in trying to ensure, in the main unsuccessfully, greater social protection for populations mired in poverty. A political reform package was also put forward based on the notion of ‘good governance’, including political transparency and accountability for states in developing nations and respect for civil liberties and liberal democratic principles more broadly. At least officially, development cooperation with developing nations became conditional on adhering to good governance. This involved a kind of ‘post-Washington Consensus’ based on the recognition that markets alone were insufficient for ensuring a reduction in socio-economic inequality and, because of this, a more pronounced role for the state in facilitating redistribution was required Stiglitz (n.d.). But, in general, the current phase of neoliberal globalisation is seen as a force for good from a modernisation perspective. One of the most high-profile critics of globalisation (Joseph Stiglitz) argues though (and quite rightly) that the one of the key challenges within the current practices of globalisation is the ongoing mistaken commitment to market fundamentalism (Stiglitz 2002).

2.2.1.2 Marxism and its Critique of Modernisation

Starting in the 1950s, the popularity of modernisation theory began to decline in part due to the lack of economic progress which the theory had predicted (Pieterse 2010). It became increasingly challenged by a range of Marxist-influenced theories (Chilcote 1974, Mignolo 1995) including dependency, underdevelopment and world-systems theory, with important theorisation being undertaken by for instance Fernando Henrique Cardoso, André Gunder

Frank and Immanuel Wallerstein. These theorists are highly critical of current globalisation, interpreting it as a form of neo-colonialism, imperialism and empire-building which serves only to under-develop so-called developing nations. Unlike modernisation theory, economic growth in advanced capitalist nations, and the global system emanating from these nations (including the international development system), is seen as having a causal effect in inhibiting economic development in these nations. Santos (1971: 226) for example defines dependency as “a historical condition that shapes a certain structure of the world economy such that it favors some countries to the detriment of others, and limits the development possibilities of the subordinate economies”. Hence, universalisation through diffusion from advanced capitalism perpetuates the ongoing subordination of ‘developing’ nations. This means that, globally, development and underdevelopment coexist simultaneously in historical time and are mutually reinforcing, so that the assumption that there are linear stages to follow (with ‘developing’ nations simply needing to catch up to developed nations) for development to take place is mistaken. Though some form of dependent endogenous development (Cardoso and Faletto 1979) was seen as possible, calls for de-linking from the global capitalist economic order were also forthcoming.

At least in the English-speaking world, André (1969) is undoubtedly regarded as one of the main founders of the notion of underdevelopment (with his formulation of the ‘development of underdevelopment’), which influenced both dependency and world systems theory (Kay 2011). I simply provide an overview of his general claim, namely, that he “did not accept the possibility of capitalist development in the peripheries and advocated that nothing short of socialist revolutionary change could overcome economic underdevelopment” (Fischer 2015: 707).

In criticising the claims of diffusion (of capital, institutions and values) of modernisation theory and the latter’s emphasis on establishing apparently mutually-beneficial economic and other linkages across nations internationally, Frank spoke about the existence of the metropole and the periphery: on the one hand, the former colonisers and advanced capitalist nations and, on the other hand, the former colonised and now developing nations. The post-colonial relationship and linkages between the metropole and periphery are based on economic domination and exploitation (including the extraction of cheap raw materials from developing nations and unequal exchange of commodities between the metropole and satellite) and this marked a continuation of colonial conditions. The presence of ‘the external’ (broadly the global) in the political economy of developing nations hence becomes critical to understanding

underdevelopment. In undergoing processes of underdevelopment over centuries, there was no grounds for claiming that so-called developing nations shared the same economic and political history as developed nations (which were once undeveloped but never underdeveloped); and hence not all nations would ultimately move along the same path, or climb the same ladder, to development through pre-defined stages.

Other Marxists, including Laclau (1971) raised criticisms of Frank's specific claims. Perhaps the most telling was the fact that Frank conceptualised domination in almost exclusively national terms, as if one homogenous metropole nation exploits a homogenous satellite nation. Additionally, and related to this, he overemphasises external relations as if these were the only determinants of conditions of underdevelopment. For a Marxist, this is problematic as it leads to a failure to consider class relationships and inequalities (including within both metropole and satellite) and the ways in which dominant classes in both benefit from the metropole-satellite linkages. This also means that internal dynamics within satellite nations would be of some significance in understanding underdevelopment, with these dynamics also influencing metropole-satellite linkages. Because of this, the satellite is not simply an object of external forces but an agent of some importance. In the end, Kay (2011: 530) argues, in relation to debates around the work of Frank: "The dispute was more a matter of emphasis as both sides agreed that there is (for some a dialectical) relationship between the internal and external factors".

Admittedly, Frank's work varies across time, including a later critique of what he deemed Eurocentric interpretations of the world-system (with such interpretations implying that all global developments historically are reducible to how Europe acted on the world). Thus Frank (1998), in his more recent book called *ReOrient*, sought to address some of the criticisms of his earlier work and to analyse more contemporary global developments, most notably the so-called East Asian economic miracles. In this work, he focused on capital accumulation, the core-periphery structures, issues of hegemony as well as political-economic cycles. In particular, the world hegemony of advanced capitalism needs itself to be understood and not taken as a given, and understood as a particular historical stage in world history. This means not reading world history from the current centre (of advanced capitalism), but having a more global and much deeper (less Eurocentric) historical perspective of the existence of world-systems.

In this sense, the rise of Europe is more of a reflection of the fall of an Asia empire (Frank 1998: 318) than the rise of Europe because of its own internal dynamics and its colonial

ventures. As Frank (1998: 4) argues, “Europe did not pull itself up by its own economic bootstraps, and certainly not thanks to any kind of European ‘exceptionalism’ of rationality, institutions, entrepreneurship, technology, geniality, in a word-of race”. Under-development in the context of world capitalism becomes simply the latest period in a long history of underdevelopment in the changing world-system. At the same time, under capitalism, any chances of delinking from the world-system and pursuing some kind of autonomous endogenous development at nation-state level, as Frank imagined previously, is not feasible at all.

Again, like his earlier work, Frank’s *ReOrient* has been subject to criticism (Arrighi 1999). One key criticism is that Frank, according to Arrighi (1999: 340), does to Europe’s rise what he did earlier to the satellite’s underdevelopment, by overplaying external forces and downplaying internal dynamics:

The commendable premise [of Frank] is that the world economy/system has properties of its own – properties that act as a constraining and disposing force on the components of the totality ... and that cannot be inferred from the properties of the components. This commendable premise, however, invariably turns into the conclusion that the properties of the components deserve no attention because they can be derived from the properties of the global whole.

To emphasise, it becomes critical not to see the components (such as the internal dynamics of a satellite nation) as reducible to the external/global or as a mere object of global forces.

While Frank is associated with the underdevelopment school, Henrique Cardoso is seen more within the dependency school. Cardoso, using a pronounced class analysis compared to Frank, argued that exploitation and domination at the global level (between metropolitan and satellite) was also replicated within satellite nations. And class and other social struggles within satellite nations played some role in the formation of prevailing metropole-satellite relationships and the effects of global forces (including investment and trade) on these nations. In this way, Cardoso was concerned with not only structural relationships but also the fluidity of specific conjunctures. Thus internal political processes are often in part responsible for outcomes that are favourable to “foreign actors in the process of development” such that underdevelopment becomes perpetuated by “dominant local classes and international ones” (Cardoso and Faletto 1969: xvi). The local dominant classes would include landed oligarchies and large-scale landowners (Cardoso and Faletto 1979: 153).

Finally, there is world-systems theory as articulated by Immanuel Wallerstein (Wallerstein 1980) which, in many ways, is similar to underdevelopment and dependency theory (Chirot and Hall 1982). Overall, Wallerstein focused on five key issues: how the capitalist world economy functions, how and why it originated, the relationship between the capitalist world economy and non-capitalist structures, comparatively studying various modes of production and the transition to socialism (Goldfrank 2000). In terms of world-systems, Wallerstein distinguishes between world empires (with a common political system) and world economies (without such a system). World economies tend to be unstable and may emerge as world empires once one nation or group of nations becomes predominant and overbearing (or hegemonic). The most recent world economy is capitalist, or the “European world-economy” which is “larger than any juridical-defined political unit” (Wallerstein 1974: 15).

The development of the capitalist world-economy led to the emergence of the ‘core’ characterised by well-developed towns, advanced manufacturing, technologically-sound agriculture, skilled labour and high investment. But this ‘core’ needed to have peripheries, which were the source of primary goods needed for manufacturing and effectively became areas from which to extract surplus. This entailed a capitalist world-system marked by uneven development between core and satellite/periphery which, for Wallerstein (1974), is intrinsic to – or is a necessary feature of – capitalist development. He goes on, however, to speak of the semi-periphery consisting of nations exhibiting economic characteristics between the core and periphery.

Overall, underdevelopment, dependency and world-systems theories have been criticised for focusing primarily on commodity market relations (and unequal exchange) between core and peripheries and for failing to offer a more rigorous investigation of capitalist production and capital accumulation based on class analysis. As Brenner (1977: 27) argues:

The method of an entire line of writers in the Marxist tradition has led them to displace class relations from the center of their analyses of economic development and underdevelopment. ...[T]hey fail to take into account either the way in which class structures, once established, will in fact determine the course of economic development or underdevelopment over an entire epoch, or the way in which these class structures themselves emerge: as the outcome of class struggles whose results are incomprehensible in terms merely of market forces.

The main point is that class analysis brings to the fore the importance of examining relationships of domination (economic and political) within peripheral nations (and indeed

within core nations). For these theories, the role of external forces is undoubtedly given prime importance, including multinational corporations and global commodity markets (Skocpol 1977, Chase-Dunn and Grimes 1995). Often, though, local (class and state) elites in peripheral nations are seen as providing the link between international capital and peripheral nations, with these elites benefiting as well. The notion of underdevelopment (and dependency) implies a situation in which resources in a satellite nation are being utilised but primarily to the benefit of external forces and local dominant classes; while un-development exists when resources are not being utilised at all or insufficiently. In prioritising underdevelopment analytically, Marxists by implication make it clear that the relationship between the dominant and dominated nation-states within the international development cooperation system (within big ‘d’ development) has a strong tendency to reinforce and intensify the small ‘d’ uneven development of world capitalism.

Of course, modernisation theorists would dispute all this, perhaps even pointing to high economic growth rates in peripheral nations since the 1950s (Bairoch 1977). However, it seems indisputable that the ‘peripherality’ (Fischer 2015) still prevails today and perhaps even more so with the rise, development and consolidation of neoliberalism globally (and subsequent to many of the main writings of Frank, Cardoso and Wallerstein). Fischer (2015: 704) thus argues that there is need to do away with “exaggerated assessments of global levelling and power equalisation, most typically framed in terms of the decline of US (and, more broadly, Northern) power versus the rise of China and Asia more generally”. The political hierarchies and economic inequalities within peripheral nations also remain deeply troubling.

2.2.2 Big ‘D’ Development and Post-Developmentalism

The previous section discussed theories about small ‘d’ development (or immanent development), though it was made clear that such theories have implications for analysing big ‘d’ development. This section focuses more specifically on theories about big ‘d’ development (that is, intentional development) and, in particular, post-developmentalism as an analytical framework. The criticisms levelled against big ‘d’ development (i.e. the international development system) by post-developmentalism are connected to the problems raised by Marxist-leaning scholars about this system. Post-developmental theory, in the end, rejects both the goals and strategies of intentional development and it does so through discursive analysis. As argued by Escobar (1992: 25-26), one of the leading post-developmental theorists:

This view of development (post development) as discourse is certainly different from analyses carried out from the perspective of political economy, modernisation, or even "alternative development." Such analyses have generated proposals to modify the current regime of development: ways to improve upon this or that aspect, revised theories or conceptualisations, even its redeployment within a new rationality (for instance, socialist, anti-imperialist, or ecological) ... The critiques of development by dependency theorists, for instance, still functioned within the same discursive space of development, even if seeking to attach it to a different international and class rationality.

Though Escobar (and other like-minded theorists) do, as seen in this quotation, offer criticisms of dependency and other Marxist-style theories (Escobar 1992), I focus primarily on the post-developmental critique of the existing international development system as embodied in the capitalist world order. In fact, despite concerns about the existence of grand theories (including Marxism) and the need to de-centre sociological analyses more broadly, post-developmentalism is quite often sympathetic to the political economy analysis (of Marxism) of both big and small 'd' development, but it focuses more on cultural and linguistic examinations of development (Blunt and Wills 2000).

Development as an intentional 'project' is commonly understood to have started post World War II in the 1940s (Cowen and Shenton 1995: 29). At the end of the Second World War, and into the 1950s and 1960s, there was general optimism that 'development' as a function of planned human interventions would work (Leys 1996), buoyed as it was analytically by modernisation theory. Though underdevelopment, dependency and world-systems theories soon emerged as the main frameworks countering modernisation theory and offering scathing criticisms of big 'd' development in the process, other critical theories also came to light and drew upon post-modernist, post-structuralist, and post-colonial thinking (Rattansi 2006, Ashcroft et al. 1995, Radcliffe 1999). These critical theories about intentional development came to be labelled as post-developmentalism.

The theoretical roots of post-developmentalism are diverse, but undoubtedly the work of Edward Said (Said 1978) is generally recognised as crucial. In *Orientalism*, Said shows how the Occident discursively constructs the Orient (as uncivilised, unmodern and steeped in tradition) as a form of self-serving knowledge and thus in a manner which justifies the intervention of the Occident in the affairs of the Orient: unable to become civilised through its own efforts, the Orient is almost crying out to the Occident as its saviour. Hence, a discursive representation of the Orient (based on a particular knowledge-set) leads to political and

economic subordination of the Orient. As Foucault (1979: 27) argued: “Power and knowledge directly imply one another ... there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations”. Orientalism, as a discursive portrayal of ‘the other’ became a “grid for filtering ideas and practices” to ensure the continued “positional superiority of the West” (Kandiyoti 2002: 282).

Drawing from the thoughts of Said, it can be posited that underpinning the practices of intentional development are discursive representations (for instance, of the African continent) and even analytical perspectives (such as modernisation theory) which legitimise such practices, with these practices being detrimental to developing nations. As Ferguson (1994: xiii) argues within a post-developmental framework: “‘Development’ is the name not only for a value, but also for a dominant problematic or interpretative grid through which the impoverished regions of the world are known to us”. This interpretative grid underpinning the international developmental system externalises the systemic problems within the system by internalising them within developing nations (Escobar 1995, Crewe and Harrison 1998). It is a grid used by, and for, developed nations which identifies and locates spatially ‘the problem’ of development within developing nations and thus de-historicises the roots of developmental problems (Sadar 1999).

Advanced capitalist nations, and the multilateral financial institutions and development agencies lodged within them, are thus able to see themselves and present themselves to others as the solution to these problems. Post-developmentalism hence views the prevailing development discourse as a basis for perpetuating Eurocentric and neo-colonial ideas and ultimately global power relations as well (Sharp and Briggs 2006, Ziai 2015, Darby 1997). This is highlighted by Alcoff (1991:26) in arguing that “though the speaker may be materially trying to improve the situation of some lesser-privileged group, the effects of their discourse is to reinforce racist, imperialist conceptions and perhaps also to further silence the lesser-privileged group’s only ability to speak and be heard”. Insofar as other, alternative, discourses are silenced, then the existing big ‘d’ development project becomes an imposition; but, insofar as the predominant development discourse becomes internalised and accepted more broadly, then a kind of consensus-based hegemony prevails and even within ‘developing’ nations. Often though, developing nations have no option but to comply, as under structural adjustment programmes.

Of course, post-developmentalism – in highlighting the existence of a politics of representation – seeks to destabilise the dominant or hegemonic discourses (or narratives). As Ziai (2015:8) notes: “The first and maybe most fundamental achievement of discourse analysis in development studies ... is the insight that the categories and strategies of ‘development’ imply a certain perspective which is contingent – in contrast to being the natural and normal way of seeing things”. In other words, the development narrative naturalises (for instance) the existence of un-development, when in fact it emerged through convoluted social and historical processes. With the developing nations being seen as the problem (or ailing), they therefore require treatment, with this treatment being in large part technicist and entailing neutral, professional, expert-derived scientific truths devoid supposedly of any political connotations (Escobar 1995: 157). As Crewe and Harrison (1998:30) put it: “‘Locals’ are problematised, portrayed as deficient in various ways, and this deficiency is referred to when legitimising the intervention of expatriates. Locals are seen as lacking in skills, corrupt, uneducated, or tradition-bound”.

This all becomes axiomatic such that big ‘d’ development amounts to a complex combination of material institutions and practices but also discourses which define, represent and theorise ‘development’ (Guha 1982), and in a way consistent with the modernisation model of linear development (Naz 2006). As Escobar (1992:24-25) argues:

Once consolidated, this [discursive] system determined what could be said, thought, imagined; in short, it defined a perceptual domain, the space of development. ... [D]evelopment is about paving the way for the achievement of those conditions that characterise rich societies: industrialisation, agricultural modernisation, and urbanisation.

Development, and the discourse inherent within it, becomes embedded in the systems and methodologies of the international development architecture (Escobar 2001).

Post-developmental theory is not without criticisms, particularly from the radical political economy approach of Marxism which claims that post-developmentalism fails to root its discourse analysis firmly within the political and economic conditions which give rise to the discourse in the first place, or fails to acknowledge that the crucial problem with the development system is not the discourse itself but capitalism per se as a political and economic system (Peet and Hartwick 1999, Kiely 1999). Ziai (2015) though argues that discourse analysis in fact focuses on the materiality of the development discourse as the latter is seen as institutionalised within power-infused structures, processes and mechanisms constituting the

international development system. This seems to be a valid defense of post-developmentalism as it is certainly evident in the work of for instance Ferguson (1994), with his examination of the development discourses of the World Bank with reference to Lesotho and the kinds of development interventions pursued in practice based on the discursive framing of Lesotho as a rural subsistence economy rather than one heavily dependent upon the regional migrant labour system.

A second criticism often raised is that there is no recognition of diversity and variation within development discourse such that it is flattened and made homogenous (Gardner and Lewis 1996, Lehmann 1997). This is said to lead to essentialist forms of argumentation by post-developmental theorists, as if all discourse emanating from within the development system is necessarily and inherently infused with a particular rendering of developing nations as un-modern (Kiely 1999). Moore (1995) argues as well that development discourse is time-bound such that the values ingrained in it vary across time, with notions of equity, democracy and sustainability not present in earlier development discourses. In this respect, it may be necessary to speak of discursive formations to reflect the fluidity of discourse construction and revision. In this sense, it may be argued as well that the current development discourse has become explicitly politicised in recent years because of the emphasis on human rights and good governance, without necessarily implying though that this entails a proper understanding of the politics of poverty and development (particularly when for example good governance is reduced simply to bringing about fully-functioning bureaucratic systems and procedures based on sound principles of accountability) (Ziai 2015).

2.3 State Policy-Formation Processes

This chapter, so far, has engaged with development theories pertaining to both small and big 'd' development. Undoubtedly, modernisation theory continues to influence international development discourses and practices and, in their own way, both Marxist and post-developmental theories offer useful criticisms of modernisation theory and the international development system. In this context, I now consider the question of policy processes at nation-state level within developing nations when it comes to big 'd' intentional development. This is important to the thesis in that government land policy in Kenya is examined.

Countries in Africa, such as Kenya, are deeply integrated into the global capitalist political economy and the international development system in a dependent (or neo-colonial) fashion and this raises critical questions about nation-state sovereignty in peripheral capitalism

(Mosse 2005). More specifically, because of economic and political dependence, national policy formation processes in peripheral capitalist states like Kenya are subject to global interests, forces and influences (Sulbrandt 2000). As Pieterse (2010:5) for example argues: “As part of accelerated globalisation, neoliberal policies impose neoclassical economics on the south, applying western standards of policy and systems of accounting to align economics and financial credit regimes”. This is in line with modernisation theory and modernising discourses emanating from advanced capitalism and international financial institutions. In this context, Girvan (2007:19) argues that the World Bank’s system of knowledge production and dissemination (and the very content of that knowledge) serves particular global interests.

All this significantly inhibits the autonomy of nation-states in Africa and elsewhere with regard to their own local social, political and economic spaces, though the extent and form of this challenge to national autonomy is subject to considerable debate (Scholte 1997, Doombos 1990, Jones 2000). The Economic Commission for Africa (ECA) speaks about the gradual loss of sovereignty for African nation-states due to (for example) the increasing influence of multilateral financial institutions and donor agencies on policy design, implementation and monitoring (ECA 1989). Under neoliberal conditions, the policy emphasis is on deregulation and privatisation, and marketisation of state activity (Williamson 1994). This shapes not only what is present in national policies but also what is absent from them. For instance, in the case of land questions, certain options and possibilities are taken “virtually off the [policy] agenda” (Stallings 2001: 27) in the face of global neo-liberal pressures, such as land expropriation without compensation. Redistributive land reform, as Borrás et al. (2009) highlight, becomes synonymous with market-led reforms and the protection or consolidation of privately-held land rights.

Any state policy process, as Mooij (2003) highlights, involves policy formulation and policy implementation dimensions and these take place within a specific social, political and historical context and involve a complex and fluid array of institutional arrangements, along with competing and complementary interests and ideas (John 1998) which often fall outside the formal parameters of the state. Institutions, ideas and interests also affect the very coming into existence of an issue (such as land reform) considered worthy of being placed on the policy agenda, and the manner in which the issue is placed on the agenda; and they affect the policy formation, implementation, outcome and evaluation dimensions throughout the entire process.

The work of developmental specialist Mosse (Mosse 2004) is of some significance, as he identifies two dominant approaches pervading the policy analysis field. On the one hand,

some scholars view policy formation in an instrumental way (the rational model); on the other hand, others (who argue in a way consistent with post-developmental thinking) view policy as a rationalising discourse involved in the politics of legitimisation. Mosse (2004:641) puts it as follows:

There is an instrumental view of policy as rational problem solving – directly shaping the way in which development is done. ... [And] there is a critical view that sees policy as a rationalising discourse concealing hidden purposes of bureaucratic power or dominance, in which the true political intent of development is hidden behind a cloak of rational planning.

In pursuing the second view, Mosse (2004) seeks to revisit the relationship between policy formation and implementation.

The rational model posits that policy is driven by expert knowledge with policy first formulated and then implemented, whether in a linear fashion or in a more convoluted manner. The linear model was an early attempt to understand the policy formation process (Lasswell 1951). It sees the policy process as a rational and technical process sequentially following clearly delineated stages in an almost unproblematic fashion (Lasswell 1956, Brewer and de Leon 1983). The stages are often said to be agenda-setting, policy formulation, implementation and evaluation. This approach was dominant throughout the 1970s and the 1980s (deLeon 1999:23). Revisions of it recognise that the move from policy formation (and the policy itself) to policy implementation is a very difficult – and often non-linear – process marked by steps backwards and sideways, with failures in implementation often being attributed to issues such as bureaucratic inertia, lack of political will and political interference.

The rational model has been criticised for a range of reasons. For instance, in so far as set stages in the policy process can be theorised about (and this is subject to dispute), their demarcation is blurred in practice (Sabatier 2007, Neilson 2001). Mosse (2004) raises a more fundamental criticism. He argues that the policy process appears publicly as an open and transparent process involving a rational and logical procession from formulation to implementation, when in fact – according to Mosse – this public image (i.e. the way in which the policy process presents itself) goes contrary to the machinations which take place behind closed doors so to speak and in fact masks such machinations. The actual policy process cannot be read from the rational (technicist) model, whether linear or non-linear. In the end, this model legitimises what in practice is a very fraught and politicised policy process.

In this light, alternative analytical frameworks exist which seek to bring to the fore questions around the politics of policy-making, including the role of a multiplicity of agents in the policy process (or ‘policy communities’), such as issue networks (or policy activists well-informed about a particular issue), epistemic communities (such as networks of professionals) and advocacy coalitions (Asthana 2009). In this way, the policy process is understood as both a focus of struggle as well as a site of struggle which regularly incorporates non-state agents (or civil society). The politics and legitimisation approach for instance, as advocated by Mosse (2004), views power relations as underpinning the entire policy process, with expert knowledge used conveniently when there are contestations and negotiations around policy issues. In the context of agenda setting (that is, the ways in which issues become or do not become subject to policy discussions), power relations are also crucial, so that it is not unusual for issues or particular positions on issues which threaten the status quo to be excluded from the policy arena. The form of power throughout the policy process may be simply ‘soft power’, which “relies on co-opting others by shaping their preferences and is associated with resources such as attractive and enviable culture, values, ideas, and institutions” (Buse et al. 2005:22).

Multilateral and bilateral aid agencies may shape and influence policies in a variety of ways including budget support, technical assistance programmes and directly funding a range of national policy processes. In fact, a significant amount of research on policy processes in developing nations is donor initiated or sponsored (Keijzer et al. 2011) and sometimes it is conducted by research institutions or consultants with strategic links to aid agencies (Ish-Shalom 2006). This includes policy research being produced by the Institute of Development Studies (IDS, Sussex) and the Overseas Development Institute (ODI, London) which is mostly funded by the British Government’s Department for International Development.

Mosse (2004) brings to the fore the importance of discursive interventions within the policy process, and his concern is specifically with such interventions by multilateral and bilateral development agencies. Of particular significance here though are donor policy-texts which involve, on a regular basis, discursive representations around the challenges existing in developing nations, including with regard to land, democracy and development. These discursive representations often suppress or conceal the politicised character of the challenges and present them in ahistorical ways (Apthorpe 1996, 1997, Gasper 1996). They also affirm the importance of scientific knowledge and hence put forward a technicist optimism in resolving the challenges (Booth 1994, Chambers 1997, Sachs 1992). Overall, there is often an

ideological construction of land problems for instance, and the valorising of specific types of expertise in resolving such problems (Ferguson 1994, Mitchell 2002).

The significance of knowledge and the ways in which it is literally deployed during the policy process (and notably so-called expert knowledge) is crucial, particularly given the heightened use of policy advisors and the acknowledged linkages between knowledge and power, or knowledge as power (Casey 2011). The existence of such advisory functions certainly provides an opportunity for donors to exercise power in policy processes through knowledge. Girvan (2007:16) argues that expert knowledge depicted as of global significance has ideological ramifications as it conditions how state decision-makers identify and solve problems by policies: “This is why neo-liberal policies are often followed even when direct institutional influences are absent, or when empirical evidence points to the contrary”.

Girvan (2007) goes on to argue that this hegemony of expert international knowledge (involving policy narratives) infiltrates the entire international development system including donor staff in developing nations, as these staff members lack “an alternative frame of reference”, and “many become prisoners of their training and unconscious purveyors of an ideology the purpose of which is to privilege particular interests at the expense of others” (Girvan 2007: 16). Apthorpe (1996) reiterates this by claiming that the discursive framing which characterises specifically development policies falsely gives the impression that these policies are necessarily based on professional, scientific and rational undertakings when in fact they are the outcome of power struggles. Girvan (2007:11), in relation to bilateral donor agencies, offers some insight into how this works:

Bilateral arrangements can enhance the opportunity for exercising leverage over national policy-making. Donor priorities are supported and other areas, by implication, are discouraged. Donors do not actually tell recipients what to submit. They provide signals to recipients by indicating donor policies and priorities, and by providing assistance for technical studies in their preferred areas. Recipients read the signals and act accordingly.

These policy narratives emanating from donor agencies become almost pre-packaged, as they come with an assumed definition of the development problem, an explanation of how the problem came about and what needs to be done to solve the problem. In supposedly being based on neutral scientific knowledge, narratives are self-referential and self-justifying though, as Knots (2006) highlights, these narratives overly simplify very complex development challenges. Campbell (2002) speaks of these as cognitive paradigms or taken-for granted depictions and analyses which, like policy narratives, provide the cause and effect (i.e. this

problem, therefore this solution), consequently restricting the options which are perceived to be possible or within the realm of logical reasoning (Krznaric 2007, Rao and Woolcock 2007).

These are many examples of narratives which justify development policies which seem to be self-perpetuating because, in the end, such policies do not even have significant positive development outcomes based on empirical evidence. Of course, they are not strictly self-perpetuating as the entire international development architecture upholds and reaffirms them over time. Roe (1991) for instance provides the example of the ‘tragedy of the commons’ narrative (propagated by the World Bank, at least in the recent past) which asserts that private land registration and titling will increase agricultural productivity because the land owners can use title deeds as collateral to secure loans for investment purposes. At the same time, customary tenure as supposedly an insecure form of tenure inhibits all of this. Such a narrative (or discourse), which became hegemonic within development circles, is based on a ready-made neo-liberal blueprint solution around land privatisation and markets.

Earlier, I referred to the existence of policy networks and communities of different kinds as intrinsic to the policy process, and which ultimately are a manifestation of underlying power differentials and dynamics. These policy groups are important to consider as, according to Buse (2006), they contribute towards for example agenda setting (why some issues are considered by policy makers), policy formulation (which policy alternatives are considered and on the basis of what evidence) and, of course, which groups are involved in decision-making (either formally or informally) throughout the entire policy process. Insofar as certain issues, alternatives, evidence and groups are involved, other issues (and so forth) and necessarily excluded from the policy process. In effect, a policy network/community is a cluster of actors who seek to influence and establish a policy in one way or another depending on their interests and ideas (Peterson and Bomberg 1999), and it would include actors both within and outside the state (Kingdon 1984). In this sense, there may be competing policy networks.

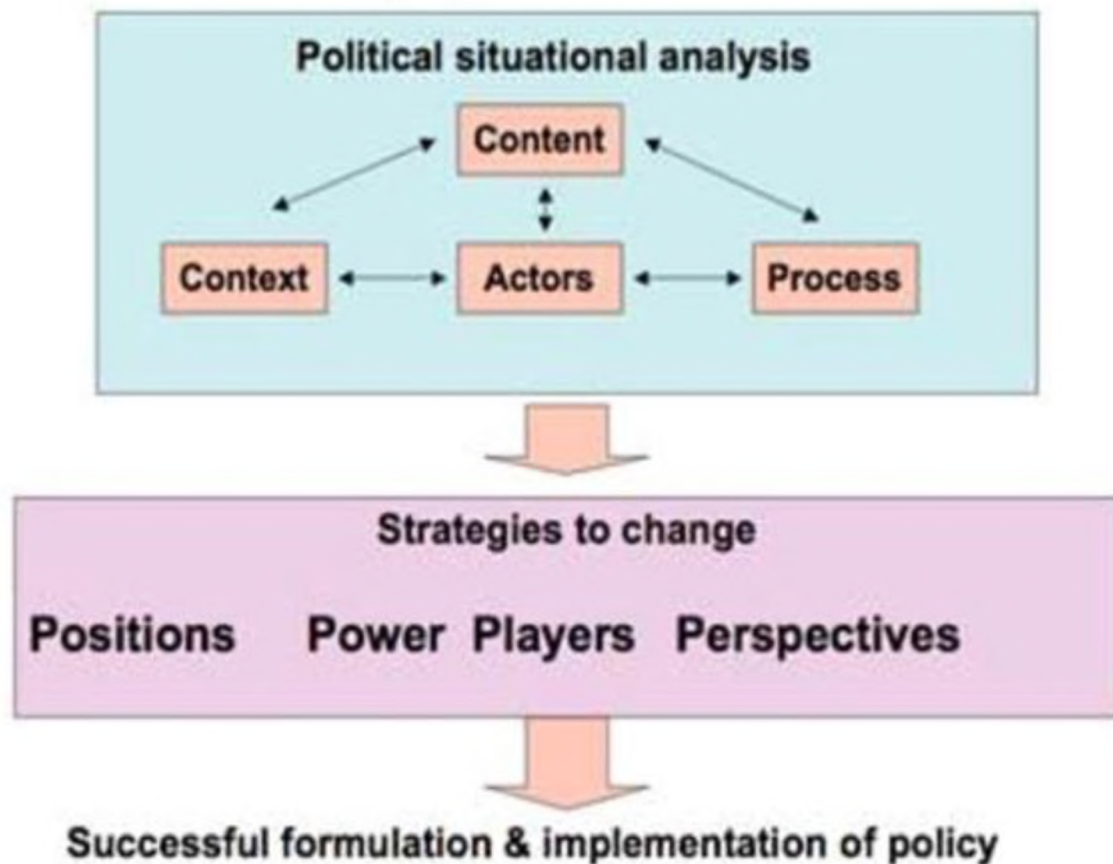
Mendizabal (2006) argues that policy groups play a number of roles, including filtering information and deciding what information is worthy of attention; amplifying particular messages and ideas; providing members with resources, such as technical assistance, in carrying out policy work; and convening gatherings of ‘stakeholders’ with regard to a policy issue. In relation to specifically research networks focused on development policy inputs, the roles might involve “organising conferences and meetings, publishing working papers and policy briefs, and providing mentoring to researchers or key individuals” (Mendizabal 2006: 11). Issue networks also exist around a particular policy (Hecl 1978, Stone 1996) such as land

reform. Of particular significance are epistemic communities, which are “networks of professionals with recognised expertise in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue area” (Haas 1992:3). In terms of legitimising discourses around a policy intervention, these communities are critical in validating certain policy alternatives and undercutting others based purely on their claims to authoritative knowledge. Additionally, there are advocacy coalitions which are lodged primarily within civil society and seek to shape the policy process around for example land reform (Nutley 2007). Recognition of this diverse range of institutional arrangements embodied in the policy process facilitates an understanding of micro-level politics as different groups jockey for position in seeking to set the future policy course, and this likely entails all sorts of conflicts and compromises along the way.

One notable example of an analytical perspective which takes into account the highly politicised character of the policy process is the Policy Engagement Framework (PEF) which was developed by Buse et al. (2008). The PEF is related to the politics and legitimisation paradigm as it seeks to understand the ways in which policy-making is a ‘function’ of internal contestations within the state, competing policy and advocacy communities, and the broader political economy. Policy changes are viewed as a result of the activities of various political stakeholders, the prevailing social context and the actual processes undertaken in policy formulation. The framework seeks to analyse the content (what), the circumstances of formulating policies (why) and the eventual strategies for policy implementation (how).

It also recognises the relevance of policy network (and stakeholder) assets, interests and commitment as well as alliances and compromises forged throughout the policy process. Importantly, though, it brings to the fore the existence of power differentials such that policy processes are marked not just by struggles but by relationships of domination, in which discursive interventions are of some significance. In this context, the policy role of aid agencies and civil society formations can be investigated. This role may involve an advisory function (such as commissioning and making available relevant research), sharing good practices from other social contexts, and the direct involvement of aid agency and civil society personnel in formulating policy. And it may entail particularly assertive interventions such as advocacy and lobbying, including public communications and campaigns, public debates and public meetings but also behind-the-scenes engagement with policy-makers (Start and Hovland 2004). Figure 2.1 below illustrates the PEF.

Figure 2.1: Policy Engagement Framework



Source: Buse et al. (2008: 39).

The PEF first speaks of the *political situational analysis* and this involves four components. The policy *context* refers to the political, economic and social dimensions operating at global, national and sub-national levels. This context can be disaggregated into: structural factors (the broad political economy and power differentials in society); situational factors (including emerging policy issues and changing institutional arrangements with reference to for instance the state administration); and cultural, discursive and symbolic factors (including institutional culture within the development system and state bureaucracies, and authoritative claims about the ideal society). Analysis of the policy *process* focuses on the ways in which policies are initiated, formulated, negotiated, adopted, communicated, implemented and evaluated. Though the PEF, at least schematically, tends to identify the existence of four stages in the policy process (agenda-setting, policy adoption, policy implementation and policy evaluation), the overall process is understood as messy and even chaotic at times.

This is because of the intervening role (or mediating role so to speak) of an array of national and international *actors* lodged between (analytically) ‘context’ and ‘process’, and from within and outside the institutional boundaries of the state. The actors or stakeholders include formal decision-makers and implementing agencies (including parliamentarians and state officials), aid agencies, civil society groups, consultants, business interests, and intended beneficiaries of a particular policy. The result of the complex interplay of context, actors and processes is policy *content*. Overall, the political-situational analysis of policy-making shows that the various factors (content, context, actors and processes) are inter-linked and that they influence each other in a multi-directional way. For instance, a policy – once formulated – may lead to negative reactions from particular actors and, as a result, heightened mobilisation around the policy-issue by these actors. Because of this, policy-making is by no means linear or smooth, and policy content is never complete but may be subject to further contestation and change.

Following on from the political-situational analysis are the *strategies to change* or the strategic ways in which policy changes are pursued, or even the basis on which policy changes are blocked. In the policy process, any changes to existing policy (or continuities in existing policies) involve *strategies* and central to these are positions, power, players and perspectives. *Players* refers to the stakeholders who are involved in a policy-issue. *Power*, very broadly, refers to the ability of various actors to influence political decision-making processes. This can entail ‘tangible assets’ (such as financial resources, personal resources, hierarchical positioning, political support and information) and ‘intangible assets’ (such as legitimacy, expertise in policymaking, trust and knowledge). *Positions* refer to the views of stakeholders on a particular policy. Actual positions on a policy may not be explicitly stated for reasons including being funded by a donor with an opposing view. *Perspectives* refer to the stakeholders’ perceptions of a social problem (including its causes and solutions) and thus this refers to discursive representations of the problem.

It is likely clear that the policy formation process, as articulated in this section, is embedded in diverse networks such as policy, advocacy and epistemic networks. For this reason, I briefly refer to network analysis (Rhodes 2008). Kenis and Schneider (1991:26) explain that network analysis is an acknowledgement that policy-making (as well as implementation) is not the preserve of formal government structures:

The core of this perspective is a decentralised concept of social organisation and governance: society is no longer exclusively controlled by a central intelligence (e.g.

state); rather, controlling devices are dispersed and intelligence is distributed among a multiplicity of action (or ‘processing’) units. The coordination of these action units is no longer the result of ‘central steering’.... but emerges from through the purposeful interactions of individual actors.

This point is important. Though the development theories set forth in this chapter indicate that global dominance and hegemony exists, this does not imply that power is merely centralised and that, therefore, states and civil societies in ‘developing’ nations are devoid of all power. Networks, in this sense, imply some kind and degree of diffusion of power within and across networks (called ‘nodes’ in network analysis) involved in policy-making processes (Provan and Milward 1995).

To emphasise, though, policy-making processes (involving networks) take place within the context of the international development system based on neoliberal restructuring (as discussed earlier), and the reliance of developing nations on multilateral financial institutions such as the World Bank and International Monetary Fund. The discourses of these institutions (based on transnational epistemic communities and policy networks) are crucial to the formation of a policy-issue and actual policies (Randeria 2003), such as in relation to land. Kapur (2006: 6) thus argues that “research is still relatively centralised in the Bretton Woods institutions – and to the extent that ideas shape agendas, centralised control of research is an excellent unobtrusive approach to set the agenda”. These discourses become critical in the context of the conditionalities imposed on developing nations by these global institutions, with the levels and modalities of aid for a particular nation affecting its capacity to engage in policies contrary to neoliberal dictates and prescriptions (Vernengo 2004). International development policies and practices in the era of neoliberal restructuring for example set conditions around democratisation and good governance, and political reforms along these lines are crucial (at least officially) for ongoing acceptance by the World Bank, International Monetary Fund and bilateral agencies (Storm and Rao 2004, Pieterse 2010).

2.4 Conclusion

This chapter has provided the broad theoretical framing for the study of land reform policy processes in Kenya. It examined development in terms of the intrinsic processes of worldwide capitalism as well as with reference to the international development system. In doing so, it offered a critical analysis which goes beyond modernisation theory and is rooted in Marxist and post-developmental theory. Because of the thesis focus on policy-making in Kenya, the

chapter further set forth an analytical framework for investigating and understanding policy processes at nation-state level. Again, a linear model of policy-making (like the linear model of modernisation theory) was subjected to criticism and a framing which recognises the complex and convoluted power-ridden character of policy processes was articulated. In the next chapter, I focus more specifically on the international development system (or big 'd' development) because of the centrality of this system to the main thesis objective focusing on aid agencies and land policy changes in Kenya.

Chapter 3: International Development System

3.1 Introduction

This chapter examines the international development system in practice and, in doing so, draws upon some of the analytical insights brought forward in the preceding theoretical chapter. In a critical vein, the history of the global development system architecture is outlined, as are ongoing controversies about the appropriate methodologies and modalities to maximise development cooperation effectiveness (Gulrajani 2011). This leads to a discussion raised already in part in chapter two, namely, the existence of any policy space for nation-states in ‘developing’ nations given that the development system is marked by significant power differentials. Given that the development system also involves civil society organisations (CSOs), their involvement in development cooperation, and their relationships to both donor agencies and the state, are also detailed. Civil society is a nebulous term with multiple meanings in the academic literature (Comaroff and Comaroff 1999). For the purposes of this thesis, it is used in an organisational sense to refer to (non-membership, donor-funded) non-governmental organisations (NGOs) and membership-based community-based organisations

3.2 Development Cooperation

Terminological confusion exists at times when it comes to understanding the international development system, including terms such as development cooperation, foreign aid, foreign assistance, development aid and development assistance, with these often used interchangeably (Dann 2013). However, Hoebink (2010) argues that development ‘cooperation’ is broader than ‘aid’ as it encompasses not just aid but also trade (such as free trade agreements), investment and even political cooperation. The word ‘cooperation’, with reference to development cooperation, is supposed to express the idea that there is a mutually-negotiated and mutually-beneficial relationship between donor nations and recipient nations, as opposed to an unequal power relationship conveyed often by the term ‘aid’. In this regard, ‘cooperation’ masks the fundamentally hierarchical relationship which exists in the international development system (or the political economy of the system) (Siitonen 1990) and posits the system as an ‘apolitical’ solution to development problems (Dann 2013) along the lines of modernisation theory.

Another key term which has emerged, and which frames the development system in the same manner as cooperation, is ‘partnership’. The 8th Millennium Development Goal (MDG) for example speaks about a global partnership for development. The emphasis on partnership is also part of the *Paris Declaration on Aid Effectiveness* (2005) as well as the *Accra Agenda*

for Action (2008). Bailey et al. (2011) argue that partnership implies a relationship of sharing and trust, while Gutierrez (2008) notes that it conjures up images of a relationship of equality, reciprocity and joint respect and ownership. Other terms highlighted in describing the character of a development partnership include shared responsibility, reciprocal obligation, mutual accountability, balance of power, and joint decision-making. However, as with cooperation, an actually-existing hierarchy of power is not properly articulated in the notion of partnership (Brinkerhoff 2002, Crewe and Harrison 1998, Siitonen 1990, Sachs 2005). This leads Crawford (2003) to conclude that the notion of development partnership is largely rhetorical and that the practices of development go contrary to any genuine partnership, as post-developmental theory would claim. Hence, “the power asymmetries within North-South relations, as expressed through the aid relationship, have not significantly changed, despite the current fad for the language of partnership and national ownership” (Crawford 2003:3). Unless indicated otherwise, I use the notions of cooperation and partnership uncritically in this chapter.

The changing terms used in describing the content of the international development system are exemplified in the history of the Organisation for Economic Co-operation and Development (OECD). In 1960, the OECD created a forum for consultations amongst donors which was called the Development Assistance Group (DAG). The DAG was later renamed the Development Assistance Committee (DAC). This organisation sought to coordinate efforts for development assistance including through the ‘Resolution on the Terms and Conditions of Aid’ adopted by DAC in 1963 and later the ‘Recommendation on Financial Terms and Conditions’ in 1965. These efforts culminated, in 1969, in the definition of particular flows of concessional financial resources as Official Development Aid (ODA). ODA was defined as official financial transactions (of a concessional character) geared towards promoting the economic and social development of developing nations. This definition was later refined in 1972, with the form and content of development cooperation as framed by OECD in large part having three main characteristics: nations suitable for development assistance must be identified according to set criteria, such as a country’s per capita income, which may change over time; any assistance must be conducive to economic development, poverty reduction and improvement of living standards, with political goals pertaining to the promotion of democracy being of less importance (Kenney 2008); and development assistance must consist of grants and concessional loans. In this context, Miller (2012) posits that there is a near universal agreement amongst donors or aid agencies on the OECD conception of development cooperation (see also Alonso and Glennie 2015), without denying variations across time and space.

3.2.1 Trends in Official Development Assistance

Qian (2014: 9) argues that “ODA disbursements increased dramatically from approximately 4.65 billion USD in 1960 to 180 billion USD in 2013”, with the corresponding figure for 1992 already being US\$68 billion. However, it took a tumble to \$55 billion in 1997. The subsequent increases (to \$92 billion in 2004) originally arose from the combined processes of increased demand for debt relief from developing nations and geo-political pressures following the 11 September 2001 attacks (Radelet 2006). Donors pledged, at the July 2005 Group of 8 (G8) meeting of industrialised nations, to continue increasing development aid with the goal for example of tripling aid to sub-Saharan Africa by 2015.

In absolute terms, the USA is the top donor globally providing over US\$19 billion in 2004 for instance. However, as a proportion of donors’ national income, the Nordic countries top the list as bilateral donors. With the exception of Finland, development assistance emanating from Nordic countries (Norway, Finland, Denmark and Sweden) exceeds 0.7 percent of gross domestic income (a target set by the United Nations) and is above the average for OECD members (Selbervik et al. 2005). Using this measure, for 2004, the USA’s contribution of US\$19 billion equates to a mere 0.17 percent of its national income. Furthermore, Swedish development assistance, compared to other EU countries, has been less tied historically to narrow economic and strategic interests (Stoke 1989). Sweden in particular is also regarded as a pioneer in the process of facilitating donor and policy coherence with regard to development cooperation for recipient nations.

3.3 Evolution of Development Cooperation

Kanbur (2003) argues that the modern era of development cooperation and aid emerged after World War II, though evidence shows that this existed previously. Some earlier examples include the passing in 1812 by the USA Congress of the Act for the Relief of the Citizens of Venezuela and, later, the ‘Good Neighbour Policy’ of the Roosevelt administration to provide aid to Latin American countries in the 1930s and 1940s. There was also the Colonial Development Act of 1929 in Britain which encompassed assistance to the colonies to build infrastructure (Little and Clifford 1965). The successive Colonial Development and Welfare acts (of 1940 to 1945 respectively), also in Britain, included support for education, and the 1948 Overseas Resources Development Act led to the setting up of the Colonial Development Corporation.

However, the critical moment in the forming of the current development architecture was soon after the end of World War II, notably the Marshall Plan involving bilateral assistance

to the countries in Europe by the USA. In terms of crystallising multilateral development assistance, the United Nations emerged, as well as – in 1945 – the World Bank and the International Monetary Fund (IMF) (which were set up by way of the Bretton Woods conference held in 1944). At their inception, both the Marshall Plan and World Bank were geared towards the reconstruction of war-torn Europe. In his inaugural address of 1949, USA President Harry Truman highlighted a programme aimed at extending globally the benefits of scientific advances and industrial progress to undeveloped areas of the world, and this gave birth to the Act for International Development of 1950.

Specific country institutions which became part of the architecture of international development cooperation were put in place across Europe and Asia particularly from the 1960s. These developments followed the designation by the UN General Assembly (of 1961) of the 1960s as the (first) United Nations Development Decade. The overall goal of the UN declaration was to encourage member states to deepen efforts to mobilise and sustain support for measures required to accelerate “progress towards self-sustaining growth of the economy of the individual nations and their social advancement so as to attain in each under-developed country a substantial increase in the rate of growth” (General Assembly Resolution 1710 (XVI): United Nations Development Decade: A programme for International Economic Co-operation). In 1961, France became the first country to establish a Ministry for Co-operation for international development. As well, to give further examples, Germany set up the Ministry for Economic Co-operation, Japan established the Overseas Economic Cooperation Fund (OECF), and Sweden formed an Agency for International Assistance which became the Swedish International Development Authority (SIDA) in 1965.

The evolution of development aid during this period can be attributed to a combination of two key factors: geopolitical strategy and socio-economic development discourse. For advanced capitalist nations, the provision of aid throughout the Cold War was designed to retain allies amongst developing nations and thereby inhibit any movement into the communist camp. In addition to this Cold War context, there were discussions about the best route for bringing about economic development and the required forms of development cooperation for this route. At the time, emphasis was placed on the critical role of central planning in stimulating and shaping economic development, as propounded in different ways by Rosenstein-Rodan (1961), Rostow (1960) and Chenery and Bruno (1962), with a subsidiary notion being the necessary stages in economic growth.

Based on a central planning framing, development aid would assist capital accumulation and supplement domestic savings, with the state overseeing allocation, management and investment to counteract any market failures. Consequently, developing nations formulated five-year development plans in what was, effectively, a state developmental period. In terms of the redistribution of wealth internal to developing nations, assumptions were made – at least initially – about this taking place based on the trickledown effect but more targeted development interventions focusing on the poor came to the fore in the 1970s. To this end, the World Bank (in 1972) under the leadership of Robert McNamara reformulated its policy to include ‘redistribution with growth’ so that the basic development needs of the poor could be met. UN agencies including UNICEF also soon recognised the relevance of pro-poor project-type interventions (Martinussen 1997).

More significant changes in development cooperation took place with the rise and consolidation of the political economy of neoliberalisation which, in terms of political changes in advanced capitalist nations, was manifested in the election of Ronald Reagan in the USA and Margaret Thatcher in the United Kingdom. The prime emphasis now became the market mechanism along with a retreat in state intervention in the economy, and this became vividly evident in the case of structural adjustment programmes implemented by the World Bank notably during the 1980s and 1990s. Development assistance now became wholly dependent upon developing nations meeting a range of reform conditionalities attached to assistance packages. These adjustment measures became popularly known as the ‘Washington Consensus’ which reflects the fact that most of the influential multilateral institutions which endorsed these measures are headquartered in Washington (IMF, World Bank, USAID and Inter-American Development Bank). Structural adjustment programmes as initially pursued were subject to significant criticisms by organisations such as UNICEF as well as by Scandinavian donor nations for failing to highlight the importance of poverty reduction and socio-economic redistribution.

In the light of these dissenting voices, adjustment programmes with a so-called human face (seeing development as not simply economic but also social) emerged. This is shown in the World Bank report of 1990 which spoke about the need for growth with equity, investments in human capital (education, health and other social services), and direct targeted assistance to the poor (World Bank 1990). The renewed interest in social development was taking place at the time when environmental considerations was also being taken into consideration in dispensing development assistance, as seen in the 1987 Brandtland report and its focus on

sustainable development. Social development as well ushered in gender concerns including under the approaches of Women in Development (WID) and Gender in Development (GID). In this context, a number of key development conferences have been held in reforming and refining the international development industry.

The period starting in the 1990s to around 2000 can be characterised as the post-Washington Consensus era. The Cold War had effectively ended and there was a general fatigue about aid; hence, critical questions began to emerge about the role and effectiveness of aid. In concrete terms, the development agenda moved to concerns about human development as well as poverty reduction. These concerns are encapsulated in the eight UN Millennium Development Goals adopted in 2000 by world leaders. As well, Poverty Reduction Strategy Papers were introduced by the IMF and the World Bank in 1999 as country-led strategies to reduce poverty in developing countries. The Papers soon became a precondition for countries seeking to access the IMF's Poverty Reduction and Growth Facility and Enhanced Heavily Indebted Poor Countries Initiative as well as the World Bank's International Development Association complementary assistance to the poorest countries.

Discussions and debates on aid and development effectiveness triggered a series of conferences, as outlined below.

3.3.1 Rome, Paris, Accra and Busan Declarations

The first ever High Level Forum on Aid Effectiveness was conducted in Rome in 2003. It was attended by representatives from 28 aid recipient countries as well as over 40 donors (both bilateral and multilateral). The official communique from the conference is known as the Rome Declaration on Harmonisation. The key provisions of the declaration included the need to ensure that donors take into account aid recipient countries' self-defined priorities as well as the timing of aid, when providing aid. As well, and in line with being responsive to recipient country priorities, donors were encouraged to be flexible when it comes to the management of aid programmes. Capacity building of developing countries also had to be stepped up to enable these countries to lead aid and development management at country level.

The Second High Level Forum on Aid Effectiveness, which took place in Paris in 2005, led to a wide-ranging declaration (the Paris Declaration) centred on improving effectiveness of development aid by having donors and recipient countries subscribe to and practice five key principles. The first principle is about ownership which implies that recipient nations should and would exercise effective leadership over their own development policies and strategies as

well as coordinate all development actions. The second is alignment which means that donors would use recipient nations' national development strategies, institutions and procedures as the bases for providing development assistance. The third principle is harmonisation among donor actions to ensure that procedures across donors are simplified and standardised. The fourth is managing resources and improving decision-making to maximise development outcomes, and the last one relates to mutual accountability such that both donors and recipient countries would be accountable for development outcomes including deficiencies in this regard. According to Hayman (2009: 583), the Paris declaration was a landmark in aid coordination initiatives and "in building on negative lessons of the past and in promoting the concept of national ownership". The core dimensions of development 'partnership' are clearly articulated in the declaration.

In a limited way, the Paris declaration no doubt provided a potential basis for recipient nations to insist on better coordinated aid with deepened country ownership. However, the idea of ownership as per the declaration only highlighted the role of government and ignored accountability to civil society. Broader criticisms of the declaration also arose. For instance, Jonathan Glennie – in his speech at the Overseas Development Institute (ODI) in the British House of Commons on 6 July 2011 – argued that the declaration had contributed to reducing the costs of doing business in the international development system but it did not lead to enhanced development impacts; in other words, the overriding emphasis became efficiency and not effectiveness. To this end, the major achievements related to the Paris declaration had been improving procurement and accounting systems amongst donors. This is in line with the thoughts of Odén and Wohlgemuth (2011), who argue that the Paris reforms revolved around technocratic approaches to efficiency to benefit aid management and delivery systems. In doing so, the reforms did not give due diligence to the ways in which power relations and politics are embedded in the global development system.

Chandy (2011) argues further that the Paris commitments are of no practical consequence as they are rarely fulfilled when it comes to international development cooperation methodologies; in this sense, they remain as merely discursive interventions. Easterly (2007) and Aldasoro et al. (2010) claim more specifically that duplication in the provision of aid still persisted subsequent to the declaration while Nunnenkamp et al. (2013) posit that efforts at donor coordination weakened after Paris. In this respect, the OECD (2011; 16) boldly acknowledged that "little progress has been made among donors to implement

common arrangements or procedures and conduct joint missions and analytical works” (OECD 2011:16). This is articulated more fully by Faust and Messner (2007: 1):

The Paris process neglects, and in part even exacerbates, a core problem of DC [development cooperation]: the continuing large number of DC actors engaged in most recipient countries without a strong demand-driven orientation. This unresolved problem has driven – in principle reasonable – coordination and harmonisation processes toward costly bureaucratic patterns of donor-driven planning procedures that hold little promise of sustainable success.

Clearly, in speaking about the absence of a demand-driven logic of development assistance, Faust and Messner (2007) are bringing to the fore the existing centrality of top-down development planning by donors, such that tensions between donor responsibility and recipient ownership remain unresolved. The harmonisation of donor practices in fact may be tantamount to donors ganging up against recipient countries, thus strengthening the power of donors and constraining policy space for recipient nations in formulating development programmes (Booth 2011:5). It may also be the case that the Paris declaration commitments, though meant to reflect a global policy space for donors, is in the main driven by and tied to the OECD-DAC. This is taking place at a time when there is a global change in the donor landscape, with countries such as China, Brazil and India emerging as important donor nations (Glennie 2011).

The Accra Forum held in September 2008 was a follow up to the Paris declaration of 2005, and it sought to assess progress on the declaration commitments (Hayman 2009). Approximately 1,200 people participated in the event coming from governments, civil society and multilateral and bilateral organisations. By 2008, the role of countries such as China and India as donors was more visible, global programmes around AIDS had emerged, and private funding sources such as the Bill and Melinda Gates Foundation now existed. These and other processes brought additional resources and expertise to development cooperation but they also complicated the cooperation architecture for developing countries. The Accra-based assessments, done by the OECD and involving 54 countries (as well as civil society groups), concluded that ownership of development cooperation by recipient governments (and of their own development plans) needed to be prioritised (Knack et al. 2011). Further, recipient governments needed to use participatory approaches in formulating such plans (including engaging with civil society) while donors were expected to support identified development priorities, seek to improve the predictability of aid, and strengthen recipient nations’ systems

for managing and dispersing aid (Hayman 2009). This necessitated more inclusive forms of partnerships involving a multiplicity of actors but, at the same time, somehow ensuring deeper harmonisation and coherence in development cooperation to maximise and document development outcomes. But many of the criticisms made of the Paris declaration also exist in relation to the Accra declaration.

The next conference, the Busan conference, took place in South Korea at the end of 2011 with the overriding objective being to deliberate and agree upon principles of delivering aid to developing countries. Busan was supposed to address some of the criticisms launched against the Paris and Accra initiatives. In this respect, Russo et al. (2013) argue that the Busan outcome changed the way development cooperation and the global aid architecture are conceptualised, by shifting the discussion from aid effectiveness to development effectiveness. Effectively, this implies an acknowledgement that aid is complementary to sources (of non-aid) development financing, including domestically-mobilised resources from the private sector. But it also means that aid per se must be understood in the context of other development processes and interventions, include trade and investment. As OXFAM (2012: 3) argues:

Likewise, some governments and observers, including CSOs [civil society organisations], argued that the scope of the debate needed broadening from aid effectiveness to development effectiveness, in order to capture how different factors are at play in any given country – aid, but also foreign direct investment, trade regulations, debt relief, labour laws, etc. – affected each other and whether they actually fostered progress once taken together. Development effectiveness better reflected the goal of policy coherence for development, which both donors and recipients had been discussing for years.

Busan, which is the last major aid/development conference of relevance to this thesis, has still not resolved several issues. Certainly, the impact of Busan on development architecture still needs to be seen and documented but, even then, the conference did not quantify time-bound and measurable targets and commitments. This task was deferred and passed on to subsequent technical level discussions. Further, Fuchs et al. (2013:22-23) argue that most of the development coordination problems have to do with relationships between donors themselves, and these problems remain. Donors tend to protect their own turf such that coordination has political costs in terms of undercutting the agendas and interests of particular donors (Bigsten and Tengstam 2015), including commercial and strategic agendas in the case of particularly bilateral donors such as USAID linked to states (Fuchs et al. 2013). Because of

this, development cooperation from donors may in many cases continue to be misaligned with the glaring needs of recipient nations.

Clearly, one of the key issues arising from these series of global declarations is donor coordination. The important dimension has been aid fragmentation (Fengler and Kharas 2011) involving the lack of harmonised donor strategies and procedures towards recipient countries (Aldasoro et al. 2010) and all this is complicated by differing donor motivations and interests which lead to competition and duplications (Barry and Boidin 2012). Bourguignon and Platteau (2015a) articulate some of the benefits which accrue to donors from a coordinated donor effort: cost savings (by reducing the transaction costs borne individually around for example negotiations and implementation), and governance benefits which involve the ability to implement development conditionalities better as well as monitoring the use of aid more fully. Improved donor coordination should ultimately enhance the chance that development aid itself will be more effective (Bigsten and Tengstam 2015).

Another key issue which is increasingly apparent from the declarations is the significance placed on civil society in any development cooperation initiatives. For instance, aid agencies (both bilateral and multilateral) came to view civil society groups as watchdogs for overseeing processes of widening democratisation, including good governance, on the part of recipient nation-states. This served to forge and consolidate relationships between aid agencies and civil society organisations. As UNDP (2012: 5) argued:

UNDP, as an intergovernmental organisation, has tended to focus on the supply side of governance: capacities and organisational arrangements in government institutions to deliver public goods and services. Growing attention is now being given to the demand side: capacities of official check-and-balance institutions (elections, political parties, parliaments, judicial systems) and informal social accountability mechanisms (civil society, media, private sector, local communities) that empower and enable citizens individually and collectively to hold state institutions to account.

Already, in the mid-1990s, Ishaman et al. (1995), based on a study of World Bank-supported projects, argued that in countries where there were robust civil liberties, the rate of return for aid and development projects was higher. All-embracing social capital in the recipient nation was also increasingly seen as crucial (Lutz and Mavrotas 2009).

3.4 Debates within Development Cooperation

Considerable debate exists about the pros and cons of development cooperation per se and about specific modalities and methodologies of development cooperation. Gulrajani (2011) argues that the main debate is between those who see the international development system as a form of neo-colonial restructuring and thus inherently negative, and those who recognise deficiencies and challenges and argue for reforms to the development cooperation architecture (and practices) to facilitate and deepen the effectiveness of aid and development. The former group is recognised most vividly as Marxists (as well as post-development theorists) while the latter contain a broad mix of liberal and more radical scholars who draw in some way (and to some extent) on modernisation theory. In this section, I consider the latter (pro-development cooperation) school only, as it is embedded within the development aid industry and informs this industry. The pro-aid/pro-reform group has been the source of the numerous development studies and reports produced, which are often financed by aid agencies, and it is central to the massive consultancy industry which exists to bring about development cooperation reforms. The pro-aid position is marked by significant internal controversy around aid effectiveness, raising questions about the efficacy of tied and untied aid and the significance of recipient country governance in enabling aid effectiveness (Gulrajani 2011, Mosley 2015).

This reformist development agenda is in large part grounded in the tenets of managerialism which is a “set of beliefs and practices, at the core of which burns the seldom-tested assumption that better management will prove an effective solvent for a wide range of economic and social ills” (Pollitt 1990:1). This entails, on the surface, a largely technicist solution to existing problems within the international development system, such as refining the modalities of cooperation between aid agencies and recipient nations. These kinds of solutions are apparent in the declarations emanating from Rome, Paris, Accra and Bussan. Even these reformist moves though are difficult to come about because of the “powerful inertia of the aid business” which inhibits the “contentious process of organisational change’ within the development system (Yanguas and Hulme 2015: 210). Further, insofar as political problems are raised, these are externalised, namely, they are not envisaged as existing within the system itself (such as through global power differentials) but are seen as embedded for instance in recipient governments as formulated in the good governance agenda.

Sachs (2005) provides the fundamental rationale for development cooperation by positing the existence of a ‘poverty trap’ and ‘financing gap’, with people living in poverty unable to free themselves from poverty because of the absence of savings. Developing

countries need savings as well for economic investment and growth, but they do not have the necessary capital base to allow for this. Hence, with this financial gap existing, external financial aid is a necessity (Ocampo et al. 2009). As Mercieca (2010: 2) notes:

Growth was seen to require real resources for the production of capital goods, that is, goods such as industrial plant, machinery, and social overheads that were not for immediate consumption, but could increase the production potential in future periods. However, as underdeveloped countries were seen to be capital deficient, it followed, almost axiomatically, that unlocking development required in turn the overcoming of this main constraint to growth.

In this context, many studies have shown a positive relationship between development assistance and economic growth (Dowling and Hiemenz 1982, Gupta and Islam 1983, Hansen and Tarp 2000, Burnside and Dollar 2000, Gomanee et al. 2003, Dalgaard et al. 2004, Ola et al. 2010, Morrissey 2012). Clemens et al. (2012) for instance argue that aid geared towards investments in infrastructure as well as productive sectors including agriculture (along with technological and knowledge transfers) lead to economic growth (and independently of the policy environment) though the issue of diminishing returns is evident (Bandyopadhyay et al. 2015). Mosley (2015; 114) claims that the linkage of aid to growth is modestly significant and, thus, sceptical positions about aid effectiveness should not be taken seriously. Askarov and Doucouliagos (2015), in a study of 32 transition economies covering the period from 1990 to 2012, conclude that development cooperation is correlated with economic growth and, again, there was no evidence that aid impact is contingent on good policies.

Some researchers (Svensson 1999, Burnside and Dollar 2000) show that aid has a positive effect on economic growth in the context of favourable economic policies as well as a solid institutional and policy set-up based on good governance. Piciotto (2007) notes that the per capita growth of countries such as Eritrea, Uganda, Ghana, Mozambique and Tanzania, which grew at an average of 4.8 percent per annum during the study period, are attributed to aid which was 22 percent on average of the gross national incomes. Karras (2006), based on a study of 71 countries which received assistance from 1960 to 1997, argues that the effects of foreign aid on economic growth are not only positive but permanent with a US\$20 per capita increase in aid being associated with a 0.16 per cent GDP per capita growth rate. Clemens et al. (2012) though highlight that there is often a time lag between provision of aid and its economic growth impacts.

Arguments about the positive impact of development cooperation not only on economic growth but on poverty reduction also exist. Alvi and Senbeta (2012) claim that, even if aid does not enhance economic growth, it can reduce poverty – such that the two need to be decoupled when examining aid effectiveness. Arndt et al. (2011) argue that aid provision amounting to US\$25 per capita can, over an extended period, cut poverty by 6 per cent. In the case of Tanzania, the decrease in overall rates of poverty can be linked to aid programmes (Lawson et al. 2013).

Other writers, while not condemning the international development system outright, are less adamant in their conclusions. For instance, Quibria (2014:75) asks: “Does foreign aid help economic development? Although the empirical economics literature on aid effectiveness, which investigates the macroeconomic impact of foreign aid on the economic development of poor countries, has grown briskly – both in volume and in econometric sophistication – it has shed surprisingly little light on this question”. In this context, some scholars have criticised previous studies, such as that by Burnside and Dollar (2000). Notably, a study by Easterly et al. (2004), which expanded on the data sets of Burnside and Dollar in terms of the analysis period and number of countries, did not find any statistically-valid relationship between aid and economic growth. This link was still not established even when policy and institutional conditions were taken into consideration (Roodman 2007). Similar claims are made about any causal relationship supposedly existing between development cooperation and poverty reduction. Easterly (2007) thus argues that, for the 1950 to 2001 period, developing countries with levels of aid higher than the average did not experience any greater reduction in poverty compared to countries with lower than average levels.

Other concerns about the international development system are raised. Easterly (2007) argues that the system entails top-down planning and delivery by aid agencies, and seeking to counter this – given global power dynamics – would be very difficult. This, according to Green (2008), means that the prospects for downward accountability become deeply problematic. Further, aid bureaucrats tend to assess their performance in terms of the value of resources dispersed (such that ‘the quicker, the better’) and this is a deeply-ingrained and perverse (almost corporate) incentive which undercuts fine-tuned, nuanced and effective aid dispersals (Yanguas and Hulme 2014). Other authors cite serious concerns about the absorptive capacity of recipient countries which results in aid not being used effectively (Clemens and Radelet 2003). Feeny and de Silva (2012) highlight certain aspects of absorptive capacity in this

respect: human and physical capital constraints, policy related and institutional constraints, and macroeconomic constraints.

In examining the actual effectiveness of development cooperation, and in relation to calls for reforms, the question of macro- and micro-level studies come into play. A few decades ago, Mosley (1986) argued that there was a micro/macro study paradox, with micro studies showing development effectiveness and macro studies being more discouraging in their conclusions. This was further claimed by Picciotto (2009), after reviewing data from World Bank projects and country assistance programmes. Likewise, Riddell (2007:192-193) argues that “[t]he available [micro-level] evidence suggests, quite strongly, that the clear majority of official aid projects achieve their immediate objectives”. White (2007) makes similar claims but also notes the problematic character of generalising to national level about development assistance effectiveness. Quibria (2014: 79) in fact argues that “[e]ven if all the projects are successful it does not mean that they will ensure success at the macroeconomic level because of the so-called fungibility issue – i.e. aid money being used for purposes other than those earmarked”. It is also the case (as discussed earlier) that significant controversy exists between macro-studies, which often use and apply econometric analysis on national and cross-national data, with the kinds of macro-level analyses being dominant tending to take on different forms over time (Miller 2012, Hansen and Tarp 2000, Doucouliagos and Paldam 2009). Ndikumana (2012: 8) brings to the fore the difficulties in reaching definite conclusions:

The key problem with efforts to document and quantify the effectiveness of aid at the macro level is that macroeconomic outcomes are the result of a multiplicity of factors, many of which are unrelated to aid, and some of which can affect the effectiveness of aid either positively or negatively. ... Disentangling the impact of a single factor such as aid on macroeconomic outcomes such as growth, human capital, health, etc., is a daunting exercise both conceptually and empirically.

A crucial issue in these controversies is the supposed positive relationship between good governance and aid-development effectiveness under neoliberalism, as noted with regard to the study by Burnside and Dollar (2000). Their findings, which are consistent with many subsequent studies (Macgillivray 2005), were – for donors and aid agencies – a game-changer and became central to the development architecture: good governance (and a solid policy and institutional environment) was to be a key conditionality for any further development cooperation (World Bank 1998, Collier and Dollar 2001). Many studies have been commissioned focusing specifically on how donors are selectively providing assistance in line

with this 'good practice' (Knack 2010, Acharya et al. 2004, Svensson 1999). As well, untied aid given to countries with favourable institutions and policies is sometimes seen as more effective compared to tied aid (Minoiu and Reddy 2007). But the controversy about good governance and aid effectiveness rages on, even the denial that aid agencies pursue the good governance conditionality.

Thus claims exist that development aid continues to go to countries with poor democratic and governance records, if only because these countries are most in need of enhanced economic growth and stability (and thus aid may be simply squandered under these conditions). Bourguignon and Platteau (2015a), in this regard, speak in particular about Liberia. Liberia receives aid amounting to more than its national budget, yet it is regularly ranked as one of the most corrupt countries in the world by Transparency International. Other countries which have received development assistance for decades without any noticeable economic and political reforms include Somalia, Democratic Republic of Congo, Haiti and Papua New Guinea (Radelet 2006, Rajan and Subramanian 2005).

The study by Yanguas and Hulme (2015) of practices of DFID and World Bank indicates that, despite the heightened rhetoric on good governance, undermining corruption and strong institutions, the actual practices of these two organisations have not institutionalised these issues at operational level. Rajan and Sybramanian (2008) and Morrissey (2004) found that there is minimal 'robust' evidence showing any causal linkages between aid and good governance conditionalities. This is also supported by Clist (2011), who argues that good governance has had negligible impact on aid allocations. However, a study by Reinsberg (2015) of 174 foreign aid recipients for the period 1995 to 2009 shows that, overall, donors respond to political liberalisation (including changes in political leadership in aid receiving countries) in the disbursement of development assistance, even though this varies between bilateral (who respond quicker and more consistently) and multilateral donors.

3.5 Development Cooperation and Policy Space

The question which arises in this context is the extent to which recipient nations, and specifically governments of these nations, have any space to pursue development agendas which in any way go contrary to the dictates of multilateral and bilateral agencies. If no such space exists, or if it is extremely circumscribed, then the notion of partnership in development cooperation acts simply as a discursive intervention on the part of these agencies to mask a relationship of domination. In fact, for Marxist scholars such as Veltmeyer (2005),

development cooperation and specifically the political economy of conditionalities are a consequence of a new round of global imperialism.

For development agencies, and for the advanced capitalist governments they represent, a lot is at stake. Development cooperation is not merely about facilitating economic growth and development, as it also has pronounced foreign policy and geo-political security objectives even subsequent to the Cold War (Alesina and Dollar 2000), and all this of course can undermine coordination efforts amongst donor nations (Fuchs et al. 2015). As Glennie (2011: 5) argues:

Most donors, including the US and Japan, for instance, have never made any bones about it [aid] being a key part of their foreign, economic and security policy. The UK, which is bound to spend all the money on poverty, has begun to use language like Aid superpower, implying that it will maintain geopolitical importance through its aid program.

Certainly, the commercial and political self-interests of donor countries affect the aid dynamic. Therefore, Berthélemy (2006) argues that key donors such as France, Japan and the United States are egoistic donors whose development assistance allocation is closely tied to trade-related interests. Powell and Bobba (2006) note as well that there is need to consider the fact that donors seek political support from aid receiving countries in the case of international deals around for example trade and investment. Along these lines, the study by Kuziemko and Werker (2006) concludes that US aid increases by around 60 percent whenever a recipient country becomes part of the UN Security Council as a non-permanent member. As well, Dreher et al. (2008) argue that US aid is used for vote ‘buying’ in the UN General Assembly. Clearly, then, development cooperation agencies are often very strident in pursuing their global agendas.

Quibria (2014:76) notes that “[t]he principle of selectivity [targeting recipient nations which meet specific conditions] has gradually emerged as the conventional wisdom and the operating framework for aid allocation by international development agencies”. Of course, the existence of conditionalities, now so prevalent to any form of development cooperation, becomes critical in trying to ensure that recipient nations work within the confines of the international development agenda (World Bank 1998, Mercieca 2010). Bourguignon et al. (n.d.:4) thus highlight that, in the context of conditionalities, dominant actors within the development assistance system influence policy-makers in recipient nations by providing for instance financial resources and technical assistance as well as by gaining access to and shaping

policy debates (for instance, around land reform). The capacity of recipient governments to pursue autonomous development trajectories hence becomes extremely difficult.

Ola (2010:11) argues that aid conditionalities have now reached the stage where development recipients are meant to fit the “‘ideal’ and stable type conforming to the basic fantasies and values of neoliberal ideology in general and the World Bank’s current development model in particular”. In this regard, Chang (2005:2-3) provides a historical analysis of the influence of specifically multilateral aid agencies:

The current phase of shrinkage in policy space started in the 1980s, when the World Bank and the IMF massively expanded their “programme” (as opposed to “project”) loans in the aftermath of the Debt Crisis in 1982 in the form of the Structural Adjustment Programmes (SAPs) – and many of its subsequent reincarnations, which are too numerous to list – and broadened the scope and enhanced the strength of the conditionalities attached to their loans... [S]ince the 1980s, the conditions have stretched to include policy recommendations similar to what the Bank and the Fund demand on their loans. This is not surprising, when we recall that after all the Bank and the Fund are controlled by the countries that are main providers of foreign aid to developing countries. This does not necessarily imply though that policy and other dictates are simply imposed (in a coercive manner) upon recipient nations, as often the governments of the latter readily buy into (or consent to) the development cooperation arrangements as these are seen as conducive to national development, or the arrangements are seen as the only development option available (and therefore they comply).

Thus it is not only the imposed conditionalities laid out as part of development packages which constrain policy space, but also quite often the supposed national benefits arising from these packages such as foreign investment. Chang (2005: 5) notes in this respect:

In addition to these (aid and loan) conditionalities ..., the policy space of the developing countries ...[is]... further limited by the (real and imagined) threat of capital flight in the environment of open capital markets. Fearing the “punishment” by the “foreign investor” ..., developing country governments adopt policies that they think (or that they are told will) please the foreign investor – especially in terms of macroeconomic policy, corporate taxation, labour law, and environmental regulation.

Contrary to the overall position of Chang, though, political and economic elites in developing nations may in fact at times frame the development packages as consistent with (at least their

understanding of) the national interest and hence as justifiable and legitimate. This possibility should not be ruled out a priori when pursuing specific studies.

It is clear that policy space has become constricted (or remains constricted), whatever explanation is offered for this. This means that developing nations are for example constrained in terms of long-term strategic planning, are unable to autonomously and innovatively work on reforming national policies, and have to act according to the orthodoxies of aid agencies in such a way as to maximise ongoing development cooperation even for the sake simply of maximising it (Oya et al. 2010: 2). It also means that there may be policy reversals, and sometimes at short notice, in order to fit into shifting development cooperation agendas and priorities. This may lead to contradictory policies. For example, when state bureaucrats in developing countries try to comply with conditionalities and adjust specific existing policies, this may result in the additions or adjustments being inconsistent with broader policy goals. In the case of land policies, countries may be forced to introduce provisions which explicitly highlight the need to create or foster the development of land markets. At the same time, the overall policy goal is to achieve equity. In some instances, this also results in gaps between policy formulation and policy implementation as some of the policy measures would have been merely meant to please aid agencies (Soludo and Ogbu 2004).

The effectiveness of selectivity and conditionalities combined is open to question in terms of bringing about positive development outcomes, as these are imposed exogenously. For this reason, it is likely more productive to allow recipient nations some degree of autonomy in terms of aid allocations, policy formulation, and programme and project implementation (Quibria 2014: 82).

3.6 Donor Agencies and Civil Society

Donor agencies do not only work through recipient nation governments as they also interact directly with civil society groups, and on an increasing basis. For example, NGOs received 0.7 percent of the overall aid from OECD member countries in 1975. This figure rose sharply to 3.6 percent in 1985, and then to 5 percent for the period 1993-1994. In 2011, US\$19.3 billion of official development assistance (ODA) was allocated to and through civil society organisations by DAC members (OECD 2013). In this respect, slightly over 20 percent of total bilateral ODA was channelled “to or through CSOs” in 2011 (OECD 2013:3). The rise continues as the amount for 2014 stood at US\$21.8 billion (Baobab 2016). This varies between donor countries. Thus, for for the period 211-2014, over 40 percent of total of both UK and

Switzerland development assistance was allocated via NGOs (Baobab 2016). Major NGOs in fact show an increasing dependency on official aid as voluntary contributions from the public have been dwindling. This increased reliance on official aid is set to continue as the DAC seeks to “strengthen civil society in developing countries” (OECD 2012: 13). Further, OECD (2013: 9) argues that:

The data suggest that DAC members have a strong preference for supporting donor country-based CSOs over other types, especially in Germany, Spain and Austria where more than 80% of funding goes to national CSOs ... In addition, while developing country CSOs may not have direct access to ODA funding from OECD countries, several DAC members require CSOs based in the donor country to work with local organisations in developing countries.

Discussions on the importance of civil society groups in bringing about development and democracy have intensified in the context of their rise in prominence in the international development system (Ehrenberg 1999, Pollard and Court 2005, Flyvbjerg 2001). In the early years of neoliberal restructuring, NGOs were almost romanticised in the academic literature in terms of their capacities on both the democracy and development fronts, based on their supposed comparative advantages in relation to governments and states. A more critical literature has arisen since. But multilateral and bilateral agencies still highlight the potential roles of civil society organisations, particularly in relation to participatory (and democratic) sustainable development initiatives. Thus in 2013, the World Bank depicted these organisations (and a dense and vibrant civil society sector more broadly) as crucial to poverty reduction through implementing development projects, as well as in relation to advocacy, monitoring and holding governments to democratic account as part of good governance (and even in facilitating democratic transitions and consolidation away from authoritarian-type regimes) (World Bank 2013). It is notable that over 600 civil society organisations participated in the 2011 World Bank/IMF annual meetings as well as in around fifty policy dialogue sessions covering various themes such as climate change, aid effectiveness and gender equity. All this is consistent with the ‘New Policy Agenda’ promoted since the end of the Cold War in 1989 (Hearn 2001, Mitlin et al. 2007, Pollard et al. 2005).

There is no doubt that NGOs (and civil society more generally) are heavily dependent upon donor funding such that upward accountability to donors is embedded in the world and work of NGOs. Their very existence relies upon ongoing development agency funding and they need to operate within the parameters and procedures as set by donors, though at times

there is some degree of wiggle-room. Many no doubt have readily internalised the language of neo-liberalism (Dunford 2000) and act in line with aid agencies in for example advocating around specific national policies. Van Rooy (1998) in fact concludes that civil society groups effectively become a convenient space for donors to promote ideas around economy, politics and citizenship. Because of this, as Pollard et al. (2005) argue, such groups become so closely aligned to aid agencies that the latter set and control the terms of the former's engagement in development practices (Lewis 1999, Hulme and Edwards 1997). It may also be the case that the selection of partner civil society organisations by donor agencies is from the start biased towards those with similar ideological perspectives (Huddock 2000, Ottaway and Carothers 2000, Petras 1997). Either way, the capacity for NGOs to act contrary to neoliberal agendas is quite difficult, despite the fact that there are significant numbers of NGOs worldwide which seek to act in this manner.

Hearn (2001) argues that civil society in effect has been 'used' by donor agencies to champion neo-liberal ideals including being a crucial mechanism to 'mobilise' people to accept the hard choices related to de-regulation and privatisation. The case of Ghana is cited, where civil society played a role in trying to ensure that citizens supported the structural adjustment programme and related austerity measures including the introduction of Value Added Tax (a measure which had been the subject of mass protests at its inception). With reference to Ghana, aid agencies selected and supported particular NGOs which promoted economic liberalism with, for example, the Institute of Economic Affairs receiving significant funding from multiple donors. As well, for Mozambique, Hall and Young (1997:227) argue that aid has been specifically designed to create NGOs which are supportive of the market economy. Similar claims have been put forward with respect to post-apartheid South Africa, with donors supporting NGOs focusing on good governance and the procedural aspects of democracy (such as elections) with limited attention to more fundamental questions about massive inequality. Organisations which have been funded in this donor-driven political project (such as Institute for Democratic Alternatives in South Africa or IDASA, and the Helen Suzman Foundation) are committed to mainstream liberal ideals.

3.6.1 Donors, Civil Society and Land Reform

Similar problems arise specifically with regard to aid agencies, civil society and land reform, with tensions though sometimes arising between aid agencies and civil society groups in the context of the strident push for market-led land reform on the part of aid agencies. Overall, as

Adhikari (2008: 124) claims, NGOs tend to refrain from engaging in land reform initiatives because land is a particularly contentious issue which may severely compromise and complicate the work of NGOs. But, starting in the 1990s, there has been a significant increase in the number of civil society organisations in African countries (such as Kenya, Malawi, Mozambique, Uganda, Tanzania and Zambia) with the objective of lobbying for pro-poor land policies. These 'land sector' NGOs have become involved in a range of networks such as LandNet Africa (established in 2000) and the Pan-African Programme on Land and Resource Rights (PAPLRR, formed in 2001). A notable landmark of the PAPLRR was the Lagos Declaration on Land and Resource Rights in Africa which was then presented to the World Summit on Sustainable Development in Johannesburg in 2002.

LandNet Africa and PAPLRR operate in different but overlapping regions in Africa, and they seek to develop and articulate a Pan-African voice on land and resource rights through advocacy and policy work. This entails engaging with other stakeholders at regional and international levels. In advocating for land rights, PAPLRR highlights the challenges pertaining to inappropriate land policies and institutions, unequal social, political and economic relations, the actions of powerful vested interests including international aid organisations, and the weaknesses of grassroots organisations. In doing so, PAPLRR and other NGOs need to lobby government on a regular basis to democratise national governance (Muhereza and Kyomugisha 1999), particularly when the existing state has authoritarian tendencies. This is not always easy, as Palmer (2007:13) notes in relation to Kenya: "The curious thing about Kenya has been how open all this has been, with commissions of inquiry and civil society organisations and a vocal local media all exposing the scandals in great detail but without being able to change the fundamentals of the body politic".

There is a strong possibility that, in engaging in advocacy around land reform, NGOs may do so in a manner which simply aligns with donor agendas (Ntsebeza and Hall 2007, Makumbe 1998). Indeed, the context within which land policies (at least in Sub-Saharan Africa countries) have been debated is in general similar, and mainly because of the common neoliberal agendas and pressures existing within the region (Saruchera and Odhiambo 2004). As a result, NGOs invariably have to engage with market-led land reform trajectories. The linkages between bilateral and multilateral donors on the one hand and civil society on the other, on issues of land reform, is shown through the annual World Bank conferences on Land and Poverty where representatives from governments, civil society, academia, the development community and the private sector gather to deliberate on land-related issues. These forums are

seen as an opportunity to share experiences related to reforms on land, but they are also used to universalise neo-liberal approaches to land reforms.

Despite this, land sector NGOs have been quite important in questioning mainstream neoliberal thinking on land reform propagated by aid agencies and in shifting the land policy terrain in a more progressive direction (Quan 2007). As Quan (2008: 2) puts it: “The demands emanating from, and the alliances forged by civil society in addressing the needs of the poor in rural development have begun to shift the terrain of strategy and debate”. In this respect, Palmer (2007:7) highlights the advocacy role of civil society groups at the international level especially on the issue of traditional land tenure systems. He notes the

Presumption that the customary should and must give way to the modern, and by modern was usually meant individual title. This was a view strongly promoted until very recently by the World Bank and it was only through serious policy engagement with DFID, GTZ and AFD, with civil society organisations globally, and with international NGOs such as IIED and Oxfam, that the Bank revised its hitherto dogmatic posture into something more flexible and nuanced in the form of its 2003 Policy Research Report on Land Policies for Growth and Poverty Reduction.

In this respect, the World Bank has begun to acknowledge that tenure security is not reducible to private titling arrangements.

Quan (2008:2) goes on to speak about the significance of rural social movements in land reform: “Land reform social movements have found it necessary to network across areas and regions so as to create broader alliances and linkages between land and wider struggles, so as to facilitate meaningful participation and achieve more tangible impacts”. Undoubtedly, in deepening modes of participatory engagement during reform processes, social movements (as grassroots organisations) are often crucial in pushing land reform beyond market-led reform; and, at times, NGOs align themselves with these movements as in the case of Brazil (Wolford 2010). The relationship however between NGOs and social movements is often fraught with problems, particularly if and when NGOs dominate the relationship and perhaps subdue the struggles of movements. In the absence of significant mobilisation by rural movements, though, NGOs find it difficult to put significant pressure on their respective governments to push for progressive land reform. As Helliker (2013: 317-318) argues, in the end “local mobilisation, organisation and struggle’ are critical for genuine agrarian change. The end result of NGO activities around land reform is undoubtedly context-specific, as the case study in this thesis of Kenya shows.

Igoe (2003), based on a study of NGOs and pastoralist land rights movement in Tanzania, and particularly in the traditional grazing lands of the Masai and Barabaig communities, highlights the problems which arise when civil society groups become engaged with forces of globalisation and the development cooperation architecture. There was a lack of coordination among the various community-based social movements in advocating for pastoralist land rights, but this improved around the 1980s when they were registered as pastoralist NGOs. The registration enhanced the ability to coordinate on a formal basis, to advocate at the international level and to access donor funds. However, this involved some degree of incorporation into the international development system and weakened the accountability of these movements, especially at leadership level, to local communities. The activities of the pastoralist NGOs became aligned with what was agreeable to their donors such that the land solutions proposed by the NGOs were apolitical (Igoe 2003).

In Uganda, the Uganda Land Alliance (which was a consortium of civil society organisations involved in land reform) became active in legislation and policy work in the 1990s. The overall approach in Ugandan land reform (as manifested in Land Bills and the 1998 Land Act) has been analysed as biased towards foreign investors with limited attention to peasant interests (Wily 1997). In this light, the Uganda Land Alliance focused on specific themes around women, children and the disabled without addressing broader political issues. Because of this, while expressing some concern about market-led land reforms, the Alliance was in broad agreement with the logic of promoting land productivity and investment. In a similar argument, and writing on civil society activities around land tenure in Cameroon, Ghana and Senegal, Ghimire (2001) notes that dependency on external funding compromised the ability of NGOs to operate autonomously. Ghimire goes on to highlight that existing rural movements in these countries, without any source of regular funding, found it difficult to move beyond small-scale and immediate demands and hence could not translate their demands into national issues. In fact, they had serious capacity problems and were often short-lived. The challenges faced by Kenyan NGOs will become apparent in later chapters.

3.7 Conclusion

Specific development cooperation or assistance interventions, including policy interventions, need to be understood in the context of theorising about both small ‘d’ and big ‘d’ development (see chapter 2). In this chapter, the focus was on the broad history and modalities of big ‘d’ development, namely, the international development system. Aid agencies of course are central

to the system and, indeed, the system rests on their existence, operations and interventions. Also important though, besides states themselves in ‘developing’ nations, are civil society organisations. While the system is marked by clear power differentials given the prevailing global dynamics, questions still arise as to the possible extent of some kind of ‘autonomous’ policy space for states in pursuing development paths which do not simply reflect the logic and demands of aid agencies. This is a central point for examining the land policy process in Kenya. In the next chapter, I examine the question of land reform themes and debates with a particular emphasis on the literature on Africa.

Chapter 4: Land Reform Debates

4.1 Introduction

Land reform is a highly important aspect of contemporary development policy and practice in Africa and beyond. Though universal agreement on the significance of land to rural livelihoods and poverty reduction exists, the form and content of land reform is the subject of major controversies. This chapter examines land and its various dimensions, as well as the many scholarly and programmatic debates which have arisen around land reform. In section 4.2, I outline what is often considered as the critical significance of land and land reform, focusing on social, political and economic elements. This leads into section 4.3, in which major debates in the land reform literature are presented and unpacked, particularly around the appropriateness of state and market redistributive reforms, private-held freehold land title and communal landholdings, and small-scale and large scale-farm productivity. In the last main section (section 4.4), I examine the position of donors in the context of these land reform debates.

4.2 Significance of Land Reform

The notion of 'land policy' relates to a complex and multi-dimensional set of legal, social and economic prescriptions which set the parameters on how land and related resources are to be governed, allocated and accessed (UN/ECE/WPLA 1996, Deininger 2003, Van der Molen et al. 2008). In this regard, a European Union (EU) Task Force on land tenure (European Union 2004: 1) argues that, implicitly or explicitly, land policies are embedded in "political choices made concerning the distribution of power between the state, its citizens and local systems of authority".

The World Bank claims that, at least officially, land policies are often designed to achieve four main goals (Deininger 2003). One goal, based on a productivist conception of the significance of land, focuses on economic growth per se through maximising investments in land, credit facilities for land, and land-based productivity and profitability. Secondly, and in large part based on a (modernisation) trickle-down theory of redistribution-through-growth, poverty reduction at household level is expected to take place. Alternatively, poverty reduction may take place more directly through processes of land redistribution. Thirdly, land reform policies improve governance around land by facilitating access to land assets, deepening democratic practices and accountability at local levels, and reducing land-based conflict. Lastly, land policies are supposed to enhance environmental sustainability through improved

land use practices as well as efficient state land management. The European Union Task Force on land tenure (European Union 2004:10-11) raise similar points, as well as highlighting more specific questions around land registration and land titling.

It is noticeable that the land policy goals as articulated by such bodies as the World Bank and EU have been for some time now couched within a neo-liberal framing of land reform. Indeed, land reform policies worldwide are regularly pursued within such a neo-liberal framework. At the same time, as shown by Molen et al. (2008) in a study of land policies from nine countries (including Rwanda, Namibia, Malawi and Kenya), there is considerable variation pertaining to the ways in which neo-liberal land restructuring is taking place, with nation-specific histories and politics coming into play in this respect. Certainly, land reform in Kenya cannot simply be read from an understanding of basic neo-liberal tenets on land policy.

The importance and necessity of land reform is quite apparent. For example, of the estimated 1.4 billion people living in poverty globally (using the measure of US\$1.25 per day), it is estimated that 70 percent of them live in rural areas (Ploeg 2011, Muyanga and Jayne 2014), such that poverty is mainly a rural phenomenon (Prosterman and Hanstad 2006: 769). In developing countries, including in sub-Saharan Africa, there is often a paucity of economic diversification opportunities beyond farming in rural spaces, and hence access to land and natural resources becomes critical to the viability of rural livelihoods. In fact, between 50 and 60 percent of the world's labour force is in some way engaged in agriculture (FAOSTAT 2004), but regularly under conditions of extreme deprivation. Amongst the rural poor, subsistence agriculture remains as the main source of livelihoods even though dire circumstances may lead to a shift to non-farm related incomes (Rigg 2006), if only to complement agricultural production, or to urban migration.

Though, in terms of national policies, neo-liberal international organisations dominate programmatic interventions, there is a considerable body of academic literature which also speaks to the significance of land reform but in a manner which – normally but not always – diverges from mainstream neoliberal thinking (El-Ghomey 2003, Sobhan 1993, Mendola and Simtowe 2015). As this literature highlights, the efficacy of land reform measures depends fundamentally on the intended land policy objectives, along with the ways in which it is carried out (for instance, state-driven or market-driven) and the land dimensions which are prioritised (such as land tenure or land restitution). In most cases, the main objective brought to the fore in the land literature is poverty reduction. Sobhan (1993) for example provides several pre-conditions which must be met so as to enhance any chances of poverty reduction through land

reform. These include the following: land reform should target specifically the poor, where feasible through land redistribution; in the case of land tenure reform, exploitative landlord-tenant relationships need to be eliminated; and general macro-economic conditions including around trade and investment should be conducive for small-scale farming livelihoods. Past land reforms, even in countries such as Japan, South Korea, China and Taiwan, which are often cited as success stories as they appeared to underpin successive economic achievements (Sachs 1987, Boyce et al. 2005, WDR 2006), need to be assessed beyond purely productivist notions including with reference to poverty reduction.

In this context, I now consider some of the key goals of land reform policies as contained in the relevant literature by focusing on the possible social, political and economic significance of land reform. It is important to note though that these three categories at times overlap (i.e. they are not mutually exclusive) but, even more importantly, one goal may be pursued at the expense of another (i.e. they may be in contradiction with each other).

The social objectives of land reform are directed towards the pursuance of equity and more specifically justice around access to and usages of land. In this respect, there is no obvious or necessary link between equity and efficiency arguments, with the latter focusing on economic growth perhaps at the expense of redistributive justice. However, the ‘inverse relationship’ (Griffin 1974, Lipton 1976, Deininger and Binswanger 1999, IFAD 2001, Conway 2011) which is often said to exist between small farms and economic efficiencies (and is used as justification for ‘land to the tiller’ programmes) expresses a possible convergence between social equity and economic imperatives such as productivity. Thus improved access to land amongst the land-short poor, through for example well-targeted redistribution programmes, is seen as a way to reduce poverty (Mendola and Simtowe 2015, Christiaensen et al. 2011, Wiggins et al. 2010, Carter 2003, Deininger 2003, Binswanger et al. 2009, Kohler 2015, Balisacan 2007, Vollrath et al. 2007).

In this light, El-Ghomeny (2003) demonstrated by means of a range of empirical studies that a reduction of one-third in the land inequality index would lead to a corresponding one-half decrease in poverty levels over a period of 14-15 years. Likewise, land reform legislation in India led to a reduction in poverty (Besley et al. 2000). In El Salvador and Paraguay, land for small-scale farming plays a key role in ensuring a reasonable per capita income for households (Lopez and Valdes 1997). Studies by FAO-TSARRD (1998) in the Philippines show that a land beneficiary under the Comprehensive Agrarian Reform Programme had lower chances of being poor compared to a non-beneficiary. Again, in relation to a study of Brazil, it

was found that those households which were in land reform settlements reported higher incomes than landless households, more nutritious food consumption levels, lower infant mortality and greater access to education (Campesina et al. 2006). However, it is necessary not to overemphasise the potential of redistributive land reform in resolving all forms of rural poverty or in ensuring dignified rural livelihoods (Briggs 2006), particularly if it involves private titling of land under neo-liberal conditions.

In terms of political significance, land reform – at least up to the 1970s – was mostly influenced by revolutionary-type movements and was carried out in the pursuit of political justice. For instance, in Bolivia, the revolution of 1952 was followed by a land reform law. In Cuba, land reform was one of the cornerstones of the revolution in 1959. In the case of Iran, land reform was carried out under the Shah as part of reforms of the White Revolution which began in 1962. With specific reference to socialist movements of the past, land reforms were conceived as paramount to social transformation, with one objective often being an end to feudalism and a better life for the peasantry (Sikor et al. 2009).

Politically, land reform is regularly seen as linked to achieving political stability and forestalling revolutionary upheavals. In this respect, May (2000) posits that there is a correlation if not causal relationship between land inequalities (arising from the absence of redistributive reforms) and political instability. In a similar way, Deininger (2003: xi) argues that extreme inequality in land ownership and possession, large tracts of underutilised land and deep rural poverty lead to an explosive combination and ultimately to the political case for land reform. This combination in fact is the source of significant levels of localised land conflicts and struggles over land, including in Kenya during the recent clashes in 2014. Because of this, land questions are regularly at the centre of peace-building efforts during conflict and post-conflict situations, as in Rwanda (Bruce 2007) and Afghanistan (Willy 2003).

Perhaps most notably in Africa, it is also evident that, subsequent to the attainment of political power by anti-colonial liberation movements at the moment of political independence, land becomes central to post-independence reforms because of the centrality of land in the first place to the liberation struggle and its goals. Ex-liberation movements now with state power thus seek to fulfill the promise of restoring land to indigenous populations (Tendi 2014). As well, the issue of an inequitable distribution of land is brought to the fore during national elections in post-independence Africa as part of political party manifestos and strategies (Mataya 2000, Melber 2000, Borrás et al. 2008). Whether or not the party-in-power then lives up to its commitments around land is another question altogether.

Monopoly over land by a landed elite has been blamed for the persistence of authoritarianism in many cases (Fox 1994, Franco 2001). Land reform, as a basis for redistributing land-based assets, becomes linked to processes of democratisation (UNDP 2002), as it goes some way in undercutting existing power imbalances between the landed elites and the rural poor (Prosterman et al. 2003). However, any causal link between distributive reforms and the deepening of rural democracy is normally assumed rather than convincingly demonstrated (Borras et al. 2008). In fact, the relationship between democratic governance and land reform has been posited as a ‘chicken and egg’ dilemma (Saturnino et al. 2010); as pro-poor land policies seem necessary for democratic governance, while democratic governance appears to be a pre-requisite for pro-poor land reform (Herring 1983). For many African countries, the presence of so-called traditional authorities is particularly problematic in terms of any claimed relationship between land and democracy, given the control which these authorities often have over land access and possession for rural households living within their domain (Walker 2005).

With regard to economic significance, the presumed economic benefits of land reform include increased agricultural production, capital formation, employment generation and greater demand for inputs and services (which also stimulate economic growth in non-agricultural sectors). Insofar as inequality in access to land is a key determinant of wider socio-economic inequality, and pervasive conditions of deep poverty are contrary to broad-based economic growth and redistribution, then the absence of necessary land reform undermines economic prosperity (World Development Report 2006). Further, as noted, there is a correlation between inequality, poverty and political instability (Giskemo 2012).

Property rights (at least involving private tenure), according to the World Bank’s *World Development Report* (2008), are a fundamental pre-condition for economic development. This view is in line with De Soto’s book, *The Mystery of Capital*, which called for the individualisation of property rights and therefore the elimination of ‘dead capital’ (referring to untitled land) and in turn its replacement by ‘generative capital’ (Peters 2012). This argument is also made by ruling governments in Africa, such as at times by the African National Congress in South Africa, as land titling for the poor ensures that land can be used as collateral in securing access to capital or credit through financial institutions (Kingwill et al. 2006: 3). The link existing (it is said) between insecure land rights and low agricultural productivity also arises because farmers have minimal incentives to engage in long-term investment in land maintenance and improvement because of a sense of impermanence (Fong and Bhushan 1996).

However, empirical evidence on any necessary link between land tenure security (based on private titling) and agricultural production remains open to dispute. This link for example is found to be non-existent by Migot-Adholla et al. (1998) based on research conducted in Kenya. Productivity was found to be affected by a diverse range of factors such as availability of credit, marketing opportunities, input supplies, extension services, health, education and infrastructure. Further, it is often argued (Tarimo 2014, Migot-Adholla et al. 1993, Pedersen et al. 2012) that land tenure not derived from private ownership, such as in customary or communal areas, is in fact a secure form of tenure and that, additionally, land under private tenure may be subject to market forces which lead to distress sales by small-scale farmers (thereby resulting in renewed processes of land consolidation).

The inverse relationship, mentioned earlier, between farm size and economic efficiencies has been contested (Byres 2004) as, again, production is seen as dependent upon numerous factors such as quality of land and human capital levels. The persistence of the argument in support of small family farms is blamed on an ideology of agrarian populism and not sound empirical evidence (Sender and Johnston 2004). Further, Muyanga and Jayne (2014) argue that the history, form and dynamics of agriculture in sub-Saharan Africa is very different from Asia where economic growth led by small-scale agriculture was apparently possible (during the Green Revolution for example). In the case of Asia, significant use of irrigation has taken place along with technological advancement in seed varieties and fertiliser, which is in contrast to Africa where most agricultural production is centred on unreliable rain-fed areas (Jayne 2015). At the same time, heavy population densities arising from previous colonial land dispossession or more recent 'land to the tiller' programmes are linked to soil erosion and lost soil nutrients (Sheahan et al 2013). As an example, and as of 2010, 40 percent of the rural population in Kenya occupy 5 percent of Kenya's rural land, resulting in a mean population density of 411 persons per square kilometre (Muyanga and Jayne 2014: 99) which has led to land degradation.

The economic, social and political objectives or significance of land and land reform policies are not straightforward and are subject to major debates as already intimated. As well, to these three dimensions could be added other dimensions, such as land as a source and site of identity and belonging especially for indigenous people (Baird 2013). Claims to particular pieces of land for ancestral, cultural and spiritual reasons bear testimony to this. In the following section, I consider more fully some key debates around land reform.

4.3 Debates about Land Reform

Despite the universal agreement on the significance of land to rural livelihoods (Ikdahl et al. 2005) there are significant debates about the direction and content of land reform for purposes of addressing rural poverty. Some of the key historically-rooted debates (Boulding 1968, Okun 1975, Barraclough 1999) which continue to resonate throughout Africa include: the appropriateness of state-driven and market-driven reforms; the proper mix of economic growth in agriculture and redistribution of land and land-based assets; private-held freehold land title versus communal landholdings; the weighting of land tenure reforms against the need for redistributive initiatives, and small-scale versus large scale-farm productivity (AU/AFDB/UNECA 2009). More recently, the relevance of a new round of land grabbing has been brought to the fore. In the rest of this chapter, I consider some of these key debates.

4.3.1 State-led and Market-led Land Redistribution

Despite the general agreement on the significance of land reform, there is no broad agreement on the method of carrying it out and specifically with reference to land redistribution. This section examines two main approaches which have been dominant in land policy and practice in recent years, namely, state-led land reform (SLLR) and market-led land reform (MLLR), with the latter under neo-liberal conditions being particularly prominent.

The SLLR is consistent with any typical state-driven programme, such that Sikor et al. (2009: 1308) describe it as any programme “conceived by national governments in a top-down fashion and implemented by their administrative branches through bureaucratic modalities”. Examples of state-led land reforms include those undertaken in Russia after 1917, China in the 1940s and the Democratic Republic of Vietnam in the 1950s. Following the rise of post-colonial regimes in power, these reforms also took place in for example Cuba and Nicaragua (de Janvry 1981, Enriquez and Llanes 1993) and Ethiopia and Mozambique (Prosterman et al. 1990, Amanor 2012).

Margulis et al. (2013) notes that in 1979, at the World Conference on Agrarian Reform and Rural Development organised by the United Nations Food and Agricultural Organisation, many groups which would have articulated stridently the views of the rural poor were not present except for a few international NGOs and a farmers’ organisation called International Federation of Agricultural Producers. This conference, along with specific discussions around land reform at it, epitomised the beginning of a downward trend in SLLR and the emergence and consolidation of MLLR in the context of the neoliberal flagship project of structural

adjustment. In fact, it seemed that any kind of redistributive land reform was put aside and only resuscitated in the mid-1990s under full neo-liberal conditions.

Consequently, and more broadly, land reform is now normally thought of in terms of a host of market-based reforms (and not only around redistribution) such as land registration to promote formal and private land property rights (El-Ghonemy 2003, Peters 2009). The neo-liberal approach to redistributive reform is commonly rooted in the willing buyer-willing seller (WBWS) modality. At the same time, neoliberal land reforms are not without state involvement, as the state to varying degrees certainly plans, legislates, facilitates, mediates, finances and supports market reforms (Sikor et al. 2009) and thus more broadly sets the conditions conducive to bringing about such reforms (Borras 2006). Also, in actual land programmes, the distinction between MLLR and SLLR are blurred on a regular basis, in large part because of varying forms and levels of state intervention in the land reform process.

With regard to SLLR, it is often the case that land for redistribution and resettlement is confiscated or expropriated by the state with or without compensation, with the acquired land normally being subject to nationalisation. Existing landowners may receive little or no compensation (particularly under confiscation) or any forthcoming compensation may be delayed. Consequently, landlords or farm owners might resist SLLR in various ways, including through protracted legal challenges, or they may negotiate retention of part of their land through subdivisions in which they seek to retain the land areas with the most existing infrastructure and greatest agricultural potential.

Several authors have highlighted certain shortfalls of the SLLR (Borras 2006: 99, Sikor et al. 2009), without though necessarily arguing for MLLR. Expropriation of land by the state is said to cause the withdrawal, from farming, of agrarian landlords or large-scale commercial farmers who are, traditionally, sources of agrarian capital and agricultural development. In this context, and insofar as SLLR does not involve private titling (and it regularly does not), formal credit institutions are not able to extend their services to land reform beneficiaries as these institutions will not accept as collateral the kinds of occupation certificates often granted by the state to beneficiaries. At times, private titling is allowed but land sales are not permissible though land rentals may be. According to MLLR proponents, the absence of land markets is said to cause distorted and imperfect markets (with the market being seen as crucial to agricultural investment, productivity and growth) (Cousins 2009). Thus land market prohibitions are seen as preventing efficient producers from accumulating or acquiring land, and they supposedly keep inefficient producers on the land as well as push land transactions

into the informal unregulated market which is subject to abuse (Banerjee 1999, Silungwe 2015).

Further concerns involve the following: political elites often take advantage of the land allocation process and take over large tracts of land; productive farms may be subdivided into smaller less productive units and environmentally fragile lands may be distributed by the state to resettlement beneficiaries; beneficiaries who lack the requisite resources to be productive farmers are allocated land and, as a result, they may – and often do – default on land loans because of agricultural unproductivity (Deininger and Binswanger 1999); and specialised departments created by the state for purposes of the SLLR, particularly with regard to post-settlement agricultural support, are often fraught with incapacity and indeed corrupt practices.

The MLLR approach, which involves minimal or unobtrusive state involvement and seeks to achieve the development and consolidation of land markets (which are said to act as efficient redistributive mechanisms), adopts two broad principles: the willing buyer-willing seller approach, and formalisation of land holdings based on private titling (Tarisayi 2014, Silungwe 2015), with the latter discussed more fully in the next section.

The WBWS approach is based in part on the claim that there are potential productive beneficiaries with the capacity to buy land while there are sufficient incentives in place to induce current landholders to sale land voluntarily or without expropriation (Magahy 2008). Willing buyers are normally provided access to credit and under some combination of flexible loan and grant financing (Tarisayi 2014, van Zyl and Binswanger 1996). Even with such financial support, land availability though is often unaffordable to the majority of poor land hungry peasants (Bardhan 1997). Beneficiaries at times are expected to form groups in the purchase of a farm which would allow for economies of scale when it comes to input and output markets. Potential beneficiaries have to meet basic minimal criteria, such as sufficient human capital, adequate savings and fundamental agricultural knowledge (Deininger 1999). As well, farm development plans including budgets are sometimes required as part of the application process. Post-settlement agricultural and other support may or may not be privatised. Market-led land redistribution tends to be extremely slow though (Tarisayi 2014). Lahiff (2007) highlights this for instance with regard to post-apartheid South Africa, where it was taking two years from the time of land sales negotiations to the approval of development plans for resettlement farms.

Measures are put in place to encourage the sale of land by landholders, such as taxation on underutilised or unutilised land. In this way, progressive taxation increases the supply of

land available in the market as it increases the cost, on the part of landholders, to hold on to land that they are not using productively (Adams and Howell 2001). Another measure is to set selling prices for land at market level prices and to ensure payment for land without unnecessary delays, and even to allow for payment in foreign currency. But, in countries such as Philippines, some landlords collude with land evaluation entities, such as banks, to inflate the prices of land even above market value. Of course, this all inhibits the capacity of the state (even with significant donor support) to enact the WBWS modality of land redistribution (Ray 1998, Silungwe 2015).

Borras (2006) argues that the MLLR scheme assumes that those who seek land as well as the landowners are both merely rational agents who act purely in terms of economic or financial incentives (in the ‘productivist’ sense), when in fact land (for both landowner and land-purchaser) has all sorts of cultural, spiritual, historical and social implications focusing on questions of belonging, identity and landscape. Land in this sense is seen as an economic factor of production alone. The willingness of landholders to sell, even with proper economic incentives, via the MLLR is thus not a given. Land is a symbol of power and social status and, in some cases, even a crude tool for manipulation of the electorate. In the end, land has multiple functions or meanings, which means that the ‘value’ of land may exceed the productive potential of the land. Insofar as landholders hold onto their land (even only as a source of collateral or hedge against inflation), land concentration and monopolies will continue.

Further, any claim that markets broadly speaking and land markets more specifically, when in large part unregulated by the state, are able to bring about effective redistribution is deeply problematic. While markets cannot be deemed as ‘anti-equity’ when considered abstractly, they are simply not able to facilitate meaningful and fundamental changes in land ownership under concrete social conditions (Logan et al. 2012). Markets are not levelers in that they are not designed as such to undermine existing land ownership hierarchies based for example on class, race and gender (Bernstein 2002, Silungwe 2015). In this sense, they do not level the playing field when it comes to land ownership and access. Logan et al. (2012: 174) indeed claim that “narratives, such as willing seller–willing buyer, distance the state from the landless by obscuring their [landless people’s] narratives in programme design and implementation”. For example, under the WBWS modality, the landless are often automatically excluded because they lack the necessary human and financial capital demanded of beneficiaries, and hence they are categorised as ‘unproductive’ or ‘unfit’ (Zimmerman 2000) for resettlement land.

In the end, the WBWS approach makes land redistribution vulnerable to local landed elites and large-scale farmers who often are able to dictate the terms and pace of land reforms. Because of this, the WBWS model may not successfully correct the existence of skewed land distribution and satisfy any broad-based land hunger (Deininger et al. 2014, Otto 2009). Borras (2006) therefore argues that SLLR is more effective in redistributing land in that it often relies, as could be argued was the case of Zimbabwe under fast track reform, on progressive forces within the state and agrarian social movements. This often leads to calls for land expropriation as a more viable option.

4.3.2 Formalisation and Land Titling

In line with neoliberal thinking on the matter of land reform and security of tenure, land policies promoted in Africa in recent years have been geared towards redressing the problems assumed to be associated with customary tenure, and mainly tenure insecurity (Bassett 1993). As Munoz-Mora (2014) argues, tenure insecurity has been simplified in being seen as a direct consequence of the absence of enforceable individual privately-held rights. This is, as Peters (2007) notes, a form of modernisation thinking which dates back to colonialism, based on the view that, to develop, Africa must follow the path set by its colonisers.

Hirsch (2011) identifies four reasons for the pro-titling approach. First of all, conferring of title is believed to bring about several benefits to the state, including clarifying land relations among citizens and hence reducing land conflicts, and increased land revenues arising from taxation. Secondly, land titles are assumed to provide an incentive for landowners to undertake land investments as they are confident about their security of tenure (Feder and Nishio 1998). In Thailand, for instance, Feder (1987) showed that private property rights increased investments in land in two out of three provinces studied. Thirdly, in formalising land markets, land titles give landholders recognised, legally enforceable rights to land which are integrated into national land administration. This effectively means that they can participate in land markets (including selling, renting and sub-dividing) and use land as collateral for purposes of accessing loans. Lastly, land titles are argued to be a strong basis for economic growth and development.

The last point arises from a combination of the benefits of the first three points and, as indicated earlier, is central to the work of de Soto's (De Soto 2000). De Soto views land held under customary tenure as 'dead capital' as it cannot be used as collateral to access loans and thus the rural poor remain stuck in poverty. Others, such as Hughes (2004), argue that the

failure to privatise and individualise land tenure means development cannot be realised at all; or that, without such private titling, the transition from an agricultural to an industrial economy is simply not possible (Easterly 2007).

Various writers have weighed in regarding the efficacy of the assumptions underlying titling programmes (Okoth-Ogendo 1976, Shipton 1988, Haugerud 1989, Attwood 1990, Mackenzie 1993, Shipton 1994, Besteman 1999, Lund 2000, Peters 1994, Holden and Otsuka 2014). Based on a review of literature on formal land titling and registration on the one hand, and access to credit and agricultural investment on the other hand, Domeher and Abdulai (2012) conclude that the links are not very significant at least in Africa. The relative lack of agricultural investment for example is mainly attributable to pervasive poverty, the paucity of appropriate agro-based infrastructure and limited access to credit (and not, in any direct manner, to the lack of land titles). The study by Migot-Adholla et al. (1993) in Kenya and Ghana likewise did not find a link between private ownership and productivity. Otto (2009:175), in reviewing the work by de Soto, claims that “unfortunately, his proposals.... are based on a whole set of unrealistic assumptions”. In this regard, Sjaastad and Bromley (1997) posit that investing in land actually leads to tenure security which is a reverse of the claim that security of tenure is a pre-condition for increased investment. The argument is that certain investments (such as planting trees and building productive infrastructure) can be critical in making an argument for long-term land possession, as often happens in the case of customary tenure.

Otto (2009: 189) also notes that prices of land tend to rise following formalisation due to land speculation. Land titling in fact generally increases land speculation, with land seen as a hedge against inflation and consequently the land is not always used productively (Atwood 1990). Increased prices for land may lead struggling farmers to sell-off their land and, as a result, consolidation (or reconsolidation) of landholdings takes place. Further, under privatisation, the possibility of future increases in agricultural investment and productivity do not necessarily lead to use of the land as collateral among small-scale farmers. Otto (2009:189) in fact argues that the possibility of obtaining credit should not be overstated:

Several researchers found ... that banks in transitional and developing countries do not lend on land. Banks find it inefficient to conduct due diligence and risk assessment on small, individual pieces of land; and they are reluctant to foreclose, as it costs time and money, and they cannot rely on the efficacy of the legal system anyway.

Furthermore, if these farmers are very vulnerable and use their land as collateral to somehow acquire credit, any failure to repay often means ending up losing the land. This would be the case both amongst farmers formerly living under customary tenure and those on resettlement land (Magahy 2008). Thus, the result is land accumulation by large-scale farmers and landed companies, such as in India where ‘tribals’ sold off their lands because of foreclosures to moneylenders (Quan 2006). This entails distress sales of land by smallholders, including soon after acquiring private titles (Deininger et al. 2014). In fact, based on experiences in Uganda and Kenya, land titling programmes facilitated foreign or international investments in land while at the same time stalling efforts to meet the demands of rural people for land. In this context, Jayne (2015: 17) argues:

[I]f title conversion mechanisms allow relatively affluent domestic and international investors to obtain land relatively cheaply, then the rise of these institutions may be exacerbating land pressures in high-density areas by restricting the supply of unutilised land that would otherwise support voluntary rural-rural migration.

Further potential problems may also arise during implementation of private titling (McAuslan (2013:15), including in relation to maladministration or even corruption as well as the heightening of tensions around land such as along ethnic lines (Rubelta 2005, Platteau 1996).

Migot-Adholla and Bruce (1994) go further to problematise the very conceptualisation of property rights as a ‘thing’ which tends to imply that either one has it or not. This, they argue, is rooted in foreign, market-based notions of property ownership. ‘Property’ entails a multiplicity of social relationships (including power relations) with uneven, differentiated and fluctuating relationships of access, such as to land. This raises the notion of customary tenure and the multiple rights to pieces of land by various groups.

In relation to this, and in writing specifically about contemporary land grabbing while also challenging the notion that tenure security is reducible to private titling, Borras (2010:3) notes that small-scale farmers do not view themselves as especially vulnerable and insecure when they “rely on local, customary recognition of land tenure”. This kind of tenure involves ‘place-based land relations’ as opposed to ‘non-place based rules’ achieved through formal titling. N’ombe et al. (2014), in highlighting the relationship between customary tenure and the chieftainship system in Zambia, argue that the privatisation of land previously held under customary tenure undermines so-called traditional authorities in the form of chiefs. In doing so, it impacts negatively on historically-rooted religious and cultural practices as well as on land management practices tested and used over time, including the multiplicity of rights to

land. With reference to Ghana, Pernes (2014:59) observes that privatisation processes eventually change the composition of local rural communities, as ‘outsiders’ join the community following land purchases and rentals based on private titling, hence affecting detrimentally the sense of responsibility towards traditional leadership.

Land titling may thus increase conflicts as it ignores currently-existing overlapping land rights including the rights of secondary rights holders (Atwood 1990). This might have negative implications for land possession and usage along gender, age, ethnicity, and class lines (Deininger and Byerlee 2011). Githinji et al. (2014) posit in particular that privatising common property exacerbates challenges faced by women in terms of for example fetching water and firewood as nearby common goods may now be privatised. Because of this, the formal specification of rights through private titling are disadvantageous to the ‘weak’ in rural society who have always depended upon unclear ‘marginal and traditional rights’ for land access purposes (Platteau 2000). This may intensify localised land conflicts. Thus Haugerud (1983) cites examples from Embu District in Kenya where disputes increased as the national land titling programme alienated secondary rights users from land. Manji (2006) also adds that farmers may prefer informal customary tenure relations to avoid the payment of land taxes.

The key point which emerges is that private titling cannot be understood as a magic bullet for tenure security and agricultural productivity. In fact, in its 2003 report on *Land Policies of Growth and Poverty Reduction* (Deininger 2003), the World Bank makes reference to the importance of secure property rights without framing this necessarily in terms of the formalisation of private rights: the two, the World Bank's claims, should be treated as separate issues. The World Bank does however argue for the importance of secure property rights which are clearly defined, enforceable and contribute to enhanced agricultural productivity. The 2003 report highlights that, under certain conditions, group rights are appropriate as long as minimum conditions can be met, such as clear responsibility of individuals within the group, effective mechanisms of internal group control and imposition, as well as enforcement of sanctions (Deininger 2003: xxiv).

4.3.3 Farm Size and Productivity

The average farm size for both Africa and Asia in 1990 was reported to be 1.6 hectares based on the World Agricultural Census (FAO 2001), which implies that small farms were prevalent in both continents (Sial et al. 2012). Recently, Jayne (2015: 3) argued that more than 50 per cent of farming households in sub-Saharan Africa have access to less than one hectare of land.

In this context, debates about farm size and agricultural productivity and efficiency have existed for a long time and continue to be pervasive (Sial et al. 2012, Pieralli 2014, Henderson 2015), with the counter-intuitive notion of ‘diseconomies of scale in agriculture’ often being articulated, namely, that small farms are more productive (per hectare) compared to large farms. This was first observed in Russia in the 1920s, but only started to be studied in-depth in India from the 1970s (Ali et al. 2013; 3). Tatwangire and Holden (2013) for instance found that the inverse relationship between farm size and productivity existed in all kinds of tenure systems in Uganda. As well, Ali et al. (2013:2), using data from 2010 to 2011, argue that the inverse relationship is true of Rwanda as “smaller farms and plots are of higher quality and may also be less likely to be affected by crop shocks”. In Kenya, Pieralli (2014) confirmed the existence of the inverse relationship. The inverse relationship argument soon attained the status of almost a fact of development (Eastwood et al. 2010, Lipton 2009).

Small farm productivity is often based on the prevalence of labour of household members, and particularly of women, whereas large farms use hired labour (Sen 1975) which increases the operational costs of large farms including costs related to labour supervision (Binswanger et al. 1986, Dong et al. 1993). In this sense, family labour is assumed to come with self-motivation unlike hired labour which requires a system of incentives and fixed wages (Frisvold 1994), though others (Standing et al. 1996, Little and Watts 1994) claim that large farms are able to use a range of techniques to minimise labour costs. As well, large-scale farms may consist of significant sections of land which are underutilised, whereas small-scale farms are often more fully utilised (Cain 1981). Sahn and Arulpragasam (1991) argue that low utilisation of large estates (leading to low productivity) is sometimes due to absentee landownership. Furthermore, low state taxation of land or the inefficient collection of land taxes may make land a costless asset such that there is not significant pressure to maximise land productivities (Mkandawire et al. 1990). So, land and labour efficiencies are both said to characterise small farms.

The inverse size-productivity relationship claim though is hotly contested. For example, any conclusive position on the existence of the inverse relationship is dubious, as this requires studies which control for example for land quality and measurement errors around farm size (Holden and Otsuka 2014, Pieralli 2014). As well, it is claimed that if the agricultural analysis shifts to profits, by subtracting the costs of inputs including an imputed value for household labour, then the inverse relationship between farm size and productivity disappears. In this light, any inverse relationship which might at times exist is due to placing massive burdens on

women as unpaid agricultural labourers which heightens gender inequality (Dyer 1997, Manji 2006). By separating out irrigated and non-irrigated land (and thus taking into consideration quality of land), the inverse relationship also does not occur (Fan 2003). More so, the productivity on small farms tends to drop over time due to overuse of the land. Chand (2011), in examining India, demonstrates that smallholdings in fact still show high productivity but that they are marked by lower per capita productivity and high rates of poverty. And Foster and Rosenzweig (2011) argue that, eventually, once modern agricultural inputs including technology are widely and effectively used, the inverse relationship falls by the wayside.

The position adopted in the farm size-productivity debate has clear land reform policy implications, as do specific claims of course about land redistribution modalities and land tenure arrangements (as discussed in the previous two sub-sections). If small farms are perceived to be more productive, then smallholder farms might be the key to poverty reduction and sustainable livelihood development in agrarian areas. Therefore, governments should focus on promoting and maintaining smallholder agriculture while, at the same time, maximising state support for smallholders with reference to on-farm production as well as input and output markets (including post-harvest value chains) (Ligon and Sadoulet 2008, Larson et al. 2012, Henderson 2015). This claim also effectively contributes to making the argument for redistribution of land, and thereby closing the inequality gap in land holdings (Lipton 1993, Holden and Ostuka 2014). Certainly, if the inverse relationship is incorrect, then governments should enact instruments which discourage sub-division of farms as well as promote land consolidation (Collier and Venables 2011).

4.3.4 Land Grabbing

In recent times, a new round of land grabbing, subsequent to colonial land grabbing, has come to the fore and this is growing on a massive scale (Anseeuw et al. 2012, Oxfam 2012, World Bank 2009, Peters 2013, Jayne 2014). Schoneveld (2014), focusing on sub-Saharan Africa, argues that around 22.7 million hectares of arable land has been acquired by large companies in recent years, with most of these companies (approximately 90 percent) being owned by foreigners. As well, foreign governments have also been involved in this process. This new round is linked to global-level processes, such as the political economy of biofuels and agricultural restructuring in developing countries (Borras et al. 2010, Zoomers 2010).

Again, debates exist about these modern land grabs. Insofar as they are understood as large-scale investments in developing countries such as in Africa, questions arise as to whether

they are a basis for broad-based rural development or simply lead to increased food insecurity, ecological deterioration, and political instability in developing countries (Cotula et al. 2009, HLPE 2011). Peters (2013) argues that, in the end, land grabs involve accumulation by dispossession, with unprotected and unrecognised land rights held under customary tenure being under serious threat. As well, while land grabs involve foreign companies, there is complicit involvement of local elites in Africa and elsewhere, including governments and local business interests.

4.4 Land Reform and Donors

It is apparent from the discussion in the previous section (section 4.3) that there is no universal agreement on the best approach and methods for land reform, as claims about land titling, the role of markets and farm size are all subject to ongoing debates. It is therefore important, in this section, to look at the role of donors in land reform policy making (especially in Africa) to understand how specific positions around these debates are being promoted and carried out.

National land policies are a product of the realisation that the legislation of land in a piecemeal manner has not worked well in the past (Bruce 2009). In this regard, a national land policy provides an opportunity to reflect on the past and present and to look into – and plan for – the future in terms of the restructuring of land ownership, management, possession and access in a more coherent manner. Land policies are also deeply intertwined with the broader political economy and hence their formulation, implementation and impact invariably have spillover effects. For example, guidelines for the European Union (EU 2004) provide a list of ten areas which are linked to land policies: poverty reduction; citizenship, human rights and social justice; gender equity; agricultural development; conflict and post-conflict recovery; land administration and governance; local government and decentralisation; taxation, environment as well as land use planning. Some of the issues which have been pursued by donors, and often quite forcibly, include: contestations around private and customary tenure, and how these relate to tenure security (Haugerud 1983); environmental degradation, natural resource management and climatic change (Antoinette et al. 2014, Mutangadura 2007, Adams et al. 2003); food security and bio-fuels; and deforestation (FAOSTAT 2005).

The World Bank, the Organisation for Economic Co-operation and Development (OECD), the United States Agency for International Development (USAID), the Department for International Development (DFID) for the United Kingdom, the Swedish International Development Agency (SIDA) and other multilateral and bilateral donors have over a number

of decades played a critical role in influencing the direction of state policies and programmes around land in Africa and elsewhere. Indeed, this role is a crucial dimension of aid agency interventions and the international development system more broadly (Corkery et al. 1995, Jones 2011). The intervention by donors is not unbiased or simply technical as it is designed to shape policy in a particular direction in terms of both the very character of the policy formation process and the concrete product (i.e. the policy itself).

Donor agency involvement in land policy, as indicated, has a long history. For example, after World War II, donor support for land reform was directed at ending feudal estates in Asia and beyond with the political goal of undermining the spread of communism (Adams 2000). During the Cold War, political and ideological struggles (between communism and capitalism) and the pursuance of world domination were critical in determining which developing countries received aid generally, from which countries, and for what purposes. In the case of donors from advanced capitalist nations, and within the context of state-led development in the 1960s, support for African countries took the form of modernising agricultural development schemes (Ghezae et al. 2009). Donor enthusiasm for land reform was less prevalent, especially from the early 1970s, in part because land reforms were interpreted as deepening and extending state power and patronage at the expense of broad-based rural development.

Neoliberalisation, involving processes of 'de-regulation', privatisation and marketisation of state apparatuses and activities (Williamson 1994), came increasingly to the fore in the 1980s and tended to reinvigorate donor interest in land reform. Attached to the neoliberal agenda was the good governance agenda which prioritised civil and political liberties as a conditionality for ongoing donor support. Land rights and land reform, based on private property rights and the market mechanism, became conceptualised and articulated by aid agencies as critical to the neo-liberal good governance agenda. Donor efforts (under neoliberal conditions) to influence the direction of land reform can be observed in organised events and forums such as the World Bank's Rural Week of March 2000 attended by representatives from eight national and multilateral donor organisations. The forum focused on land reform and there was an overall endorsement of the basic neo-liberal policy tenets and prescriptions such as a formal legal framework to promote land markets (World Bank 2000).

Similarly, the Commission for a Strong and Prosperous Africa which was created in 2004 and chaired by the British Prime Minister at the time, was heavily influenced by de Soto's view on land rights (in fact, de Soto visited Britain at critical points to share his views on land titling). It is thus clear why the Blair Commission Report for Africa (released in 2005) clearly

endorsed and recommended the formalisation of land titles. Manji (2006) stresses that the Blair Commission was seeking not simply to clarify British policy on land reform and donor aid, but sought as well to set the standard for all international donors. Neoliberal trajectories in land reform policies in Africa have however been controversial at times. In the case for instance of Kenya, Zimbabwe and Malawi, the former British coloniser has been accused of interfering with land reform in a way which stalls redistributive land reform and protects vested landed interests against the needs of the rural poor (Palmer 2000).

A case in point is Tanzania. The Shivji Commission was set up in 1991 to investigate land issues and came up with a range of recommendations, including not to operationalise land markets (Larsson 2006). But its report was not commissioned into a White Paper because the recommendations did not align with the neoliberal land reform programme on which the Tanzanian government was embarking (Manji 2001). After the apparent rebuff of the Commission's recommendations, the government published in 1995 the National Land Policy and the British Overseas Development Agency (BODA) engaged a legal consultant to draft the land bill. The main thrust of the bill was to liberalise land tenure through individual titling and formalisation, and thus to move away from communal tenure, though this kind of tenure was the felt need at grassroots level based on consultations by the Shivji commission (Maoulidi 2006). As a consequence of the resulting Land Act of 1998, village and pastoral lands were to be alienated through certificates of investment, which were meant to attract investments in natural resources such as minerals and timber. The Tanzanian government's adoption of individualisation of land rights no doubt arose because of intense pressure placed upon it by donors such as BODA. In fact, in embarking on a formalisation programme, the government engaged with de Soto's Institute of Liberty and Democracy (ILD) (Benjaminsen et al. 2004). As well, the Norwegian Agency for International Development (NORAD) funded efforts propounded by ILD on land formalisation.

Donors, or aid agencies, influence land policies in a variety of ways including budget support, technical assistance programmes and funding a range of national policy processes (AUC-ECA-AfDB Consortium 2010). Of particular significance are donor policy-texts which involve discursive representations around land and democracy. These discursive interventions do the following: present a one-size-fits-all solution which suppresses local histories by articulating issues in a-historical ways (Apthorpe 1996, 1997, Gasper 1996); affirm the relevance of (Western) scientific knowledge and conceal the hand of politics and ideology in land policies (Booth 1994, Chambers 1997, Sachs 1992); and valorise the significance of

(supposedly) types of technical and rational expertise in resolving land problems (Ferguson 1994, Mitchell 2002).

Agencies such as DFID and USAID, in promoting particular land reforms, seek to justify such reforms through credible scholarly research and papers (such as the World Bank Policy Research Report on land in 2003). But most of the forthcoming research papers on land are ultimately internal papers or those commissioned by bilateral and multilateral agencies, such that they serve to justify already-existing discursive renderings of land challenges and solutions. Such interventions have been particularly noticeable during the current neo-liberal era, and on a global scale, and will be demonstrated later in the case study of Kenya. For now, it can be noted that aid or donor agencies seek to facilitate and shape public debate around land and, in so doing, they tend to take specific discursive positions on historically-rooted debates which continue to resonate throughout much of Africa (Boulding 1968, Okun 1975, Barraclough 1999), including those discussed in the preceding section (such as the appropriateness of state and market reforms, the proper mix of agricultural growth and land redistribution, and the weighting of tenure reforms against redistributive initiatives).

There has been a very strong emphasis by donors on legislation around land reform with reference to Africa. Together, this has involved the drafting of national land policies, the appointment of commissions of inquiry into land issues, and the enactment of new land laws. Manji (2006) analyses this involvement in a critical manner. He argues that the laws, based on neoliberal principles, are (if only unintentionally) an instrument for globalising capitalist social relations, and that they facilitate or reinforce the transfer of power to 'the global' by effectively ensuring that control over land policies goes to international donors and financial institutions; this implies a globalisation of legislative land frameworks, as intimated in the case of formalisation of private titling in Tanzania.

On the surface, the construction of land laws and policies often involves a multi-stakeholder approach with representation from international and bilateral financial institutions, national governments, peasant organisations and non-governmental organisations in what might be described as a 'juridical link' (Manji 2006: 18), and which is likely amenable to analysis as a kind of policy network. But relationships of power are embodied in such networks, with the power of 'the global' normally prevailing in terms of the neoliberal content of land reforms (and thus entailing the universalisation of land laws). Any such networks though, as Manji (2006) argues, tend to be quite transitory and may splinter once new land legislation is drafted. They only persist, and sometimes in a fragmentary manner, with regard to 'follow-up

actions' such as 'resolving' bottlenecks in land legislation implementation. This was the case in Uganda subsequent to the land laws of 1998, with DFID for example providing assistance through a project titled Securing Sustainable Livelihoods through Land Tenure Reform. In large part, this project involved most of the groupings which had participated in various roles in the drafting of the 1998 law.

Donors also contribute to the land reform implementation stage. The EU's Land Policy Guidelines of 2004, in highlighting the significance of land reform, for instance argues that donors can contribute more directly to the land policy process by engaging in institutional and capacity building of relevant state apparatuses, and monitoring and evaluating processes of implementation (IIED, NRI & RAS 2004). In this respect, in February 1999, DFID brought together policymakers, researchers and civil society representatives from Africa for a workshop on Land Rights and Sustainable Development in the United Kingdom (Toulmin and Quan 2000). Further, DFID supported the Rwandan Land Ministry in efforts to build implementation capacity (including providing technical advisers).

4.5 Conclusion

Land reform in Africa and elsewhere remains deeply controversial, and particularly so in the context of recent global neoliberal restructuring. Specific controversies, which of course overlap in many ways, were detailed in this chapter, including around modalities of land redistribution and alternative forms of land tenure security. Though systematic and rational debates can exist, and do exist, in the scholarly literature about these land reform dimensions, land reform trajectories in practice are determined – or at least conditioned – primarily by what takes place within the international development system (including the role of aid agencies). This is the sphere in which politics and ideology become increasingly to the fore. Chapters six and seven examine this fully with regard to land reform policies in Kenya. But before providing this examination, it is first necessary to provide a historical and contemporary overview of land in Kenya (in chapter five).

Chapter 5: Land and Politics in Kenya

5.1 Introduction

This chapter provides an historical and contemporary overview of the land question in Kenya, with a particular emphasis on the politics and ethnicity of land. This is necessary in order to contextualise later chapters which focus more specifically on land policy processes in Kenya. In the first section (section 5.2), I provide a brief economic and political profile of contemporary Kenya. The next section (section 5.3) examines the political economy of colonialism in Kenya with a particular focus on land conquest by white settlers and the resulting dispossession of land for indigenous Kenyans. Though there were limited land reforms during the waning years of colonialism, the overall objective of the colonial settlers throughout the colonial period was to promote and safeguard their commercial interests. The following section (section 5.4) analyses the land question in post-colonial period in Kenya (including state initiatives around land), ending the discussion though in the years when the land policy process was taking off (as this is examined more fully in later chapters). It will become clear that, in Kenya, post-colonial governments have not addressed fully the historical land grievances, and that these grievances became increasingly politicised and ethnicised. Because of the significance of land and ethnicity in Kenya, section 5.5 examines this more fully. Before concluding, section 5.6 briefly discusses land questions along the coast of Kenya.

5.2 Current Social-Economic Profile of Kenya

Kenya occupies 581,751 square kilometres and this is divided into 571,416 square kilometres of dry land and a further 11,230 square kilometres of open water (RoK 1984:70). Estimates suggest that 80 percent of the land area is arid or semi-arid and thus of low agricultural potential (KIPPRA 2013: 205). The World Bank (2013) estimates that the population is 44.35 million people and the country's Gross Domestic Product (GDP) stands at US\$44.10 billion. Overall, Kenya is considered a low-income level country.

The Kenya Institute for Public Policy Research and Analysis-KIPPRA (2013) provide a synthesis on the various indicators on poverty in Kenya. The poverty head count ratio, which refers to the proportion of the population which lives below the poverty line, was estimated as 45.9 percent in 2013 (KIPPRA 2013). In absolute terms, the number of people classified as poor has been increasing annually: 18.2 million in 2007, 19.5 million in 2008 and 20.1 million in 2010. Poverty rates and prevalence vary between counties within Kenya as well as across rural and urban spaces. Counties such as Kitui, Marsabit, Mandera, Samburu, Tana River,

Turkana and West Pokot have poverty levels above 70 percent. Rural areas continue to bear the brunt of poverty; the rural rate was 56.4 percent in 2008 as against 36.2 percent for the urban population, with the figures for 2012 being 55 percent and 35.5 percent respectively. Even in the rural areas, distribution of the poverty burden is not uniform with particularly high rates being recorded in Turkana, Marsabit, Mandera and Wajir, and lower rates in Kajiado, Kiambu, Kirinyaga, Narok, Nyeri and Murang'a.

Land inequality is high with the Gini-coefficient of land concentration reported to be 0.711 (World Bank 2008), and 28.9 percent of the population considered as landless (RoK 2003). Among those who own land in rural areas, 32 percent possess only about one hectare which is normally too small in size to support viable livelihoods. This is a critical issue as (rural) poverty is highly correlated to size of landholding in Kenya. Thus, areas with a high proportion of landlessness or land fragmentation also report high levels of poverty (Syagga 2006). The *Poverty Reduction Strategy Paper for Kenya* (RoK 2001) outlines the causes of poverty countrywide and notably most of the factors cited, such as low agricultural productivity, lack of access to land, lack of rural employment and ethnic conflicts, can be linked to land ownership, possession and management.

The Kenyan economy grew at a rate of 4.6 percent in 2012 which was an increase from the 4.4 percent reported in 2011 (KIPPRA 2013). In terms of employment (including urban employment), the majority of people work in the informal sector which is associated with low levels of income per capita and low productivity. Around 25 percent of GDP in 2013 was attributable to the agricultural sector (KIPPRA 2013). This involves an increase as agriculture had contributed 18 percent to the GDP in 2012. The growth in the agricultural sector was mostly due to conducive weather conditions and various reforms including increased state resources directed towards irrigation and agricultural inputs. Furthermore, the new constitution in 2010 (discussed later) led to the devolvement of agricultural responsibilities and functions to county governments which in turn acquired the power to leverage public-private partnerships (PPPs) geared towards improving agricultural productivity. Agriculture is a crucial sector in the Kenyan economy given its contribution to the national economy and the fact that it is the major source of livelihood for 80 percent of the people living in rural areas.

Overall, the national economy of Kenya has not performed well in recent years. For example, levels of investment, savings and efficiencies as set for the 2008 to 2012 period were not achieved mainly due to factors around the political crisis in 2007-2008, the global financial crisis and sluggish economic growth nationally. However, according to the UNCTAD (2013),

foreign direct investment has increased since 2008 except in 2012 when it was lower than the preceding year. The figures for this five-year period were as follows: 2008 (USD96 million), 2009 (USD115 million), 2010 (USD 178 million), 2011(USD 335 million) and 2012 (USD 259 million).

Administratively, Kenya has moved to a devolved structure since the promulgation of the new constitution in 2010. Before this and since the colonial period, Kenya had a centralised system of authority which was further strengthened by successive post-colonial administrations. The post-colonial system at first consisted of eight administrative provinces (namely, Nairobi, Central, Nyanza, Western, Rift Valley, Eastern, North Eastern and Coast) (see Map 5.1), with the provincial system later replaced by a system of counties. These provinces were headed by provincial commissioners who were presidential appointees. Notably, the provincial administration was a department within the office of the President. Below the provincial administrative structures were districts, headed by district commissioners also appointed by the president. Districts were subdivided into divisions, which were also divided into locations followed by sub-locations. The fact that provincial commissioners were presidential appointees meant that they could be deployed to enforce executive decisions.

The 2010 Kenyan constitution provides for two levels of political authority in the form of the national government and then county governments (see Map 5.2). National and county governments are meant to be distinct but interdependent in a way which does away with the previous subordinate role of local government structures to the national state executive. Each county government is headed by a Governor (and deputy governor) who is elected by the people in the country. The Governor appoints up to ten officials to head the administrative or executive branch of the county, and the county-level legislature consists of people elected by the voters at ward levels. There is expected to be a clear separation of powers between the executive and legislature within each county. The counties are geographically aligned to the 47 administrative districts which have existed since 1992.

Map 5.1: Provinces in Kenya



Source: Oaker Services Limited (2015) Shapefiles.

Map 5.2: Counties in Kenya



Source: Oaker Services Limited (2015) Shapefiles.

5.3 From Colonialism to Independence (1885 to 1963)

The annexation of land in Kenya is best analysed as a process with three main stages. The first stage was the acquisition of land by the British protectorate as a way of setting up the 'colonial state'. The status as a British protectorate only ended in 1920 when it became a British crown colony. During this first stage, several actions were undertaken. The protectorate was declared on 15 June 1885 heralding the start of a massive dispossession of indigenous Kenyans. Based on the Land Acquisition Act of India (1894), which was extended to Kenya, the Commissioner of the Protectorate appropriated all lands situated within one mile of the proposed Kenya-Uganda railway line in 1897 (Kanyinga 2000, Syagga 2011). Following on from this was the forceful acquisition of land for the establishment of public infrastructure and buildings. This can be understood as the early years of a coloniser-colonised 'jurisdictional link', involving an attempt to universalise property-related laws (making sure the laws applicable in colonies are harmonised with the English legal system) to make it easier for business entities to engage in transactions regardless of geographical location. This facilitated the involvement of global capital in land-related deals in Kenya (and in other colonies) given that property laws were largely the same throughout the British empire. To avoid overlapping political authority in certain areas of Kenya, the British moved to curb the authority of the Sultan of Zanzibar to a 10-mile strip (*Mwambao*) along the coast of Kenya and Tanzania (Syagga 2011). These different processes culminated in the setting up of the colonial settler economy based on the assumption that the alienation of land was permanent (Sorrenson 1968). At this stage, land annexation centred mostly on the Ukambani region in Eastern Province, central Kenya, and the Rift Valley. These areas had agricultural land with the greatest potential and were made even more attractive by the easy access to transportation as a result of the established railway line.

The second stage involved the colonial administration (from 1920) introducing a series of laws which effectively legalised the alienation of land which was already ongoing, and such measures were often forcibly implemented (Kanyinga 2000). In 1902, the Crown Lands Ordinance had been passed allowing for the sale of land to the settlers by the Crown or, alternatively, giving rentals to them for a period of 99 years (Binswanger-Mkhize et al. 2009, Veit 2011). This was however amended through the Crown Lands Ordinance of 1925 which extended the lease period to 999 years (Okoth-Ogendo 1991). In addition to the change of the lease period, the ordinance declared that all 'waste and unoccupied' land was to become 'Crown Land' and this meant that Africans now only had 'temporary occupation rights' to their ancestral land and were thus at the mercy of the governor's powers of land alienation. At the

end of both the first and second world wars, British ex-servicemen who chose to remain in Kenya were easily allocated free land. As of 1914, approximately 2 million hectares of land had been alienated from Kenyans, affecting mostly the Kikuyu, Masai and Nandi communities (Okoth-Ogendo 1991). The dispossession of land gained pace and reached 2,880,000 hectares by 1924.

Through the 1925 Ordinance, land was delineated into Native Reserves for black Africans and scheduled areas for European settlers which also became known as the 'White Highlands'. Thus, there was effectively a dual system of land tenure and land administration. The pronounced land segregation was only completed in 1932 following the Kenya Land Commission Report which advocated the further creation and enforcement of boundaries between the Native Reserves and White Highlands. Removing black Africans from the White Highlands was a move towards reassuring the White settlers that their rights to the land granted would remain unchallenged (Carter Commission 1934, Freward 1979). As this move was ensuring land abundance among the satisfied white settlers, the opposite was happening in the reserves where there was increasing landlessness and congestion (Van Zwanenberg 1972).

Once the settlers had land, they then needed labour to work on the farms. A series of measures were thus introduced to ensure that there would be an African labour force working on the settler farms, sometimes at the expense of Africans working their own plots in native reserves. In this regard, in 1918, the Resident Native Ordinance had been passed which provided for a labour contract under the supervision of, and regulated by, the government. Under this Ordinance, as a form of labour tenancy, the labourer (in a sense, a 'squatter' with no long-term residential rights) and his family could live, and cultivate a piece of land, on a settler's farm but only on condition that the labourer worked for a specified period for the white settler in a year. This arrangement provided labour opportunities especially for those Africans who had lost access to any land in the reserves because of increasing congestion and degradation. Overall, labour was sourced through various strategies: coercion, institutional distortions such as racial restrictions on land ownership, poll taxes and crop monopolies. Thus, Africans seeking work, as labourers, on farms owned by settlers during the colonial period, did not do so on a voluntary basis.

There were notable differences in the land ownership patterns between the White Highlands and the native reserves (Kanyinga 2009, Boone 2012). A total of approximately 3 million hectares was alienated for the White Highlands and, of this, over 50 percent was high-potential arable land including for cash-crop farming. The other 50 percent was mostly

conducive for large-scale livestock farming. Over 3,600 farms were in place with landholdings ranging from 400 hectares to over 800 hectares. Leo (1989) posited that the white settlers owned 21,000 square kilometres for a country totaling 356,000 square kilometres. In the meantime, 68 percent of Kenya's land is remote and unsuitable for farming and 6 million black Kenyans shared this, with the reserves covering around 84,000 square kilometres. There was also an ethnic dimension to the land ownership structure among Africans with particular areas reserved for specific ethnic groups. The colonial administration instituted social and political boundaries to perpetuate this land demarcation along ethnic lines (Kanyinga 2009). The purpose was also to engage in a 'divide and rule' strategy by preventing political interactions between different ethnic groups. This, in the end, created socio-political inequalities along ethnic lines and was a critical factor in the formation of ethnic identities.

In the third phase, from the mid-1950s, the colonial administration embarked on land tenure reforms and introduced individualisation of land. In response to population pressures in the reserves, the administration adopted a reserve plan emanating from the Swynnerton Report of 1954 which was aimed at privatising land ownership, ending collective control of land and promoting cash crop production (Pedraza 1956). Furthermore, the Swynnerton Report was critical of the prevalence of sub-divisions of land in the reserves and advocated for the consolidation of parcels of land (Syagga 2011). In doing so, the report did not take into account any historical injustices arising from colonialism including how the landless had lost their land, and it showed an insensitivity to the gendered character of land access and possession. The colonial administration also thought that individualisation of plots would have the effect of preoccupying people with work on their separate plots of land and hence they would not come together in any agrarian movement against the state (and at a time when the Mau Mau rebellion was gaining ground). Those who lost their land in the process of individualisation and consolidation of reserve land often had no option other than to go to the White Highlands and enter into wage labour. Ebioha (2013: 213) summed up the implications of the Swynnerton plan in the following manner:

The plan was to set in motion a drive to alter the notion and fact of land ownership, as well as the attitude of Africans towards land as an indispensable means of subsistence.... Under this plan, the small pieces of land scattered in several areas were to be consolidated into single units registered under individual ownership. This was a departure from the traditional land tenure system in which communal ownership or control and disposal of land prevailed in most African societies. Through this means, it

is evident that the western private property rights would be extended to the African societies in Kenya.

5.3.1 From KAU and Mau Mau Rebellion to KANU and KADU

The processes of dispossessing Africans from their land, resulting in the declaration of present-day Kenya as a British colony on 23 July 1920, culminated in deep resentment of the colonial administration by the indigenous people (Veit 2011) and therefore local people started organising against the system. For example, Harry Thuku, a Kikuyu who was a staunch opponent of British rule, was arrested by the British police on 14 March 1922. Two days later, protesters, who gathered to demonstrate against the arrest at the central police station in Nairobi, were shot at by the police and at least 20 of them died.

The legislative assembly at the time consisted of 17 elected seats which were divided as follows: 11 for whites, 5 for Indians and 1 for Arabs. Elections for the legislative assembly were periodically held including in 1924, 1927, 1931, 1934 and 1938 and for all this period no seats were reserved for the indigenous Kenyans. As part of the ongoing African resistance to colonial rule, the Kenya African Union (KAU) was formed in 1944 by James Gichuru and Harry Thuku (who had been previously arrested in 1922). Initially, it was referred to as Kenya African Study Union. In 1947, Jomo Kenyatta (who later became the first post-colonial president of Kenya) was elected president of KAU.

Following on from this political mobilisation and resistance, the Mau Mau (which was a militant uprising), was born. The Mau Mau originally consisted of the Kikuyus who had by this time suffered the most in terms of dispossession of land. The Mau Mau organisation started in 1948 though it was only a loose organisation initially. The armed rebellion under the leadership of Dedan Kimathi Waciuri started on 26 September 1952, with the group reportedly killing the first British civilian on 3 October 1952. In addition to the Kikuyus who were the majority in the rebellion (Materu 2015), some of the Mau Mau members were from Meru and Embu ethnic groups. Maloba (1993:170) argues that while the Kikuyus did not prevent other ethnic groups from joining, there was no active recruitment directed at incorporating further ethnic groups.

The Mau Mau tactics centred on undermining the colonial administrative structures as well as eliminating, through assassinations, both the white administrators as well as Africans who were supporting the administration (Troup and Hornsby 1998, Materu 2015). The demands of the rebellion were for the colonial administration to restore Africans' land rights

as well as grant political freedoms and bring about social justice. The violence unleashed was felt most in the White Highlands and central Kenya and this resulted in the declaration, on 21 October 1952, of a state of emergency (Kanyinga 2009). Following the declaration of the state of emergency, Jomo Kenyatta, the leader of KAU then, was arrested for his alleged involvement with the Mau Mau. He was sentenced to seven years of hard labour on 8 April 1952. The state of emergency was only lifted in 1960 by which time many Kikuyus were imprisoned or detained. This was after the arrest of Dedan Kimathi Waciuri on 21 October 1956 and his later execution on 18 February 1957. The agricultural economy took a tumble as significant numbers of white farmers became skeptical of the future and stopped or reduced productive activities on their farms (Kanyinga 2009). Other farmers even went as far as seeking a repatriation package to go back home.

Branch (2006) and Bedasso (2012) describe the attempts by the colonial administration to also undermine the Mau Mau rebellion by facilitating some form of class formation among black Kenyans. In this respect, in the elections for the African representative to the reformed national legislature (of 1957-1958), there were stringent minimum requirements on education level and wealth. As well, those who hailed from the Central Province and wished to candidate themselves for the position had to be screened to ensure they had never engaged in the activities of the Mau Mau. Overall, such initiatives entailed trying to create an elite class with interests at odds with the majority of the African population (Bedasso 2012). Further, land was central to the Mau Mau struggle but it also became a reward given, by the colonial administration, to those Africans who opposed the activities of the Mau Mau.

Around the time when the state of emergency was lifted, the KAU split into two parties: Kenya African National Union (KANU) and Kenya African Democratic Union (KADU). Jomo Kenyatta was elected president of KANU (while he was still in prison as he was only released on 14 August 1961) on 14 May 1960 and KANU was officially recognised as a political party on 11 June 1960. The KADU was established on 25 June 1960. Both parties shared a vision of deracialising the White Highlands and thus undermining racially-based land segregation. The activities of the parties led the colonial administration to consider the need for some kind of limited land redistribution which was only meant to silence voices of discontent. It was clear that the interests of the colonial settlers were driving the nature and pace of such reforms. There was a clear divergence between the interests of African political leaders and colonial settlers as the former were concerned about landlessness and unemployment while the priority of the latter was maintaining their own productivity and prosperity.

There were differences between the KADU and KANU on some issues (Materu 2015). KADU was advocating for a federal structure of government which meant giving sub-national regions the power to administer land issues (Maxon 2009). This was a position largely borne out of a consideration of the differences in population size between the various ethnic groups; in Kenya, including at the time, regions are generally dominated by particular ethnic groups (Kanyinga 2009). The concern for minority ethnic groups earned KADU some support among certain settler farmers (Maxon 2009) as these settlers considered themselves as a minority and thus felt that their land owning interests would be considered and protected under federalism. In contrast, KANU advocated for a centralised government system as motivated by the desire for national integration. Furthermore, KANU preferred that land redistribution should take place once an African government was in place, so that the interests of the colonial settlers would not override the programme.

The existence of KANU and KADU was along political, ethnic and economic lines (Bates 1989). The KANU was said to be an alliance between the Kikuyu and Luo who wanted to obtain land from the Kalenjin (due to the numerical advantage and relative economic advantage of the Kikuyu and Luos); while the KADU was an alliance of the Kalenjin and Luhya whose interests in land were opposed to both the Kikuyus and Luos (Manner 1962). Bates (1989) argues that, as the Kikuyu were wealthier and thus had the advantage of being able to buy land (thanks to their earlier assimilation into wage labour), the KANU opted for market-based land distribution. The Kalenjin were less economically privileged leading to the KADU advocating for regionalisation of land distribution on an ethnic basis (Materu 2015).

The colonial administrators opted to Africanise the White Highlands as a way of bringing about stability, and thus effectively by-passed any more radical changes. Consequently, in 1959, a new policy was formulated and implemented which was geared towards deracialisation of rules on ownership of agricultural land. For this undertaking, land purchase by Africans was promoted. Wasserman (1976) posits that four issues led the colonial government to consider its specific policy on land redistribution. First, by taking the initiative to redistribute land, the colonial settlers assumed that they would always retain control of the redistribution process and ensure that their interests are protected. Secondly, the agitation around land had grown to the point that it could no longer be ignored – land hunger especially among the Kikuyus would soon, if not addressed, lead to further insurgencies. Third, identifying and promoting the African landed elite to move into the highlands would obscure and confuse the situation in that it could now be re-characterised as not strictly a black-white

division in terms of land access. Lastly, international financial institutions, such as the World Bank, were supportive of the land settlement schemes and land transfer processes as these would relieve land pressure in the reserves and enhance employment opportunities (IBRD 1961: 4).

To move the process forward, the Land Development and Settlement Board (LDSB) was formed by the colonial government in January 1961 (with a huge representation of settlers on the board) with the objective to organise for resettlement. Settlement schemes soon followed with the first schemes to be on 'Z' plots meant to benefit prosperous Africans. The plan was that, once land has been earmarked for settlement, it would be purchased by the government and then subdivided ready to be sold to the few selected prosperous African farmers (Kanyinga 2009: 96). In addition, there was also a scheme targeting prosperous Africans but those who needed additional support to be able to gain the necessary farming skills (Belshaw 1964). However, these efforts were done without the involvement or support of KANU which, as indicated, preferred to halt all redistribution until the period when an African government was in power.

5.3.2 Early Settlement Schemes

These early resettlement schemes can be viewed as the first time when international donors (bilateral and multilateral) supported land reform in Kenya. The British government, the International Bank for Reconstruction and Development (IBRD) and the Colonial Development Corporation (CDC) bankrolled these schemes in terms of purchasing land (Boone 2011). The approach to redistribution was based on the willing-buyer/willing-seller scheme and geared to support land markets (Njonjo 1978, Leo 1989). At this time, the colonial administration was entering its final years, but the settlers took the driving seat in the design of the settlement schemes which were not meant to address the major challenges of landlessness and squatting.

Approximately 73,000 hectares of land were acquired before 1963 with the objective of settling 1,800 yeomen and 6,000 peasants (smallholders). The mechanics of the land acquisition was that land to be distributed to assisted farmers would be in the main purchased through loans, with a third of the land purchases for the smallholder schemes using the grant format thanks to the Commonwealth Development and Welfare Fund (IBRD 1961). The assumption was that these schemes would lay the foundation for stability in the national

economy as well as amongst the settler agricultural farming community even subsequent to a post-colonial African government.

District agricultural committees were established and tasked to evaluate land proposed for sale while the Department of Agriculture would engage in technical appraisal of the soil and water to ascertain the “suitability for subdivision and intensification” (Kanyinga 2009: 97). It was then for the LDSB to negotiate with the farm owner the purchase price and make recommendations to the Division Land Board. At the time of transfer, cash was to be paid for the equivalent of one third of the purchase price and the balance was to be paid in seven equal installments with 5 percent interest. The Kenyan government acted as guarantor for the payment (IBRD 1961). Allegedly, the LDSB offered prices to white settlers which were much higher than the actual market value of their land (Kanyinga 2009, Leo 1989).

The land holdings distributed differed depending on the economic status of the beneficiary; the yeoman holdings were on average 20 hectares, with smallholders receiving about 6 hectares each. Boone (2011: 1324), based on a literature review, characterised the land holdings as follows:

Most of the 1960s settlement schemes were designed as either 5,000-acre “low density schemes,” designed for commercial farming, or 10,000-acre “high density schemes,” designed for peasant or subsistence farming. The commercially oriented schemes were divided into parcels of about 11-16 hectares (approximately 30 acres) each, distributed to approximately 160 families per scheme (on average). On high density schemes, plots of 4-6 hectares (about 11 acres) were distributed on schemes that could accommodate from a few hundred to more than a thousand families.

The yeomen were allocated plots strategically closer to the white settlers to enable farming knowledge transfer. The criteria for beneficiaries, as developed by the LDSB, included having good farming experience and managerial capacity (IBRD 1961). Still, the potential beneficiaries for the smallholder plots had to have a working capital of around £50. These selected beneficiaries received credit facilities and grants to help them purchase land as well as to develop it.

Overall the scheme was meant to help build the confidence of settlers that a forcible land grab by the ex-Mau Mau’s was not going to happen and thus their investments were secure. However, the settlers felt that the terms of payment, of one third cash price at the point of land transfer (when they are selling off parts of their land) was not attractive with the serious risk of default especially when the African-led government came into power. These payment

terms were later renegotiated to provide for 50 percent cash payment on transfer with the balance to be paid in three equal annual installments over three years. Additionally, some white settlers were not comfortable with the introduction of the smallholder peasant and yeoman farms as these challenged their dominance in the agrarian economy.

5.3.3 One-Million-Acre Scheme

Another scheme, called the one-million-acre scheme, was pursued during the twilight years of the colonial period and was to involve an orderly transfer of ownership of land from those white settlers who wanted to leave prior to independence (Belshaw 1964). The scheme was designed to last for the period 1962-1967. At the time of independence in 1962, and despite the earlier settlement schemes discussed above, about 3 million hectares of land (50 percent of Kenya's agricultural land) remained in the hands of white settlers (Syagga 2011). Some individuals such as Lord Delamere owned up to 400,000 hectares (Zwanenberg 1975). In 1962, in terms of the one-million-acre scheme, there was a shift towards high density settlements with the objective of reaching masses of landless people and targeting low-income groups with plot sizes of approximately 10 hectares. Previous schemes entailed reaching a select few indigenous Kenyans. The plan was that most of the land was to be purchased and distributed to land hungry peasants relative to well to do farmers. The expected income return for these plots was 500 to 1,500 Kenyan shillings per year, after deductions for loan repayments and subsistence costs (Kanyinga 2009:100).

Even though it was focused on high density settlements, low density schemes were also included and would provide a plot size of about 16 hectares with an income return of around 2,000 Kenyan shillings a year. These low density schemes were for those peasants interested in engaging in agriculture for both subsistence and commercial purposes (Kanyinga 2009: 100, Leo 1989) and they would assist in cultivating a class of African farmers socialised into modern farming. The land redistributed was given to individuals and not groups or communities. Donors continued to play a role in the one-million-acre scheme, with the World Bank and the governments of Great Britain and the Federal Republic of Germany making available the requisite resources. Land beneficiaries would receive loans, and they would automatically take over relevant debts related to settlement, which were computed to include costs of land purchase and administration charges of running the scheme.

The government had overall responsibility for the scheme, taking over from the LDSB which had run the previous one. The target for this round of land redistributions was the

provision of land to 35,000 mostly land hungry peasants on a total of approximately 1 million acres (or 404,686 hectares) of white land located particularly on the periphery of the reserves, catering primarily for high-density peasant holdings. The purchase of the land was to be staggered, involving 200,000 acres (or 80,937 hectares) per year for five years. As an improvement from the previous land purchases in the earlier scheme, and to encourage more colonial settlers to sell their land, sellers were to be provided full cash payment at the time of sale and, in addition, such payments could be effected in either London or Kenya depending on each farmer's preference (Kenya Land Alliance 2004). The goal of the government, as in the previous scheme, was to maintain a stable agricultural sector and national economy in general (Syagga 2011). Hence the approach to land redistribution was geared to keeping intact the structure of landholdings in the White Highlands but, at the same time, to address the needs of land hungry people in order to avoid the forced eviction of white settlers. This was achieved in the sense that the rights and capacity of squatters to own land in the White Highlands remained limited. And lower density settlements (which were still part of this scheme) targeting more prosperous Africans were meant to create a class of African farmers which would buy into the white settlers' approach to agriculture and thereby promote economic growth.

As well, the identification of beneficiaries under this scheme was meant to address issues related to national security. In this sense, the scheme involved a carrot and stick approach, namely, parceling out significant tracts of land while also excluding certain groupings from the redistribution process. In this respect, Leo (1989) notes that the former insurgents (ex-Mau Mau) in particular were a grave concern for the majority of European farmers in the White Highlands and, consequently, the oversight of the selection of scheme beneficiaries involved colonial government loyalists including some traditional African leaders who excluded – from the scheme – sympathisers of the ex-Mau Mau and other people convicted of offenses. The scheme, as a result, did not address many of the grievances which were behind the Mau Mau uprising. Further, it led to the reorganisation of the former Mau Mau detainees as well as other militant groups coming onto the scene such as the Land and Freedom Army, *Kiama Kia Mwingi* (Council of the Masses) and *Mitarukire* (the ragged ones).

In the end, demand for land outstripped the amount of land which was purchased under the scheme. Additionally, some of the acquired land was located in unproductive areas and this was coupled with the fact that the size of plots was relatively small compared to land which was used for growing high-priced cash crops and livestock in low density areas on white owned farms (Kanyinga 2009, Njonjo 1978). Consequently, militant groups and some labourers on

white farms threatened to forcibly occupy white farms. In order to prevent violent seizure of white farms, Jomo Kenyatta (the prime minister of the new African government operating under self-rule from June 1963) instructed that the landless Kikuyu labourers be resettled in an area called Kinangop, from where the majority of the tensions emanated. This was before 12 December 1963, the date set for independence.

5.4 Post-Colonial Period

It is critical to provide a brief context to the discussions which led to independence especially as these pertain to land redistribution; as these discussions largely defined post-colonial land policies soon after independence. The Lancaster House conferences on a new Kenyan constitution, in which African political leaders were involved, began in January 1960. The discussions centred to a significant extent on the Bill of Rights which was proposed by the white settlers to guarantee existing property rights (Veit 2011). This ran contrary to the African nationalists' demands for significant land reform and resettlement. The successive conferences saw the British government and settlers exert considerable pressure on Kenyan African political leaders to endorse the willing buyer/willing seller approach to land reform. In the end, Jomo Kenyatta, president of the Kenya African National Union (KANU), conceded to this position while KADU maintained its demand for federalism or *majimbo*. The KADU federal approach would vest powers on land governance to the regional authorities thus potentially limiting the ability of one to acquire land, insofar as ethnicity and region would determine from where the potential buyer would come from. In addition, federalism would prevent large-scale centralised bureaucratic-directed land redistribution.

Several aspects of the Lancaster house agreements had implications for Kenyan land reforms going forward (Kanyinga 2009). Private property was to be protected via the Constitution and this stripped the state of any expropriation powers as far as private property was concerned (Bedasso 2012). If the state wanted to acquire privately-owned land, the purpose of such an acquisition would have to serve the public interest and full compensation was to be paid to the current land owner. Furthermore, the courts were available for the parties involved to appeal any such acquisition. Land settlement programmes were to be set up, involving the purchase of farms from white settlers and their subsequent subdivision for black farmers, with the British Government expected to provide most of the funding. In line with market-based land reform, a land bank was to be established with the objective of making available short-term credit to the new black settlers in an endeavour to boost agricultural productivity. Long-

term loans would also be provided to those black Africans who wanted to purchase existing white farms without subdividing them.

5.4.1 Jomo Kenyatta 1963 to 1978

As already outlined earlier, a programme of settlement schemes shaped along market mechanisms was established in the twilight years of the colonial administration, including the One-Million-Acre Scheme from 1962. KANU won the elections in December 1963 and Jomo Kenyatta became the Prime Minister of an independent Kenya. However, it was only in 1964 that a new constitution emerged, with Kenya becoming a republic under what in effect became a one-party state system. Taking off from the concessions he made during the Lancaster House conferences, Kenyatta, while making policy changes related to land reform, largely reneged on any revolutionary promises of large-scale land reform programmes (Kimani 2010). Several aspects of the Kenyatta land reform direction can be noted. The primary colonial laws, the Crown Lands Ordinances of 1902 and 1915, were retained albeit with minor changes (Veit 2011). Specifically, the government updated national directives by replacing ‘Ordinances’ with ‘Acts’, with references to ‘Crown’ (as in crown land) becoming ‘President’. As well, reference to the British Monarch in law was replaced by Government. Effectively, former ‘Crown Land’ became ‘Government land’. What is critical is that the colonial laws allowed the British Monarch to allocate land as it deemed necessary; so, by maintaining the content of existing legislation and merely moving the powers to the Government, the stage was set for further possible abuse of these laws (Syagga 2011).

Additionally, the superiority of private freehold tenure (regulated via modern laws) over customary tenure was retained, with systematic titling programmes pursued on a significant basis particularly on redistributed farms as part of new post-colonial settlement schemes (Bedasso 2012). There was a marked continuity from the policies which emanated from the Swynnerton Plan of 1954 whose recommendations were to increase agricultural productivity (including for farmers in the Native Reserves) through market-based incentives to intensify agriculture, and by way of investments and technology improvements within a market-based land allocation system. Notably there was no review of how a person had acquired land before endorsing freehold title. Bedasso (2012: 26) thus highlights continuity in pre- and post-independence land policies and in the broader trajectory of the Kenyan political economy:

Probably the most powerful symbol of continuity is the appointment of Bruce Mackenzie, a settler farmer, to serve as the Minister of Agriculture for the first eight years of the independence era. The commitment to continuity is also demonstrated in the engagement of the British in training and advising the military establishment... At the economic front, the Kenyatta government asserted its intention to ensure continuity by ruling out any departures from a capitalist mode of economic organisation.

The state executive retained absolute powers over land as well as in the distribution of land including within a context in which areas were divided along ethnic lines (Kimani 2010, Veit 2011).

It should be noted that the period 1960 to 1963 was characterised by discussions and agreements between KANU and KADU as they attempted to show a united African political party front in the negotiations for independence. The KANU under Kenyatta was not totally opposed to all KADU proposals with reference to federalism. The first post-independence constitution of 1963 reflected some of the federal approaches recommended by KADU. However, in 1964, a new constitution ushered in the Republic of Kenya with the new position of the president while the Prime Minister position was abolished (Okoth-Ogendo 1972). Kanyinga (2009) also notes that KANU agreed to align beneficiaries of various settlement schemes (including the million-acre scheme) to ethnic-based compositions. Boundaries to this effect were drawn up by the Boundaries Commission which tabled its proposals in December 1962. The former 'Native reserves' were renamed 'Trust lands' but the authority to administer these areas was not transferred back to the traditional leaders. Such authority was vested in statutory law which meant such land was regarded as government land despite the constitutional provisions which highlighted the need to take into account interests of the indigenous owners.

In 1965, the Kenyatta government set up a Commission for Squatters with the objective of both registering and settling the landless. Due to the urgency to address land issues, approximately 18,000 families were to be quickly resettled on 12-acre plots. This scheme became known as *Haraka* settlement areas, with 'Haraka' meaning *haste*. For this scheme, there were no income qualifications nor was there any post-settlement support (Leys 1975). As of 1975, over 12,500 families had been settled. The schemes gave rise to incipient class differentiation as people who were able to pay the stipulated 10 percent deposit for the cost of the plots ended up with larger plots than those who could not do so. Corruption and nepotism was also rife and consequently even those who were not landless benefited from the scheme.

The scheme under the Commission for Squatters was phased out in the early 1970s. In order to effectively implement the willing-seller/willing-buyer approach, a Settlement Fund Trustees (SFT) was established on 25th April, 1955 with the main objective being to make available resources for the purchase and distribution of land. But the high-density schemes which were put in place benefited mostly well-to-do Kenyans who could meet the criteria in accessing loans. This programme exacerbated ethnic tensions as people purchasing lands outside of the ‘traditional ethnic zones’ were considered immigrants or aliens (Kanyinga 1998).

In this respect, corruption and patronage characterised the Kenyatta era and were in most cases practiced along ethnic lines (Kimani 2010). The Kikuyu politicians in the Kenyatta government fostered a system which favoured fellow Kikuyus, who had also set up most of the land-buying companies. This meant other ethnic groups such as Luo, Masai and Kalenjin were at a disadvantage. Boone (2011:1322) thus argues that the prevailing system “created opportunities for politicians and state agents to manipulate land allocation and land rights in the pursuit of social and political control over populations settled in the Rift. These opportunities were exploited by politicians in 1991-1992 who sought to play the land card for electoral gain”. Notably, Kenyatta is viewed as being a factor in the well-to-do disproportionately benefiting from the Million-Acre Scheme when he announced, in 1964, that senior government officials will be prioritised in terms of allocation of 40 hectare plots together with the farm houses (which are within the ‘Z plots’). This arrangement was not originally known by the British Government whose funds were bankrolling the scheme. The scale of the scandals which followed promoted the setting up of a commission by the British government in July 1966 to investigate land redistribution. The commission’s report noted that many people who were benefitting from land reform, especially under this Kenyatta directive, did not need any financial assistance to acquire land as they could do so without assistance through loans. In fact, President Kenyatta himself received 88 hectares (Kamau 2009). The scheme was completed in 1971 having distributed 505,858 hectares out of the 3,035,147 hectares which was occupied by the white settlers (Syagga 2011: 11).

5.4.2 Daniel Arap Moi 1978 to 2002

Following the death of Kenyatta, Daniel Arap Moi (who was the vice-president at the time) took over as Kenya’s president in 1978. His tenure continued with the corrupt and ethnic-based land reforms characterised under Kenyatta’s tenure of office (Kimani 2010, Materu 2015). Hope (2014:495) argues that Moi sought and achieved the “total exercise of power” which

gave rise to neopatrimonialism, ethnic biases, an undermined civil society, economic mismanagement, misuse of public resources as well as corruption. Being a Kalenjin, the new president rewarded his supporters (mostly the Kalenjin) with land. Some of the land given out was in prime areas such as Trans Nzoia, Nandi, Uasin Gishu and other Rift Valley districts. The selling price to these ‘cronies’ was often at below-market prices. Some of the land parceled out included protected forest reserves or land owned by parastatals such as the Agricultural Development Corporation (ADC) and Kenya Agricultural Research Institute (KARI).

As result of widespread civil discontent and sustained pressure from donors, Moi conceded to re-introduce multiparty politics in 1991 (Otieno 2010). Section 2A of the Constitution which was used to ban opposition parties was repealed and a two-term limit (of 5 years per term) for the presidency was introduced (Kimundi 2011). In an attempt to suppress the opposition, though, Moi portrayed it as an ethnic-centred attempt led by Kikuyus to try and control land. Using the idea of regionalism (*majimboism*), he unofficially instigated other ethnic groups to take back or seize land which was had been ‘stolen’ by the Kikuyus especially in the Rift Valley and western Kenya (Mutua 2008, Klopp 2001). As Boone (2011: 1314-15) notes, “the ordinary citizens who participated in (or abetted) the violent killing and house-burning campaigns in Rift Valley districts often expected to claim the land of the victims as reward for their efforts and for the political support they gave to the Moi regime”.

Many other politicians echoed the message of getting back Rift Valley land and giving it to its original owners who had been disposed by the colonial state and subsequently by KANU under Jomo Kenyatta in the 1963-1978 period. While such tactics have been cited as contributing to Moi’s election successes of 1992 and 1997, they led to population displacements, deaths and ethnically-based land grabbing. In this context, Kagwanja and Southall (2009; 261) argue:

Despite capitulating to domestic and international pressure to return Kenya from one-partyism to pluralist democracy in 1991, the country’s strongman, President Daniel arap Moi, and his Kenya African National Union (KANU) cynically manipulated extra-state violence to frustrate democracy, secure victory and retain power during the 1992 and 1997 multiparty elections.

Further, Boone (2011: 1314) with reference to the 1991 and 1992 election-related violence, argues that: “All previous accounts recognise that 1991-1992 violence stemmed from long-standing land conflicts that had strong ethnic dimensions and that the violence itself was

instigated by re-election-seeking political bosses of Rift Valley Province, the regional stronghold of the regime of Daniel arap Moi”.

5.4.3 Mwai Kibaki 2002 to 2013

Mwai Kibaki came to power when the National Alliance Rainbow Coalition (NARC) defeated KANU in elections of 2002. Moi was not eligible to run following the lapse of his two terms (based on the revised constitution). NARC received 62 percent of the votes while KANU (for which the presidential candidate was Uhuru Kenyatta) got 31 percent. This marked the first transfer of power via elections in post-independent Kenya. Kibaki took over in 2002 after being elected by a broad reform coalition which advocated undoing the then-existing government accused of corruption and human rights abuses. However, the optimism about the presidency of Kibaki soon started to wane (Kagwanja and Southall 2009, Hope 2014) due to various reasons including political infighting among the elites. Kangwanja et al. (2009) argue that the major cause for the infighting was that Kibaki reneged on implementing the Memorandum of Understanding (MoU) between his National Alliance Party of Kenya (NAK) and Odinga’s Liberal Democratic Party (LDP) (the parties which formed the NARC coalition) especially provisions on equal sharing of key positions in government as well as ‘consensus’ in decision-making.

The tensions culminated in the two factions taking different positions on the 2005 referendum on the proposed draft constitution, with the referendum resulting in a ‘NO’ vote of 58.12 percent. In general, NAK was for a centralised system of government with powers vested in the executive presidency; while the LDP propounded elements of a federal parliamentary system. As a compromise, and in coming together to form a united front against KANU, the two factions had put in place a MOU which provided also for the introduction of the position of Prime Minister, via a new constitution subsequent to coming into power. This proposed arrangement, which was in fact encapsulated in the post-election draft constitution, meant keeping the Presidency but with reduced powers compared to the Prime Minister. However, this particular provision was amended before the draft constitution was subject to the referendum, with the new draft vesting significant powers in the Presidency with a weakened role for the Prime Minister. Eventually Kibaki reshuffled the cabinet without any representation from Odinga’s faction. This resulted in NARC splitting into two: Kibaki’s NARC-Kenya and the Odinga’s Orange Democratic Movement (ODM). As with previous political mobilisation

in Kenya, grassroots mobilisation around this political turmoil took on an ethnic and very tribalised form (Chege 2008: 133).

In order to chart the way forward on land reform, a twenty-member Commission of Inquiry was appointed by Kibaki in June 2003 and was chaired by Paul Ndung'u (thus it is popularly known as the Ndung'u Commission). The commission's main objective was to investigate the illegal and irregular allocation of public land especially for the period from 1980 to the 1990s. The report concluded that "land was no longer allocated for development purposes but as a political reward and for speculative purposes" (Ndung'u 2005:144). The report further offered a damning criticism of the centralised land allocation powers in the presidency and the consequent abuse of such powers.

There were several specific findings of the commission. An estimated 200,000 land titles were processed illegally for the period for 1962 to 2002. Most of these titles (nearly 98 per cent) were processed between 1986 and 2002. The illegal titles were issued for all types of public lands such as forests, settlement schemes, national parks and game reserves, road reserves, wetlands, research farms and land belonging to parastatals. The illegal titles were issued on instructions from the presidency and senior government officials. Because of this, land redistribution programmes did not address the massive problem of landlessness. In fact, speculative tendencies were rampant with most land grabbers selling the illegally-acquired land to state apparatuses at higher prices than they had paid. State apparatuses such as the National Social Security Fund were being pressured by unscrupulous political elites to buy back land which they had initially lost in illegal land deals. Specifically, the Fund was labelled as a 'cash cow' in this respect by the Ndung'u commission.

The way forward, based on the Ndung'u commission, was for Kenyans to come up with a comprehensive land policy which would set the priorities and principles on land reform to be then enacted by appropriate legislation. The commission highlighted that, for a country with an agricultural-based economy, a national land policy was critical. Pursuant to the Ndung'u commission findings and recommendations, a National Land Policy Secretariat was formed under the Ministry of Lands and Settlement to coordinate the national land policy process. Furthermore, the secretariat was tasked with organising a National Civil Society Conference on Land to discuss land reform. Consequently, civil society organisations such as the Kenya Land Alliance (formed in 2004) began to engage in land reform issues.

In characterising the Kibaki era, Berman et al. (2009: 462) argue that most of the ills such as corruption based on ethnicity continued despite the change in government:

The euphoria that followed the 2002 elections in Kenya and the end of the increasingly authoritarian regime of Daniel arap Moi, soon dissipated as the regime of Mwai Kibaki slid into the business as usual of corruption, patronage and cronyism of politics in Africa's most strongly articulated informal system of ethnic-based patronage, one that originated in the colonial period and was refined and extended under the Kenyatta and Moi regimes.

In this context, after providing this brief historical and political account of land and land redistribution in the post-independence period, I now address one of the key issues around land which runs throughout this period (namely, politics and ethnicity) though I also note its colonial roots.

5.5 Electoral Politics, Ethnicity and Land

The negotiations for a political settlement in 1960 included land reform as one of the key issues (Bedasso 2012). Following the elections for the Legislative Assembly of 1961, which were won by KANU, the victorious party started negotiations with KADU. Though KADU had lost the elections, the dialogue was necessary in order to fast track the process of forming the first post-independence government. On the issue of land redistribution, the approach recommended by KADU, based on decentralised land administration and thus regional and ethnic dimensions to the land question, was adopted.

Consequently, the Boundaries Commission was established and a report was produced by the commission in December 1962. The report highlighted the importance of ethnic-regional issues embedded in prevailing Kenyan ideas around land reform. For instance, Masai preferred being separate from the Kamba while those from Meru wanted to be separate from the Kikuyu. In terms of land access, the Kikuyu were to be placed in central Kenya, Meru and Kamba in Eastern Province, and the Masai in Rift Valley Province together with the Kalenjin subgroups. Still, regionalisation was not followed at all times as Kinangop (which is in the Rift Valley) was allocated to the Kikuyu causing heightened tensions with the Masai and the Kalenjin who traditionally hailed from the Rift Valley prior to being disposed of their land by white farmers.

The justification of government was that more Kikuyus had been displaced under colonialism; as well, the freeing of around 60,000 Mau Mau detainees had increased the demand for land from members of this ethnic group (Lamb 1974). As a result, the Kikuyu disproportionately benefited from the One-Million-Acre and *Haraka* settlement schemes. Political tensions among ethnic groups were continuing to brew at this time and resentment

was widespread. However, this did not lead to open and violent conflict partly because there was available land for purchase. When Moi, a Kalenjin, became president in 1978, he did not promote the Kalenjin to take back land as his stated goal was to unite the country. But many Kalenjin resorted to establishing land buying companies to counter the dominance of the Kikuyus.

The change to multi-party politics from 1991 to 1992 in Kenya soon provided opportunities for politicians to play the ethnic card whenever it suited them (Bedasso 2012), though KANU tended to repress these tendencies from within. In the meantime, Moi and some Kalenjin politicians used the land question to mobilise ethnic-based support in the Rift Valley Province. People who wanted to remove Moi through multi-party politics argued that most Kikuyus had unscrupulously acquired land in Rift Valley even though the Kalenjin and the Masai ethnic communities were meant to benefit from Rift Valley land. The result was that Moi led his party to declare Rift Valley a 'KANU zone' and a hostile territory for opposition parties, and for Kikuyu and Luo politicians emerged in the process.

The provincial Rift valley administration also declared loyalty to the central government. Kanyinga (1998) argues that the goal became one of employing violence to eliminate opponents of Moi in Rift Valley and, in October 1991, *Majimboists* and KANU supporters violently took over a farm in Nandi District to evict non-Kalenjin shareholders. Militant gangs comprising Kalenjin youth started to evict perceived outsider groups from Rift Valley farms (National Council of Churches of Kenya 1992, Parliamentary Select Committee 1992) and this was supported and sometimes financed by politicians allied with Moi. Outside of the Rift Valley, violence relating to land and ethnicity was also witnessed in the Coast Province (see section 5.6) as local residents organised and sought to evict 'aliens'. The linkages between land, ethnicity, violence and politics were clearly evident in the 1992 and 1997 elections as well.

The 2002 general elections were not as violent as the immediately preceding ones, as Moi had finished his term and was not eligible to stand as a presidential candidate. His appointed successor (Uhuru Kenyatta) was a Kikuyu and the son of the first president, which meant that the interests of Kikuyus and Kalenjin would be both represented under his leadership (Bedasso 2012). He however lost the election to a coalition of political parties (the National Rainbow Coalition) which advocated for comprehensive reforms including around land and the constitution. This ushered in the Presidency of Mwai Kibaki (a Kikuyu).

The broad-based alliance splintered in 2004 due to wrangles around power-sharing (Materu 2015). The splintered groups took their disagreements into the constitutional-making process which was underway (Kadima and Owuor 2006). The government loyalists (NARC-Kenya) proposed only minor changes to the constitution, which was interpreted by those in the opposition faction (ODM) as an effort to undermine change and perpetuate Kikuyu's dominance in both the political and economic life of the nation (Steeves 2006). Consequently, the draft constitution (which also espoused changes to land governance including a prominent role for regional administrations in land management) was rejected in the referendum of November 2005 in line with the ODM position. Following the official disintegration of the national coalition and rejection of the proposed constitution, violent conflicts over land ensued in areas such as Kuresoi in Rift Valley Province and Mount Elgon District in Western Province, with all of these incidences being based on ethnicity and the perception of locals versus outsiders.

When elections were eventually conducted in December 2007, the situation was tense and waiting to explode into open violence (Mueller 2008, Materu 2015). Preceding the elections, there were heated debates about having a unitary state or a regional system of government. The ODM, the main opposition, advocated for a regional system while the ruling party (Party of National Unity-PNU) asserted the need for a unitary state so as not to undermine national cohesion any further. While voter turnout was high (over 70 percent of registered voters), the opposition complained that the Electoral Commission of Kenya was manipulating voting results to favour the ruling party government. The Electoral Commission announced the results on December 30 which showed that the ruling party headed by Mwai Kibaki was the victor (Kimani 2010). However, violence immediately broke out in the opposition strongholds of Nairobi, Rift Valley, and Coast, Western and Nyanza Provinces. This involved for instance some Kikuyu families and Kisii in Rift Valley being evicted from their landholdings by Kalenjin people. Upon taking over the land, the Kalenjin renamed these settlements with local Kalenjin names in trying to do away with any Kikuyu identity. Violence was so deep and intense that 300,000 people had become internally displaced persons in early 2008.

Kanyinga (2011) argues that the violence took on an ethnic dimension. In delving into this, the Commission set up to investigate the post-election violence (the Waki Commission) posited that the set-up of administrative districts in Kenya had been largely organised around ethnicity (RoK 2008: 31). The report further comments, and quite strongly, that overt and covert attempts to bring about homogenous communities created 'residential apartheid' and

that this phenomenon was not only a rural problem as it was also notable in urban informal settlements of Nairobi (with, for example, Luos most likely to be found in Kibera and Kikuyus in Mathare). Following the election violence of 2007, Uhuru Kenyatta (a Kikuyu and son of Kenya's first president) as well as William Ruto, a Kalenjin and member of the ODM at the time, were indicted by the International Criminal Court for their alleged roles in the violence. However, the two men representing the Jubilee Alliance and ethnically largely the Kikuyu (Kenyatta) and Kalenjin (Ruto) then won the 2013 election and are now president and deputy president of Kenya, respectively. The case against Uhuru was dismissed by the International criminal court in 2014 for lack of evidence. As well, the case against Ruto was dismissed for lack of sufficient evidence in 2016.

Klaus and Mitchell (2015), based on a study of the Cote d'Ivoire and Kenya experiences with electoral-related violence, argue that such violence has to do with weak property institutions, and the belief by at least one group that its land rights are threatened or it can gain more territory or reclaim what it perceives as land previously 'stolen' from it. Thus, in

Democratising societies where land and property rights are weak, land grievances can provide leaders with an effective tool to mobilise violent collective action during elections. Specifically, leaders can draw on local land grievances to convince followers that their land rights hinge on the outcome of elections, establishing a motive or logic for violence. Land grievances establish two separate logics for violent collective action based on threats to land security and the opportunity to expand or reclaim land rights (Klaus and Mitchell 2015:423).

In the case of Kenya, ethnicity has been central to land, elections and violence. To ease tensions and prevent further escalation, an international mediation team spearheaded by the African Union and the United Nations intervened starting in January 2008 and managed to negotiate the grounds for a national unity government; a power sharing agreement was signed on 28 February 2008 (Kanyinga 2011). However, the mediation efforts could not overturn the fact that relations between the Kikuyus and the Kalenjins had become politicised and the land question was not being addressed properly and adequately.

5.5.1 Roots of Tribalism and Land

An *Aljazeera* article of 22 December 2007 argued:

As Kenya's rapidly increasing population vies for scarce land resources, some have begun to see themselves not as Kenyans but as tribal members - divided from their

compatriots by language, custom and blood - and it is along these tribal lines that many Kenyans are expected to vote in the December 27 presidential and parliamentary elections.

The problems of land and tribalism in Kenya are largely a construct and product of British colonial rule starting in the 1880s (Leys 1975, Oricho 2009, Njororai 2009) and this is despite the fact that the existence of tribes predates the colonial period. In this context, Kabiri (2014) note that ethnicity in politics (or tribalism) is not simply a consequence of having multiple ethnic groups but arises from the manipulation of the existence of such groups by some actors in the 'body-politic'. This manipulation is often made possible by various institutional failures such as not upholding the rule of law. Kimani (2010: 252) therefore argues that: "The British government underlined and manipulated the notion of ethnicity to maintain the status quo and deflect attention from the economic marginalisation and inequalities that colonialism had established".

According to the census of 2009, Kenya's total population is 38.6 million. The ethnic enumeration indicates the following; Kikuyu at 22 percent, Luhya 14 percent, Luo 13 percent, Kalenjin 12 percent, Kamba 11 percent, Kisii 6 percent, Meru 6 percent, other Africans 15 percent, and non-Africans (Asian, European, and Arab) at 1 percent. The total number of 'tribes' is listed at 42 (Oricho 2009, Njororai 2009) such that Bedasso (2012: 3) argues that Kenya is highly-ethnically fractionalised. The Institute of Economic Affairs (2009) study in Kenya concluded that there is no inherent hatred between ethnic groups. What did emerge though as an area of deep concern was the complex and turbulent inter-ethnic relationships which had been fostered over time by historical land injustices and the 'politicisation' of ethnicity (and its use in accessing political power) as well as ethnic-based allocation of resources. The commission set up to investigate post-election violence (Waki Commission) indicates that marginalisation in land and other issues became interpreted increasingly in ethno-geographic terms (RoK 2008).

Undoubtedly, the actions directed to achieve divide-and-rule by the colonial administration gave rise to increased tribal consciousness. To quote Parsons (2011: 495):

In an effort to generate labour, protect European settler interests, and rationalise administration, the Kenyan imperial regime sought to impose a new ethnic geography on the African majority that confined communities to specific "native reserves" based on their supposed ethnicity. Theoretically, each "tribe" had a "homeland" that the state set aside for their exclusive use. Problems developed when more populous ethnic

groups outgrew their assigned reserves and coveted the territory of European settler farmers in the “white highlands” and that of less populous tribes.

Efforts by the colonial government in this regard were made easier given the existence of tribal identities in pre-colonial society, so that the strategy of the British was to bring about tensions between ‘tribes’. For the pre-colonial period, there is no evidence of significant animosity between and among ‘tribes’. In fact, in the case of certain groups such as the Kikuyus and Luo, there was no sustained social and political interactions until they became integrated into the emerging colonial political economy. In pre-colonial times, even members of a single clan could claim land as a group and not as individuals. Whenever disputes arose among ‘tribes’, especially due to land issues, tensions were dealt with amicably because the traditional land tenure system was flexible and could easily respond to the needs of both agriculturalists and pastoralists. As well, sufficient land was available and ‘new land’ could easily be made available by clearing forests. Ethnic groups co-existed, traded and intermarried (Lonsdale 1992) without major conflict.

The actual construct of the conflict along tribal lines under British colonialism involved primarily land issues (Department for International Development, Strategic Conflict Assessment 2008, Kenya National Commission on Human Rights 2008). The British took over the most arable lands while forcibly resettling indigenous peoples into ‘reserves’ characterised by bad soils and weather conditions. In 1904, the colonial administration introduced the policy of settling Africans on ‘native reserves’ and this became the foundation for the colonial and post-colonial ethnically-defined administrative units (Veit 2011:3). Estimates suggest that British and other European settlers combined took 20 percent of Kenya’s land (Kenya Human Rights Commission 2011), including the productive areas of the ‘White Highlands’ for their exclusive use (Human Rights Watch 2008, Kanyinga 2009, Peters 2013, Boone 2012). In the native reserve areas, there was a clear attempt to establish land rights on a purely tribal basis. As long as they were in their tribally-defined reserves, indigenous people were expected to continue their traditional forms of land tenure and farming practices. As Peters (2012:4) highlights: “Territorial fixing of political and land-based authority ... emphasised the link between rights in land and group membership, with groups or ‘communities’ cast as ‘tribal’ and ethnic by colonial and succeeding governments”.

Confining indigenous people to the reserves coupled with forestry and conservation laws gave rise to the land shortages under colonialism. These laws meant that indigenous groups could no longer clear new areas in an attempt to satisfy the need for additional land.

This also had the effect of more intensive use of land and soil deterioration in the reserves. The Masai lost much of their customary land to settlers as they were moved into two reserves as early as 1904. The two reserves (northern and southern reserve) were reduced to only one in 1911 as the northern reserve was phased out and all the Masai were moved to the southern reserve (which was also semi-arid). Further, starting in 1913, the Kikuyus and other farming communities started to settle in Masai land. To cope with the new political and economic order, some people migrated to the White Highlands as agricultural workers. As well, starting in the 1940s, the settlement schemes initiated by the colonial governments involved constant shuffling of the Kikuyu, Masai, Kalenjin and other ethnic groups between the central highlands and Rift Valley. Many Kikuyus had also moved to the Rift Valley (traditionally seen as Masai and Kalenjin lands) thus marking the start of inter-tribal competition. The Kikuyus had likely suffered the most because of the extensive loss of (and eviction from) their traditional lands due to white settlerism. This explains why the 1952 Mau Mau rebellion consisted mostly of the Kikuyus.

This politicisation of ethnicities or tribalism became embodied early on in the social and political formations of the different ethnic groups in Kenya, including political parties in more recent years (Okoth-Okombo 2011, Nyakuri 1997, KHRC 2011, Bedasso 2012: 10). As evidence of this, Nyakuri (1997) notes for example that the Kikuyus formed the Kikuyu Central Association (KCA) in 1924 to 1925, the Akamba formed the Ukambani Members Association (UMA) in 1938, the Luhya formed the Luhya Union (LU) in the 1920s, the Luo formed the Young Kavirondo Association (YKA) in 1921, Taita formed the Taita Hills Association (THA) in 1939, the Kalenjin formed the Kalenjin Political Alliance (KPA) in 1961 (and the founder included Moi who later became the president of Kenya), and the Coastal tribes formed the Mwambao Union Front (MUF) in the 1960s.

In 1960, ethnically-based parties, notably KANU and KADU, entered the political scene (Media Development Association and Konrad Adenauer Foundation 2012). KANU was formed on 27 March 1960 in Kiambu while the KADU was formed on 25 June of the same year. The reason for the formation of KADU only a few months after KANU's emergence was that KANU was perceived as advancing predominantly the interests of the Luos and Kikuyus. For other ethnic groups, this would mean their possible marginalisation from the post-independence corridors of power. Unsurprisingly, KADU was constituted by the Masai United Front, the Kalenjin Political Alliance, the Coast Political Union and the Kenya African People's

Party. Such pronounced feelings of 'ethnic referencing' in politics would remain prominent well into the post-independence period.

At independence, the government structure inherited from colonial times was not significantly changed. Further, within the new post-colonial economic order, prevailing resources were inadequate and difficult to access, including infrastructure, human resource capacity, capital, education, health facilities and land. Within this context, tribalism would become one of the key bases and criteria for allocation of resources by the new state (Bedasso 2012). Admittedly, the first post-colonial president of Kenya, Jomo Kenyatta, publicly condemned tribalism. As well, during his era, a one-party state was installed on the grounds that multi-party politics would undermine national unity by deepening already-existing tensions between ethnic groups (Ochieng 1989). The KANU leadership wanted a unitary state which would respect private land rights. KANU soon merged with KADU (in 1964) whose established approach had been a more federal system (Boone 2011). According to Kanyinga (1998:4), this merging of the two parties "eroded the influence of the radicals in KANU for they could no longer threaten to defect to the opposition. This gave way to class based politics of access to and control of the land and froze its ethnic dimensions altogether".

However, it has been convincingly argued that during the presidency of Jomo Kenyatta (from 1963 to 1978), political power and the allocation of resources heavily favoured the Kikuyus (Decalo 1998, Yieke 2010). As Oricho (2009: 50) argues at length:

In essence, when Kenya became a one-party state in 1969, Kenyatta ruled the country with a clique around him mainly from his ethnic Kikuyu, who eventually alienated other groups from the political and economic order for his entire reign (1963-1978). Although Kenyatta did not instigate ethnic clashes, he targeted eminent persons from other ethnic groups that he felt were a threat to his leadership. History has it that many people were assassinated including Pio Gama Pinto (Kenyan Indian), JM Kariuki (Kikuyu) Tom Mboya, D.O Makasembo, Arwings Kodhek (all Luo) Ronald Ngala (Mijikenda of Coast), Seroney (Kalenjin) among others. Such assassinations generated interethnic tensions rendering [the] country in awkward position of hostility and political tribal identity since Kenyatta's reign.

When Daniel Arap Moi was the Vice-President, he was not well accepted within Kenyatta's inner circle mostly because of tribal affiliation (Korwa et al. 2001:1). Hence, when Jomo Kenyatta died, those who constituted his inner circle formed the 'Change the Constitution Movement' also known as the 'Kiambu mafia'. Its aim was to change the constitution so that

Moi, as the vice-president, would not immediately assume power (for 90 days) such that general elections would need to be held. However, the attorney general at the time, Charles Njonjo, was Moi's ally and he helped Moi defeat the 'Kiambu mafia'. Moi eventually ascended to power in spite of the opposition to his rise from within KANU.

The change to Moi as president had implications for the allocation of political power. Moi began to systematically centralise power and also favour the Kalenjin. As examples, people from the Kalenjin 'tribe' were appointed to key positions in the Agricultural Development Corporation (ADC), Kenya Commercial Bank (KCB), Kenya Posts and Telecommunications (KPT), Central Bank of Kenya (CBK), Kenya Industrial Estates (KIE), National Cereals and Produce Board (NCPB), and the Kenya Grain Growers Cooperative Union (KGGCU). Further,

To bolster his grip on power, Moi also embarked on the gradual Kalenjinization of the public and private sectors from the 1980s. Moi is a Tugen, one of the smaller Kalenjin ethnic groups. He began to "de-Kikuyunize" the civil service and the state-owned enterprises previously dominated by the Kikuyu ethnic group during Kenyatta's regime (Korwa et al. 2001:5).

The KADU party, to which Moi belonged before being assimilated into the KANU, had espoused federalism in order to protect the land rights of smaller ethnic groups. With Moi's ascendancy to the presidency, some of the elements which had been pro-federalism soon found a voice.

But the tribal hostilities became prominent especially with the reintroduction of multi-party democracy in 1991. Senior politicians during the election campaigns made constant reference to the need for people to go back to their ancestral lands or they would be forced out (Human Rights Watch 1993) and this contributed to enduring patterns of ethno-regional interests within politics (Human Rights Watch 1999). Referring to Moi's years as president, Oricho (2009: 50) observes that:

During his 24 year reign, Moi exploited the Kenyan diversity and politicised ethnicity to levels where he could instigate clashes in districts and provinces with mixed groups, a practice he perfected in the 90's in order to discredit the onset of multiparty democracy in Kenya. He politically motivated ethnic clashes which were used to disrupt and displace populations and groups that supported the opposition (mainly the Kikuyu in Rift Valley, Luo in the slums of Nairobi and Mombasa, Kiisi's and Luhya's in western Kenya) that followed with general land clashes of 1992 in Rift valley.

Resorting to ethnic issues and land facilitated the victory of KANU in both the 1992 and 1997 elections. In 2002, however, KANU (without Moi running for re-election) lost as the opposition, the NARC, came into power as a broad-based coalition. This was a 'rainbow coalition' encompassing various ethnic groups and consisting of Kijana Wamalwa of Forum for Restoration of Democracy-Kenya, Raila Odinga of Liberal Democratic Party, and Charity Ngilu and Mwai Kibaki of National Alliance Party of Kenya/Democratic Party of Kenya. Kibaki, who became president through the 2002 election, continued to pursue an ethnic-kind of politics including appointing people to key government posts along 'tribal' lines.

5.6 Land Question along Coast

Besides ethnicity and party politics, another important land theme in the case of Kenya relates to coastal land problems, which have been well documented and discussed (RoK 1978, Cooper 1980, Salim 1968: 224, Ghai and MacAuslan 1970, Kanyinga 1998, Kanyinga 2000, Mkangi 1975, Fleuret 1988, Ciekawy 1988, KLA 2008. GoK 2009). Kanyinga (1998) argues that coastal land problems are closely linked to the twin processes of the slave trade and consolidation of Sultan rule along the coast. The British and Germans were engaged in broad contestations over the East African coast and the dispute was resolved, in this instance, by letting the Sultan of Zanzibar have sovereign rights over a strip of 10 miles along the coast called Mwambao. This agreement was facilitated through a joint commission of the British and Germans in 1886 (Kanyinga 2000). The Sultan granted his subjects titles to land in this area but not to the indigenous people. Further, the Land Titles Ordinance of 1908 denied the indigenous people as well as the ex-slaves the right to make claim to their indigenous lands, which effectively made them squatters. The British, as indicated earlier, also became involved in establishing Native reserves and many coastal squatters were moved to the reserves.

Most slaves who were working along the coast in the plantations owned by Arabs and Swahilis were freed between 1890s and 1907. Some of the ex-slaves continued to stay on the plantations but now producing food crops for their own purposes while others moved to the Native reserves (Cooper 1980). The fact that some ex-slaves decided to squat on land which their former masters could no longer occupy proved to be one of the challenges in successive generations: "Some of them paid nothing but occupied the land with the implicit consent of the owners. Other landlords simply abandoned the land and left it to the squatters who comprised the Mijikenda [indigenous people] and ex-slaves" (Kanyinga 2000: 56).

Decades later, the developments around negotiations for the independence of Kenya added another layer of complexity to the coastal land question. At the insistence of the British, Kenyatta agreed to recognise private land rights along the coast including further adjudication and registration of land where this had not been done. This process though did not consider the rights of the Mijikenda, thereby reducing them to squatters or tenants of the Arabs and the Swahili landowners. Settlement schemes, as discussed earlier, were taking place in Kenya at this time in part to quell calls by radicals for immediate redistribution measures. These involved promoting individualisation of land rights based on claims about the linkages between private tenure and enhanced agricultural productivity. However, as Kanyinga (1998:6) highlights, problems pertinent to the coast arose in this regard:

These resettlement schemes were not specifically established for the landless in the coast region; upcountry groups got land here in spite of landlessness among the coastal people and in spite of the fact that the land question here considerably differed from the upcountry one. Increasing numbers of outsiders and malpractice in the allocation of plots gradually engendered hostilities between the indigenous groups... Provincial Administration and upcountry political elites were second to Arab and Swahili landowners in acquiring private land rights and titles in the area... [These] schemes thus could not eliminate or even reduce the problem of landlessness.

Resettlement failed to address the deep-rooted grievances around land along the coast (KLA 2008) and, indeed, various initiatives after independence in 1963 led to further land misappropriations in the coastal areas mostly by Kenyan elites. Further, salt mining companies acquired large tracts of land in these areas at the expense of agricultural production. These lands were then left idle once salt mining was no longer viable. Corruption has also resulted in land acquired by strategic government institutions such as the Kenya Ports Authority (KPA), the Kenya Navy Base (KNB) and the Kenya Marine and Fisheries Research Institute (KEMFRI) being sold off to private developers and mostly unscrupulously. Private speculation in terms of land has, as well, negatively impacted on ecological consideration around “Tana and Sabaki rivers deltas in the coastal regions of Kipini and Malindi respectively” (Republic of Kenya 2009: 44).

The report of the Njonjo Commission of Inquiry into Land Systems of Kenya (from 2002), weighs in on the coastal land problem. According to the report, the problem is largely due to Section 17 of the 1908 Land Titles Act (Chapter 282) in which all land not legally registered becomes Government land, as well as the successive adjudication process. The

indigenous people had not laid claim to their lands as per the criteria set out by the Act (which favoured privatisation) such that their customary land rights were not considered and recognised. The people who received land titles (mostly Arabs and Europeans) ended up renting out the land thereby becoming absentee landlords. The Njonjo commission concluded that ‘squatters’ or tenants now reside on the land as the landlords are mostly absent. The existence of absentee landlords has, at the same time, created the problem of lack of meaningful investments on the land.

5.7 Conclusion

This chapter has examined land questions and themes in Kenya historically, tracing contemporary problems back to the colonial period. Significant land dispossession under colonialism clearly fueled anti-colonial rebellion and also contributed significantly to the agitation underpinning the political independence movement. Massive land challenges were inherited by the post-colonial government in Kenya from the early 1960s and, in seeking to address these, intense political party and ethnic conflicts – as well as state incapacities and maladministration around land – have been central to shaping land reform trajectories. All this fed into the recent land policy-making processes in Kenya, such that the policy process was quite convoluted and complex. Of course, added to the mix (and complicating matters even further) was the crucial role of aid agencies. The following three chapters examine the Kenyan land policy-making process, with chapter six providing an overview of the process.

Chapter 6: The Land Policy Process in Kenya

6.1 Introduction

This chapter provides a comprehensive overview of the land policy process in Kenya, including its temporal unfolding and the opportunities and challenges which existed along the way. In doing so, it shows the ways in which the land policy process became intertwined with the constitution-review process which was taking place almost simultaneously. In examining the complex processes underpinning the formation of the new land policy, the chapter also considers some of the key moments including what are considered as landmark government commissions of inquiry. The final land policy and laws emanating from it are discussed as well. In offering this overview of the land policy process in Kenya, the activities of aid agencies, state actors and civil society organisations are necessarily raised, but these activities and interventions are subject to deeper examination in the following two chapters.

6.2 Temporal Overview

The World Bank (2010) argued that Kenya's land administration and management framework had always been weak including during the colonial period. Both the market and non-market based ways of how people came to own and possess land had been poorly regulated. This could be attributed largely, it claimed, to the absence of a comprehensive national land policy. This was consistent with *Kenya Vision 2030*, the country's long-term development plan launched in 2008. Consequently, the lack of a comprehensive land policy, as well as interference by affluent individuals (elites) in both market and non-market ways of land distribution and access, led to the prevalence of informal settlements, inefficient land use practices, land use conflicts, environmental problems, inequitable distribution, perpetuation of historical injustices, landlessness and high poverty levels.

Just as during the colonial period, commissions which looked into land issues as the basis for policies remained the norm in post-independence Kenya. In 1999 a commission of inquiry was appointed to look into the Land Law Systems of Kenya (known as the Njonjo Commission). There was an overarching conclusion in the commission's report that a national land policy was needed as the current situation was characterised by maladministration in land procedures and practices. Furthermore, it was seen as important to anchor land issues within a new constitution (RoK 2002). At this point the process of pursuing a national land policy already existed, with a coalition of civil society organisations (the Kenya Land Alliance) and

other non-state actors providing their inputs to the process while the Ministry of Lands and Settlement coordinated the administrative aspects of the process.

Providing a temporal overview of the national land policy process is a complicated endeavour due to the fact that several ‘events’ happened concurrently. Some overviews of the process exist already, namely, by: UN-HABITAT (2008) which chaired the development partners group on land, Ibrahim Mwathane (2010) who was the Chairperson of the Institute of Kenya Surveyors, and Martin Adams and Robin Palmer (2007) who were involved as consultants during the process (though Adams was involved only in the early stages of the process and left midway). There is however no agreement about when to start the temporal analysis. While UN-HABITAT begins its analysis with the formation of the Kenya Land Alliance in 1999, Adams and Palmer identify 2002 as critical as this is when civil society groups organised and conducted the national civil society conference on land reform in Kenya. Mwathane identifies an even later starting point, in tracing the process from 2004. While my analysis focuses mainly on the period starting in the 1990s, it is clear that the build up (or background) of events and developments which led to the formal phase of Kenya’s structured land reform policy process can be traced back to well before the 1990s (as the previous chapter intimates).

For instance, the National Development Plan for 1964 to 1970 already highlighted the importance of land registration, transfer and management practices in the promotion of land markets and it also encouraged land consolidation. Any land reform, according to the plan, should include post-settlement support services (such as agricultural credit, inputs and extension services). The Sessional Paper No. 10 of 1965, focusing on African socialism and its application to planning in Kenya, argued for the need to invest in high potential agricultural areas. This though meant maintaining the status quo in terms of land ownership as the emphasis was on productivity and economic growth as opposed to equity. A sessional paper (No. 1 of 1986) spoke about the importance of the agricultural sector in economic growth and employment creation, and about the need to review land tenure laws and practices. These, and many other initiatives, did not however fall within the ambit of a systematic review of Kenya’s land policies, as started to occur from the late 1990s.

Thus, the 1990s are a critical period to start the temporal analysis. First of all, the democratisation process was taking root at this time, with the opening up of spaces for the articulation of policy issues and land ranked highly in this regard (Manji 2012, Mitullah 2001, Mwathane interview 13 January 2015). Secondly, most of the actors who eventually became

active in the National Land Policy Formulation Process (NLPFP) – a phrase often used in Kenyan government publications – started to appear on the stage in the 1990s including ActionAID, OXFAM and DFID linkages with the Kenya Land Alliance. Lastly, in 1999, it became apparent that the state could no longer ignore the voices of dissent about how land access and ownership issues were being officially handled (Ndiritu interview 27 January 2015, Nyawira interview 15 January 2015). This was evidenced by the fact that President Moi appointed (in 1999) the Commission of Inquiry into the Land Law System of Kenya on the Principles of a National Policy Framework, Constitutional Position of Land and the New Institutional Framework for Land Administration (the Njonjo commission noted above).

The Kenya Land Alliance (KLA), an umbrella organisation whose overall goal was to coordinate efforts of civil society organisations working on land issues and to advocate for an inclusive and participatory process in coming up with a comprehensive land policy as well as law reform, was formed in 1999 (and registered as a trust in 2001) to spearhead land policy formation nationally. In its mission statement, the KLA highlights that the alliance is an institutional framework for land law and policy advocacy in Kenya. It was borne out of the realisation that the policy, legal and institutional land framework created in the 1950s under colonial conditions was no longer sufficient to deal with contemporary global and national dynamics around land. The organisation was initially funded by DFID and also supported by ActionAid and OXFAM.

A number of aid agencies, including SIDA, soon became involved in various ways in the national land policy process (USAID Kenya 2009). SIDA for instance provided funds to KLA but it also offered technical assistance to the Ministry of Lands and Settlement (including for the development of a land information management system), and it supported several land-focused workshops including one titled ‘Involving Non-State Actors in the Land Sector in Kenya’ in 2008. Around the same period, the Institute of Surveyors of Kenya (which is a professional organisation) was also advocating for a review of land laws and it published a booklet on this issue. This publication was critical as well to the constitutional review process as several of the issues identified therein were later incorporated into the draft constitution otherwise known as the ‘Bomas draft’.

In May 2002, the KLA convened the National Civil Society Conference on Land Reform and the Land Question held at the Kenya College of Communication Technology in Mbagathi. The British Deputy High Commissioner Paul Harvey also attended this conference. However, due to the frosty relationship between civil society organisations and the government

at the time, the Ministry of Lands and Settlement declined an invitation to attend the conference (Adams and Palmer 2007). The conference sought to provide a forum for open, sincere and constructive discussion on all matters relating to land problems in Kenya. With the conference report coming out soon after the conference (June 2002), the outcomes of the deliberations were expected to be part of the inputs of civil society into the Constitution of Kenya Review Commission:

Specifically, the conference sought to come up with appropriate constitutional, policy, legislative and even programmatic recommendations that would inform the reform initiatives currently on going through the Constitution of Kenya Review Commission (CKRC) and the 'Njonjo Commission' (Kenya Land Alliance 2002:10).

In November 2002, the report of the Commission of Inquiry into the Land Law System (appointed in 1999) was completed, though the report was only released in March 2003. Of importance is the 'Principles of the National Land Policy Framework for Kenya' (which is part 2 of the report) as this has been incorporated into successive constitutional review documents.

In December 2002, the NARC government came to power, with land reform being central to NARC's campaign platform. The government highlighted the need for a time-bound plan for the development of a national land policy, with the absence of such a policy being emphasised by the Njonjo Commission. Adams and Palmer (2007), in their temporal description of the land policy formation process, have stressed the significance of the address by Hon. Amos M. Kimunya (the then Minister of Lands and Settlement, now under a new government) at a Stakeholders Conference held at the School of Monetary Studies on 16 April 2003. This conference was organised by civil society organisations under the leadership of KLA and attended by donors including DFID, various civil society organisations (CSOs) and Ministry of Lands and Settlement officials. In his address, officially opening the conference, the Minister highlighted the need to work with civil society and professional bodies in the formulation of the national land policy.

Probably due to the land reform thrust of the NARC campaign, several CSO activists joined the NARC government (Mwathane interview 13 January 2015, Nyawira interview 15 January 2015, Ndiritu interview 27 January 2015). In July 2003, a process to form the Development Partners Group on Land (DPGL) was initiated. This group became a pivotal mechanism for the coordination of donors supporting land reform in Kenya. The formation of the DPGL can be traced back to the request by the then Minister of Lands on 18 July 2003 (UN-HABITAT 2008) for development partners involved in land issues to harmonise their

efforts. In November 2003, the International Monetary Fund (IMF) resumed lending to the Kenyan government after a three-year gap, citing anti-corruption measures by the NARC government as central to the resumption. Interestingly, a month later (in December 2003), the NARC government granted former president Daniel arap Moi immunity from prosecution on corruption charges including on land-related matters. Simultaneously, the Poverty Reduction Strategy Paper (PRSP) for 2001 to 2004 highlighted that landlessness was linked to poverty, and issues of specific concern included poor land tenure systems, land fragmentation and inadequate land policies. The PRSP contributed heavily to the Kenyan government's 'Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007' (IP-ERS 2003-2007), which highlighted the importance of land to economic development.

In April 2003, the new draft constitution (or Bomas draft) was finalised following a consultative process, with land issues included in chapter 11 of the draft constitution. In June 2003, the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (the Ndung'u Commission) was established by president Mwai Kibaki. In following on from the findings of the Njonjo Commission, the Ndung'u commission focused on the extra-legal allocation of public lands (and lands reserved for public purpose) to private individuals and corporate entities. The commission incorporated representatives from civil society, academia, the legal profession and the civil service. Notably, Lumumba Odenda (chairperson of the Kenya Land Alliance) was one of the commissioners. In June 2004, the Ndung'u report was finalised but its release was delayed by government until December 2004 (Adams and Palmer 2007). The commission noted the lack of a clear legal, policy and regulatory land framework, a situation which made it possible for affluent people/classes to acquire land illegally (RoK 2004). The conclusion of the commission was radical – all such illegal and irregular allocations, dating back to the early 1960s (RoK 2004), had to be revoked. Of course, this ignored land alienation through colonial conquest predating 1960.

In December 2003, the Ministry of Lands and Settlement issued a Concept Paper (or note) indicating the action plan for the formulation of the National Land Policy and, in February 2004, it facilitated a stakeholder workshop to deliberate specifically on the Concept Paper. The discussion at this workshop focused on the possible roles of various stakeholders in the land policy process and it set up six thematic groups to examine issues considered particularly pertinent to any finalised land policy. The thematic groups were: rural land use, environment and informal sector; urban land use, environment and informal sector, land tenure and socio-cultural equity; land information management systems; legal framework; and institutional and

financial framework. In March 2004, the National Land Policy Concept Paper was largely accepted by the various state and non-state actors involved in the land policy formulation process. The concept note provided the inventory of state and non-state actors engaging in the land policy process, the terms of reference for the various subgroupings (the thematic groups, certain committees and the Secretariat) as well as the time-lines for the process until completion. One month later, in April 2004, the National Land Policy Secretariat was established. The process was initially set to be completed by June 2005. In August 2005, the Draft Issues and Recommendations Report on the National Land Policy was in fact issued, based on the deliberations and inputs of the six thematic groups. In December 2005 the draft national land policy was released and published in English and Kiswahili languages to facilitate countrywide discussion and input.

In the meantime, the proposed new constitution of Kenya was finalised on 22 August 2005. This was significant for the land policy process as Chapter 7 of the proposed constitution was on 'Land and Property'. However, the constitution was later rejected in a referendum on 22 November 2005 (as indicated in the previous chapter). Amongst commentators on land, there is a debate as to why the draft constitution was rejected. Adams and Palmer (2007) argue that Kenyans were simply expressing dissatisfaction with the way in which the government had overseen the Constitution of Kenya Review Commission process. Ndiritu (interview 27 January 2015) argues that any claim that land reform was rejected in and through the 2005 referendum is problematic as the referendum was not in the end issue-focused (such as on land) but was instead characterised by (mostly) the emotive issue of tribalism. Where issues were discussed, they were peppered with "negative ethnicity" to the extent that even land issues were not discussed on their own merit but were used as political party electoral rhetoric to incite raw emotions. In any case, land became a major cause of the post-election violence in 2007/8. The Committee of Experts on Constitutional Review (2010: 21) noted that the

Proposed New Constitution of Kenya (2005) (commonly known as the Wako Draft) was adopted by the National Assembly and presented to Kenyans in a referendum on 21 November 2005. It was rejected by 57% of the votes cast. The referendum became the perfect forum for the political elite to air long standing grievances. Each group resorted to distortion and incitement based on ethnicity and tribal affiliation, and raised hostility and animosity to levels that exacerbated the divides in Kenya.

However, Griffiths (2010:3) argues that the rejection of the proposed new constitution was related specifically to Chapter 7 on land, as "there was strong cross-party rejection of

Chapter 7 which was widely seen to represent an outright attack on private property and tenure rights by shifting the control over land from owners and users to central government”. Some of the Chapter 7 provisions to which Griffiths refers include reducing the lease period of land from 999 years to 99 years, the barring of non-citizens from owning freehold titles to land, the conversion of existing freehold titles to leasehold (for 99 years) and the repeal of the Registered Land Act (1963) which would open up every existing land title to legal challenge. Despite the rejection of the proposed new constitution, the process to formulate a National Land Policy continued.

In November 2006, a landmark decision was reached by the supreme court stating that the proposal by the Ndung’u commission to establish a land tribunal to investigate illegal/irregular land allocations was unconstitutional. The basis for this decision was the fact that, under the constitution of Kenya at the time, land administration was centralised under the President and Commissioner of Lands. This court ruling further galvanised CSOs to propose changes to prevailing land management structures. Consequently, the national land policy (as eventually adopted) was based on a three-tiered system of land management comprising a National Land Commission (with offices at District level) as well as both District and Community Land Boards. The revised structure was part of an attempt to reduce the over-centralisation of land allocation powers in the executive branch of government. Further, alternative dispute resolution mechanisms on land issues were to be put in place, aside from the courts. These mechanisms revolve around community land boards using negotiations, mediation and arbitration to resolve disputes to the extent possible as these methods are usually flexible, less costly and can save on courts time.

The draft national land policy, which incorporated inputs from the many consultations and meetings, was finalised in June 2006 and “[a]pproved in principle by Cabinet but not expected to be tabled in Parliament as a Sessional Paper until after the elections [which were scheduled for 2007]” (Adams and Palmer 2007: 19). Cabinet approval for public dissemination and debate of the land policy occurred though in September 2006. The revised draft, which incorporated feedback from a series of public debates and consultations, was finalised in March 2007. The review and approval of the policy was undertaken during two stakeholders’ conferences. First, the draft was considered by over 600 participants (including representatives from CSOs, both community groups and non-governmental organisations; Ministry of Lands and Settlement officials; and some donors) during the National Stakeholders Conference in April 2007. The second draft was then approved during the second national stakeholders’

conference (with CSOs, government officials and donors) held in May 2007. The National Land Policy was adopted at this conference. The delegates who attended ‘mandated’ the Ministry of Lands and Settlement to work on the Sessional Paper which would then be presented to the cabinet for review and approval.

In April 2007, the draft national land policy was subjected to a peer review. This review was conducted by Sue Mbaya, Ibrahim Mwathane, Abdalla Hamdok and Julian Quan who were a team from the Continental Land Policy Initiative which had been set up in 2006 as a joint initiative of the African Union Commission (AUC), the United Nations Economic Commission for Africa (UNECA), and the African Development Bank (AfDB). The mission was funded by SIDA. The draft national land policy was reviewed based on the “Framework and Guidelines on Land Policy in Africa”. This framework itself was still in draft form and had been prepared by the Continental Land Policy Initiative. The overall conclusion of the review team was that the draft land policy was progressive but the team still suggested further revision and action to enhance some of the provisions.

In May 2007, a final draft land policy was prepared by the National Land Policy secretariat. The document was presented to Cabinet for deliberation and approval through a cabinet memorandum in October 2007, but the tense political situation in Kenya at the time caused a delay in the adoption by Cabinet of the document. More specifically, in December 2007, following the disputed presidential elections, post-election violence erupted. An estimated 1,500 people died. The government and opposition then concluded a power-sharing agreement in February 2008 and a cabinet was agreed upon in April 2008. Due to these political contestations and issues, the national land policy was only approved and adopted by cabinet on 25 June 2009 with a session paper being issued in August 2009. Finally, parliament approval of the sessional paper took place in December 2009 (Sessional Paper No. 3 on 3 December 2009).

The national land policy provisions were then integrated into the Kenya draft Constitution. A referendum on the draft Constitution was conducted on 4 August 2010, with the constitution endorsed by 68 percent of those who voted. Pursuant to the referendum, on 27 August 2010, President Mwai Kibaki of Kenya promulgated the country’s new Constitution.

6.3 Constitution Making

As already implied, the constitution making process in Kenya in recent years overlapped with the national land policy process and, for this reason, it is important (before examining the land

policy more specifically) to discuss the current Kenyan constitution and its historical roots. The history of constitution making in Kenya dates back to the colonial period as, before the advent of colonialism, the area now known as Kenya did not have a centralised authority or formal judicial institutional arrangements.

While colonialism started in earnest in 1890 and a protectorate (East Africa Protectorate) was established in June 1895, it was only in 1920 that the British declared Kenya a colony, with black Africans suffering increasing subordination and subjugation at the hands of British settlers. The main reason for the British declaration of Kenya as a colony was primarily strategic (in terms of empire-building) along with the necessity of ensuring effective control over the territory notably with reference to land and land-based resources. In this respect, protectorate status was insufficient as it only implied incomplete political jurisdiction (Okoth-Ogendo 1991).

There were significant challenges related to acquiring meaningful and effective control over the entire territory, with the obtaining of land rights only possible by conquest, agreement, treaty or sale. Only the 10-mile coastal strip ruled by the Sultan of Zanzibar, which had been ceded to the Imperial British East Africa Company (IBEAC) through a Concession Agreement, was 'eligible' for immediate British colonial rule. At the time, the rest of the territory (of what is present day Kenya) had not yet been conquered and there were no agreements or treaties in place. This legal and political dilemma however ended in 1899 when the legal team of the Crown argued that conquest, agreement, treaty or sale was only applicable to protectorates with a recognised form of government. Because of this, for the areas outside of the 10-mile strip of the coast under traditional leadership structures, the Crown could simply acquire all unoccupied land and grant freehold or leasehold title over such acquired lands to the subjects of the Crown. Legally this was done via the English Foreign Jurisdiction Act of 1890. In the decades after the 1890s, several actions were undertaken (as mentioned earlier) to entrench the colonial administration, including the crown land ordinances of 1902 and 1925 which granted freehold and leasehold rights (up to 999 years) to white settlers and gave land rights to indigenous Kenyans in Reserve areas (with Reserve land being crown land such that the Reserve population had only temporary occupation rights).

Following on from the anti-colonial struggles, the period 1960-1962 witnessed constitutional moments with, most importantly, three conferences organised in London to draft Kenya's new post-independence constitution. The conference discussions revealed certain entrenched positions around the political future of Kenya, with the colonial settlers wanting to

protect their supremacy and prosperity while some African delegates, as noted earlier, called for federalism and others for a centralised form of government. The eventual constitutional outcome was a complicated arrangement which sought to take into account these varying positions. The 1963 Constitution had entrenched regionalism. As Media Development Association and Konrad Adenauer Foundation (2012: 6) argues: “The proposals that emerged sought a quasi-federal structure with a strong central government, which was responsible to a bicameral parliament”. The Constitution entailed a National Assembly which was bicameral with the Senate (that is the upper House) being the guarantor of regionalism or *majimbo*. In making these compromises, the constitution which emerged sidelined important issues pertinent to the coastal areas, African traditional institutions and land claims.

6.3.1 Constitutional Changes from Independence

Specifically, the first constitution at independence separated and distributed executive powers among the Queen (represented by the Governor-General) as the Head of State, the Prime Minister as the Head of Government, and Regional Assemblies which had exclusive authority over land, primary and secondary education, local taxes, the police force and local government. This system was in contrast to the more centralised system which had existed during the colonial period. However, this system did not last long. On declaring Kenya as a Republic in 1964, the role of the Prime Minister was removed and the Presidency was introduced, effectively reverting to the use of centralised bureaucratic authority which had characterised the colonial governorship.

Since independence there have been several amendments to the constitution. The list of these amendments have been documented and extensively discussed (Lumumba et al eds. 2011, Media Development Association and Konrad Adenauer Foundation 2012, Kamunde-Aquino 2014, Nunow 2004, Muigai 1993, Okoth-Ogendo 1972). Kamunde-Aquino (2014) in fact lists 25 constitutional amendments from 1964 to 2008 with Muigai (1993) concluding that, as a consequence of such numerous revisions, the constitution was no longer rigid and being wholly respected as it was being amended at will and thus at the mercy of the power elites. Most of the amendments were meant it seems to serve the elite classes and dominant party by centralising power in the imperial presidency. This sentiment is also highlighted by Media Development Association and Konrad Adenauer Foundation (2012:11):

Most of the amendments were not intended to improve the quality of the Constitution but to entrench an authoritarian and undemocratic administration. Other amendments were

intended to solve political problems facing the government from time to time. Most of the amendments were carried out by a Parliament dominated by members of one political party.

There are several notable amendments which can be highlighted especially around centralising power. Constitution of Kenya (Amendment) Act No. 38 of 1964 effectively repealed the provision allowing for sub-national regions (or regional authorities) to levy independent revenues at regional level which thus went contrary to federalism. Federalism was further undermined by Constitution of Kenya (Amendment) Act No. 16 of 1968 which abolished law making at regional level. In 1965, Constitution of Kenya (Amendment) Act No. 14 changed the grounds for declaring a state of emergency from approval by Parliament with a 65 percent majority vote to now only a simple majority. This was followed by Constitution of Kenya (Amendment) Act No. 18 of 1966 which removed the time limitations on state of emergencies. A major constitutional change involved the enactment of a new constitution in 1969 which centralised the bureaucracy, created a unicameral legislature and further empowered the presidency.

Further constitutional amendments continued after this. Significantly, Constitution of Kenya (Amendment) Act of 1982 (through Section 2A specifically) in effect introduced a one-party state in Kenya. This amendment occurred subsequent to an attempted coup in August 1982. The one-party state arrangement was reversed officially through Constitution of Kenya (Amendment) Act No. 12 of 1991 following intense pressure on the Moi regime from within Kenya as well as from the international community. The last amendment of the constitution preceding the new 2010 constitution was the Constitution of Kenya (Amendment) Act of 2008. This followed the 2007/8 post-election violence when the coalition government was established. Two major changes brought about by this amendment was the establishment of the office of the Prime Minister and Deputy Prime Minister (such that the position of Prime Minister, which had been abolished in 1964, was reestablished – in addition to the existing presidency).

In terms of land and the constitution, the 1963 Kenyan constitution classified land into three categories: government land, trust land and private land. In 1968, all land that was previously not alienated was declared Government Land. This category captures all land reserved for government use, forest reserves (those which did not fall under Trust Land areas), natural forestlands, and land along rivers and around lakes. In terms of land management, the power to make grants and dispositions of any estates, interests or rights in or over government

land was vested in the presidency by virtue of the 1968 President (Government Land) Act. Furthermore, the Commissioner of Land administered the Act and could execute the powers of the president over government lands if so delegated to do so. In the end, the centralisation of authority without any stringent checks and balances resulted in much of the Government land being privatised without due consideration of the public interest.

Secondly, land designated as “Native Reserves” or “Special Areas” during the colonial period became known as the Trust Lands after independence. Lastly, private land was defined as all land held on freehold or leasehold tenure by members of the public. Ownership of private land is by individuals, private limited companies, co-operative societies, statutory boards and other private institutions. During Kenya’s independence negotiations of 1960 and 1962, it was generally agreed by the negotiating parties that the Constitution would protect private property. The state was only able to acquire private land in the interest of the public or for public benefit, and adequate compensation to the landowner was a stipulation for any such acquisition. The National Land Commission’s Strategic Plan (The National Land Commission 2013:11) for 2013 to 2018 sums up the weaknesses of the constitution which preceded the 2010 constitution in terms of land issues as follows:

The Constitution considered land merely as ‘property’, and failed to recognise its unique and complex nature. It also made no effort to deal with the legacy of unlawful acquisition of public land by the colonial administration, or the complexity of multiple legal land regimes including customary land tenure. Further, the Constitution failed to tackle the exclusion of women and indigenous groups from land ownership, and the problem of environmental degradation.

6.3.2 New Constitution 2010

Before the 2010 constitution, two constitutions had been enacted in Kenya since independence in 1963. The first constitution was in 1963, and the second in 1969. The 1990s marked the beginning of the demand for constitutional change (Chitere et al. 2006). The Kenyan constitution of 2010 was the culmination of a long struggle by civil society groups and pressure from the international community. An earlier attempt to come up with a new constitution in 2005, as noted previously, had failed as the draft constitution was rejected in the referendum of the same year. Reasons for the rejection are varied and in some cases disputed. The often-cited reasons include tribalism, intense lobbying by the elite (in particular against provisions around land reform) as well as differences which had emerged within the coalition NARC

government. The resurgence of the efforts post-2005 to enact a new constitution are largely tied to efforts to find long-term solutions to the 2007/2008 post-election violence. Hakijamii (2012: 5) in fact argues that “it is possible that had the 2007 post-election debacle not occurred, and in particular the intense pressure the political class was subjected to, we would not have had a National Land Policy and a new Constitution”.

With the facilitation of Mr Annan, and supported by the international community, the Kenya National Dialogue and Reconciliation Committee (KNDRC) was established on 28 February 2008. The KNDRC consisted of African Union appointed mediators, which was a panel of eminent African personalities including Kofi Anan (as chair) Benjamin Mkapa and Graca Machel as well as the two major political parties which were in dispute (namely, the Party of National Unity (PNU) and the Orange Democratic Movement (ODM)). Various stakeholders’ conferences were arranged to take stock of the progress of the KNDRC and these conferences included various government officials, civil society organisations, religious leaders, business leaders, media, elders and youth leaders, international organisations and donor governments.

In February 2008, the KNDRC articulated the four main points which were to be pursued in addressing the crisis. One of the four points was the need to deal with poverty as well as inequality in the distribution of, and access to, resources including inequality arising from historical injustices. Specific issues pertaining to land which needed to be tackled, besides land reform itself, included constitutional, legal and institutional changes to facilitate land reform measures. Hence, “[w]e recognise that the issue of land has been a source of economic, social, political and environmental problems in Kenya for many years. We agree that land reform is a fundamental need in Kenya and that the issue must be addressed with the seriousness it deserves” (KNDRC 2008:2). The Committee highlighted the importance of a constitutional review on land tenure and land use, and of enacting land policies which are sensitive to issues around land access, environmental conservation, forestry and water resources. Amongst other actions, moving forward would entail putting in place a harmonised set of land laws as well as a Land Dispute Tribunal Act, a Land Information Management System and a Land Reform Transformation Unit in the Ministry of Lands and Settlement.

The KNDRC set out the process of a constitutional review which was to include an inclusive process involving a statutory constitutional review timetable, the enacting by parliament of a Referendum Law for a constitutional referendum, and the setting up a committee of experts for the drafting of the new constitution. The proposed new constitution

was to undergo parliamentary review and approval and then was to be put to the vote by way of a referendum. To give legal status to the overall process, parliament enacted the Constitution of Kenya Review Act (2008) and Constitution of Kenya (Amendment) Act (2008). Section 47A of the latter piece of legislation incorporated the agreements on the proposed process for coming up with the new constitution outlining the procedure to be followed to replace the existing constitution including the need for a referendum.

In terms of actual timelines, the constitution was presented to the Attorney General in April 2010 and then published on 6 May 2010. The referendum was conducted on 4 August 2010. Following the successful referendum-based vote, the constitution was promulgated on 27 August 2010. While the constitution was eventually adopted following a referendum, several issues remained controversial particularly the actual role and effectiveness of popular participation and political representation in the constitutional reform process. It is important to also note that the constitution had provisions which went well beyond the scope of land issues, and hence it is difficult to assess if the majority vote was in favour of land reform specifically. Similarly, all those who voted against the constitution may not have been against the constitution's land clauses. The other key issue is that the national policy itself was not subjected to a national referendum but was rather endorsed through representative politics, including a review by cabinet and parliament and then endorsement by the presidency. Whether these political institutions were responding to the demands of the populace or pressure from donors and civil society groups may never be conclusively ascertained.

6.4 National Land Policy

The National Land Policy (NLP) was formulated as per Sessional Paper No. 3 of 2009. The NLP argued that the land management system prevailing until then had been preoccupied with the economic value of land at the expense of a multi-dimensional understanding of the importance of land to society. For instance, in addition to being a source of livelihoods, land is also a cultural heritage for many African communities. Thus, there was the need to ensure "equity, sustainability and the preservation of culture in the utilisation of land" (RoK 2009:9). This meant that the NLP envisaged the presence and significance of multiple types of land tenure systems living side by side with equal guarantees of land security. In adopting this position, customary forms of tenure were to be respected.

The main objectives of the NLP are stated as securing the rights of all citizens to access to land. The provisions of the NLP, if implemented, would contribute – it was argued – to

sustainable growth and investment as well as poverty reduction as a result of efficient and effective utilisation of land and land-based resources. A range of principles govern the land policy: equitable access to land for subsistence, commercial productivity and settlement, intra- and inter-generational equity, gender equity, secure land rights, effective regulation of land development, sustainable land use, access to land information, efficient land management, vibrant land markets, and transparent and democratic administration of land (RoK 2009:2). In this regard, the policy advocated for the review of the constitution to provide clearer principles for land tenure and governance of land. The key argument was that “[I]and policy reforms are not likely to succeed in the absence of such a sound constitutional framework” (RoK 2009:10).

There was also a call for decentralisation of land administration and management as well as to set up mechanisms to ensure broader participation in decision-making around land issues. The institutional framework for land management would include three entities, namely, the National Land Commission (NLC), District Land Boards (DLBs) and Community Land Boards (CLBs). The overarching principles for this institutional set up includes devolution of power and authority, stakeholder participation, operational autonomy, effective surveillance and performance-monitoring systems, access to justice and gender equity, appropriate enforcement mechanisms, and the smooth transition from the current institutional arrangements to the proposed arrangements.

The national land policy categorises land in Kenya into three types: public land, community land and private land. The policy proposed that all public land should be managed by the National Land Commission. Furthermore, there was a clear need to repossess public land which had been acquired illegally or irregularly. To facilitate the firm – or at least firmer – recognition of community land, the Trust Land Act (Chapter 288) had to be repealed as it led to the individualisation of land tenure and plots. The registration of particular interests in land under the Registered Land Act (Chapter 300) also effectively undermined customary land rights and this also required changes. Access to land by non-citizens was to be limited to leasehold only and of a maximum length of 99 years, such that non-citizens would not be allowed to acquire freehold rights. The land policy further advocated for the necessity of regulating land size. On the one hand, this would entail curbing the fragmentation of land parcels into uneconomical units and, on the other hand, it would allow for the repossession of large tracts of underutilised or unutilised land. This would simultaneously contribute to proper environmental management, which is a cornerstone of the policy. The policy once implemented would safeguard the environment by reducing pollution and degradation of ecosystems:

“Sustainable management of these natural resources depends in large part on the governance systems, which define the relationship between people and the resources” (RoK 2009:22).

On land reallocations, the NLP provided a framework for identifying, verifying and recording of genuinely landless people, and it highlighted the need to resettle those who are landless, internally displaced or squatters. In doing so, the policy advocated for equitable and transparent procedures in land allocation in the context of a history of corrupt land transactions. However, it also emphasised the need to respect the formal rights of legal land owners. This initiative would be supported by an improvement in land information management systems, including transitioning from (in the main) paper records which are manually managed and have proven inefficient and time-consuming, to computer-based systems. The manual arrangement had in fact allowed for manipulation of the system thereby facilitating corruption. There would be financial backup to bankroll the policy’s land reform recommendations by way of the introduction of a land tax on both developed and undeveloped land.

In addressing historical injustices around land, the NLP refers to land-based grievances which stretch back far into the colonial period (back to 1895) while also citing the importance of revising or removing any post-independence land policies, programmes and practices which aggravated land injustices. The deep historical context is critical because “[i]t is these colonial practices and laws which formed the genesis of the mass disinheritance of various Kenyan communities of their land (RoK 2009:42). Specific attention was given to land management and access problems along the coast. These problems included hampering public access to beaches but, more importantly, there are organisations which hold extensive tracts of land (which now lie idle) and absentee landlords are rampant and this serves to escalate the squatter problem. The NLP also spoke about pastoralism as a legitimate land use and agricultural production system and called for the establishment of a suitable framework for the management and continuation of pastoral land. Finally, questions around gender and land inequity were brought to the fore. The necessity for matrimonial co-ownership of property and protection of the land rights of women in inheritance is therefore emphasised.

6.4.1 Land and the Constitution

In the constitution, land issues are dealt with in Chapter Five which is titled ‘land and environment’. Chapter 5 provides guidelines on how land issues need to be managed including the principles of land policy; classification of land; setting up of the National Land Commission; and regulation of landholdings by persons who are not citizens of Kenya. It also

does not protect property rights of those people who illegally acquired land. Chapter 5 of the constitution benefited from the NLP which was widely seen as the product of a consultative process. A USAID/Kenya fact sheet (undated: 5) thus states that “[t]he Committee of Experts that drafted the constitution lifted those elements out of the [land] policy and inserted them into Chapter 5 of the Constitution which dealt with land”. Article 60 of the 2010 Constitution outlines the key land policy principles. These are: equitable access to land for subsistence, commercial productivity and settlement, and recognising the need to achieve a sustainable balance between these uses; and intra- and inter-generational equity, gender equity, secure land rights, effective regulation of land development, sustainable land use, access to land information, efficient land management, vibrant land markets, transparent and good democratic governance of land.

The USAID/Kenya fact sheet (undated:5) goes on to say that “[t]his chapter was one of the most controversial chapters of the Constitution”. In fact, the constitutional process revived the debates which existed during the NLP formulation. Mwathane (2010) highlights some of the provisions which triggered opposition to the proposed constitution as it relates to land reform: elimination of gender discrimination, categorisation of public and community land, land holdings by non-citizens, establishment of a national land commission, assessment of land tax, resolution of historical injustices around land, review of irregular grants of public land, and minimum and maximum sizes of private land. None of these issues were new as they arose earlier during the NLP process but the constitution-making process provided another opportunity for some actors to try and defeat what was outlined and accepted in the NLP. Importantly, though, the constitution underscores the importance of the national land policy “thereby giving the policy the backing of supreme law (constitutional law is superior to ordinary laws) (Article 60 (2))” (Wily 2010: 8).

Through the constitution, land administration is significantly changed by introducing the National Land Commission to administer public lands, a role previously performed by the Ministry of Lands and Settlement. As well, all land in Kenya is now deemed to belong to the people of Kenya. Hakijamii (2012; 7) argues:

The Constitution is also clear on the issue of who ultimately owns and should control land in the country. It is not the government or any other state organ. It is the people themselves. All land in Kenya belongs to the people of Kenya... Never again should we allow any institution to arrogate to itself powers of playing around with our land as this is our shared heritage for which millions lost their lives to reclaim.

This does not entail though that land will become, by the stroke of a pen, the basis for a more just and prosperous Kenya, as translating the constitution into practice would be a difficult process. In this context, and in writing on the NLP and its successive incorporation into the new constitution in 2010, Boone (2012:76) highlights that

Land politics in Kenya is a redistributive game that creates winners and losers. Given the intensely redistributive potential of the impending changes in Kenya's land regime – and the implications of the downward shift in the locus of control over land allocation through decentralisation of authority to county governments – there is no guarantee that legislators or citizens will be able to agree on concrete laws to realise the constitution's calls for equity and justice in land matters.

The new constitution recognises three types of tenure, that is, public, community and private (Article 61(2) of the 2010 Constitution of Kenya). This differs from the 1963 constitution which had classified land as Government Land, Trust Land and Private Land. This new classification is significant as, under the Trust Land Act, land belonging to communities was held in trust by the local authorities. However, this 'trust' was often abused as discretionary powers were used to fuel patronage and rent seeking. The 2010 constitution thus effectively became the foundation for recognising community land as one of the official land tenure categories and in a manner which, at least formally, would allow for some kind of local community control. As well, previously, Government land was often allocated not for purposes of serving the public interest and the new constitutional provisions around public land were meant to counter this. The classification of land in the 2010 constitution is aligned to the National Land Policy, Section 3.3.1. Wily (2010:14) argues that, in laying down a strong legal and constitutional basis for the NLP, the constitution "[r]epresents a marked improvement on the current 1963 Constitution in matters of land ownership, land use and land governance".

In order to ensure completion of the reform process for enacting land laws, the Fifth Schedule of the constitution required that legislation on land be delivered as follows: community land (Article 63) in five years, regulation of land use and property (Article 66) in five years, legislation on land (Article 68) in 18 months, agreements relating to natural resources in five years, legislation regarding environment in four years, and a system of courts (Article 162) in one year. However, the timelines proposed were too short to be able to deliver changes of such an intense political character, with these changes in many ways threatening the economic and political establishment. To date, the community land bill is yet to be passed. The establishment of the land commission was delayed and, so far, the roles of the Ministry of

Lands and Settlement and the National Land Commission remain contested. To a certain extent, the Land Commission has been defunded making its effectiveness a challenge. As the next section shows, the land laws formulated are complex and have been enacted without much public consultation

6.4.2 Formulation and Content of Land Laws

The increased attention on land reform legislation, which started in the 1990s, has been driven by several factors. MacAuslan (2013) for example highlights the role of international financial institutions which saw land reform processes as an opportunity to promote good governance and functioning land markets consistent with neo-liberal restructuring. Peters (2014:170) argues more broadly that international financial institutions in conjunction with national governments such as in Kenya were trying to address the issue of persistent rural poverty despite (if not because of) the neoliberal restructuring in the 1980s under structural adjustment programmes, while also being responsive to the rise of social movements and civil society groups advocating for land reforms and to deepening civil violence related to land disputes. In particular, conflicts triggered by competition over land were a consequence of higher prices for land which was partly triggered by increased demand for and commercialisation of land (Berry 2002).

In general, the making of any laws in Kenya revolve around the cabinet and parliament. At the same time, the new constitution had put pressure on government in terms of timelines for which amendments were required. The fifth schedule which listed the various laws required and timelines within which this was to be accomplished, turned out to be very ambitious. Consequently, the government empowered relevant line ministries (the land ministry plus other ministries with interests in land-related matters) to develop the initial content of the laws which would then be subjected to input from other stakeholders. In terms of participation, and mainly due to the justification that the process was highly technical, professional bodies such as the Institution of Surveyors in Kenya, Federation of Women Lawyers, Kenya Human Rights Commission and the Law Society of Kenya were particularly dominant, though the Kenya Private Sector Alliance including banking sector representatives and the Kenya Association of Manufacturers (whose main objective was to foster a business-friendly land environment) was also involved. Even at the parliamentary committee review stage, the committee members relied on advice often provided by these professional bodies (Mwathane interview 13 January 2015). As well, the Ministry of Lands and Settlement identified and contracted a consultant to

formulate the land laws. Sequentially, the draft laws were to pass through the Law Reform Commission, the Commission for the Implementation of the Constitution (a commission established by the government and provided for in the 2010 Constitution with the objective of aiding the implementation of the new constitution), the Cabinet and then finally Parliament for approval (some in April 2012).

Three land laws in Kenya are particularly important, all of which were enacted in April 2012: Land Act (No. 6 of 2012), the Land Registration Act (No. 3 of 2012) and the National Land Commission Act (No. 5 of 2012) (see Economic and Social Rights Centre 2012, for a detailed outline of these laws). In this respect, the 2010 constitution had stipulated an eighteen-month period in which to formulate, debate, and enact the necessary land legislation.

The National Land Commission Act outlines the functions of the National Land Commission. These include the following: alienating public land on behalf of national and county governments thereby effectively taking over the role previously vested with ministers, councilors and the president; monitoring registration of all interests and rates in land; developing and maintaining an effective land information management system at both national and county level; and initiating investigations on its own initiative or on the basis of a complaint about present or historical land injustices and to recommend redress. In terms of human resources, the chairperson and members of the Commission were to be recruited in a transparent and competitive process which included approval by Parliament.

The Land Act brings together various laws previously spread over several legislations such as the Indian Transfer of Property Act 1882, the Government Lands Act 1915 and the Registered Land Act 1963. Effectively the Land Act also repeals the Wayleaves Act 1912 Chapter 292 and the Land Acquisition Act Chapter 295. The Land Registration Act seeks to guide the registration of title to land in Kenya and repeals and replaces a number of previous pieces of legislation. Overall, it overhauls and standardises the land registration system in Kenya with the objective of facilitating land transactions and land development. This, and the other two acts, came into effect on 2 May 2012.

6.5 Commissions of Inquiry

Central to government action around land in recent years has been the setting up of a number of commissions of inquiry. This section thus provides a brief outline of recent commissions of inquiry in Kenya related to issues of land. Several key official documents including the NLP, the new Constitution and various land legislation have been in fact informed by the findings

and recommendations of these commissions of inquiry. In this regard, the Africa Centre for Open Governance (2007:27) has noted that “[c]ommissions of inquiry have been defined as ad hoc advisory bodies set up by the government to obtain information. In their working they are expected to make an assessment of the facts and later recommendations to the government in power. The government can accept or ignore the recommendations”. It is the possibility of ignoring or accepting recommendations of official commissions which has resulted in the often only partial acceptance and implementation of recommendations emanating from land commissions of inquiry in Kenya.

The history of commissions of inquiry in Kenya of course predates the period of independence. For instance, even during the period of the protectorate, commissions were appointed by the British including the 1913 Native Labour Commission and its inquiry into the issue of labour shortages. In the post-independence era, the use of commissions persisted as was legally enshrined in Section 3 of the Commissions of Inquiry Act of 1962 which made provision for the President to appoint or set up a commission of inquiry on any matter and to also appoint the commissioner or commissioners.

With specific reference to land issues, Hakijamii (2012:4-5) identifies several commissions which had been appointed. Examples include the Parliamentary Select Committee on the Issue of Land Ownership along the Ten-Mile Coastal Strip of Kenya in 1978; the Commission of Inquiry into the Land Law System of Kenya in 1999 (the Njonjo Commission); the Judicial Commission of 1998 into Tribal Clashes (Akiwumi Commission); the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land in 2003 (Ndung’u Commission); and the Commission of Inquiry into the Post-Election Violence in 2008 (Waki Commission). Of particular significance to the NLP are the Njonjo and Ndung’u commissions as they are both widely acknowledged to have had an impact on the reworking of land laws and land administration arrangements. The Ndung’u commission was likely more crucial because of its strong emphasis on the linkages between corruption and land ownership/access.

6.5.1 Njonjo Commission

The Commission of Inquiry into the Land Law System of Kenya was appointed on 17 November 1999 by the President of Kenya, Daniel Arap Moi and then formally established through Gazette Notices Nos. 6593 and 6594. The role of the commission was to review land issues in Kenya and propose main principles for an ensuing land policy framework as well as

to analyse the legal and institutional framework of land tenure and land use in Kenya and recommend appropriate programmes. Given the multiplicity of existing legislation on land, one of the major tasks was to recommend guidelines for overarching legislation which would establish and incorporate appropriate systems of land tenure, ownership, control, acquisition and disposition of land rights, along with the relevant overall land management and administration. Effectively, this commission was mandated to look at both the constitutional and legislative aspects of all land issues.

The final report of the commission was only published in November 2002 with a strong focus on the necessity of restructuring land administration and management in a coherent and holistic manner. It also argued for one consolidated land policy, as the absence of such a policy had resulted in the instrumental use of law for political gains. The specific claim was that land laws were not guided by an overarching policy hence momentary considerations including the desires of unscrupulous political elites informed law making. As well, existing land statutes had caused significant land management problems by centralising power in the executive presidency without guarantees of accountability to the public or even democratising land management. Notably, in speaking about corruption, the commission did not name any individuals who had unscrupulously benefited from land appropriations. The many specific recommendations of the Njonjo commission were not acted upon by the sitting KANU government in any meaningful manner.

6.5.2 Ndung'u Commission

When NARC ended the reign of KANU by winning the 2002 national elections, it had campaigned on a platform of change including fighting corruption and ushering in a new more democratic constitution. Emanating from the broad goal to fight corruption was the promise to investigate and recover public land which had been illegally allocated by the preceding government. In pursuing this, the NARC government set up the Ndung'u Commission (Gazette Notice No. 4559) on 4 July 2003. The specific terms of reference included: reviewing the legal status of various allocations of public land; providing evidence about unlawful and irregular allocations which also entailed listing all lands unlawfully acquired or irregularly allocated, and the beneficiaries and perpetrators of these transactions; and recommending necessary corrective legal and administrative measures as well as criminal investigations or prosecutions.

It took 9 months for the Commission to complete its task and the output was a massive report of 244 pages and two annexures totaling an additional 1,773 pages. The report findings

were organised under three ‘types’ of public land, namely: Urban, State Corporations and Ministries’ Land; Settlement Schemes and Trust Land; and Forestland, National Parks, Game Reserves, Wetlands, Riparian Reserves/Sites, Protected Areas, Museums and Historical Monuments. The report was very sensational as it detailed numerous individuals and companies who/which had benefited from illegal allocations of land including forest land. It included a range of complaints, received by the commission, of alleged illegal allocation of public land. The commission noted that illegal allocations of public land peaked before and after general elections as an indicator that land was part of the political patronage system. The actual process of irregularly or illegally allocating land took various forms. Eight of these ways are identified in the report:

Direct allocation by the President and/or the Commissioner of Lands, contrary to the law; illegal surrender of ministry and state corporation land and subsequent illegal allocations; invasion of government and trust lands and subsequent acquisition of titles to it, contrary to the law; allocation of land reserved for state corporations or ministries; allocation of trust land contrary to the Constitution and related laws; allocation of land reserved for public purposes; allocation of riparian reserves and sites; and allocation of land compulsorily acquired for the public interest to individuals or companies (O’Brien 2011: 17)

Writing after the publication of the report, the chairperson of the commission – Ndung’u – noted that:

Our conservative estimate was that some 200,000 illegal titles were created between 1962 and 2002. Close to 98% of these were issued between 1986 and 2002... Categories of public land affected included forests, settlement schemes established for the poor, national parks and game reserves, government civil service houses, government offices, roads and road reserves, wetlands, research farms, state corporations’ lands, trust lands (Ndung’u 2006:5).

Ironically, those who ‘grabbed’ land would sell it off at exorbitant costs including to state corporations (in some cases, state corporations had been forced by certain political elites to sell the land they owned at prices below market prices, or to purchase land at exorbitant prices). The most notable institution which was made to buy land at above-market prices was the National Social Security Fund which “spent about KShs.30 billion between 1990 and 1995 purchasing illegally acquired properties” (Ndung’u 2006:6). In this respect, Manji (2012:467) argues that “the doctrine that public land should be administered and allocated ‘in the public

interest' was consistently perverted" in Kenya over an extended period of time and, further, that professionals including lawyers used their knowledge to make possible some of the inappropriate land transactions and profit in the process.

The commission highlighted the distinction between illegal allocations and irregular allocations. Illegal allocation involves land which is not subject to disposal at all in terms of existing legislation. Titles issued under these circumstances were recommended by the commission for revocation. Irregular allocations refer to instances when a piece of land is indeed legally available for disposal and allocation but the administrative procedures stipulated were not followed. The commission recommended the need to follow the necessary procedures to ensure such allocations are regularised.

The commission went on to identify certain cases which needed to be investigated and prosecuted. Examples included 551 allocations made by the Nairobi City Council, 270 in Eldoret, 186 in Kisumu and 407 in Mombasa, as well as several irregular allocations by Kenya Railways which needed to be investigated further as documentation was not complete. As well, revocation of titles was recommended for 229 allocations made by the Kenya Agricultural Research Institute, 31 by Kenya Pipelines and 178 by the prison authorities. Some state ministries also had many of their allocations recommended for revocation, including Ministry of Cooperative Development and Marketing, Ministry of Agriculture, Ministry of Education, Ministry of Labour and Ministry of Energy.

These examples alone indicate a major breakdown in the land management system in Kenya, which in large part arose because of the failure of even public institutions to act in the interest of the public alongside the absence of appropriate checks and balances with regard to those wielding power in Kenyan society. In counteracting and overcoming these problems, the commission proposed the creation of three new institutions to facilitate necessary reforms: Land Titles Tribunal, Task Force and the National Land Commission.

Several crucial issues arose surrounding both the findings and recommendations of the Ndung'u commission. First of all, cooperation with the commission from the relevant institutions was not always forthcoming (Ndung'u 2006, Manji 2012) with some records of transactions deliberately tampered with or even destroyed. This meant that available information on a particular transaction was sometimes incomplete thus hindering the commission in making definite conclusions on such transactions. Secondly, the act governing the commission of inquiry placed all decisions on the course of action to be pursued under the authority of the office of the president. This position was also enforced by the courts whenever

a particular litigant tried to bring forth the findings of the report into the legal domain and thereby force the president to implement the commission's recommendations. If the president's office declined to act on any recommendation, then no action would be taken. Third of all, most of the lands which had been illegally or irregularly allocated had since been passed on or sold to third parties, or had been used as collateral with banks. This made the process of revoking titles complicated and hence the need to consider each case on merit.

This related to the fourth problem, that is, the number of cases were so many that they would literally clog the justice system if each was to be acted upon with due diligence. Fifth of all, the existing institutional set-up meant that the Permanent Secretary in the Ministry of Lands was assigned to deal with the reported corruption and this effectively meant that those who had collaborated during these irregularities would be ironically expected to find a way forward. The Ndung'u report itself had highlighted and confirmed this dangerous link between politics and land administration. Finally, as a hangover from the colonial period, there was the legal hurdle around the prevailing protection of the sanctity of title especially the legal protection of a first registration of a particular piece of land.

There was one notable aspect to the membership of the commission itself; more specifically, the coordinator of the Kenya Land Alliance was appointed to the Commission. This caused mixed reactions. Among CSO activists, some viewed this positively: as a sign of the end of an era in terms of relations characterised on the whole by suspicion between the government and civil society groups, especially amongst those groups advocating for radical changes to the land status quo. Other activists viewed this more negatively: the appointment was seen as part of a co-option strategy and this was a continuation of the preceding government's strategy. This appointment of the KLA coordinator to the commission was indeed part of a broader debate within civil society about working outside and within the state. Under the new NARC government, several civil society activists were now being appointed to various government positions. The fears about co-option of the KLA activist seemed to be allayed once the report was released, as it was highly critical of the prevailing land order. In fact, KLA lobbied for the release of the report to the public when the government was delaying its publication.

6.6 Conclusion

Land policy in Kenya, including with reference to land reform, has been fraught with controversies historically, and this was certainly the case also throughout the recent land policy

process, as shown in this chapter. This of course highlights the centrality of land to Kenyan history and society. The processes outlined in this chapter clearly demonstrate that changes to policies, or the formation of new policies, are not linear in character, particularly when the policy-issue is highly contentious (such as land). As well, at any point during the process, any progress made seems fragile and tentative, as contestations continue unabated. In fact, despite the land policy now existing in Kenya, threats to it are very real including with respect to policy implementation. The focus though of this thesis is on the policy formation process itself and, in the next two chapters, the role of aid agencies in the land policy process are examined in greater depth, including how they interacted with the state and civil society organisations.

Chapter 7: Aid Agencies and Land Policy in Kenya

7.1 Introduction

This chapter provides an in-depth analysis of the role of donors in influencing and shaping the process and content of the land policy in Kenya. Section 7.2 provides an overview of donor-state relations in Kenya starting with the colonial period, whereas the following main section (section 7.3) offers an extended discussion of aid agencies in relation specifically to the state's land policy process. This involves considering for example the donors' architecture of engagement and the secondment of foreign-funded experts and consultants to buttress mostly donors' discursive interventions, as well as donor positions on questions around preferred land reform modalities. It will become clear that aid agency involvement in the land policy process in Kenya was highly-charged politically and was not a neutral and unbiased pursuit in line with some idealised notion of development cooperation.

7.2 Donor-State Overall Relationship

De Zeeuw (2010), citing the Ministry for Foreign Affairs of Denmark's 'Kenya–Denmark Partnership: Strategy for Development Cooperation, 2006–2010', noted that ODA to Kenya from 1963 to 2004 totaled USD 18.4 billion. For the period from 2002 to 2007, the corresponding figure was USD 4.1 billion. The 2007 ODA statistics consist of 84 percent from bilateral donors and 16 percent from multilateral donors. In terms of sources of funding, the USA is the biggest donor followed by the European Commission, the United Kingdom and Japan in that order.

Overall, the relationship between donors and the state in Kenya often has been contingent upon geopolitics (Murunga 2007, Briggs 2014, Kanyinga 2014, Gibson et al. 2015). During the Cold War years (the 1940s to early 1990s), Kenya was a strategic ally to the West in the latter's efforts to stop the spread of communism globally. Consequently, during these years, the existence of democratic governance was not a conditionality for receiving aid. Further, agreements with aid institutions (both bilateral and multilateral) normally involved the state executive and relevant line ministries. After the Cold War, the priorities of donors shifted and the focus now was on conditionalities as attached to aid, such as embracing multi-party democracy, good governance and anti-corruption as well as economic liberalisation policies.

In the case of Kenya, the government complied with the requested reforms but this was done very selectively which negatively impacted on its relationships with donors (Whitefield 2009). Specifically referring to Moi's presidency, Kanyinga (2014:234) argues the following:

“He would agree to some reforms under pressure from the World Bank and the IMF, but renege on their implementation once funds had been disbursed”. As well, Cooksey (2004:4) claims that in the 1990s, the donor community (led by the IMF and the World Bank) failed to enforce reforms upon the Moi regime:

The IMF demanded the establishment of an Anti-Corruption Authority as one of a number of conditions for the resumption of aid. KACA [Kenyan Anti-Corruption Authority] was set up in November the same year [1999]. In July 2000, the IMF approved a \$198m loan. In December 2000, KACA was disbanded and in January 2001 the IMF again suspended disbursements. In November 2003, the IMF approved a \$252m loan, citing ‘Kenya’s demonstrated commitment to fighting corruption as the reason for reinstating the loan. By August 2004, the IMF had changed its mind again, citing deteriorating ‘institutional capacity to manage donor funds ... both in finance and other areas’.

O'Brien and Ryan (2001) undertook a comprehensive study of aid to Kenya focusing mainly on the 1980s to the mid-1990s, which is the period of Structural Adjustment Programmes. The study highlighted several aspects of aid to Kenya during this period (Mwega 2005). Overall, nominally aid flows increased from the 1970s to 1980s and decreased in the 1990s. The reduction of aid inflows in the 1990s was due to donors’ misgivings about the pace of institutional reforms including the fact that at this stage the country was effectively a one-party state (Briggs 2014). Branch (2011) cites an instance in which 250 million US dollars in aid was suspended by donors. This period though was characterised by a decrease in the amount of aid to Africa more broadly (Hjertholm and White 2000, KIPPRA and ODI 2005, O’Brien and Ryan 2001) in the context of an end to the Cold War, with donors – as indicated – now starting to highlight the importance of good governance within the aid delivery framework (Briggs 2014). Aid to Africa in fact declined from US\$ 1,549 million in 1989-90 to US\$768 million in 1994-95.

With reference to Kenya, aid coordination between donors (which focused as well on a wide array of government sectors) can be traced back to the 1970s when the World Bank organised a Consultative Group (CG). Coordination was seen as necessary as there were numerous multilateral and bilateral donor agencies active in Kenya with each donor having different priorities and operating procedures. However, the activities of the donor group (including even the holding of regular meetings) came to an end following the suspension of donor aid to Kenya in November 1991. In 1989, the Appropriations Sub-Committee of the

House Foreign Relations Committee of the USA government had already disapproved the provision of any additional aid to Kenya citing human rights violations. While there were donor coordination meetings organised in Kenya in 1993, 1994 and 1996, levels of participation were low, and the next meeting only took place in 2003.

Briggs (2014) highlights that even though not all donors had an acrimonious relationship with the Kenyan government at the time, peer pressure among donors made it possible to achieve a coordinated cut in aid across all donors. Any further aid was mostly tied to specific projects (over which it was assumed donors could closely monitor) as opposed to providing aid as revenue through the Kenyan Treasury. However, Gibson et al. (2015), based on a study of specifically project-directed aid to Kenya from 1989 to 1995, suggests that this aid was mostly targeted at specific geographical areas which formed the main power base for the president. With regard to the Moi years, one donor noted that donor coordination efforts “brought negative reactions from Government, and many donors in turn, began to avoid the country” (McCormick et al. 2007:31). Consequently, there was less activity from donors in support of government, with preference being given to channeling resources through NGOs. A few donors such as Sweden, UNDP and the World Bank continued funding government directly albeit with reduced funding.

Following the inauguration of a new government in January 2003, donors’ interest in supporting the Kenyan government was revived. The November 2003 Consultative Group meeting took place in Nairobi and was jointly chaired by the World Bank and the government of Kenya. This meeting led to the establishment of the Harmonisation, Alignment and Coordination (HAC) Donor Group in early 2004 (DAC 2007, HAC 2006) consisting of 15 donors. The HAC initiated and prepared the Kenya Joint Assistance Strategy (KJAS) for 2007-2012 which established a common assistance strategy for all donors. The relationship between donors and the Kenyan government however remained challenging even after the NARC came to power in December 2002. As an example, in July 2004, the top eight bilateral donors in Kenya at the time (USA, Britain, Canada, Germany, Japan, Norway, Sweden and Switzerland) noted that “[d]evelopment partners cannot be expected to put their taxpayers’ funds at the service of Kenya if the country’s own Treasury and public resources are being tapped for private gain” (Cooksey 2004: 5).

7.3 Donors and Land Reform in Kenya

The role of donors in land reform in Kenya can be traced back to the colonial period. The widespread discontent and conflict which developed over decades following land dispossession of Africans led the colonial government to revisit the issue of land access and propose measures to placate the grievances. As part of this strategy, in 1959, a new policy was formulated which was geared towards deracialisation of the rules on ownership of agricultural land. For this undertaking, land purchases by Africans were promoted. International financial institutions were supportive of the land settlement schemes and thus of a land transfer process as a way to relieve land pressure and enhance employment opportunities (IBRD 1961:4). Specifically, the British government, the International Bank for Reconstruction and Development (IBRD) and the Colonial Development Corporation (CDC) bankrolled these schemes in terms of purchasing land.

The approach to redistribution was based on the willing-buyer/willing-seller arrangement and was geared towards enhancing land markets (Njonjo 1978, Leo 1989). The settlement schemes continued to be implemented even after independence. Partly due to the dominant hand of donors, Kenya became one of the leading countries in Africa in the privatisation of land ownership through processes which entailed systematic individualisation, titling and registration in line with the Swynnerton Plan of 1954 (Wily 2011). Consolidation and registration of land was undertaken to create 'yeoman' farmers settled on productive economic units of land. Parallel to this were legal and administrative changes to allow the 'yeoman' farmers to engage in the cultivation and selling of high value commodities as well as to provide these farmers with credit and extension facilities (Kariuki 2004).

Corruption and nepotism though were rife and consequently even those who were not landless benefited from the schemes. Kenyatta is viewed as having been a key factor in the elites disproportionately benefiting from the Million Acre Scheme when he announced, in 1964, that all colonial farm houses (and adjacent pieces of land totaling 40 hectares within the 'Z plots') would be set aside for senior government officials. This arrangement was not originally known by the British Government whose funds were bankrolling the scheme. The scale of the scandals which followed prompted the setting up of a commission by the United Kingdom government in July 1966 to investigate the whole scheme. The commission's report noted that some of those who ended up benefiting from land reform, especially under Kenyatta's directive, were people who did not need the financial assistance to acquire land as they could do so without any loans. President Kenyatta himself got 88 hectares (Kamau 2009). Even

during the Moi regime, aid also financed corruption, cronyism and waste with regard to land reform. As Cooksey (2004:1) argues more broadly: “Past aid to Sub-Saharan Africa has not stimulated growth or reduced poverty. However, African ruling and middle classes and private business interests in aid recipient countries benefit hugely from aid flows, and constitute a powerful pro-aid lobby”. What is apparent from the history of land reform in Kenya is that donor-supported initiatives failed to address the problem of landlessness. In this context, I examine more recent initiatives from 1999 onwards on a thematic basis.

7.3.1 Engagement Architecture

Starting in the 1990s, aid modalities and their effectiveness have been in the spotlight (UN-HABITAT 2008, Bigsten and Tengstam 2014). OECD/DAC (2003) identify several problems with reference to aid flows such as: the unpredictability of aid flows themselves; the need for structures for effective implementation of aid programmes; donor reporting and monitoring/auditing mechanisms which are parallel to existing recipient government structures; the multiplicity of donor financial reporting and accounting systems; and the frequency and multiplicity of donor missions which overburden the recipient government’s administration and increase transaction costs. In response, donors, recipient countries and civil society organisations throughout the region advocated for Harmonisation, Alignment and Coordination (HAC) arrangements. Events in Kenya mirror these developments including in relation to the land sector (Augustinus interview 30 December 2014).

Despite Kenya carrying through on the HAC processes, UN-HABITAT (2008) noted that the HAC process in Kenya was not being pursued to the extent of its neighbours namely Tanzania and Uganda. The reasons for this are both political and economic. Less than 10 percent of the Kenyan national budget comes from external funding with the ratio of net ODA to GNP reported at 4.4% for Kenya in 2001 while it was 13.6% in Tanzania and 17.1% in Uganda. Kenya is also not eligible for debt relief. Additionally, politically, the period of the KANU regime was marked by weak relations between development partners and the Kenyan government due to issues around lack of government commitment to political and economic reform resulting in either reduction of support by some donors or complete suspension. Specifically, the net inflows of ODA declined to \$311 US million in 1999 from a high of \$1 billion US per year in the late 1980s.

UN-HABITAT (2008), Mwathane (interview 13 January 2015) and Wachira (interview 19 December 2014) all posit that the HAC processes in the Kenyan land sector were more

visible during the National Land Policy Formulation Process (NLPPF). In fact, it is suggested that the NLP more generally led to significant harmonisation amongst all stakeholders: government, civil society, private sector and development partners/donors (Mwathane interview 20 April 2015). The institutional harmonisation within the land sector thus exhibits most of the features typical of Sector-Wide Approaches (SWAPs) such as coordination tools, a Memorandum of Understanding, partnership principles and joint financing arrangements (or a basket fund). SWAPs bring together the efforts of donors, government and any other stakeholders to ensure that major funding for any sector (for example, land or health) contributes towards a sector policy under government leadership. Notably, the SWAP is an approach and not a set of activities (Brown et al. 2001:7). Still, this harmonisation lacked a clear land sector strategy and sector investment programme in the sense that no broader blueprint existed for this purpose.

In analysing the role of donors in the NLP formulation process, it is necessary to focus on the Development Partners Group on Land. The Development Partners Group on Land (DPGL) in Kenya predates the Paris Declaration and various emergent global donor coordination structures. This means that the DPGL mechanism had to evolve with the successive global developments (Augustinus interview 30 December 2014) by way of adopting emerging approaches and globally developed standards to the extent that they existed and were applicable to Kenya. The formation of the DPGL can be traced back to a request by the Minister of Lands and Settlement on 18 July 2003 (UN-HABITAT 2008) that development partners involved in land issues seek to harmonise their efforts. This request was taken as an invitation from the Kenyan government and an indication that the government had a positive perspective on the importance of donor coordination. At this stage, UN-HABITAT, SIDA and DFID initiated a process of reaching out to other development partners, which culminated in the first meeting on 17 September 2003 also facilitated by UN-HABITAT.

The first meeting enabled the mapping out of development partners or donors with a stake in land issues, as well as the election of the chair of the group and an agreement on the need to sustain the engagement over time. UN-HABITAT was elected as the chair of the group and this is attributed to the fact that the organisation had the technical expertise and was also seen as a neutral stakeholder (UN-HABITAT 2008, Mwathane interview 13 January 2015, Wachira interview 19 December 2014, Ndiritu interview 27 January 2015). These 'attributes' of UN-HABITAT were critical considering that the role of the chair included spearheading the coordination of policy dialogue on sector-specific issues, coordination of donor assistance

within the land sector, providing information and technical advice, and monitoring of donor performance in land reform (DPGL 2006).

Wendy Schreiber Ayres (interview 8 January 2015) argues that the land policy discussions played out within the context of several politically-sensitive issues which shaped how donors engaged with the NLP process. This sensitivity is often cited as another reason why UN-HABITAT was deemed the most appropriate chair of the DPGL. Furthermore, the DPGL itself was seen to be an appropriate institutional arrangement as it allowed for the discussion of issues with government as a group, thus minimising the exposure of each individual donor to government criticism: “The engagement with Development Partner Group on Lands (DPGL) was particularly effective as it enabled even the most sensitive of issues to be approached without significant exposure to any one [donor] agency” (Ndubi email, DFID official email, 31 December 2014). Some of the politically-sensitive issues which affected the character and level of donor involvement included tribalism and land as well as land questions along the coast. But even general historical injustices and grievances around land were contentious as addressing them meant disenfranchising certain (landed) groups in terms of access to land.

The tenure of the chair was expected to be 2 years but, in this case, it was deemed necessary to have UN-HABITAT continue beyond the 2 years. Effectively UN-HABITAT chaired the DPGL from 2003-2013. SIDA was elected vice chair at the first meeting. The need for coordination among donors and thereby to avoid duplication in efforts was clearly highlighted at the meeting of the DPGL working group on Land Information Systems of 13 January 2006. In this meeting, Japan International Cooperation Agency (JICA) indicated that there was duplication between initiatives supported by SIDA and JICA and hence the need for JICA and SwedeSurvey (a Swedish government-owned agency established to coordinate mapping, cadastral, land registration) to coordinate their actions. In the DPGL meeting of 13 November 2008, all other donor initiatives were identified as in need of alignment; and UN-HABITAT, SIDA and USAID had discussions to undertake demonstration interventions. Demonstration interventions were projects which were meant to showcase particular approaches in land management including on the use of technology in recording keeping.

Further, in March 2004, the Ministry of Lands and Settlement launched a strategic plan (2004–2009) which was geared towards poverty reduction by facilitating access to land, and it started to prepare the concept note (or proposal) which set out the action plan for the NLPFP. The concept note was launched following stakeholder consultations in May 2004. These

processes provided the context for facilitating the DPGL as well as enhancing its general relevance. The Memorandum of Understanding (MoU) between the Ministry of Lands and Settlement and DPGL, which was originally signed in 2004, was renewed in 2008, and this was also being discussed at the meetings of the DPGL and the Ministry of Lands and Settlement. In this regard:

Dr. Augustinus reported that the consultative meetings held on 30 July 2008 and 6 August 2008 with [Ministry of Lands and Settlement] MOL and DPGL agreed to the revision of MOU as a guiding framework for DPGL and MOL. It was pointed out that the MOU had already been circulated to development partners to make amendments/changes. DPs [development partners] were encouraged to read the MOU and give comments to facilitate the finalisation and signing of the document (Minutes of meeting DPGL, 18 August 2008:5-6).

Dr Augustinus was Chief of the Land, Tenure and Property Administration Section, Shelter Branch of UN-HABITAT and also the Chair of the DPGL. In the DPGL meeting of 13 November 2008, it was then reported that the MoU between DPGL and Kenya's Ministry of Lands and Settlement had been signed by the Permanent Secretary of the Ministry of Lands and Settlement on 16 October 2008. As well, a Financial Management Agency (FMA) contract with Pricewaterhouse Coopers, which was already in place, was renewed. SIDA took over the previous contract for the FMA with Pricewaterhouse Coopers which had been discontinued by DFID. UN-HABITAT (2008:30) explained that development partners who supported the national land policy process by contributing to the basket-based funding mechanism engaged the services of a private accounting firm (namely Pricewaterhouse Coopers) as the FMA:

The FMA team includes one full-time accountant situated in MoL and closely working with NLPS [National Land Policy Secretariat] and the finance department, a fund manager (six days per month) and a fund director (two days per month). The FMA has two main responsibilities. The first is quality control for budget and procurement plans of individual initiatives under the action plan. The second task is capacity development for relevant MoL departments (e.g. finance and procurement). The FMA is carrying out a capacity assessment. This will provide the baseline for capacity development support. The basket fund and the FMA are toolboxes containing different tools, e.g. MoU, capacity assessment and on-the-job-training of MoL officers.

7.3.2 Working Relationships between Donors and State

The interaction between the Ministry of Lands and Settlement and DPGL was formalised in April 2004 with a signed Joint Declaration. The Joint Declaration acknowledged the centrality of land for national development and highlighted the need for an inclusive national land policy formulation process. It also spoke about the need to establish linkages between land issues and natural resources management, poverty reduction and social equity. There was a shared realisation that ensuring a comprehensive land policy necessitated cooperation among various stakeholders (including donors, civil society and government) although with different rationales for this. For donors, some of the challenges they were experiencing when funding development projects and programmes in Kenya were seen as due to unresolved land issues and especially the absence of a coherent national land policy (Mwathane interview 13 January 2015). Still, as will become evident later, other geopolitical and economic agendas had a bearing on donor involvement, such as the need to curb political instability and create a middle class along with land markets.

The DPGL started off with 17 members. In supporting the land policy formulation process, some of the development partners were to provide non-earmarked funds through a joint-funding arrangement, managed by FMA, while others instead opted for earmarked funds with specific tracking mechanisms put in place for their contribution to ensure that such transactions are not mixed up with those of other funding lines. However, the earmarked funds were not managed by the FMA. Earmarked funds come with the limitations regarding what they can be spent on, while non-earmarked funds are relatively flexible (hence the need for close monitoring via the FMA). Still other development partners were not providing funding at all but were in agreement with the general principles of the engagement. UN-HABITAT (2008) identifies UN-HABITAT, SIDA, DFID, DCI (Development Cooperation Ireland) and USAID as the core group within the DPGL. A Memorandum of Understanding on the funding arrangements was signed on 29 June 2004 between Ministry of Lands and Settlement and development partners. The financial support which was committed by donors at the signing of the first MoU with the Ministry of Lands and Settlement amounted to Ksh 147,000,865 or approximately USD 2,052,019. In this respect, the AUC-ECA-AfDB Consortium (2010: 25-26) makes the general point that:

African countries have not always been able to make provision for adequate budgetary allocations to underwrite the cost of land policy development and implementation

(including capacity gap assessments, monitoring and evaluation and medium to long term strategies and programmes to deal with capacity constraints).

The key point though is that, if donor assistance in seeking to address these challenges is not well managed, then it can easily undermine government ownership of the process. Dorothy Angote, Permanent Secretary of the Ministry of Lands and Settlement, based on the minutes of a meeting between the Ministry of Lands and Settlement and DPDL, alluded to such possible problems by indicating that “the MOL has faced various challenges including lack of adequate funding from Government and limited capacity” (Ministry of Lands and Settlement and DPGL meeting minutes of 30 July 2008:8).

Personalities were also critical in determining the nature of the interaction between donors and government. Amos Kimunya, then Minister for Lands and Settlement, had been the Chair of the Institute of Certified Public Accountants of Kenya (ICPAK) and Mr Mwathane had been chairperson of ISK (Institution of Surveyors of Kenya) but was now the chair of the Land Development and Governance Institute which is a private firm consulting on land issues. In this way, key actors such as the Minister of Lands and Settlement (Amos Kimunya) had experiences working with donors in his previous role as Chair of the ICPAK, and they were largely familiar with donor expectations thus creating ‘entry points’ for engagement. As well, Ibrahim Mwathane’s role with ISK and now with the private firm meant that he also had knowledge of dealing with donors. The ISK was a key actor in land sector reform including as the chair of the Land Sector Non-State Actors group in 2008. The commitment and support from the former Minister of Ministry of Lands and Settlement (Amos Kimunya) has likely been undervalued as he played a critical role in the land policy process (Saad email 11 January 2015). Another commentator reiterated this: “The Development Partners Group on Land was quite influential at the beginning, especially during the tenure of Amos Kimunya as Minister. Their influence may in fact have had more weight with the government than the civil society and all the other interests combined” (Odhiambo email 15 February 2015).

The influence of the DPGL is evident when considering the opportunities it had to provide inputs into several of the key documents during the land reform process. The Ministry of Lands and Settlement and DPGL meeting minutes of 6 August 2008 indicate some of the documents which were being discussed and amended based on the inputs of donors, including the Land Reform Support Programme Implementation Project Document and the Land Information Management System (LIMS) Implementation Development Plan (2008-2010). In following meetings, terms of reference for various Technical Working Groups (TWGs) were

discussed, such as Land Management TWG, Land Information Management TWG, Legal TWG and Public Education and Awareness TWG. The minutes of the meeting for 18 August 2008 speak of for instance one proposed action: “Development Partners to review Ministry of Lands Work Plan and give comments to the DPGL Secretariat by close of business Thursday 21st August 2008.... Comments on the Ministry work plan will be consolidated and sent to the Ministry of Lands [and Settlement]”.

At times when the land reform agenda seemed to stall or when the review process was moving at a snail’s pace, the DPGL used the opportunity in meetings to request progress updates. One example is that, during the DPGL meeting of 13 November 2008, it was noted that “a cabinet memo was prepared by the MoL and presented to the Cabinet Office in October 2008. The cabinet memo was booked in the cabinet register for discussions. However, it is not known when the cabinet memo will be discussed”. The cabinet memo in question related to the national land policy. This resulted in an action point which stated that “DPGL to request an update on the Draft National Land Policy in the next quarterly meeting” (DPGL meeting minutes 13 November 2008:10)

As of the end of 2008, twenty-seven meetings of the DPGL had been conducted. The Minister of Lands and Settlement had attended, in person, eleven of these. Further, the Permanent Secretary of the Ministry of Lands and Settlement (Dorothy Angote) would attend and chair several of the meetings and, sometimes when decision-making was required, DPGL and Ministry of Lands meetings would be postponed to fit her schedule (DPGL meeting minutes of 10 February 2009). Such meetings became a vehicle to ensure that the Ministry became sensitised, at the highest level, to the thinking around land reforms from donors including from foreign experts. In the meeting between the Ministry of Lands and Settlement and DPGL of 30 July 2008, the permanent secretary “requested for a copy of the African Union-United Nations Economic Commission for Africa-African Development Bank land policy framework as well as the report of the consultants who undertook the peer review of the Kenya land policy in 2006” (Ministry of Lands and DPGL meeting minutes 30 July 2008:7).

UN-HABITAT (in the person of Lars Reuterswärd, Director, Global Division) was the chair and also constituted the secretariat, and hence it played a crucial role in ensuring ongoing engagement. In this respect, there were also informal interactions at very high levels including ambassadorial and ministerial levels and these helped to move the process forward (Mwathane interview 13 January 2015). As well, bilateral meetings were pursued by various donors. That bilateral meetings were taking place between donors and government officials is evidenced by

the minutes of the meeting between the Ministry of Lands and DPGL of 30 July 2008 when the SIDA representative reported that there was “ongoing bilateral agreement with MOL with a commitment of about Kshs. 280 Million will be extended to allow the Ministry utilise remaining funds in supporting ongoing activities” (Ministry of Lands and Settlement and DPGL meeting minutes 30 July 2008:5). This shows that the bilateral discussions were also used to finalise specific agreements.

7.3.3 Secondments, Foreign Experts and Consultancies

At the onset of the national land policy process, the fear that the process may be high-jacked by donors was often cited. A newspaper (*The East African*) published an article on 9 August 2004 regarding the policy formulation process in which the role of DFID was the centre of attention. In addition to providing financial assistance, the article indicated that DFID had seconded, to the government, an expatriate (Martin Adams) as a technical advisor for the process. DFID was keen to participate in the drafting of the Concept Note, and Adams was contracted and paid for by DFID to assist with the process (Mwathane interview 13 January 2015). The expatriate was reportedly (according to the newspaper) the “first District Agricultural Officer in Kitui district of eastern Kenya before becoming a consultant on land reforms in Namibia, Mozambique, Zimbabwe and Botswana”.

Given what was seen as the interests of the British, whose nationals and companies owned and controlled significant amounts of land in Kenya, this raised eyebrows. Thus, “land is such an emotive issue in Kenya and donors (especially DFID) had come under scrutiny” (Ndubi email 31 December 2014). Rosemary Wachira, who was the Deputy Director of Physical Planning and national coordinator of the land policy process in 2004 explained to the newspaper that “the Ministry of Lands and [Settlement] is in full control of the process”. Mr Adams himself noted that: “There is no conspiracy by donors to influence the outcome of the process, but you (Kenyans) must be vigilant”. One coordinator of a civil society group (who wished to remain anonymous on this point in my interview) argued that it was a challenge accepting technical advisory services from donor-seconded personnel when Kenya had highly qualified land sector experts such as the late Prof. Okoth-Ogendo among others.

In addition to DFID, other donors such as SIDA were also providing foreign experts under the banner of technical assistants. In the meeting of Ministry of Lands and Settlement and DPGL of 6 August 2008, the SIDA representative noted that SIDA “had earlier expressed interest in offering TA [technical assistance] to support the broader LIMS [Land Information

Management System]. Sida emphasised that it is still keen to provide TA support and if unanimously endorsed by MOL and DPGL, the process of TA recruitment can start immediately” (Ministry of Lands and Settlement and DPGL meeting minutes 6 August 2008:4). This recruitment was eventually done with SIDA regularly updating the DPGL and the Ministry of Lands and Settlement on the process of hiring. Based on the Ministry of Lands and Settlement and DPGL meeting of 30 July 2008, Dorothy Angote seemed to highlight that there was a need to understand the difference between having resources and having knowledge on the land issues. As the minutes of the meeting (quoted below) show, donors’ ability to provide aid, including so-called experts, is not synonymous with the capacity to fully understand land issues in specific contexts. Foreign experts will likely mislead the process in addressing land issues if they are not conversant with the local context and contestations. As the minutes indicate:

One of the critical questions that needs focus is whether there is enough expertise on [the] land issue on the donor side... Of utmost importance was to clearly understand the land issues and develop clear strategies. It was noted that there is often a risk of concentrating on funds rather than clearly articulating the land issues. This often led to billions spent in Africa, yet little progress was evident. It was recommended that there was a need to be issue-focused, develop clear strategies and plans and finally allocate funds (Ministry of Lands and Settlement and DPGL meeting minutes 30 July 2008:2).

In the same meeting, USAID reported that they had contracted US experts who had prepared a desk study in order to provide outputs into understanding the land sector in Kenya (page 6).

Donors clearly argued for the review of the land policy thorough the use of foreign personnel. SIDA for instance supported the peer review of the draft NLP by experts on land in Africa, with some of the recommendations of this review mission eventually incorporated into the NLP. The review was conducted, as noted earlier, by Sue Mbaya, Ibrahim Mwathane, Abdalla Hamdok and Julian Quan, and then submitted to the National Land Policy coordinator (Ministry of Lands and Settlement) via SIDA in April 2007. The review team emanated from the Land Policy Initiative which had been set up in 2006 and was a joint initiative of the African Union Commission (AUC), the United Nations Economic Commission for Africa (ECA) and the African Development Bank (AfDB). The Kenyan experience was in fact used to finalise the Framework and Guidelines on Land Policy in Africa which was later adopted by the African Ministers responsible for land in April 2009, and further endorsed by African Heads of State

and Government through a Declaration on Land Issues and Challenges in Africa during the Thirteenth Ordinary Session of the Assembly of the African Union in July 2009.

Missions by the Kenyan government to other countries was also supported by donors. This was a way of further influencing the government's views on land policy and reform. In the Ministry of Lands and DPGL minutes of 30 July 2008, the SIDA representative remarked that:

Swedish International Development Agency (Sida) thanked the Permanent Secretary for the fruitful meeting and pointed out that this was an opportune time to discuss DPGL's support for the Ministry. It was noted that the visit to Hungary by the MOL officials and some members of the DPGL, was a good pointer on how Kenya had performed on land reforms in comparison to other countries and it was evident that there was a big challenge in meeting expected results (Ministry of Lands and Settlement and DPGL meeting minutes 30 July 2008: 5).

Similarly, the DPGL meeting minutes of 10 February 2009 indicate discussions around proposed study tours of government officials to Namibia, Uganda, Sweden and Madagascar. Most of these tours were discussed in the context of showcasing best practices around Land Information Management Systems including prospects for private and public partnerships as they relate to LIMS.

Additionally, the contracting of consultancy companies was prevalent including in relation to hiring of candidates for employment related to the national land policy formulation effort as well as lobbying activities and information dissemination. As an example, SUNY-Kenya (an USAID implementing partner) was involved in programmes to strengthen the Kenya National Assembly and this involved working with the Parliamentary Committee on Lands and Natural Resources since 2000. USAID extended the consultancy to include a specific focus on land policy formation and content. As a result, a briefing of the Parliamentary Committee on Lands and Natural Resources was held in July 2008 in Mombasa. Based on the minutes of a DPGL meeting held on 18 August 2008, it is clear that SUNY-Kenya gave a briefing of its activities to the parliamentary committee at the July meeting. The minutes indicate that SUNY-Kenya also discussed with the parliamentarians various "flagging salient issues in the National Land Policy". As a USAID contracted company, it becomes apparent that the discussion on contentious land issues was likely biased in articulating the USAID position. A rather dramatic conclusion of SUNY-Kenya was the observation that the National Land Policy is "still controversial as it stands. Although the Minister of Lands and Settlement has previously

indicated that the land policy is ready for presentation to Parliament. The SUNY consultants view was that the chances of parliament passing it are minimal based on the responses of the committee”. However, contrary to these observations, a year later Parliament did pass the National Land Policy.

The use of companies to consult on various land reform advocacy and lobbying activities, run by people who have influence within the government, was notable. For example, head of SUNY-Kenya (Mr Fred Matiangi) was later appointed and sworn in as the Cabinet Secretary for Information, Communication and Technology on 15 March 2013. Mr Matiangi’s profile also clearly indicates his firm positioning within the international development system as he had previous consultancies with the Canadian International Development Agency (CIDA), the World Bank, the West Minister Foundation for Democracy and Transparency International.

Overall, the views on the role of expatriate staff vary. Mwathane (interview 13 January 2015) and Saad (email 11 January 2015) both claim that the secondment of foreign nationals from donor countries in supporting the formation of the NLP was well managed and beneficial to the process. Foreign experts were helpful as they provided benchmarking for the eventual policy and instilled confidence in local experts and policy makers that they were on the right track. By providing technical experts, donors also contributed by highlighting lessons learned elsewhere including best practices. However, from the discussion in this section, it also can be argued that the role of foreign experts was not entirely positive. At times, they were viewed as hired guns for the specific purpose of ensuring that donor interests within the land reforms were protected.

7.3.4 Donors: Property Rights and Land Markets

The period when Kenya was embarking on the NLP process coincided with the publication of the World Bank’s 2003 report *Land Policies for Growth and Poverty Reduction*. This report was heavily aligned to the book by Peruvian economist Hernando de Soto of the Institute for Liberty and Democracy titled ‘The mystery of capital: Why capitalism triumphs in the West and fails everywhere else’ (de Soto 2000). Broadly speaking, de Soto argued that poverty is mostly a consequence of poor people lacking access to formal property rights. As the World Bank claimed: “Access to land and the ability to exchange it with others and to use it effectively are of great importance for poverty reduction” (WB 2003:1). Manji (2006) and Kennedy (2003) posit that this focus on property rights led to a legalistic perspective on land reform and was

detriment to enabling discussions around land redistribution and the difficult political and economic choices necessary for effective poverty reduction.

In fact, poverty reduction was a running theme throughout the Kenya NLP process. This is not surprising as the period in which discussions on the national land policy began coincided as well with the introduction of Poverty Reduction Strategy Papers (PRSPs) in 1999 by the World Bank and International Monetary Fund. Kenyan efforts to come up with its first PRSP commenced in November 2000 with the document being finalised in June 2001. The PRSPs were focused on poverty reduction including by fostering a participatory approach to the development of national policies. The PRSPs were in large part conceptualised as vehicles for achieving the Millennium Declaration which had been endorsed by all United Nation member states in September 2000 and incorporated into the Millennium Development Goals (MDGs).

The importance of property rights and land markets as the basis for poverty reduction found expression in the views for example of the Kenya Land Owners Association (KELA). Di Matteo (2014) argues that the NLP process did not involve full consultations with important stakeholders such as KELA. Saad (email 11 January 2015) however argues that this view is incorrect as the land owners were involved on a continuous basis. The KELA is a lobby group established around 2004 to represent the views of land owners and mostly British farmers. Importantly, the Machakos and Makueni Ranchers Association (2007) saw the NLP as an attack on private property rights (Boone 2012). This association was separate from KELA even though it was clearly of the same view regarding various provisions of the NLP. The KELA lobbied against several provisions of the land policy such as reducing the length of land leases from 999 years to 99 years and the creation of a powerful National Land Commission which was not accountable to, or legitimised by, the electorate. As KELA put it, “removing free and unencumbered transfer of an individual’s property rights as any future transfers of property must first take into account all other legitimate rights or interests held, or claimed, by other persons over the affected land” (KELA 2008:2). Further, KELA was against limiting ownership of land by non-citizens and foreign companies and opposed to land redistribution and land restitution. The KELA argued that

If implemented, the provisions set out in this Draft National Land Policy will at a single stroke weaken the economic foundations of agricultural and commercial development in Kenya and thus undermine the accumulation of wealth by its citizenry. It will lead to

capital flight and disinvestment, and it will create, accentuate and perpetuate both rural and urban poverty (KELA 2008: 4).

Di Matteo (2014) and various key informants noted that, as a consequence of the KELA's lobbying activities, DFID stopped engaging with the NLP starting in 2007. The disengagement of DFID from the process is evident when reviewing available meeting minutes for the DPGL with the government or amongst DPGL members themselves. For most of the meetings, DFID's representative to the group would send apologies (meeting minutes of 30 July 2008, 6 August 2008, 18 August 2008, 10 February 2009, 16 February 2009, 4 March 2010). In contrast, SIDA was always in attendance while USAID attended most of them and sometimes sent multiple representatives.

Its conditional (and gradual) withdrawal from the process starting in 2007 amounted to DFID seeking to promote certain foreign policy objectives (Saad email 11 January 2015). This is consistent with the general observation often made that donors including international financing institutions try to impose their own agenda and may withhold funding if policies being developed are not aligned to their interests (Dijkstra 2005, Lazarus 2008), which may include promoting national commercial interests or enhancing global influence. For example, in the national land formulation process, it is possible to see subtle attempts to protect international economic investments in Kenya from radical land reforms which might hurt existing interests or prejudice Kenya's reputation as a safe country in which to invest. In this respect, DFID (2011:3) in its operational plan for 2011-2015 noted that, in the case of Kenya, "[s]upport to Land Reform will not be renewed, given the difficulties of achieving results without disproportionate effort".

It remains unclear if DFID supported fully all the issues raised by KELA. What is plausible is that, as most of the European foreigners who owned land would be of British origin because of the colonial legacy, land reform became a very sensitive issue for DFID. One of the respondents (who preferred to remain anonymous) claimed that, when KELA was able to access and lobby the British parliament, it raised the issue of British citizens being directly affected if the redistribution of land was to happen (including reducing the lease period and ending ownership of land by foreigners). The DFID was sympathetic it seems to the KELA position at least on protecting the land rights of foreigners who owned land. From interviews with various informants, it came across as difficult for DFID to continue providing resources towards a process which was deemed adversarial to the interests of British citizens.

Huggins (2009) argues that, at the Lancaster House independence negotiations, President Kenyatta had agreed to maintain the sanctity of private property regardless of how that property was acquired. This early post-colonial position was reiterated in the National Land Commission 2013 to 2018 Strategic Plan, which argues that:

When it was clear that Kenya would eventually get independence, colonialists ensured that Property Rights Protection was guaranteed before the conclusion of the Lancaster House talks (1960 to 1962). This was in order to guarantee their settler position in independent Kenya and continue ownership of their large chunks of land, or have the right to dispose it gainfully (National Land Commission 2013:10).

A position paper from the Kenya Land Alliance and the Kenya Human Rights Commission (Kenya Land Alliance and Kenya Human Rights Commission 2004) argued that section 75 of the constitution which guaranteed the sanctity of private property needed to be repealed so as to allow for the redress of historical injustices. Effectively this means that certain civil society groups such as the KLA were lobbying for radical measures in the content of the new land policy, even calling for the rolling back of private property rights which had been acquired in “an illegitimate manner” and the recovery of “public land acquired irregularly”. Clearly this position went contrary to the arguments of the KELA. The stance of the KLA also went contrary to other civil society groups. Boone (2012:92) thus points to an instance when the Kenya Law Society (KLS) took the Minister of Lands and Settlement “to task” for approving the Draft National Land Policy of 2007 which, according to the KLS, would harm the future of Kenya in terms of wealth creation. The argument of the KLS was mostly based on the existence of provisions for land redistribution and resettlement in the document. The KLA on its part argued that such concerns were ill-founded or misplaced as leaving historical land alienation and injustices unaddressed would lead to conflict.

The United States Agency for International Development, Property Rights and Resource Governance Programme under the Prosperity, Livelihoods and Critical Ecosystems initiative launched a review of the draft National Land Policy which was finalised in February 2008. The results of the review were meant to be part of the USAID input into the DPGL as well as informing successive USAID missions. In examining the recommendations, it is clear that USAID was only inclined to support the land reform process insofar as the content of the final land policy was consistent with its views on land issues in Kenya. Given that USAID provided resources to both civil society groups and government during the land reform process,

it is likely that such resources were meant to influence the positions adopted by the recipients (i.e. civil society and government).

The USAID report expressed deep concern on various provisions of the draft land policy which were seen to negatively affect the operations of land markets if the policy was finalised and then implemented. The report noted that, while individualisation of land ownership had been the goal of successive governments in Kenya, “[t]he recommendations of the KNLP would halt this fifty-year process and, it seems, would seek to roll it back in important ways” (USAID 2008: 6). The rolling back would be a concern as the report itself stressed that:

The way in which nations define property rights – such as private, public, state-held – and permit citizens to hold property (e.g., private, leaseholds, etc.) and defend those rights through the rule of law or administrative procedures, greatly influences the processes of globalisation, national economic growth, and the development of democratic society. Indeed, property rights are seen as a critical factor in economic growth, nation-building, governance and political stability in the U.S. Foreign Assistance Framework.

Some of the specific sections of the policy highlighted in the report as undermining secure property rights include Paragraph 77 which calls for “repealing the principle of absolute sanctity of first registration under the Registered Land Act”. This is coupled with the need for primary right holders to “obtain the written and informed consent of all secondary right holders before disposing of the land”. In this respect, the cited Paragraph seeks to end “absolute sanctity of first registration”. The report then indicates that:

There is clearly a potential for a reduction in security of tenure of holders of registered titles, for greater risk in land markets, and for considerable uncertainty and widespread litigation. As flawed as the tenure conversion process has been, trying to ‘run the film backward’ may be equally fraught with difficulties (USAID 2008: 9).

Concern is also expressed about Paragraph 92 which sought to prohibit non-citizens from holding ownership interests in land, and to permit non-citizens and foreign companies to acquire leasehold rights only, and then only for 99 years. Furthermore, no mention is made of any need to provide compensation for the reduction in property rights for non-citizens who already owned land. As well, so the report argues: “Prohibition of foreign ownership may prospectively pose a barrier to new foreign investment, though the seriousness of the impact is difficult to gauge” (USAID 2008: 9). The report also highlights that restitution and

redistribution would undermine the success of the “S0 615-007, Increased Household Incomes” programmes of USAID which involved investments in commercial production in Kenya’s agriculture. At the time, this USAID programme was using market-led approaches and focusing on boosting productivity in maize, dairy and horticulture in medium and high production areas. There was need to ensure that production disruptions would not occur or at least be minimised if restitution and redistribution were to ensue.

USAID in 2008 tried in fact, through Association for Rural Development (ARD) legal technical support, to put pressure on the KLA and Kenyan government to abandon the NLP because the policy, according to USAID, was unconstitutional and against existing and known legislative frameworks on land. In response, KLA walked the talk of its constituency (the poor citizens) and resisted the USAID’s arguments. In the end, USAID strategised to defeat the policy at the legislative level. According to a former Coordinator of CSO (email 5 February 2015):

It also became evident that there were competing donor imperatives, when USAID came into the picture with a very ambitious plan focused on forests (Mau) and wildlife conservation (Laikipia and Lamu). The interests of the Americans were not in consonance with the pursuits of civil society and Kenyans at large, even though it was presented as aiming to empower communities.

The USAID approach was focused on natural resources management (such as forests and wildlife) in the context of maintaining the privatisation of land. This of course did not address historical injustices including with reference to pastoral communities which lost their land during the colonial period and continued to do so under post-colonial governments.

USAID priorities were also highlighted by the organisation’s representative (on page 6) in the minutes of a meeting with Ministry of Lands and Settlement and DPGL on 30 July 2008. The representative said: “Land reforms are still relevant to USAID and particularly the finalisation of the land policy; implementation of the Ndung'u report; Natural Resources Management and Mau Forest in putting together collaborative forest programmes when the time is right”. While the mention of the finalisation of the NLP and implementation of the Ndugu report express a commonly agreed objective by various stakeholders (including by the majority of CSOs), USAID was not in agreement with some of the provisions of the NLP such as reducing the lease period and barring foreigners from owning land as freehold. This means that any pressure on the part of USAID to finalise the NLP was not based on a version of the policy favoured by majority of the CSOs and particularly KLA. All throughout 2008, USAID

was calling and pushing for a review of key provisions in the national land policy. In the meeting between the Ministry of Agriculture and DPGL on 6 August 2008, the USAID representative:

Raised the issue of further review of the National Land Policy. USAID was concerned whether the outcomes of planned public gatherings on the national land policy would be feedback and factored into the land policy. The Ministry confirmed that during the preparation of the sessional paper all issues will be considered (Ministry of Agriculture and DPGL meeting minutes 6 August 2008: 4).

While donor support to civil society (such as from USAID) was geared presumably towards ensuring that the voices of marginalised groups are heard, it is apparent that this was contingent upon those voices being aligned to the donor's own objectives. In this context, Peterson (2013: 22) argues more broadly that:

The re-appropriation of land and the idea of property rights could not be more averse to each other. Regardless of its necessity, land redistribution stands in opposition to ideas rooted in classical theories of property and customary law, which, to varying degrees, conceptualise property as an individual or common right to own, hold or use land to the exclusion of all others. Neither classical theories nor customary rights approaches to property anticipate the modern need to legitimately dispossess a land-wealthy few and transfer land to previously marginalised groups

Aga Khan Development Network (n.d.:50) likewise argues that development agencies, in Kenya, were reluctant at first to provide support to civil society organisations involved in advocating for land reforms citing the 'sensitivity' of the issue.

When looking at the specific activities supported by the donors in the case of Kenyan land reform, several of them can be linked to promoting efficient lands markets by focusing on information management, land registration, legal frameworks and land management structures. Thus, in her opening remarks to the Ministry of Lands and Settlement and DPGL meeting on 30 July 2008, Clarissa Augustinus of UN-HABITAT noted that the following activities had been readily supported by donors: analysis and technical support for the development of a Land Information Management System (LIMS), the Kenya National Spatial Data Infrastructure (KNSDI) initiative, training at the Kenya Institute of Surveying and Mapping (KISM), ongoing GIS training, capacity-building for land boards and dispute tribunals, national forums on land tenure and property rights, and analyses on land tenure and property rights in relation to economic growth and natural resources management. (Ministry of Lands and Settlement and

DPGL meeting minutes 30 July 2008:5). In the same meeting, the Japan International Cooperation Agency (JICA) representative remarked that “JICA particularly was impressed with the enthusiasm of the MOL regarding the NSDI. It was emphasised that a National Spatial Data Infrastructure (NSDI) was critical in supporting ongoing reforms and without an NSDI the Ministry of Lands and Settlement which is information driven would be stuck” The remark by the JICA representative also shows how the state bureaucracy was more comfortable with initiatives which were geared towards promoting efficiency in land management such as improving records keeping and retrieval. Such initiatives did not directly entail confronting the legacy of corruption and patronage in land management.

Kloop and Lumumba (2014) claim that, even after the DPGL was formed with the objective of supporting efforts directed towards addressing issues such as historical land injustices and informal settlements, the majority of the donors still avoided ‘sensitive’ issues and supported technical aspects such as information management systems which were seen as less politically-sensitive. Like the points raised by Augustinus of UN-HABITAT, examples given by Kloop and Lumumba (2014) include: JICA’s support to the National Spatial Data Infrastructure (NSDI); World Bank support of the Transparency, Communication and Information Programme, E-Government (TCIP), and the Financial and Legal Support and Technical Assistance Programme (FLSTAP); and SIDA’s support to the Land Information for Informal Settlements (LIIS). However, SIDA still directly supported the policy process (UN-HABITAT 2008).

SIDA’s involvement with land issues in Kenya in fact started with activities on slum upgrading in Kibera (in 2001-2002) but without any specific focus on land policy reform. However, it soon became evident that such activities were very dependent upon land ownership and tenure issues and thus upon policy changes (Ndiritu interview 27 January 2015). This prompted SIDA to engage with the prevailing Kenyan government but there was no headway as it was during Moi’s presidency. After 2002, when the NARC government came into power, the political situation changed and land became topical especially following the release of the Ndugu report. But, like donors in general, SIDA tended to keep a very low profile (Saad email 11 January 2015) and did not call for radical reform. Critical exchanges were taking place, since the coming to power of the NARC government in 2003, through regular meetings between senior Government of Kenya and donor officials, almost in secret. It is illuminating that there were no cars or pickups emblazoned with the project name (as is usually the case in

other ministries) or embassy staff signing protocols with government officials on television. Donors were engaged in quiet diplomacy in seeking to influence land policy reform.

Overall, donors supported the articulation of the quest for land reform by direct financial contributions, seconding experts and sponsoring of forums. They seemed willing to spend large amounts of money on participation and communication activities in order to ensure success. But AU/AFDB/UNECA (2009) argue that these donor-supported activities need to be interrogated. They note for instance that the electronic-based Land Information Management System (LIMS), while of significance, still bears the risk of serving the needs of the Kenyan elites and not landless people due to the fact that e-infrastructure in rural Kenya is very poor. In this way, support directed at information management systems on land, if done in the absence of reforms which seek clearly to promote pro-poor land relations, merely aids the efficient operation of land markets. This has led some observers to conclude that the engagement of donors with land reforms in Kenya and east Africa more generally has been a consequence of the pressure from multinational corporations which want liberalised land markets under a private property regime (Odhiambo 2002).

7.3.5 Forestalling Social Upheavals

Finally, another key objective in donor support for the NLP process was forestalling social upheavals (Saad email 11 January 2015). In this respect, an important challenge was how to articulate and frame a land policy that was equitable and catered for the interests of the poor, especially the landless, squatters and the swelling ranks of urban slum dwellers. Donors were aware of the potential threat of major social upheavals and conflict if the prevailing land situation was not rectified. For example, through donor funding, the Institution of Surveyors of Kenya was able to sponsor a series of research studies including one on the “coastal land problem”.

The post-election violence of 2007/2008 and the resultant international pressure and formation of the coalition government had a bearing on the NLP process, especially the adoption of the policy by the cabinet. Boone (2012: 91) notes that the “Kofi Annan mediated agreement ... required that a new land policy be voted by end of the year”. This further raised issues of the role of the international community (including donors, the UN and mediation teams) on the eventual adoption of the NLP. Hakijamii (2012:5) argues: “It is possible that had the 2007 post-election debacle not occurred, and in particular the intense pressure the political class was subjected to, we would not have had a National Land Policy and a new Constitution”.

The incorporation of land issues in the mediation efforts was not surprising considering the centrality of land grievances to the election-related violence. The Kenya Land Alliance and Kenya Human Rights Commission, in a policy brief, highlighted that political violence since the 1990s had often been a product of the exploitation of land-based (historical) grievances by politicians. To quote Boone (2012:78): “At grassroots level, rival groups have often stood on opposite sides of a distributive conflict that has been structured and stoked by the land allocation policies of Kenya’s governments, both colonial and postcolonial”. Overall, disputes about the election results were only one of the factors behind the post-election violence. In addition to historical land injustices as a factor, other factors such as inequitable distribution of employment, infrastructure and the struggle for political power fed into the tension and conflict (Kagwanja 2008). Addressing the ongoing land challenges, in order to forestall further social upheavals in Kenya, was always in the minds of donors though not always articulated formally or publicly.

7.4 Conclusion

Based on this chapter, it is clear that aid agencies were central to shaping and influencing the land policy process in Kenya in a variety of ways, and that their involvement in this process was part of a broader pattern of development cooperation with the Kenyan state over an extended period of time. Of significance is the fact that aid agencies did not operate in silos but sought to collaborate with each other on an ongoing basis to maximise their policy impact. Their involvement also involved significant discursive work in seeking to justify the incorporation of particular land reforms (based for instance on respect for private land rights) into the final policy product. However, donors did not cooperate on the basis of absolute consensus at all times and they did not always ‘get their way’. In fact, as the next chapter shows, aid agency interaction with both the state and civil society organisations was marked by problems and challenges.

Chapter 8: Kenyan State and Civil Society

8.1 Introduction

This chapter focuses on the role of the state and civil society organisations in the land policy-making process in Kenya, the interaction which aid agencies had with both state and civil society, as well as state-civil society engagements. Section 8.2, which is the shortest of the three main sections in the chapter, focuses specifically on the Kenyan state and it does so historically. The state's centrality to the land policy process in Kenya has already been established in the last two chapters and hence this short section is designed mainly to set the context for the more extended discussion of civil society set out in sections 8.3 and 8.4. Civil society, as discussed in this chapter, is not a homogenous grouping of organisations and hence there was some internal tensions around the land policy process. However, there is no doubt that the more progressive 'wing' of civil society played a fundamental role throughout the process and hence its positions and strategies (as well as challenges) are fully discussed.

8.2 Kenyan State and Land Reform

Several proposals during the land policy formulation process entailed a radical break from the status quo in Kenya. In this context, Mwathane (2010) summarises some of these issues which, simultaneously, became quite contentious during the NLP process. These included the broad proposal to resolve historical land injustices, as well as, more specifically: the conversion of leasehold land titles from 999 to 99 years, the removal of any sanctity to first registration titles issued initially in terms of the Registered Land Act, the inclusion of the concept of 'community ownership', the recovery of illegally and irregularly allocated public land without compensation, the recognition of the rights of squatters (particularly along the coast of Kenya), the prohibition of the ownership of freehold land by non-citizens, the removal of the control of Trust Land by County Councils to be replaced by Community Land Boards, the establishment and mandate of the National Land Commission, and the recognition of secondary land rights (for spouses and children). These proposals, if implemented, threatened to shake the status quo to the core including leading to tensions within government circles and the state bureaucracy around land reform.

In Kenya, due to successive periods of land maladministration and corruption, black Kenyan elites held large tracts of land at the time when the national land policy was being formulated. As such, it was no longer a clear case of white settlers (mostly of British origin) versus black Africans in terms land ownership. Bedasso (2012:9) therefore argues that

“[u]nlike in Zimbabwe, which was settled by Europeans that had numbered more than 60,000 at independence or in Uganda, which didn’t have any noticeable white settlement throughout the colonial period, Kenya’s settlers created some room for the growth of an African elite group”. Land ownership in fact had been used over the years to entrench political power (Southall 2005). The Ndung’u commission had already shown that some of the key challenges with land administration in Kenya were due to the centralisation of powers to allocate land under the Presidency. Hence it was not surprising that senior politicians and bureaucrats had an interest in halting radical land reforms.

Syagga (n.d:10) notes for instance that the Million Acre scheme conceived under the colonial administration aimed among other things to “socialis[e] the new (African) elites into the colonial political, economic and social patterns through the establishment of a multiracial alliance of European settlers and African landowners to forestall independence and majority rule”. The Million Acre scheme benefited only 5 percent of the population which then became part of Kenya’s elites (Mitullah 2001). Hence, in the long run, the objective was to prevent mass mobilisations by a group which might otherwise display anti-status quo tendencies, therefore effectively trying to link land reform to a political stabilisation agenda (Quan 2000).

Citing several authors, Manji (2012) argues that Kenyan citizens have always been distrustful about bureaucratic powers over land mostly due to the use of (mostly) public land to gain political mileage as well as personal wealth. As evidence of linking land to political mileage, the Ndung’u commission noted that the illegal and irregular allocations of public land increased in the run up to or soon after elections in 1992, 1997 and 2002 (RoK 2004). Notably, the commission’s report indicated that it was not always the case that allocations of public land were made with the authorisation of the president as required by law. The Ndung’u report highlighted cases where Commissioners of Lands made direct grants of government land without any authority from the president. Furthermore, there was deliberate tampering of the records at the Ministry of Lands and Settlements, obviously to hide the extent of the illegal and irregular transactions (RoK 2004).

Land-related corruption was clearly part of the bureaucratic functioning of the state. The Ndung’u commission points to “the extent to which illegal or irregular transactions in public land in Kenya have been made possible through administrative and professional corruption” (Manji 2012:469). In a similar vein, the International Land Coalition (2011:18) argues that all methods used by the Kenyan elites to illegally or irregularly acquire land clearly show abuse of “public office” and “an abandonment of the public trust doctrine”. Van der

Molen and Tuladhar (2007) demonstrate that, based on the Kenya Bribery Index for 2001 and 2002, the Ministry of Lands and Settlement ranked 4th and 13th respectively in the country. Further, in 2005, 65.7 percent of the people who approached the Ministry of Lands and Settlement were likely to have been asked for a bribe in exchange for receiving services. Some officials at the Ministry of Lands and Settlement were keeping possession of files which they had no right to keep (Hope 2014). When the individuals who needed the papers approached the ministry, they would be told that the files are missing which prompted the payment of bribes for the documents to be 'retrieved' (Opiyo 2010). McAuslan (2013: 56) thus concludes that "the Kenyan elites used the processes of the market and the individualisation of tenure not to create a land-owning democracy but the reverse – a landowning authoritarian state in which the people were deprived of their land".

There were thus attempts among the elites, including in government, to frustrate significant land reforms. For example, there was a general unwillingness to release, to the public, reports such as the one emanating from the Ndung'u commission which was calling for the restoration of illegally and irregularly allocated land (Manji 2012). The assumption was that the release of the report would cause political upheavals by exposing government abuse around land allocations (interview with senior government official who wished to remain anonymous). Minister Amos Kimunya, in an interview with a *Nation* newspaper correspondent and published on 10 June 2004, went out of his way to justify the government's delay in releasing the report:

Nobody is sitting on the Ndung'u Report to doctor it as has been alluded. The report touches on things that were done by a sitting Government elected by the people of Kenya. It touches on thousands of people who have been allocated land and we cannot just handle it carelessly just because people are demanding that it should be released. I think people need to realise that there is a lot of sensitivity and any careless move on that report could cause tension that would take time to quell. It could be misused politically by some people to divide Kenyans along political and tribal lines.

Even when the report was eventually released, the circulation was restricted hence not readily available to the public. Further, while the "findings of the Commission were largely welcomed, most of the report's recommendations were ignored" by government (Judiakhungu et al. 2008: 2). A *Nation* article of 25 January 2015 highlighted the problems faced by the president in particular in this regard, as it indicated that "Kibaki's weaknesses in addressing land problems were that some of his Cabinet members had been mentioned in the Ndung'u report. This made

it difficult to implement its recommendations that included prosecuting grabbers and forcing them to return land”.

In another instance, parliament delayed deliberations and endorsement of the draft national land policy for two years. Several policy provisions which focused on enhancing transparency within land administration systems faced resistance. This included the establishment of the National Land Commission which was seen as taking away land powers then vested in the presidency and Ministry of Lands and Settlement. Connected to this was the fact that the Land Reform Transition Unit, whose role was to – amongst other things – facilitate the establishment of the National Land Commission remained underfunded by the government. Indeed, it appears that government was never fully and collectively sold on the idea of a National Land Policy.

This may have been inevitable given the complex character of the Kenyan government at the height of the process. The 2002 elections brought into power a grand coalition made up of truly strange bedfellows at least ideologically-speaking, and, as such, it is difficult to imagine consensus within the government on the land question. Further, government’s objectives in developing the national land policy were not the same to those of civil society. The latter saw the policy as an opportunity to address the long-simmering land-related historical injustices and to institutionalise equity in land access and democracy in land administration. For its part, government was more focused on institutionalising efficiency and hence its stress for example on titling and computerisation. Because of this, dramatic land reform was never on the negotiation table for government: “Although land issues surfaced to the top during the 2007-08 post-election violence (PEV), government leaders benefiting from the status quo have prevented reform and continue to pose an obstacle to progress” (USAID/Kenya n.d: 1).

The friction between government and civil society was evident as late as 2008. The minutes of the DPGL meeting of 18 August 2008 (on page 2) noted an incident during the Parliamentary Committee on Lands and Natural Resources meeting in Mombasa in July 2008:

Participation of Kenya Land Alliance raised controversy during the meeting. Previous Mau controversies led to Members of Parliament from South Rift to request that KLA leave the meeting. The SUNY consultants view, based on the responses of the committee, was that the conduct of KLA was seen as wanting as they rallied CSOs to demonstrate, thus ruining the objective of the meeting which aimed at inducting MPs [Members of Parliament] to the National Land Policy.

SUNY was a private consultancy firm contracted by USAID to undertake capacity building for parliamentarians. The conclusion of SUNY, from the meeting, was that it was necessary to “[n]arrow the gap between CSOs and parliament by inviting CSOs to participate in land consultative meetings”.

Government engagement with civil society was not on the basis of any principle (or a recognition of the absolute need for civil society involvement) but mainly in response to a conditionality of support laid down by donors, i.e. donors would engage with the land policy process only if civil society was also part of the process. At key stages of the process, government in fact tried to ignore civil society or to assimilate it. At some point, however, it seems that government became overwhelmed by the process and lost focus, thereby leaving the initiative almost entirely to civil society. This is manifested in the wording of the final land policy document, which is very consistent with – and almost reads like – a civil society advocacy document on land reform in Kenya (Odhiambo email 15 February 2015).

The land policy only came into existence as a result of political pressure which was mostly generated through strong mobilisation by civil society. In the context of this mobilisation, it became untenable for any politician to come out publicly in opposition to the policy. Thus, even those politicians who, on the eve of tabling of the policy in Parliament, threatened to shoot it down on the floor of the House, remained silent when it was tabled. This is not to say that those who opposed the policy ever changed their position. Rather, they decided to lose the battle in order to win the war, trusting in the bureaucracy of the state to frustrate the implementation of the policy. With reference to Kenya, Hassan (2015) argues that revised formal rules (including policies) do not automatically lead to democracy or a change in the status quo especially if bureaucratic interests are undermined by the proposed formal rules.

That the land policy was still very sensitive even when the draft policy was in place can be exemplified by the discussions in the DPGL meeting of 10 February 2009. The UNDP representative in the meeting provided a brief of a UNDP project which had been designed to, among other things, support “consensus building around the National Land Policy to facilitate political will in passing the policy”. It was then noted (on page 7 of the minutes) by the UNDP representative that the Ministry of Lands and Settlement felt that this was a “sensitive issue and did not want to open discussions on the policy”. This effectively meant that the UNDP project had to be re-oriented.

The challenges experienced by the state in Kenya is typical of cases wherever there are significant efforts to undertake redistributive land reform policies. The initial motivation to undertake radical measures and fix the problem once and for all is often questioned when the implications of such measures become more clearly understood and when the realities and complexities of implementing the reforms are confronted. When this happens, inertia sets in and the state tends to retreat by focusing on economic growth and productivity goals instead of the eradication of landlessness (Adams 2000). Because of this, Lindblom (1968) argues that policy-making is a process of ‘disjointed incrementation’ which is generally conservative and does not allow for a radical break from existing policies.

8.3 CSOs in Kenya

The European Union Land Policy guidelines stress that “[w]hile economic interests have their own ways of lobbying, pressure from civil society may be a crucial factor in initiating reforms or accelerating their pace and overcoming the resistance of those groups opposed to land policy reform” (EU Land Policy Guidelines 2004: 21). In this section, I consider the role of civil society organisations with reference to the land policy process in Kenya, including though not only groups pushing for change but those also resisting it.

The African Research and Resources Forum (2009) defines CSOs to include NGOs, trade unions, farmers’ associations, professional associations and student movements. Over the years, civil society organisations in general have played a role in the development of Kenya (Yatich et al. 2007). In doing so, they often seek allies within political society even at times aligning themselves with a particular political party. At the same time, CSOs are often subject to controls, cooption, institutionalisation and sometimes repression by the state. Wanyande (2009) argues that Kenyan CSOs have not always been united, with some working closely with conservative political forces while others working towards change. For instance, the Youth for Kanu (YK92) campaigned politically and was a critical factor in the Moi election victory of 1992. CSOs in Kenya also go through fluctuating periods of near dormancy and strident activity, with this being in part due to the type of regime and broader changes in the Kenyan political economy.

Several phases of political transition can be discerned in Kenyan politics dating back to the 1880s when the country was first colonised by Britain. The initial phase involved the suppression of traditional structures, which were largely decentralised, by the Western system of government which centralised power. During this period, CSOs did not play a significant

role as the colonial authority were fully in charge and dictating policies (Wanyande 2009: 11, Chemengich 2009). The next phase followed the imposition of colonial rule and the emerging organising of resistance to the colonial system. Some of the specific examples include the Nandi uprising of 1905-1907 as well as the much later Mau Mau rebellion. These resistance movements were supported by various groups including trade unions, political parties and tribal associations such as the Kavirindo Welfare Association. The overall demand of these groups was a democratic and just system of government as well as an inclusive economic system. This however does not mean that all Africans were against the status quo, as some were recruited by the colonial authorities to be the 'Home Guards' in fighting against the progressive forces. Eventually the colonial regime was overthrown in efforts which combined trade unions, ethnic associations and political parties.

Soon after Kenya's independence in 1963, Sessional Paper No. 10 of 1965 was issued and it highlighted the importance of voluntary organisations. Successive government strategies including on poverty reduction recognised the importance of CSOs. It was thus expected that the new government would be democratic and allow for fundamental freedoms. This was not to be the case, as the KANU government under Kenyatta envisaged the activities of trade unions to be threatening. This led the government to usher in a one-party state and repress dissenting voices including those within civil society. For example, the Secretary General of the Central Organisation of Trade Unions had to be nominated and appointed with the involvement of government (Good 1968, Wanyande 2009). Specifically, the government would choose the person from a list of three names nominated by trade union members. In another instance, Maendeleo Ya Wanawake (an organisation advocating for women's rights) was co-opted into the ruling party which ultimately curtailed its autonomy. In terms of the media, the Voice of Kenya operated as the only broadcasting station. In the print media, there were only three newspapers, namely, the *Standard*, the *Nation* and the *Kenya Times*.

Overall, there was selective treatment of CSOs by the state under KANU (Wanyande 2009). CSOs engaged in social and economic activities were allowed to carry out their work. CSOs engaged in governance and political activities were treated more harshly. The government's engagement with CSOs involved in socio-economic activities mostly involved encouraging self-help efforts which would then play a part in socio-economic development of the country. With self-help groups being part of Kenyan traditional society in the past, the most prominent self-help efforts took the form of the *Harambee* (which relates to community members working together on community projects by providing cash, labour and materials).

The contributions of the *Harambee* system were significant. For example, it is estimated that over 8.5 million British pounds' worth of resources (labour, cash and materials) were raised in the 1970-74 period.

However, its significance during the Kenyatta period mostly arose because of the context within which it was operating. Matanga (2000) thus argues that there are two credible ways in which to understand the *Harambee* as a post-colonial development strategy. One way is that it provided an opportunity for peasants to obtain resources from the state (as a contribution to the *Harambee*) in exchange for providing elite patrons with political support. The other way is that the state was taxing peasants to support their own development. Undoubtedly, the *Harambee* became a way to source support for the political elites and consequently there was a general pattern showing increased *Harambee* activity around general election periods. As well, for a state facing resourcing challenges, the *Harambee* facilitated the galvanising of much needed resources. I now consider CSOs in the Moi years in more detail.

8.3.1 Moi Period 1978-2002

The transition to the Moi regime in 1978 came with a more repressive state. As Moi was from the minority Kalenjin community, he did not command the same support of the large ethnic groups of the Luos and Kikuyu as was the case with his predecessor (Kenyatta). For example, the Abaluhya and Luo sporting clubs were deregistered as they had tribal names, as also happened to ethnic welfare associations such as Akamba Union and Luo Union. Further, openly criticising the state triggered a negative reaction with the media being resigned to self-censorship (Barkan 1992). The attempted coup against the Moi regime in 1982 fueled further repression against political freedoms. In 1988, a constitutional amendment meant that the president now had the power to appoint and dismiss members of the Public Service Commission, Judicial Services Commission and the judiciary. Specifically, Act No. 50 of 1988 did away with the security of tenure of judges and members of the Public Service Commission, hence making a mockery of the constitution which sought to separate the powers of the executive, judiciary and legislature.

All CSOs were required to register with the Ministry of Culture and Social Services and non-compliance with this requirement meant that an organisation would not be able to access both donor and government funds. In a few cases, CSO activists were arrested on allegations of being national security threats and this set the state on a collision course with CSOs. One documented incident took place in 1989 when the Green Belt Movement headed

by Prof Wangari Maathai (who became a Nobel Laureate) sought a court injunction against the government as it opposed government's plans to construct a building in Uhuru Park (Wanyande 2009). In this context, in the same year, the government proposed the creation of a Directorate to coordinate and control NGOs. The main objective was to ensure that the activities of NGOs and CSOs more broadly were aligned to national interests.

In the face of assaults by the state on dissenting political views (notably from within political parties), CSOs were the only other voice which could express discontent. In large part, NGOs in urban areas (with foreign funding) tended to take a confrontational approach in relation to the state. These NGOs were mostly led by an educational elite who had the capacity to understand state activities and thus formulate a counter agenda or organised response. Some of the CSOs which remained active included the Law Society of Kenya, Students Union of Nairobi University as well as the staff association of the same university and the churches. These churches included the Anglican Church (Church of the Province of Kenya-CPK), the Presbyterian Church of East Africa (PCEA) and the Catholic Church, as well as the National Council of Churches of Kenya (NCCCK) which is an umbrella body of protestant churches in Kenya. During the Moi period, churches stood out as the fearless critic of the prevailing political order. The churches' main advantages compared to other civil society groups were their large constituencies and the fact that most of them had elaborate international and foreign links (Matanga 2000). Their struggles for greater freedom were done through sermons in the church, radio broadcasts, national newspapers, newsletters, conferences as well as press releases. Even among the churches, though, there were differences. Churches such as African Inland and Legio Maria, which were relatively small in size and mainly rural-based, supported the Moi government (Sabar-Friedman 1997).

Ndegwa (1996) sums up the response of the state during Moi's presidency in the face of CSO opposition to state actions. The response included deregistration or proscription; forcing the removal of CSO leaders from their positions or withdrawing resources and privileges; reconstituting civil society organisations into new bodies by governmental fiat; and seeking to co-opt CSOs into the state's agenda. As for deregistration, this affected organisations such as the University (of Nairobi) Staff Union, the Student Organisation of Nairobi University (SONU), the Matatu Vehicle Owners Association (MVOA) and the Public Service Club (Ndegwa 1996:27). For their part, CSOs sought to diminish contacts with the state to avoid antagonism or at times to openly engage in opposition to the single-party state.

Thanks to DFID support to Kenya, some of the British judges continued to work in Kenya after independence. However, because of the nature of their contracts, which involved renewal based on the recommendation of the Kenyan government, these judges could not exercise their duties in an independent way. Two such expatriate judges (Justices Derek Schofield and Patrick O'Connor) eventually resigned citing government interference. Korwa and Munyae (2001:5) thus argue that the judiciary had several challenges in terms of trying to protect human rights most of which were being violated by the state. Such challenges had a detrimental effect on protecting the rights of mobilisation by CSOs. In the context of the broad assault on CSOs by the state, donor support for CSOs increased.

The operational space for CSOs opened up in the 1990s and this can be attributed to several factors. In 1992, section 2(A) of the constitution which criminalised multi-party politics was repealed. This led to a political climate more conducive to CSO activity and to huge expectations for regime-change, which combined resulted in heightened CSO mobilisation. The reintroduction of multi-party politics also contributed to the opening up of the media airwaves. Importantly, *The People Weekly* newspaper emerged. This publication was investigative and published information including on classified government activities. On the television front, new networks emerged with political satire programmes such as Reddykyulass, Bulls eye and Newshot.

Donors also expressed deep concerns about the authoritarian character of the Kenyan state and wanted change, with CSOs becoming allies in this regard. The Structural Adjustment Programmes of the 1990s, which entailed a focus on good governance and institutional reform, clearly entailed a challenge to any authoritarian tendencies within the Kenyan state. Among other conditionalities, the programme in Kenya was directed at reducing government spending on basic services such that the provision of these services was to be increasingly ceded to the private sector. As well, because of ongoing concerns about government mismanagement, donor funding was often channeled towards CSOs. The 1990s then was marked by the growing openness and prominence of CSO work in Kenya and this was formalised within the sub-region. Thus, Chapter 5 of the 1999 East African Cooperation treaty, for which Kenya is a signatory, highlights the need for member states to create a supportive environment for the operation of CSOs including their enhanced involvement in decision-making at the national level.

During most of Moi's era (1978-2002), however, and mainly due to the gradual withdrawal of donor support and subsequently the structural adjustment programme's

emphasis on a lean government, the state failed to provide basic social services to Kenyan citizens. In fact, the performance of the economy took a tumble, from a peak of 8 percent annual economic growth in the 1960s and 1970s to negative growth (-3 percent) in 2001. Hence, socio-economic challenges deepened for ordinary Kenyans and would be a source of mobilisation amongst worker organisations. But governance issues remained central to the objectives of CSOs. In this light, Korwa and Munyae (2001: 13) provide a detailed account of the incident of 10 June 1999 when a reportedly peaceful rally to pressurise the government on constitutional review processes was disrupted by the combined forces of the KANU youth and the police. The rally itself had been organised by civil society groups including religious leaders. In this sense, the opening up and flourishing of CSO work around specifically political reform was not a linear development but continued to be marked by many setbacks.

8.3.2 Kibaki Era 2002-2013

The rule of KANU ended in 2002 when the NARC won the elections. The NARC government had campaigned and won on a platform of change. Some CSO activists joined the NARC government. However, internal frictions within NARC started to show early due to the non-implementation of the Memorandum of Understanding between the President Kibaki and Vice-President Raila Odinga. The MoU was based on broad-based sub-national and ethnic representation as well as power sharing. The NARC government was also soon hit by scandals including the Aglo-leasing deal. The scandal arose from government procurement of sophisticated passport equipment system from France and forensic science laboratories sourced from Britain. The deal involved overpricing in addition to lack of transparency. This scandal became a trigger for CSOs to start exposing government mismanagement.

Some of the CSOs which emerged and became vocal include the Institute of Economic Affairs, Transparency International and the Centre for Governance and Democracy. Simultaneously, CSOs which were active during Moi's era such as Law Society of Kenya and National Council of Churches reignited their activities. There was a substantial increase in the sheer number and volume of activities of CSOs during the NARC years, which is mostly linked to the freeing up of operational space in the context of the political and economic liberalisation which took root in the 1990s. The CSOs soon became central to the democratisation and good governance agenda taking off (Kanyinga 2004). As of 2007, when the national land policy formulation process was still ongoing, there were 4,000 registered national and international NGOs in Kenya (Griffiths 2010).

Following the end of KANU rule in 2002, expectations of increased democratic space were high among CSOs. However, several challenges arose affecting the CSOs including ongoing state hostility particularly towards those CSOs which challenged the excesses of the state and ruling elite. Nevertheless, many CSO activists (as indicated) joined the NARC government. This took place because many CSO activists had contributed to the coming into power of the NARC government of 2002 (and then the 2007 Unity Government in later years). This entry into the state, particularly by long-standing CSO activists, led to leadership shortfalls within the CSO sector.

Ethnicity also affected how CSOs engaged with certain national issues, including even within the churches. For example, during the Constitutional referendum of 2005, Catholic bishops were divided along ethnic lines in terms of advocating for either the adoption or rejection of the Bomas draft constitution. Specifically, Catholic bishops from Central Kenya aligned with the political party from this area to support the draft constitution which was in sharp contrast to Catholic bishops in Nyanza (Wanyande 2009). This was part of a broader dilemma for the CSO sector, namely, that it was marked by heterogeneity and subject to internal tensions, which was evident throughout discussions on the draft national constitution. Different CSOs were prioritising different issues which were not though necessarily in contradiction with each other. Therefore, the Kenya Human Rights Commission was advocating for the Bill of Rights to be anchored in the constitution, child rights organisations were advocating for rights of children to be entrenched, and religious groups were not in agreement on how religion should be integrated into the constitution.

8.4 CSOs and Land Policy Processes

In this context, I discuss the role of CSOs during the time of the national land policy formation process specifically. In doing so, I offer a thematic presentation including formation of alliances, engagement strategies, challenges within CSOs, and relationships with both the state and donors.

8.4.1 Formation of Alliances

Civil society groups had demanded a review of land governance in Kenya since the early 1990s (UN-HABITAT 2008, Nyawira interview 15 January 2015, Mwathane interview 13 January 2015). In the 1990s, though, CSO involvement with land reform was based on separate organisational initiatives with each CSO focusing on a specific aspect of reform (UN-HABITAT 2008). Examples of the CSOs active at that time include Greenbelt Movement, East

African Wildlife Society, Mazingira Institute and the Kenya Human Rights Commission. Such efforts were sporadic and disjointed and, as such, were not able to bring about meaningful long-term changes (Odhiambo 2002).

In order to harmonise CSO efforts in the land sector, the Kenya Land Alliance (KLA) was launched. The consultation workshop which led to the formation of KLA was held in Nairobi in May 1999 and was funded by OXFAM-GB, which was itself funded by DFID. OXFAM provided support in forming the alliance based on its previous experiences in Uganda, with KLA being modeled along the lines of the Uganda Land Alliance. The Kenya Land Alliance served two strategic purposes, namely, to legitimise the land reform agenda and to empower civil society organisations as part of the overall democratisation process. Pursuing a democratisation agenda through civil society was one of the lessons learned by DFID in countries such as Mozambique and South Africa (di Matteo 2015). The KLA was also supported by professional associations including the Institution of Surveyors of Kenya (ISK) and the Law Society of Kenya (LSK). At the same time, the alliance realised the value of networking beyond Kenya and hence soon established linkages with the East African Land Network, HAKIARDHI Tanzania, LandNet East Africa and International Land Coalition.

CSOs also worked specifically with communities to defend or advance their land rights and access. In one instance, the KLA partnered with other NGOs such as ActionAid as well as the Yala Swamp community to lobby the Ministry of Environment and Natural Resources and Parliamentary Departmental Committee on Agriculture, Lands and Natural Resources against the commercial activities of a USA-based company (called Dominion Group of Companies) which were threatening the livelihoods of the community. In another case, the civil society group called RECONCILE implemented programmes to build the capacity of community-based groups so that the latter could engage in land rights advocacy. The process of capacity-building entailed the provision of technical assistance to carry out research and information dissemination. To this end, RECONCILE worked with Waso Trust Land Project and OSILIGI – two pastoralist organisations in Isiolo and Lakipia in northern Kenya.

In 2008, the CSOs formed the Land Sector Non State Actors (LSNSA) (Mwathane 2010) which is a coalition of local land sector civil society and professional associations meant to advocate and push for land reforms. The chair of the alliance was the Institution of Surveyors of Kenya while KLA played the secretariat role. Other members of the LSNSA included Federation of Women Lawyers (FIDA-Kenya), Shelter Forum, Pamoja Trust, Hakijamii, Groots Kenya, Kenya Human Rights Commission (KHRC) and the Land Development and

Governance Institute (LDGI) (Makathimo and Kaaria-Ogeto 2010). The funding to kick start the alliance was provided by SIDA.

8.4.2 Engagement Strategies

Civil society engagement with land reform in Kenya has gone through various phases in terms of the relationship with government, with the character of the engagement depending upon the political dynamics within Kenya. The ways in which donors were engaging with socio-economic development and political processes in Kenya also affected the work of CSO especially regarding the availability of funding (Nyawira interview 15 January 2015).

As the KLA was being set up, the government appointed the Presidential Commission of Inquiry into Land Law Systems in 1999. There was hesitancy on the part of KLA in participating in this commission but eventually a decision was reached to facilitate community engagements on behalf of the commission. Further, the KLA monitored the commission's deliberations. In June 2002, the KLA mobilised for and conducted a national conference on the land question with participation by donors, academics and other CSOs. This was a challenging period regarding relations with the Moi government. Consequently, the Ministry of Lands and Settlement declined an invitation to attend this conference, called the National Civil Society Conference on Land Reform and the Land Question, which was held on 21 to 23 May 2002 at Kenya College of Communication Technology, Mbagathi. The outcomes of this conference were meant to feed into the preparation of a submission to the Constitution of Kenya Review Commission (Adams and Palmer 2007). The negative attitude of government to civil society efforts around land reform can be linked to the fact that most political elites were involved directly or indirectly in land grabbing (Ndung'u 2004).

The coming into power of the NARC government in December 2002 created opportunities for better collaboration between government and CSOs working on land reform. For instance, the commission of inquiry into the illegal and irregular allocation of land included the coordinator of KLA as one of its members. Additionally, the Concept Note for the national land policy formulation process (MoL 2004) highlights the potential roles of CSOs in the process. These roles included membership of the technical committees and thematic groups, as well as provision of technical services and expertise, mobilisation and advocacy for raising awareness about the land policy process, and monitoring government procedures (UN-HABITAT 2008). During this period, preparation and dissemination of pamphlets and other forms of informational and educational material was a feature of CSO activities. Examples

include the Land and Property Digest, a quick reference brochure containing key land reform policy proposals in the draft National Land Policy and in the Wako Draft Constitution, and booklets comprising the full papers presented during various land workshops.

Mwathane (2010) lists several activities undertaken by the Land Sector Non State Actors (LSNSA). It is noteworthy that most of the member organisations of LSNSA were already active in the NLP formation process, including representation on all six thematic groups. The LSNSA lobbied the government to finalise the process of formulating the NLP particularly given the intensity of the 2007 post-election violence. It also became directly involved in undertaking public education and awareness campaigns targeting communities and their leaders. One key objective of these campaigns was to curb the ethnicisation of land issues which had been a key underlying cause of the post-election violence (Augustinus interview 30 December 2014). Educational and lobbying campaigns also targeted relevant parliamentary committees whose work had a bearing on the approval and implementation of land policies. These parliamentary committees included Land and Natural Resources, Justice and Legal Affairs, Local Authorities, Administration and National Security, Agriculture, Livestock and Cooperatives and Transport, Public Works and Housing. As well, high level informal meetings such as breakfast meetings were organised by the LSNSA in targeting officials from government, development partners, the media, and political and religious leaders. Overall, Mwathane (2010) argues that all this helped the policy process to gain traction and momentum such that it began to move at a faster pace than previously.

Makathimo and Kaaria-Ogeto (2010: 11), with reference to the Institution of Surveyors of Kenya, highlight some of the linkages and roles of CSOs. The ISK conducted a meeting in Mombasa (on 4 September 2009) which was attended by the leader of the Coast Parliamentary Group (Hon. Benedict Fondo Gunda); representatives of parastatals headquartered in the coast region; public administrators in the local authority and Ministry of Lands and Settlement; members of the local land control boards; leaders of religious groups; leaders of community-based organisations and representatives of professional bodies. The overall objective was to seek support for the NLP. More importantly, the ISK (as chair of LSNSA at the time) worked directly with parliament. For example, the ISK organised a workshop with Parliamentary Departmental Committees concerning Land and Natural Resources; Agriculture, Livestock and Cooperatives; Local Authorities; Transport, Public Works and Housing; Justice and Legal Affairs and Administration and National Security. The workshop is described in the following quotation:

The Parliamentary Departmental Committees Workshop held in Mombasa in November 2009 was attended by 24 of the invited 45 Members of Parliament, and 15 members of staff at the Kenya National Assembly. The Workshop set the tone for the debate of the Sessional Paper on the National Land Policy and its successful endorsement by Parliament on 3rd December 2009. The Workshop also created a forum where the Ministry of Lands and Settlement gave feedback to the concerns of Legislators on various issues in the draft National Land Policy such as Equitable Access to Land; Sanctity of Title; Illegal Acquisitions; Foreign Ownership of land and length of Lease Terms. It also created a forum for representatives of the Professional Societies; Civil Society and the Private Sector to urge legislators to support the Sessional Paper on the National Land Policy once it was presented to Parliament. ... The success of the Workshop and previous advocacy activities was reflected in the endorsement of the National Land Policy by Parliament two weeks later (Makathimo and Kaaria-Ogeto 2010: 11).

The workshop was seemingly an important and effective strategy as parliamentarians were able to express their specific concerns and to obtain immediate feedback from the Ministry of Lands and Settlement about their concerns. It was certainly one way for CSOs to gain access to political elites and to interface with the body politic on issues which are clearly governance related: Notable is the claim (in the quotation) that the endorsement of the NLP by parliament can be attributable to this workshop.

8.4.3 CSO Challenges

Civil society is not a homogeneous grouping but is marked by differences as well as tensions. For instance, with reference to KLA itself, there were instances of different views on certain issues within the network. A case in point is with reference to the Mau forest where residents faced eviction. Some members of the KLA which were concerned in particular with ecological issues advocated for evictions, while those which work on human rights and housing emphasised the right of the forest residents to shelter and human dignity.

But significant tension also arose because of the varying positions of civil society groups with reference to the national land policy. Boone (2012:92) thus points to an instance when the Kenya Law Society (KLS) took the Minister of Lands and Settlement “to task” for approving the Draft National Land Policy of 2007 which, according to the KLS, would harm the future of Kenya in terms of wealth creation. The argument of the KLS was mostly based on the existence of provisions for land redistribution and resettlement in the document. But

KLA on its part argued that such concerns were ill-founded or misplaced as leaving historical land alienation and injustices unaddressed would lead to conflict. As well, land owners and business interests (largely finance houses) were anxious to protect an open and vibrant land market, and donors often created space for these interests to be articulated. For instance, they made it possible for finance houses to attend key hearings and relevant international conferences (Saad interview 11 January 2015). But it was the Kenya Land Owners and the Machakos and Makueni Ranchers Association (2007) which emerged as possibly the fiercest critics of the national land policy formulation process. In this context, Griffiths (2010) argues that some CSOs and donors ended up dominating the NLPFP and he sees this as problematic in that landed property owners were in large part excluded despite any assertions to the contrary.

Griffiths (2010) goes on to claim that CSOs (at least NGOs) do not contain internal electoral processes and they are not able to claim legitimately to represent any particular group in Kenyan society. Thus, they influence policy and challenge government around land reform without any clear mandate to do so, other than through their upward accountability to foreign donors. He argues that the rejection of the proposed new constitution in the 2005 referendum related specifically to problems with Chapter 7 of the document (which focused on land), and then claims that the approval of the land policy in 2010 (which was consistent with Chapter 7) was only possible because of the undue influence of certain CSOs and donors during the policy process. Thus, in 2005, “there was strong cross-party rejection of Chapter 7 which was widely seen to represent an outright attack on private property and tenure rights by shifting the control over land from owners and users to central government” (Griffin 2010: 3). The outright attack related for example to reducing the lease period of land from 999 years to 99 years and the repeal of the Registered Land Act (1963) thus opening every land title to legal challenge.

Griffiths (2010:3), in questioning its legitimacy, singles out in particular the KLA which he argues was “not listed on the NGO Coordination Board database” and “only 20 of the 60 NGO members listed on its website are registered”. In 2005 and 2006 around 14 regional consultations on land issues were held around the country mostly spearheaded by CSOs with funding from development and donor partners. The KLA conducted “five regional workshops, and formulated for the Land Policy Secretariat a Civil Society Position Paper and five Policy Briefs on a range of issues including historical injustices, land management and administration, community and minority rights issue” (Griffin 2010:4) This is viewed by Griffin as involving an over-dominance of certain CSOs in the land formulation process. The so-called wider

consultations embedded in the land policy process (MoL 2007, KLA 2009) effectively marginalised land owners and the private sector more broadly. Emphasis in the consultations was, according to Griffiths, placed on minority rights such as pastoralists and women's ownership of land with disregard for the rights of current land owners. Hence,

The UK government's Department for International Development and also UN Habitat, was at first dismissive but rapidly became actively hostile, to the extent of denying admittance to representatives of the Kenya Landowners' Association at key meetings and seminars, and actively lobbying against KELA within the body politic (Griffiths 2010:7). Boone (2012) also notes the perception that the process was not truly inclusive during all phases considering that the Kenya Land Owners Association and the Machakos and Makueni Ranchers Association were only "belatedly recognised as stakeholders in the process" (2012:92).

This points to a wider problem of how to include land owners in a process which is meant to be redistributive. In this regard, Kariuki (2004: 5) argues that

The reciprocal relationship between land ownership and the political system makes them interdependent... Landowners have always ensured that the political system comes under their control or influence. Land owning interests, especially if they are privileged and entrenched, will not give up their privileges or power unless they are forced to do so through one form of negotiation or coercion.

Thus a pronounced recognition of the existing rights of land owners, and a prominent role for them in the national land policy process, may have stalled the process altogether. The relevance of a CSO like KLA became crucial in this way.

In fact, overall it can be argued that the interaction of the government and CSOs (which were largely funded by donors) was mutually beneficial in specific ways. The CSOs (such as KLA) would not have been able to help formulate the NLP without government involvement and the same can be said to be true of the government which needed CSOs to lend legitimacy to the process. In the end, collaboration between KLA and government provided legitimacy to the process and to all the actors involved.

But this was undertaken at the expense of the CSO capacity. 'Brain drain' from CSOs occurred (particularly from NGOs), with many civil society activists joining the NARC government. The *East Africa Weekly* of 6 June 2005 named some of the prominent former CSO activists who joined the government. These included the following: the former chairperson of the Law Society of Kenya, Ahmed Nassir Abdullahi (who became chair of the advisory board

of the Kenya Anti-Corruption Commission); Kenya Human Rights Commission chairperson, Prof Makau Mutua (who headed the government task force on the Truth and Reconciliation Commission); former executive director of the Kenya Human Rights Commission, Maina Kiai; former chief executive officer of the Centre for Governance and Development and chairperson of the NGO Council, Gichira Kabaara; and former executive director of Transparency International John Githongo (who became the Permanent Secretary for Ethics and Governance).

This created a vacuum of experienced leadership at various organisational levels for CSOs. Given the “political cleavages, ethnic polarities, and low political trust” (Maina 1998:149) which prevailed at the time (as well as during the 1990s), the challenge of cultivating and developing another group of CSO activists who could easily gain a national profile and acceptance would be difficult; in the meantime, CSO organisational capacity and competence was affected detrimentally. Nyawira (15 interview January 2015) also claims that, when previous CSO activists entered the government from 2002, they did not necessarily continue pushing for the acceleration of land reforms. Some seemingly became quite silent in terms of advocating for land reform and even sided with the status quo in opposition to ongoing mobilisation within civil society. This therefore raises questions around any ‘entrust’ strategy by progressive land activists in becoming part of the state bureaucracy, as this strategy may inhibit prospects for ongoing reform initiatives on their part. However, levels of mobilisation outside the state both before and after 2002 made it difficult for the NARC to avoid pursuing the land policy formation process.

8.4.4 CSOs, the State and Donors

KLA (2010) highlighted several challenges in undertaking its work on land, including its interaction with the state and donors. As an umbrella body, it sought to register as a Trust but this

Was denied because it [KLA] has cultivated enmity with some [legislators] who consider the network a thorn in the flesh. KLA thus has not gotten a certificate of incorporation as a Trust. The main hindrance to this has been lack of political will, which arises from the fear that once KLA is registered it would be very difficult to gag or prohibit its operations (KLA 2010:23).

Without registration as a trust, board members of KLA could be sued as individuals on matters pertaining to the organisation, something which increased the chances of individuals being

victimised by the state. The lack of appropriate registration was also a challenge for fundraising as many donors viewed its non-trust status as problematic in terms of financial accountability. It is notable though that the KLA was eventually registered as a NGO in July 2013. This is significant, as being registered as an NGO meant that KLA could now hold elections to select leadership within the organisation which is not legally possible as a trust. As well, as an NGO it is relatively easier to form partnerships and raise funds from donors.

In some ways, even when the NARC government came into power, the state's relationship with civil society remained fraught with problems (Kantai 2007). In one instance, in May 2005, the Manyoito Pastoralists Integrated Development Organisation (MPIDO) was threatened by the government with deregistration due to its involvement in the Laikipia campaign which was aimed at addressing historical injustices. Specifically, the campaign advocated for the Masai community to be returned to the Laikipia plateau from which they had been moved during the colonial period (Kantai 2007). The intimidation also reportedly took the form of "undue attention from tax authorities" (Kantai 2007: 120). Being a member of the KLA, the case of MPIDO highlighted the potential victimisation which might happen to other KLA members. In a related case, the government of Kenya sent letters of inquiry to organisations such as OXFAM to request information on how they were involved with the lobby activities in the Naivasha case (particularly in funding the activities of KLA which was involved in this case). The KLA was working with community groups which were challenging the land owners in Naivasha who wanted to block access to the nearby lake from ordinary community members. This affected the activities of OXFAM as an NGO and a donor as well, as OXFAM was funding the Kenya Land Alliance.

Additionally, some employees of international NGOs (which were funding local land NGOs) had their work permits revoked. In some instances, the government felt that criticisms by CSOs of its handling of the NLPFP was simply geared towards pleasing the donor audience so as to ensure ongoing CSO funding. To quote one assistant state minister: "We [government] are working as partners with the civil society in the reform programme. The NGOs only criticise the government in order to remain relevant in the eyes of donors (Assistant Minister for Justice and Constitutional Affairs Robinson Githae quoted in *East Africa Weekly* of 6 June 2005).

With regard to donors, they were clearly instrumental in invigorating civil society formations as well as supporting those groups involved specifically in land policy formulation and articulation of land issues overall. In general, there was only minimal enthusiasm for

supporting land reform policies by donors prior to the start of national land policy formulation process (Mwathane interview 13 January 2015), though some donors such as DFID were already engaged. The KLA, formed in 1999, was thus being funded by DFID among others. This was at the recommendation of Oxfam-GB (Adams email 28 January 2015) following its experience in Uganda where CSOs had been funded and later mobilised, advocated and lobbied for land reforms. As well, based on the experience of Oxfam generally, CSOs had been successful in spearheading the democratisation agenda. DFID was in fact the first donor to engage with the land sector in Kenya from a governance perspective, an approach which encompassed empowering CSOs to promote advocacy on land issues as well as focusing on the land rights of the poor and other disadvantaged groups.

The support of DFID for the reform of land administration and management from 2004 to 2009 was geared towards improving prospects for economic sustenance and tenure security of the urban and rural poor, particularly women and children (and with an earmarked budget of £4 million). DFID also offered material and technical assistance to the land policy formulation and implementation process as led by the Ministry of Lands and Settlement. This was matched by support to civil society organisations engaged in the policy process and by a parallel programme of support to local-level land rights management, to be jointly implemented by Ministry of Lands and Settlement and the then Ministry of Justice and Constitutional Affairs (Ndubi email 19 January 2015). However, it should be noted that while DFID's official position remains that its assistance towards national land policy formulation stopped in 2009, several commentators interviewed highlighted that DFID's gradual withdrawal of support particularly to CSOs engaged in advocacy started as early as 2007. When DFID eventually pulled out of the process, SIDA continued to support CSOs. For instance, the Land Sector Non State Actors was formed with SIDA support in 2008. Di Matteo (2015) describes this new umbrella organisation as a "rescue operation" for the NLP formulation process. In this respect, DFID had "invested hugely in the process in support of civil society, and its withdrawal nearly brought the civil society effort to naught" (Odhiambo email 15 February 2015). SIDA also supported individually other CSOs and CSO networks (such as KLA and ISK).

In her testimony before the (USA) senate foreign relations subcommittee on African affairs on 7 February 2008, Katherine J. Almquist, who was the Assistant Administrator for Africa at USAID, with regard to democracy concerns in Kenya, noted that the USA would, as part of the solution, support "[r]esearch, dissemination, and policy advocacy by Kenyan civil society for national dialogue and constitutional reform regarding the underlying issues

propelling the current crisis – for example, devolution of authority, executive authority, electoral reform and land policy” (Almquist 2008:9). It became apparent that donors conceptualised civil society organisations as critical to the land policy and wider reform process even in difficult times around referendums and elections. This was because CSOs were seen as mobilising grassroots participation and advocating for the reforms.

During these times, there was a tendency amongst politicians to redefine their views, with some of these positions being unacceptable to donors. This involved for example falling back into the tendency to look at the land question from an ethnic perspective or seeking to perpetuate the centralised bureaucratic control over land management in the interest of sustaining political patronage and the status quo. Further, during particular times of heightened political tension, the land policy process itself became sidelined as a kind of ‘cooling off’ period on the part of the state. In such circumstances, donors would deepen their funding of CSOs for purposes of more forceful lobbying of government and politicians to ensure that the policy process would be sustained (Mwathane interview 13 January 2015). This was important given that international donors tend to refrain from openly criticising national governments as this may be interpreted as meddling in the country’s internal affairs as if lecturing to a legitimate government.

As such, in the DPGL meeting minutes (on page 8) of 10 February 2009, it is noted that the SIDA representative claimed that it was

Becoming clear that there is an urgent need for NSAs [non-state actors] support (seen as the demand side) to keep the momentum on implementation of land reforms including Agenda 4 issues [which focused on long term measures and solutions around constitutional, institutional and legal reforms including on land, poverty and inequity following the post-election violence], TJRC [Truth Justice and Reconciliation Commission] and constitutional issues.

This was a specific instance of a donor calling for deepening of support to CSOs. The donors went even further, not only to support CSOs but also to ensure that their voices were protected. The *East Africa Weekly* of 6 June 2005 therefore carried an article about Denmark threatening to withhold aid to Kenya if the operating license of a particular NGO was to be revoked:

A Danish newspaper, Information, last week said Denmark would withhold Ksh1.5 billion (\$19.5 million) in aid unless a row between an international NGO, Mellempfolkeligt Samvirke (MSKenya), and Nairobi is resolved. The NGO has been deeply involved in land reform in the country. Leading civil society groups, among them

the Kenya Human Rights Commission, Kituo cha Sheria, the Basic Rights, the Kenya Alliance for the Advancement of Children and Seatini (Kenya), told The East African their continued support for the initiatives is threatened by the government's renegeing on its commitment to reforms.

The rift was due to the fact that government was refusing to renew the work permits of some of the senior staff of MSKenya (including the country director Lotte Grauballe) based on allegations that the organisation was sponsoring ethnic violence related to land issues through supporting local land rights organisations. Further, MSKenya was accused of supporting a Masai land rights group called Osiligi which was being accused by government of spearheading the invasion of commercial ranches in Laikipia district. On its own account, Osiligi claimed that it was merely involved in land advocacy. Osiligi registration by the state was later revoked.

Broadly speaking, donors wanted to ensure a wide-ranging consultative process for developing the land policy. Thus, during the meeting of the DPGL of 18 August 2008 (DPGL meeting minutes 18 August 2008:4) SIDA “emphasised that it is keen to support a land policy process that is inclusive”. In providing financial and other forms of support for this, donors were able to overcome significant shortfalls in the national fiscus of Kenya which would allow for such a consultative process, even if the Kenyan government was totally and consistently committed to land reform. But the donor community, it is argued, was highly selective in its support for CSOs. This involved a “closed market as donors look at particular organisations for funding. Donor funds are not easily accessed by small/local organisations” (Owalla interview 15 January 2015).

In particular, community-based organisations found it challenging to comply with the donor application requirements. Additionally, there was jostling by CSOs for the few donors which were keen to fund land reforms, which created a tendency amongst some CSOs to shift their intended programmatic interventions to match donor priorities. In this context, Ng’ethe and Katanga (2004:36) argue that funding of “civil society organisations generated incentives for CSOs to focus their energies on attracting donor grants rather than responding to grassroots demands”. However, the case of Kenya shows that, overall, CSOs did not always tow the donor line. For instance, USAID in 2008 tried, through ARD legal technical support, to pressurise KLA and the Kenyan government to abandon the national land policy process because it was (in their view) deemed to be unconstitutional and against known legislative frameworks on land. The KLA walked the talk of its constituency (the poor citizens) and resisted intellectually the USAID-supported arguments. This may have been made possible by the divergence of

interests among donors especially between SIDA and DFID which effectively provided some choices over funding possibilities.

Finally, donor interactions with CSOs changed over time. In the pre-Kibaki era, donors tended to support CSOs as the government was deemed difficult in formalising state-donor relationships. However, with the change to the NARC government, the donors preferred to work with government rather than CSOs.

8.5 Conclusion

This chapter focused primarily on the important role of civil society organisations in the land policy-making process in Kenya, including the sharp differences between different organisations. The backdrop to the activities of the progressive civil society groups was the uneasiness of the state bureaucracy and political elites with radical land reforms as well as state corruption and maladministration around land ownership and access. The state's seeming resistance to land reform was evidenced by for example unnecessary delays and missed deadlines, and defunding the process (including of critical institutions such as the National Land Commission). Donors worked closely with the diverse range of civil society groups, including the KLA, and this no doubt facilitated their involvement in the land policy process. At the same time, the demands of a group such as KLA did not tally closely (or at least always) with those of either aid agencies or the state. For instance, though aid agencies wanted to 'weed' out corruption in the land management system, they also wanted to bring about land changes in ways which did not lead to social and political upheavals (and thus they sought to prevent any radical changes). The KLA, with its abiding concern around landlessness, had to vigorously persevere throughout the process despite the many challenges it faced.

Chapter 9: Conclusion

9.1 Introduction

This final chapter provides overall conclusions about the land policy making process in Kenya, with particular emphasis on the role of development agencies in the process. The first main section (section 9.2) of the chapter offers a short summary of the role of the various actors in the Kenyan land policy process, namely, the state, civil society and donors. The second section (section 9.3) seeks to relate the case study of land policy in Kenya to the theories about development and policy making discussed earlier in the thesis. In this way, the chapter seeks to end off with an integrated analytical understanding of the role of donors in the land policy process in Kenya.

9.2 Donors and Other Actors in the Land Policy Process in Kenya

In providing inputs into the land policy process in Kenya, donors interacted primarily with the state/government as well as civil society organisations. Before summarising the role of donors, I set out the involvement of the state/government and civil society.

9.2.1 State Bureaucracy, Government and Political Parties

The colonial institutions, which had centralised power over land allocations and administration, were inherited by the post-colonial state with only cosmetic changes. As the new elites doubled up as politicians and land owners, resistance to land reform became prevalent as land was a source of rent seeking and patronage. The post-colonial state formation processes in Kenya, which also had a strong tribalist tendency, thus informed the character and function of the state's land management practices.

The struggle against colonialism was in the main a struggle for the restoration of land rights. The Mau Mau struggle was based on the demand for the restoration of Africans' land rights as well as granting of political freedoms and bringing about social justice (Troup and Hornsby 1998, Materu 2015). Unsurprisingly, most of the Mau Mau violence was unleashed and felt mostly in the White Highlands and central Kenya (Kanyinga 2009), areas where the majority of the land dispossessions of Africans by European settlers had taken place. Part of the response, by the colonial state, to the Mau Mau rebellion was an attempt to divide and rule the population by various mechanisms including embarking on deliberate measures to create divisions among the African population economically and socially. The economic measures

translated into fostering wealth inequalities which became mirrored often along tribal/ethnic lines (Branch 2006, Bedasso 2012). In the end, land (which was central to the Mau Mau struggle) was used by the colonial state to reward those who opposed the activities of the Mau Mau.

The formation and function of various indigenous political movements, including political parties, against colonialism was largely informed by both tribalism and elitism. This is evidenced by the political agendas which were expounded by the two main political parties: Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). The overall objective for both parties was to fight colonialism, specifically demanding political freedoms and restoration of land rights to the indigenous African population. However, the demand for land rights was laced with tribalism from the onset (Materu 2015). KADU advocated for a federal structure of government which meant giving sub-national regions the power to administer land issues (Maxon 2009). In contrast, KANU advocated for a centralised government system as motivated by the desire for national integration. The very composition of the two parties showed the ethnic fissures (Bates 1989), such that KANU was said to be an alliance between the Kikuyu and Luo while the KADU was an alliance of the Kalenjin and Luhya.

The negotiations for independence were conducted at Lancaster House. The negotiations led to key concrete agreements which had a direct impact on land management for the post-colonial state. There was an overall agreement to protect private ownership and promote market based land reforms with funding support by donors. The first constitution also closely resembled a federalist approach which was advocated for by KADU. This was however short-lived when, in 1964, Jomo Kenyatta amended the constitution to effectively put in place a centralised system of government and vested the power to distribute land in the executive presidency. In addition to the centralisation of land management powers in the presidency (Syagga 2011) and market-based approaches to land distribution (Bedasso 2012), other pertinent issues included the fact that the primary colonial laws around land were retained albeit with minor changes (Veit 2011). Effectively, former 'Crown Land' became 'Government land'. Further, instead of a radical change to colonial policies, the basic tenets of the Swynnerton Plan of 1954, which were crafted within a productionist framework to agriculture, were pursued by the post-colonial administration. This effectively meant foregoing any radical attempt to tackle historical land injustices.

The transition to the Moi regime (following the death of Jomo Kenyatta) did not entail any significant shift regarding land redistribution. In fact, the only notable aspect of any land reforms was to usher in a new crop of land owning elites along ethnic lines (Kimani 2010, Materu 2015). However, the continued use of state resources for patronage and blatant corruption attracted the ire of donors and civil society organisations. At this stage, the solution (according to donors) rested in replacing the one party state, ending corruption and ushering in democratic government. This saw the expansion of CSO activities largely due to increased funding by donors, in particular to monitor the activities of the government while demanding democratic change. After concerted effort by donors, working with several CSOs, Moi conceded to re-introduce multiparty politics in 1991 (Otieno 2010). Notably, the constitutional changes entailed a limit of two terms for the state president but these were not retroactive which meant that Moi was able to stand again. In order to win the democratic elections, Moi deployed the idea of *majimboism* (devolution of administrative and political power to the regional level including land management) and, by extension, an ethnic based politics on land. Working covertly, Moi's team encouraged his supporters to seize land which had been 'stolen' by the Kikuyus especially in the Rift Valley and western Kenya (Mutua 2008, Klopp 2001). This further fomented ethnic tensions. This deliberate ethnicisation of politics is viewed as having contributed to Moi being able to hold onto power until 2001.

The change in guard, from Moi to Mwai Kibaki, which occurred in 2002 happened when Moi was no longer eligible to run as per the constitution. This meant Moi had to nominate a successor with Uhuru Kenyatta, son of the first Kenya African president, being his choice. Kenyatta was resoundingly defeated in the election by Mwai Kibaki who was leading the National Alliance Rainbow Coalition (NARC). The NARC was a coalition of various broad based social movements and ethnic groups, and its agenda and political mobilisation was notably based on ethnic-tribal lines (Chege 2008). Even with the underlying ethnically based politics, NARC was elected on the platform of change: politically, economically and socially.

It did not take long for the new coalition to portray an image of being pro-reform, particularly on land management. Procedurally the government appointed, in June 2003, the Ndung'u Commission. While the commission came up with an itemised list of illegal and irregular allocations of public land, as well as a description of how these transactions were being carried out, there were no prosecutions. The Ndung'u report blamed the rampant corruption in land management on the fact that powers to allocate land were overly centralised in the executive presidency. The inaction on the part of the government, following the

publication of the report, has been attributed to the fact that the elites who were involved in illegal and irregular deals were also part of the state bureaucracy. The result was that the state was uncomfortable with any proposal which sought to democratise land management and rights, addressing historical injustices and installing land ceilings, and instead it opted for a focus on economic growth and productivity.

The Kenya case can be understood as an attempt at reform within the land sector based on an assumption that it is possible to strip the state of the powers which it had apparently abused in the past. It was ironic that those changes had to be endorsed by the very state which sought to retain the status quo. Thus, the findings from the Ndung'u commission (and other commissions) failed to deliver real reform, and the executive within the state institutions continued to show disregard for existing laws on land and even sabotaged land reforms. In considering the internal workings of the Kenyan bureaucracy, reasons emerge as to why land reforms are slow or never meet expectations. These reasons are not always technical (poor design), administrative (lack of staff) and procedural (including improper sequencing). The truth is that land reform as a form of social engineering is seen by the state bureaucracy as a slippery slope, as the scope of reform is easier to define on paper than in practice. As such, once policies are enacted they can potentially have a life of their own, leading to demands for change in wide ranging areas including governance.

9.2.2 Kenyan Land Alliance and other Non-State Actors

The role of civil society organisations with reference to the land policy process in developing countries was already elevated by the European Union's Land Policy Guidelines. In the case of Kenya, the operational space for CSOs opened up in the 1990s and this can be attributed to several factors. In 1992, section 2(A) of the constitution which criminalised multi-party politics was repealed. This led to a political climate more conducive to CSO activity and to huge expectations for regime-change, which combined resulted in heightened CSO mobilisation.

The CSOs became the darling of donors, as part of the latter's democratisation agenda around good governance and aid conditionalities. This agenda, at the time of the land policy process in Kenya, was rooted in neo-liberal thinking and practice. The donors, led by the World Bank, clearly identified the lack of a coherent national land policy in Kenya as hindering productivity in agriculture and the CSOs became crucial for the donors in mobilising to put in place the land policy process. CSO engagement with the land sector, in the view of donors, was to be more sustained and have greater impact if all the CSOs came together in a united

front. To this end, the Kenya Land Alliance (KLA) was formed in 1999 with direct donor funding from DFID and the technical guidance of OXFAM. The Kenya Land Alliance served two strategic purposes, namely, to legitimise the land reform agenda and to empower civil society organisations as part of the overall democratisation process in Kenya.

It may be problematic to consider the KLA as strictly endogenous though it was a Kenyan-based organisation. This is because the KLA was in large part a creation of foreign donors and was expected to work towards achieving foreign agendas. The Kenyan government in fact responded to some criticisms about land management leveled against it by the KLA by claiming that there was an incentive for the KLA to be overly critical of government so as to draw positive attention (and therefore funding) from donors. At the same time, it seems clear that the KLA displayed a degree of autonomy from its donor funders, and pursued a land reform path which was more radical than that of donors, as witnessed by its inputs into the land policy process. For Griffiths (2010), KLA ended up pushing for land changes far beyond its weight. But there was also collaboration between KLA and the state. The Kenyan case also demonstrates the dominance of the urban middle class in the leadership of the CSOs.

At the same time, particularly when understood broadly, civil society is by no means a homogenous grouping. Thus, the Kenya Land Owners Association (KELA), in representing white settler landed interests, sought to forestall any changes which went against the private property and market mechanism regimes. KELA lobbied the British parliament in seeking to influence DFID's position on the direction of land policy changes in Kenya. This is viewed as having succeeded due to the fact that DFID pulled out of the process, thus undermining funding of the land reform efforts at a critical time. What was also on display was the fact that donors are also not a homogenous group. For instance, SIDA continued to fund the process even after DFID's withdrawal.

9.2.3 Donors and Neoliberalism

Donor participation in the land policy process in Kenya took place within this complex social and political setup in which competing interests and agendas existed. Land issues were at the centre of struggles for independence in Kenya and continue to remain unresolved after independence. Clearly, land is a highly politicised issue. Global interest in land in Kenya, notably amongst development agencies, has been strong for a number of years. However, these agencies tended to depoliticise their involvement in the land-making process in Kenya in the sense of masking their own specific agendas on land reforms.

Donors' participation in Kenya land sector reforms dates back to the colonial period and the approaches they supported were market based reforms (individualisation and titling of land). The World Bank and the governments of Great Britain and the Federal Republic of Germany bankrolled various settlement schemes including the one-million-acre scheme. The approach to redistribution was based on the willing-buyer/willing-seller arrangement and was geared towards enhancing land markets (Njonjo 1978, Leo 1989). With the rise of neoliberalism, similar approaches to land reform remained amongst donors far into the post-colonial era in Kenya. In this respect, the Development Partners Group on Land became quite important, as it was an institutional mechanism for coordinating donor activities on land. Even though the Group predates the Paris Declaration, the discussions which informed the Paris declaration on aid effectiveness had already started, including on how to solve the problems of fragmentation of donor strategies. The fact that donor coordination under the Group in Kenya gave prominence to the enactment of a (land) policy shows the importance placed on good policies as being critical for development cooperation effectiveness.

The donors appointed a Financial Management Agent to manage funding which was being provided to the state to support the National Land Policy Formulation Process (NLFP); and the engagement with the state was formalised through a joint declaration in April 2004. Donors' influence on the national land policy though was not only by directly funding the state. Influence was also achieved by way of discursive interventions. To the donors, the unresolved land question was about promoting efficiency in land markets, modernising agriculture and promoting good governance including in the land sector. The political economy of land as a problem in Kenya was only a priority to donors insofar as this entailed fighting corruption and decentralising land management away from the executive presidency. This effectively meant that radical land reforms and, by extension, addressing historical injustices in a meaningful way, was never on the table for donors. While poverty reduction was highlighted by donors as one goal of land reform, this was from the perspective of 'trickle down' economics and hence was tied to a stable and growing economy and not by way of redistribution. The Kenya case study thus supports the argument of Stallings (2001) that donor influence on national policies shapes not only what is contained in policies but also what is absent from such policies.

In presenting neoliberal reforms as the embodiment of truth and as inherently for the public good, aid agencies present themselves as intervening in a purely technical and administrative (and hence unbiased) manner to bring about what should be, from their perspective, uncontested land policy changes. This depoliticised narrative helps to create

legitimacy for their involvement in the affairs of Kenya, and hides (though not always successfully) the ways in which their involvement and contribution is in line with the logic of global capitalism under neoliberal conditions. Further, even though (or perhaps because) the politicised character of their interventions are often not subject to scrutiny and interrogation, these interventions come to dominate debates on land reform. Overall, donor involvement in Kenya was meant to improve the efficient functioning of land markets and included information management, land registration, legal frameworks and land management structures.

9.3 Theoretical Framing and Land Policy Process in Kenya

This section examines the case study of land policy in Kenya in the context of the theoretical framing of the thesis, namely, in relation to small ‘d’ development theories, big ‘d’ development theories and the theories of the policy process.

9.3.1 Small ‘D’ Development

The thesis provided an analysis of macro-theories on the development of immanent capitalism. The macro-theories helped in explaining the development of global capitalism, particularly in its contemporary neo-liberal variant, from the perspective of underdevelopment-type theories. The neoliberal programmes (themselves rooted in capitalism) emanate from modernisation theories which view the interaction of developing countries and developed countries in the global economy as largely unproblematic and in fact beneficial to the former. The interaction is said to enable the evolution of developing countries along the path set earlier by advanced capitalist societies, as developing countries become infused with the standards set by developed nations, including in relation to capital, knowledge and technology. Underlying the modernisation assumption is that capitalist development processes are in large part conflict free and that no contradictory interests exist between developing and developed countries. Any problems experienced by developing nations with reference to moving along the path of development are said to be located internal to developing nations. The policy implication of the modernisation theory includes the need for increased global integration including capital and knowledge transfers to developing countries.

Various criticisms were raised against modernisation theory from the perspective of underdevelopment theorists such as Cardoso, Frank and Wallerstein. Their diagnosis of the problems of developing countries indicates that the challenges faced by developing nations emanate from the ways in which these countries were immersed into the global system and

continue to be immersed within it, which is ultimately to the disadvantage of developing nations. Because of the power of advanced capitalist nations in the global system of development, it is very difficult for developing nations to delink from the world economy or to pursue any form of endogenous development processes and practices. Though world dominance is understood at the national level, with developing nations being subject to subordination, underdevelopment theories also recognise that – within developing nations – political and economic elites benefit from the global integration of their countries into world capitalism. Local elites in developing nations act on behalf of (if not at the behest of) global forces and share the same interest of sustaining the status quo of underdevelopment (Cardoso and Faletto 1969). This involves respect for stable property rights and privileging of the market mechanism under current neoliberal conditions.

Kenya is currently integrated into the global capitalist political economy and the development system in a dependent (or neo-colonial) fashion. Colonialism created several problems for Kenya, including the extraction of resources and the local annexing of land to colonial settlers for purposes of extroverted agricultural production. This annexation was legalised through various land acts (Crown Lands Ordinances of 1902, 1915 and 1925). The attempts to modernise the agricultural sector did not benefit the indigenous population given that they were often disposed of their well-established land assets and were deprived of political rights. This led to widespread poverty and massive social inequality. The form of colonialism enacted in Kenya also had a very pronounced ethnic dimension to it, and this contributed to the heightened significance of ethnic identities amongst the indigenous population, particularly in the context of land shortages. Unsurprisingly, the local population, while organising against colonial rule, also started to organise against each other (mostly along tribal lines).

The post-colonial period continued with further integration into the world economy, without massive benefits though for the former colonised peoples. Overall, 28.9 percent of the population is considered as landless (RoK 2003) and, among those who own land in rural areas, 32 percent possess about one hectare only which is normally too small in size to support viable livelihoods. It is no coincidence that the *Poverty Reduction Strategy Paper for Kenya* (RoK 2001) clearly put lack of access to land, lack of rural employment and ethnic conflicts as some of the key underlying causes of poverty in Kenya. All of these problems continue to exist even though the Kenyan economy grew at a rate of for instance 4.6 percent in 2012 (KIPPRA 2013). Economic growth per se has not trickled down to ensure large-scale redistribution of wealth in the country.

Clearly, though, local elites are benefiting from the post-independent Kenyan political economy. Particularly noticeable, for this thesis, is the ongoing presence of white (former) colonial settlers who still maintain control over substantial areas of the Kenyan countryside. Further, significant numbers of political and state elites have used their access to the state and to state resources to gain a foothold in the agrarian economy and often on an obscene basis. In this sense, by the late 1990s, post-colonial Kenya had all the trappings of a neo-colony in which both economic and political elites had either maintained or acquired access to rural land, and to the disadvantage of the majority in the countryside. It is not surprising then that, when the land policy process arose in Kenya, there was clear objections to any radical land reforms by a range of elites and major attempts were made to forestall or sidetrack the land policy process, as discussed in earlier chapters.

9.3.2 Big 'D' Development Theories

The small 'd' development theories are linked to the big 'd' development theories. Big 'd' development theories refer to the international practices of the development system and this encompasses development cooperation and the current neoliberal framing of this cooperation in relation to democratisation and poverty reduction. Notably, these interventions not only entail material transfers (provision of monetary aid, technology and human resources) but also discursive interventions which refer to the ideas which underpin and define the interventions deployed to solve supposedly the development challenges of the developing countries.

In this context, I focused significantly on the post-development critique of the international development system and the creation of mental images of what is said to exist in (and to characterise) developing nations as well as the solutions to development problems in these nations. As articulated by Alcoff (1991:26), "though the speaker [development agency] may be materially trying to improve the situation of some lesser-privileged group, the effects of their discourse is to reinforce ... imperialist conceptions and perhaps also to further silence the lesser-privileged group's only ability to speak and be heard". This implies a discursive imposition in which developing nations are conceptualised as unable to help themselves and are calling out willingly for interventions from international donors who have the necessary tool-kit to bring about development. This discourse of development becomes domineering and self-justifying, and undermines any development alternative in such a way that the development doctrine becomes almost impervious to the learning of lessons from the past. Any

problems or failures in the implementation of the development doctrine are largely explained as a function of poorly-designed projects requiring some kind of reform within strict limits.

Development interventions, in the end, are seen as neutral. Thus Ziai (2015:8) explains that “[t]he first and maybe most fundamental achievement of discourse analysis in development studies ... is the insight that the categories and strategies of ‘development’ imply a certain perspective which is contingent – in contrast to being the natural and normal way of seeing things”. Insofar as development cooperation, as articulated by donors, is seen as ‘natural’ and ‘normal’, rather than as biased and politically-charged, then neoliberal dictates around land (and other) themes are to be pursued vigorously and without question. This became clear during the land policy process in Kenya.

Intentional development was evident in Kenya starting in the colonial period. The overriding view was that Africans needed to be taught modern agriculture (including by first forcing them to join wage labour on settler farms) and be socialised into the market economy by promoting individual land ownership and titling, thereby effectively undermining customary land tenure. In order to help lift the indigenous Africans to the level so desired, knowledge and technology diffusion was promoted while loans and grants were provided for the purchase of land units through the willing buyer and willing seller approach, with white settlers fully compensated. This then meant that approaches on how land was to be distributed were pre-set according to the market logic. The belief in the effectiveness of aid was already evident, as Britain, the World Bank and Germany bank-rolled the early settlement schemes.

Donors, both multilateral and bilateral, have a heavy presence in post-colonial Kenya and have been welcomed by the political elites. And, certainly, discursive work by Kenyan donors took centre stage during the land policy process from the mid-1990s in post-colonial Kenya. To summarise, these revolved around the importance of land markets, the need to maintain the sanctity of original title, democratisation of land management, and ruling out any state confiscation of land without compensation even for purposes of redressing historical land injustices. In this way, land reform and land rights became conceptualised and articulated by development agencies as critical to the neo-liberal good governance agenda. Such land discourses shaped in many ways the kinds of interventions pursued by donors during the land policy-making process in trying to influence the state and the content of the final land policy. These involved the attempts at coordinating their work on the basis of neoliberal principles, formal interactions between donors and state officials (and national politicians), and the use of foreign experts and consultancies in formulating the land policy.

9.3.3 Policy Making Processes

The theories on global capitalism (small 'd' development) and intentional development (big 'd' development) have a bearing, both direct and indirect, on understanding the intrigues of policy making in developing countries. They also imply that the hand of donors is very crucial (if not sometimes dominant) in the policy making process. At the same time, policy processes in developing nations are not reducible to the hand and machinations of donors, as state-political elites and civil society organisations also enact agency and sometimes in a manner which goes contrary to the interests and pressures of donors. For donors, though, policies (including the land policy in Kenya) are meant to fit the script: supportive of property and markets, consistent with (their) democratisation agenda, and not marked by destabilisation by way of radical redistribution of land and wealth. As indicated already, these 'policy narratives' emanating from donor agencies falsely give an impression of a technically designed solution to assumed causes of development (and land) problems.

Even then, policy making is a complex process. Early theories had posited it as a technical process, where the task of policy makers (largely assumed to be technocrats) was to gather all the relevant information, weigh one alternative against another, and then choose the most cost-effective and efficient way of achieving the undisputed pre-existing objective. Under this approach, it was posited that policy actors and the policy process itself are fully rational, with the policymaking process passing through stage after stage in an unproblematic and linear fashion (Lasswell 1956, Brewer and de Leon 1983).

Such approaches to policy making have been rightfully criticised as policy making involves various competing stakeholders with varying interests including those who wish to resist change. As well, knowledge brought to bear on policy decisions is not neutral. Research carried out to inform policy choices may be biased to justify the interests of only some actors, thus sustaining particular pre-defined development narratives. In this process, alternative knowledge generated may be side-lined and at times unfairly discredited. One such framework which shows the political intrigues, and highly politicised character, of policy making is the Policy Engagement Framework (PEF) (Buse et al. 2008). With other like-minded theories discussed, it brings to the fore questions around the politics of policymaking, including the role of a multiplicity of agents in the process (or 'policy communities') such as 'issue networks' (or policy activists well-informed about a particular issue), epistemic communities (such as networks of professionals) and advocacy coalitions. In this way, policymaking is understood as both a focus of struggle and a site of intense struggle which incorporates non-state agents.

This kind of policy theory shows how policymaking is a ‘function’ of internal contestations within the state, competing policy communities and the broader political economy.

Aid agencies in Kenya were one such policy community. These agencies acknowledged the significance of land reform as evidenced by the involvement of both bilateral (DFID, Oxfam, SIDA, JICA and USAID to name a few) and multilateral aid agencies (World Bank and UN agencies such as FAO) in influencing the direction and content of land policies and their implementation. As expected, during this period when neo-liberal approaches dominated, policy issues were couched within the philosophies of ‘deregulation’, privatisation and marketisation of state activities (Williamson 1994).

Donor assistance to the Kenyan land reform policy formulation occurred in the light of the Kenya Joint Assistance Strategy (KJAS) which represented the main strategy for seventeen development partners in Kenya for the period 2007-2012. The KJAS has three pillars: encouraging economic growth, reducing poverty and vulnerability, and strengthening state institutions and improving governance. But reformulating land policy in Kenya predates this strategy. And during the entire policy process, donors directly funded both the state and civil society organisations for different but converging reasons. The financial support to the state was meant to enable the bureaucracy to carry out the reform processes, including wide consultations with various stakeholders. As well, donors provided technical assistance to the Ministry of Lands (including for the development of a land information management system), as well as discursive narratives about land through policy briefs and other documents. For donors, CSOs (notably progressive ones like KLA) were critical to the reform effort in mobilising people to demand reform and also lobby the government. The process of formulating a national land policy in Kenya was thus spearheaded in part by an umbrella network of civil society organisations (KLA) committed to effective advocacy for the reform of policies and laws governing land in Kenya.

In the land policy formulation process, politicians and state elites also formed part of policy communities. The politicians enjoyed privileged knowledge of policy making processes including how the state bureaucracy functions. Most politicians were land owners as well and had interests in protecting the status quo; some of them had been even linked to previous illegal and irregular land allocations as recorded in the Ndung’u report. The result was a political elite, including within the bureaucracy, which was willing to accept improved efficiencies in land management (through for example improved record keeping) but only if this did not upset the status quo in respect of land already acquired (illegally or irregularly). Of note was the intention

throughout the process of preserving the powers to allocate land within the office of the President. At several points, the state would argue that so-called radical action around the reform effort (such as immediate releasing of the Ndung'u report) would undermine stability in the country.

Thus the state itself may be pushing for a particular position. This is because, when it comes to contentious issues such as land reform, far from the state being a neutral broker, it has its own interests and represents often the interests of various elites. The interests of the state were partly defined by the land holding elites (including state elites with landed rural property) who were keen on maintaining their property and thus frustrated reforms, especially reforms which would lead to prosecution or confiscation. To fend off reforms, issues such as the need to maintain stability in the market were raised. On this aspect, it was alleged that some of the land titles issued irregularly or illegally had already been used as collateral in banks. To a certain extent, these elites favoured minimal land distribution reforms which would allow them to continue to present themselves as addressing the deep rooted land hunger. Notably, all the presidents of Kenya have always had, as part of their political agenda, the issue of addressing land grievances; but they would only pay lip services to such reforms once elected into office. As well, the political elites were in favour of a limited amount of land reform which would allow them to use land as a tool for political patronage to reward supporters particularly leading up to and soon after elections. It is not surprising therefore that the state was not in favour of pursuing dramatic land reform and institutionalising this in land legislation.

Settler land owners also emerged as a policy community when they formed the Land Owners and Users Association. Effectively this made them an issue network; and, like many amongst the political elite, the landed elite was not willing to envisage land reform if it entailed land redistribution. As an advocacy coalition of the rural propertied class, they argued and lobbied against measures which were seen to distort the functioning of land markets such as land ceilings, legislating against foreigners' owning land and reduction of the lease period from 999 years to 99 years. Epistemic communities were very much visible in the land formulation process. These included professional bodies such as Institution of Surveyors in Kenya, Federation of Women Lawyers, Kenya Human Rights Commission and the Law Society of Kenya. Some commentators argue that these groups, as elite formations, hijacked the policy process when it came to the drafting of land laws, as this process was regarded as technical and thus the wider public was largely excluded from it. The influence of such epistemic communities may even be understated since various parliamentary committees took guidance

from professional bodies but the level of this interaction (including during informal meetings) is not easy to ascertain.

Donors clearly interacted with CSOs, state and government during the land policy process in Kenya, and often (as indicated) in a diverse and fluctuating manner. This, as argued, served to complicate the policy process. Additionally, these groupings were by no means internally homogenous and united on all issues related to the land reforms. Thus there may be internal divisions within what seems to be a unified policy community. Among donors, for example, SIDA had a poverty reduction and social development focus while the thrust of JICA and World Bank was more on improving land information management. While other donors (DFID and USAID) expressed interest in both these aspects (poverty reduction and information management) as part of their overall objectives, they became deeply entangled in the political economy of land reform by overly insisting on the need for market based methods of land distribution. As a result, it is believed that DFID pulled out upon realising that some ‘anti-market measures’ (reducing the leasing period for land and barring foreigners from owning land) were being included as part of the land policy. In this regard, SIDA sought to make up the slack caused by the withdrawal of DFID. The point is that shifting tensions between donors, and entries and exits of particular donors during what was a long policy process, were bound to make the process more convoluted.

As well, there were shifting alliances between different policy communities if only because the process was drawn out. The reforms started (in earnest) around the late 1990s, with major policy changes only taking place in 2009 (NLP), 2010 (the constitution) and 2012 (first group of land laws). Further, there were several other reforms particularly regarding the role of the National Land Commission, the enactment of the Community Land Act and the conversion of freehold titles to leases still to be resolved. Over this period, several CSO activists joined the government. Once in government, some did not push for reforms and in fact sided with the status quo. Notably, Amos Kimunya (then Minister for Lands) had been the Chair of Institute of Certified Public Accountants of Kenya (ICPAK). This makes the categories envisioned by the PEF very porous.

The details of the PEF, as outlined in chapter two (see Figure 2.1), contribute to an integrated understanding of the Kenyan policy process. The political situational analysis involves four components (actors, content, context and process) which are interlinked in a multidirectional way. First, the policy context refers to the political, economic and social dimensions operating at global, national and sub-national levels. In Kenya, the context related

to the political economy of land in the country and the resulting land-based power differentials and social conflicts (notably along ethnic lines). Further, there was the global political economy involving neoliberal narratives and the international development system, which conditioned the policy-making process. Secondly, the policy process as identified by the PEF focuses on the ways in which policies are initiated, formulated, negotiated, adopted, communicated, implemented and evaluated. The Kenyan case study clearly highlights that land policy formulation is not a linear process as it involves messy and convoluted political struggles involving a diverse range of actors (including aid agencies) rooted in different ways in the global and national contexts. Thirdly, as implied already, the PEF speaks of the role of various national and international actors who are lodged in-between (analytically) the 'context' and 'processes'. In the case of Kenya, the actors included the state bureaucracy, national politicians, aid agencies and various groups within civil society, all of whom positioned themselves vis-à-vis the land policy process by way of fluctuating modes of cooperation, consensus and conflict. Fourthly, there is the policy content which, based on the PEF and as was true of the case of Kenya, arises from the complex interplay of context, actors and processes. The land policy content in Kenya thus was not foreordained but depended fundamentally on the outcome of complex processes of engagement by a range of actors, with donors only being one of them.

The subsequent stage of analysis within the PEF, after the political-situational analysis, refers to the strategic ways in which policy changes are pursued and reinforces the situational analysis. This stage can help explain why certain proposed land policy positions in Kenya did not succeed, and why some did. Key aspects to be considered in this kind of analysis are positions, power, players and perspectives. In the case of the Kenyan land policies, the players refer to the donors, CSOs and the state including the political elites. Power speaks to the ability of these players (or actors) to influence or even block various policy positions. In Kenya, some stakeholders including political elites, land owners and donors sought to dilute the character of reforms and for various reasons, and used their various power bases to pursue this. Perspectives refer to actors' perceptions of a social problem (including its causes and solutions) and thus this refers to discursive representations of the problem in question, such as land. The Kenyan case study showed how various stakeholders diagnosed the land problem, with donors for instance stressing the question of governance and productivity while some CSOs (notably KLA) highlighted historical land injustices and redistribution. Such perspectives ultimately conditioned the position they adopted in terms of the desired land policy content, but their

capacity to bring this about was contingent on their respective power assets and the ways in which they sought to manoeuvre their way through the policy process over an extended period.

Finally, the Kenyan case has also shown how events can change the overall narratives around a policy area. It can be argued that, prior to independence in 1963 and immediately thereafter, land reform was largely couched as a decolonialisation project even though it was already apparent that there were indigenous Kenyan landed elites. Starting in the 1990s, land reforms were framed as a way of tackling corruption especially after the publication of the Ndung'u report on irregular and illegal land allocations. Following the 2007 election violence, though, land reform featured prominently as a peace building measure. As the subsequent efforts to resolve the post-election violence were 'internationalised' (by the mediation of the African Union and the Kofi Annan led team of eminent persons for example) it became politically difficult for politicians to be seen as standing in the way of land reforms which were coupled with peace building. This is what arguably drove the unwilling stakeholders to at least sign onto the NLP and the constitutional changes.

9.4 Conclusion

This thesis, it is hoped, has provided an insightful analysis of the Kenyan land policy process which has relevance to understanding similar policy processes in the land and other sectors, in both Kenya and beyond.

The Kenya land policy reform process is sometimes looked upon as representing good policy practice, as it entailed a national policy which was included in the constitution and eventually gave birth to land laws. In the process, there were various new institutions created around land management and in particular the National Land Commission. My thesis though provides a more critical understanding of the processes leading to the land policy. However, the main issue which lies ahead is the question of implementing, monitoring and evaluating the land policy in Kenya. There is no guarantee that the land policy will be implemented and enforced as envisaged as such 'post-policy' processes are subject to the same kind of complex dynamics as policy processes themselves. It is hoped that, in the years to come, I will be able to offer an in-depth analysis of the 'post-policy' process in relation to the Kenyan land policy.

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Appendix 1- Meeting Minutes

Ministry of Lands and Development Partners Group on Land (2006) *Meeting minutes, 14th August 2006*, Ministry of Lands office (Ardhi House), Nairobi

Ministry of Lands and Development Partners Group on Land (2008) *Meeting minutes 30th July 2008*, Ministry of Lands office (Ardhi House), Nairobi

Ministry of Lands and Development Partners Group on Land (2008) *Meeting minutes 6th August 2008*, Ministry of Lands office (Ardhi House), Nairobi

Ministry of Lands and Development Partners Group on Land (2008) *Meeting minutes 18th August 2008*, Embassy of Sweden Office (Eden Square), Nairobi

Ministry of Lands and Development Partners Group on Land (2008) *Meeting minutes 13th November 2008*, Embassy of Sweden Office (Eden Square), Nairobi

Ministry of Lands and Development Partners Group on Land (2009) *Meeting minutes 10th February 2009*, Embassy of Sweden Office (Eden Square), Nairobi

Ministry of Lands and Development Partners Group on Land (2009) *Meeting minutes 16th February 2009*, Ministry of Lands office (Ardhi House), Nairobi

Ministry of Lands and Development Partners Group on Land (2010) *Meeting minutes 4th March 2010*, Ministry of Lands office (Ardhi House), Nairobi

Appendix 2-Interviews

- Adams M (email communication 15 December 2014), Former Land policy consultant with DFID in Kenya during the National land policy formulation; a consultant, author and programme officer at Makoro, madams@mokoro.co.uk
- Adams M (email communication 17 December 2014), Former Land policy consultant with DFID in Kenya during the National land policy formulation; a consultant, author and programme officer at Makoro, madams@mokoro.co.uk
- Adams M (email communication 28 January 2015), Former Land policy consultant with DFID in Kenya during the National land policy formulation; a consultant, author and programme officer at Makoro, madams@mokoro.co.uk
- Adams M (email communication 2 February 2015), Former Land policy consultant with DFID in Kenya during the National land policy formulation; a consultant, author and programme officer at Makoro, madams@mokoro.co.uk
- Augustinus, C (30 December 2014), Unit Leader: Land and Global Land Tool Network Urban Legislation, Land and Governance Branch. +254 20 7624652
- Ayres, W, S (08 January 2015), Economist with the World Bank in Kenya. Email: wayres@worldbank.org
- Di Matteo F (22 April 2015), PhD Candidate in socio-anthropology, Centre Norbert Elias, EHESS, Marseille GRED, Montpellier on internship with Kenya land Alliance while attached to IFRA, Nairobi, francesca.dimatteo@yahoo.it
- Doyle K, M. (26 June 2015), Senior Land Policy Consultant-was a consultant the USAID-ARD in Kenya, (KENYA SECURE PROJECT) and Co-Authored the Review of the 2012 land laws, bbossoxx@gmail.com
- Lukalo F (22 June 2015), National Land Commission, Director of Research and Advocacy; Was also a discussant during the 22 June 2015 Workshop
- Lumumba O (email communication, 5 February 2015) Executive Director Kenya Land Alliance; olumumba@kenyalandalliance.or.ke
- Lumumba O (23 June 2016) Executive Director Kenya Land Alliance; olumumba@kenyalandalliance.or.ke
- Lind E (email communication 26 January 2015) Former Programme Officer, Land Tenure and Property Administration, Section, Shelter Branch, UN-HABITAT. Also member of the DPGL secretariat, karibuproject@gmail.com

McLaren R (Skype interview, 3 February 2015), Currently Director of Know Edge, Scotland, formerly, Consultant with UK Department of International Development in Kenya on the Land Policy (2007) and consultant for the Swedish International Development Agency on the land policy in Kenya (2008), robin.mclaren@knowedge.com

Mwathane I (13 January 2015) Chairman of the Land Development and Governance Institute. Formerly with ISK, mwathane@landsca.co.ke. +254 -20 – 2714976/ +254 - 722-744019

Ndiritu J (27 January 2015), Snr Programme Manager, Swedish International Development Cooperation Agency (SIDA). john.ndiritu@gov.se. +254721307312

Ndubi J (email communication 31 December 2014) Programme Officer DFID in Kenya, enquiry@dfid.gov.uk

Ndubi J (email communication 19 January 2015) Programme Officer DFID, enquiry@dfid.gov.uk

Nyawira K (15 January 2015), Former Action AID-Regional Coordinator –Rift Region (former) and now the National irrigation: Social Development Specialist. nyawirake2001@yahoo.com, +254722391456

Nyawira K (email communication 16 January 2015), Former Action AID-Regional Coordinator –Rift Region (former) and now the National irrigation: Social Development Specialist. nyawirake2001@yahoo.com, +254722391456

Odhiambo M (15 February 2015) Former official of RECONCILE and an author and academic of land issues. Email ochiengodhiambo@gmail.com

Owalla C (15 January 2015) Community Initiative Action Group-Kenya (CIAG-K) info@ciagkenya.org. +254-716-384135/+254-735865026

Owuor E (23 June 2016), Executive Director Uganda Land Alliance, ED@ulaug.org

Selebalo C (18 December 2014) Secretariat of the Development partners group on land, UN-HABITAT. cyprian.selebalo@unhabitat.org

Wachira R (19 December 2014) Former Director of Physical Planning/Coordinator, National Land Policy Formulation Process. Ministry of Lands and Settlement Kenya. rwangariw@yahoo.com +254722-234711

Yahya, S. S (email communication 11 January 2015) Professor- Saad Yahya & Associates, saad.saleh@syaworld.com

Appendix 3-Conferences (where the draft thesis results were presented)

Institute of French Research in Africa of Nairobi (22-23 June 2016), “Politics of State Interventions on Land Rights in East Africa”.

IFRA (2015), IFRA Seminar 22nd June: “Emerging Insights into the Reform Process of the Land Sector in Kenya”.