

# HISTORICAL INJUSTICES

## A Complementary Indicator for distributing the Equalization Fund



REPUBLIC OF KENYA

### *African Socialism and its Application to Planning in Kenya*



Fifty Shillings - 1965

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Commission  
on Revenue  
Allocation



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This paper, commissioned by the Commission on Revenue Allocation (CRA) provides background information to assist in drafting a policy on allocation of the Equalization Fund. It focuses on historical injustices as a complementary indicator of distribution of the Fund. The views and opinions expressed in this paper are those of the authors and should not be attributed to the CRA.





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# 1.0 Introduction

## 1.1 The Need for a Policy Paper

The need for a policy paper on historical injustices arose out of the necessity to find an alternative or complementary criterion for distributing the Equalization Fund (hereafter the Fund). While recognizing the importance of this Fund, quantitative methodologies, which have included inter alia land poor, income poor, female headed households, remoteness, youth economic deprivation, poor health infrastructure, low levels of school enrolment, few schools, absence of tarmacked roads, high mortality rates, poor performance in national examinations, limited income/livelihood opportunities and income distribution, poor access to information, poor access to financial services, low capacity for collective action, have so far informed the discussions on how the Fund can be distributed. These determinants have their shortcomings, as they are largely deductive in nature and do not fundamentally capture the sense of suffering experienced by those who endured historical injustices.

The promulgation of the New Constitution ushered in an era of hope, as it provided Kenyan citizens with a legal foundation to participate in governance through a devolved system of governance. One of the progressive elements of this constitution is the recognition of marginalised and minority groups and the specific provision of an Equalization Fund to bridging the inequities and inequalities they characteristic their marginalisation. A qualitative analysis of the historical injustices will go a long way to augment and/or complement the economic indices of poverty and marginalization of these groups and/or areas and are equally important in determining the sharing of this Fund. It may equally serve as a separate criterion for determining which county or which minority group deserves to benefit from the Fund. It is against this backdrop that the Commission on Revenue Allocation seeks to have the other side of the story told so that 'a close to complete' picture of the status of marginalised groups and their experiences with historical injustices could be documented, with a view of informing the decision-making process vis-à-vis the distribution of the Equalization Fund.

## 1.2 Purpose and Objectives

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### 1.2.1 Purpose

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The overall purpose of this policy paper is to illustrate and analyse the historical injustices experienced by various groups or counties in order to inform and/or guide the decision making process of equitable distribution of the Equalization Fund for marginalised and minority groups.

### 1.2.2 Objectives

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1. Generate a body of knowledge on historical injustices that will inform and or guide the allocation of the Equalization Fund.
2. Determine counties that qualify for the Equalization Fund.
3. Determine minority and marginalised groups that qualify for the Equalization Fund.

It is anticipated that this paper will represent a crucial step in recognizing the injustices of the past, based on which the process of reconciliation can happen. This will be achieved by:

- Enhancing the economic wellbeing of marginalised areas and/or groups; and
- Adding momentum affected in the implementation of the constitution.

Ultimately, the success of the CRA will be ascertained based on its ability to facilitate equality and equity in Kenya in an integrated and co-ordinated manner.

## 1.3 Scope

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It is anticipated that this paper will also be relevant in broader terms within organizations and institutions of business and of society where marginalization and recognition of minorities has been lacking. Consequently, remedial action in the form of positive discrimination or institution of specific measures to bridge the historical injustices (across the board) can be rolled out.



## 1.4 Focus

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- This Policy Paper documents historical injustices to facilitate the distribution of Equalization Fund to counties and groups that have experienced injustices.
- The Paper argues that equality cannot be attained without those who suffered injustices are enhanced on the road to recovery. These counties and groups will remain vulnerable because their access to national institutions and facilities was in the past limited.
- The Paper recognizes the need for the state to use the Equalization Fund to legitimize the value of equality as well as ensure that other institutions and spheres of life should adhere to the equality that the 2010 constitution.
- Equality cannot be attained before those who were deliberately socially and economically excluded or deprived are brought into the fold through such deliberate efforts as benefiting from the Equalization Fund.

## 1.5 Rationale

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- Progress towards a shared society must be built upon the significant strides that have been made towards recognizing minorities and marginalised communities within the constitution. Even then, a rigorous methodology for the equitable sharing of the Equalization Fund needs to be formulated; a mechanism that appreciates the eminence of historical injustices experienced.
- The CRA recognizes that there are methodological and technical challenges in finding reliable and robust indicators of marginalization. This is apparent in the absence of proper documentation in what appears to have been a deliberate scheme by past regimes by either not maintaining records for these areas or by suppressing any available information. This provides a challenge in collating data on which to make decisions for the distribution of the Fund.
- CRA should provide recommendations to Parliament before any Bill for appropriating money from the Equalization Fund is passed and therefore it has to seek for the requisite information on which to base the advice.<sup>1</sup>

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<sup>1</sup> Article 204 (4) of the Constitution (2010)



- The fact that the counties and groups that should benefit from the Equalization Fund have suffered because of the debilitating cycle of social exclusion and poverty as well as violence and conflict, means that they have been significantly disadvantaged in terms of social and economic progress as well as opportunities to build a future.
- Recognizing historical injustices as a criterion for sharing the Equalization Fund gives voice to the diverse victims of economic and social exclusion, which is critical to national reconciliation.
- Recognition of their suffering and affording them the Fund is paramount in ensuring the participation of marginalised communities in nation building. This will inculcate a sense of “belonging” among minority ethnic groups and enhance their participation in political, economic, social and cultural spheres.

## 1.6 Defining Historical Injustices

- In this paper, historical injustice means those harms and wrongs committed by individuals, groups and institutions (including rulers and regime elite) against other individuals and groups who may be dead but whose descendants are alive. The descendants could be individuals or groups of all kinds deserving of recognition or acknowledgement for their suffering and should as such be compensated. The historical injustice narrative speaks of a society’s deviation from or distortion of normal living of a people.
- The idea of recognition of the suffering of victims of historical injustices is important in the process of redressing the wrongs. The recognition of the minority and marginalised in Kenya’s Constitution is significant because it underscores the basic humanity and subjectivity of the victims denied by the perpetuation of inhumanity against them. Recognition is, of course built into the act of restoring to or compensating someone for the harm suffered.
- In the above sense, the Equalization Fund is part of this acknowledgement; a kind of reparation in the form of affirmative action to uplift the victims of marginalization and historical injustices to at least a measure of dignity close to the rest of the country. The Fund is thus a response to mitigate historical injustices-an acknowledgement that past regimes practiced or permitted what we judge to have been gross, systemic injustices.





# 2.0. Situational Analysis and Historical Context

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## 2.1 The Pre-independence Period

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Different communities in Kenya had varied encounters with Arab imperialism and colonial occupation. At the Coast, Arabs alienated the indigenous people from their land. The colonial government equally had its share in this dispossession of people's lands.<sup>2</sup>

During the colonial period, expropriation of land was achieved through various laws, ordinances and promulgations, including the Crown Lands Ordinance of 1915 on land ownership and the Native Trust Bill of 1926 restricting Africans to Native Reserves. These realities raised the profile of land ownership and inequalities of the same. Historical injustices related to land continue to linger and continue to be a source of conflict.

Infrastructure and other investments by the colonialists were skewed towards central Kenya and the so-called White Highlands, which resulted in infrastructural and economic inequities across Kenya's regions. The colonial focus of social and physical infrastructure investments in the White Highlands was noticeable in key sectors such as education, health and water supply. These measures set the stage for the perpetuation of inequalities, which persist to date.

Based on anthropological studies, communities in far-flung areas were often despised and viewed as not 'progressive' and consequently, locked out of the 'devel-

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<sup>2</sup> A detail of this land alienation at the Coast is treated separately in this paper as part of the historical injustices.

opment' agenda of the colonial government. These became the infamous 'closed districts', which remained so until as late as 1982. These areas are today one of the least developed areas in the country. This deliberate effort by the colonial government was augmented with such laws as the Outlying Districts Ordinance that made such areas as Turkana and large part of North Frontier District pariah regions. They remained so until recently.

## 2.2 Independence Period

Kenya's independence in 1963 ushered in a sense of great expectations among Kenyans. There was anticipation that Kenyans would no longer experience poverty, disease and ignorance, thereby reducing the inequalities and inequities propagated by the colonialists. However, repressive policies designed by colonial and post-colonial governments such as the restricted movement of people within the Northern Frontier Districts (NFD) resulted in dissent and gave rise to irredentism and the need for secession. The Shifta war fought between the Somali of Northern Kenya and the Kenya Armed forces was emblematic of this problem. The actions of the state towards the Somali people and other groups of this area exemplify the knee-jerk responses, the independence government used to resolve problems it faced. A scorched-earth policy was adapted against the peoples of Northeastern and the injustices set in.

Infrastructural and other investments by post-colonial Kenya governments favoured the so-called high yielding areas and the president's region (Kenyatta and Moi eras). To punish the peoples of this region for dissension, the Kenyatta and Moi governments deprived these communities' key infrastructural investments. The government's focus of social and physical infrastructure was noticeable in key sectors such as education, health and water supply. Even with the introduction of the District Focus for Rural Development in the 1980s, which was meant to redirect resources to formerly economically neglected areas such as North Eastern Province (NEP), the unequal distribution and investment continued. Such measures were instrumental in fuelling and sustaining a sense of neglect and of not belonging to Kenya.

Weak governance and leadership presented a major challenge on issues of equity and equality within the country. In the past, public appointments paid little attention to Kenya's diversity. In this context non-appointment of citizens from the northern frontier region served to exclude them from participating in national devel-

opment agenda and highlighting the region's plight to the government. Equally, the steady mismanagement of public financial resources and increasingly autocratic and repressive presidencies did little to alleviate the situation of the peoples of NEP. Continued repression of the people of NEP was the order of the day and as such, these and other governance challenges did not augur well to enhance access to resources by the region between 1963 and 1978.

There were no specific and effective economic redistributive mechanisms put in place by the postcolonial governments. National policies, such as Sessional Paper No. 10 of 1965 whose thrust was to focus public investment on areas with the highest absorptive capacity resulted in the concentration of resources away from areas largely ignored during the colonial period.

There was little change after 1978. Despite the Nyayo philosophy of Love, Peace and Unity, there was little attention paid to past grievances among Kenyans and in particular those from marginalised areas during the 1980s and 1990s. Specifically, through the 1980s and 1990s, there was:

- i. Lack of decisive land reforms and persistence of land based conflicts;
- ii. Little regard for Kenya's diversity vis-à-vis public appointments and recruitment within civil service;
- iii. Inequitable distribution of budgetary resources;
- iv. Mismanagement of public resources; and
- v. Autocratic governance, among other challenges

In addition, constitutional changes promoted the concentration of power in the presidency. Concurrently, budgetary resources remained overly centralized and development remained disproportionate despite the launch of the District Focus for Rural Development and the fifth National Development Plan's (1984-88) under the central theme of 'mobilising resources for equitable development'. The espousal of structural adjustment programmes through Sessional Paper No. 1 of 1986 further deepened vertical and regional inequalities. The net effect of this for marginalised areas was continued exclusion from access to resources and consequently perpetuation of acute poverty.

Increasing perceptions of exclusion among various groups in society resulted in an escalation of internal demands for democratic governance and the return to multi-partyism, as well as calls for a new constitutional dispensation from the 1990s well into the new millennium.





The 2002 elections brought the National Alliance Rainbow Coalition (NARC), which enjoyed massive goodwill from the citizenry, to power. The goodwill yielded some positive momentum towards a shared future. However, the NARC government performed badly in terms of economic distribution and inclusiveness. They perpetuated existing nationally divisive conditions including inadequate attention to regional and other inequalities, which kept alive feelings of selective exclusion and continued marginalization for the minorities and other perennially marginalised groups. The balkanization of the country and increased ethnic bigotry arising from the struggle over the control of the constitution review process only added to a sense of hopelessness in Kenyans but worse still among the marginalised. In essence, marginalised groups were not given recognition in the Proposed Constitution of 2005 and this partly explains its rejection at the referendum. Increasingly the period 2002 to 2007 was a 'failed revolutionary period'; the marginalised groups were perhaps the most frustrated since they continued to live in the lowest rank of Kenya's economic pecking.

These frustrations came to the surface bare after the debacle of the disputed elections of December 2007. The 2007/2008 post-election violence was partly a culmination of an escalation of inter-ethnic rivalry and feelings of exclusion and marginalization. Like the previous governments, the post-2003 regime perpetuated the monopolization of key public appointments by the ruling elite<sup>3</sup>, but increasingly found no purpose in attending to the question of the marginalised and historical injustices meted on Kenyans by past regimes. Issues relating to the equitable distribution of resources seem to have excluded from the agendas of successive governments or were deliberately ignored. Spatial segregation of services, intergenerational reproduction of poverty increasingly has fostered inequality in the marginalised areas. The huge investment on Thika Road superhighway is just fresh in many marginalised groups minds whose areas have not had a murrum road let alone a tarmacked road since independence.

The foregoing discussion provides a broad picture of the historical context of neglect, exclusion and lack of distributive mechanisms in Kenya. It is evident that little was done by post- independence regimes to promote equitable distribution of resources and specifically recognize minorities and the marginalised by positively redressing these injustices. It was not until the promulgation of the new Constitution (2010) that the marginalised and minorities were recognized. To this end, Kenya cannot afford to make any other missteps in its bid to have an all-inclusive development.

<sup>3</sup>National Cohesion and Integration Commission (2011) report on Ethnicity in the Civil Service

## 2.3 The Constitution of Kenya and the Recognition of Minorities and Marginalised

Kenya's engagement with marginalised and minority issues is informed by its constitutional commitment to reduce social and economic inequalities that characterized the past. The Constitution is the national instrument, which determines Kenya's compliance to poverty reduction but also equal opportunity. Of particular importance was the specific mention in the various sections of the constitution of the marginalised and minorities. The Constitution recognizes the primacy of respecting minority rights and makes substantive provisions for the affirmative action in favour of these groups.

Issues related to equity dimension are taken into account by the Constitution. For example, the Constitution provides for semi-autonomous counties that will receive equitable grants from Treasury based on the recommendations of the Commission on the Revenue Allocation (CRA)<sup>4</sup>. The Constitution also provides for an Equalization Fund, which is set aside "only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible."<sup>5</sup>

In addition, the Constitution provides for the representation of minorities and marginalised groups in governance, and has provisions on enhancing access to employment and special opportunities in educational and economic fields for these groups. Therefore, the Constitution provides impetus to diminish Kenya's regional inequalities, which continue to be a recipe for disharmony and dissatisfaction among citizens.

The Constitution attends to other historical grievances that have undermined national cohesion and integration such as land management. On land management, the Constitution provides for the creation of a National Land Commission mandated to manage public land on behalf of the national and county governments, and provide the national government with recommendations on land issues. It stipulates the principles of land management including equity, efficiency and sustainable land management practices.<sup>6</sup>

The Constitution also categorizes three types of land holdings: public, community and private. Public land, which was classified as government land, is

<sup>4</sup> Allocating resources equitable-not equally- is the correct strategy for redressing the vast levels of welfare inequality across Kenyan Counties. See below formation and mandate of the CRA.

<sup>5</sup> Article 204 (2)

<sup>6</sup> Article 60

described as land owned by the people but held in trust by the national or county government. Concerning minorities and the marginalised, the Constitution recognizes their right to community land, which cannot be appropriated, as was the case in the past, without the community's consent.<sup>7</sup>

The Constitution defines the marginalised under Article 260. A marginalised community is:

- 1) A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the economic and social life in Kenya.
- 2) A traditional community that out of desire to preserve its unique culture and identity from assimilation has remained outside the integrated social and economic life in Kenya.
- 3) An indigenous community that has maintained a traditional lifestyle and livelihood based on a hunter gatherer economy; or
- 4) Pastoral persons and communities, nomadic or settled communities that due to geographic isolation, has experienced only marginal participation in the integrated social and economic life in Kenya.

A 'marginalised group' is defined as one disadvantaged by laws or practices based on grounds of discrimination covered in Article 27: race, sex, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture or birth, among others. There are also important provisions, which give protection to minorities and the marginalised, for instance those covered in Article 56 on the rights of minorities and marginalised groups. The state is required to put in place affirmative action programmes to ensure that the marginalised participate in governance, as well as providing special opportunities in education, economic fields and access to employment. They should be allowed to develop their culture, language and practices and have reasonable access to water, health services and infrastructure. For our purposes, Article 204 provides for an Equalization Fund, which would comprise 0.5% of the national budget to cover service provision and infrastructure development in marginalised areas. Protection from discrimination is covered comprehensively in Article 27.

Section 56 of the constitution provides that the State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups:

- a) Participate and are represented in governance and other spheres of life;
- b) Are provided special opportunities in educational and economic fields;

<sup>7</sup> Article 63



- c) Are provided special opportunities for access to employment;
- d) Develop their cultural values, languages and practices; and
- e) Have reasonable access to water, health, and infrastructure.

These constitutional provisions are a key step in the journey towards attaining a more equitable society. However, the issue of how to make the protections enforceable is crucial. The constitution suggests that access to justice is critical in ensuring these provisions of the Constitution apply to minorities and marginalised groups. Part of the efforts to facilitate the process of roping in these formally neglected groups is to make sure, through CRA that the Equalization Fund is equitably distributed to the identified counties and groups.

## 2.4 The Commission on Revenue Allocation (CRA)

The Commission on Revenue Allocation is one of the independent bodies created by the Constitution and whose mandate is to:

- 1) Protect the sovereignty of the people;
- 2) Secure the observance by the state organs of democratic values and principles; and
- 3) Promote constitutionalism.<sup>8</sup>

Thus, CRA is one of the progressive and explicit institutions of managing national resource allocation and guarantee equity on the same. Unlike in the past where resource allocation was a preserve of a few and largely was in control of the presidency, the Constitution gave the mandate of distribution of resources to CRA between the central government and the counties and in particular the Equalization Fund with regard to the minorities and marginalised groups. CRA has been accorded a good opportunity to right the wrongs of the past by using clear, independent and objective methodologies to allocate resources to achieve a shared future and ownership of the nation and promote a sense of belonging to the nation among the peoples of Kenya. Consequently, a discourse on historical injustices provides an important parameter that will guide the institution and ensure it distributes the Fund accordingly.

<sup>8</sup> Article 249 (1)



# 3.0 Historical Injustices

## 3.1 The Coast

Many peoples of Kenya have suffered some form of historical injustice. Historical injustices include exclusion of some segments of the community from the mainstream economic, political and social arenas that drive distribution of national resources and services. The Coast province has suffered relatively more injustices than most parts of the country. The land problem is among the most glaring injustice directed to the local inhabitants. Other injustices include unemployment, inadequate infrastructural development, and poor access to education and exclusion of the local inhabitants from the management and utilization of natural resources among others.

### 3.1.1 The Land Issue

The land problem is one of the thorniest issues facing the coast province and is at the central theme that is the driving force of the political restlessness, which has evolved over the three distinct regimes. Indiscriminate land grabbing, alienation and lack of access to all land related resources have a bearing on most of the other socio-economic and political injustices affecting the peoples of the Coast Province. Indeed, land ownership issues have dogged the local Mijikenda people, who are the main indigenous community in the region, for a long time as various powers entrenched their claim over the same land, almost oblivious of the existence of the ancestral owners. Greed and total disregard of the right of other people to own land and enjoy decent life drove the powerful and mighty to slowly but surely disinherit the Coastal people of their heritage and source of their livelihoods. Right from the era of the Arab-Swahili rule to the current rule, the coastal people have steadily watched their land taken and reduced into squatters. They have neither the voice nor the political and economic might to fight back, and for most of them, nor the socially correct connection to prevent their land from being acquired for public or private development. Faced with this situation, the coastal people have questioned their very identity—are they really part of Kenya?



The historical development of how land was allocated and re-allocated is important to show the extent of historical injustices towards the coastal people.

Establishing the legitimate owners of the coastal land is critical in understanding the context of historical injustice on the coastal people. The available records show that Africans were the earliest inhabitants of the coastal region. These communities also had a long history of trade relations with the peoples of the Mediterranean, Persia, Oman, India and China. The intermarriage and social interactions between the indigenous peoples and these traders led to the emergence of the Swahili people who established themselves at the coastal towns before the arrival of Arabs. The Arabs and Swahili succeeded in founding prosperous city-states and remarkable trade-networks, which were disrupted by the arrival of the Portuguese in 1500. The two hundred years of brutal and regressive Portuguese rule that followed prompted the Coastal Swahili traders to request for military assistance from Omani Arabs.

Accordingly, the claim to the coastal lands by the indigenous peoples – the Mijikenda and others, was eroded as more and more Arabs arrived. The land rights of the Mijikenda and other indigenous ethnic groups, including the Bajuni of Lamu and Tana River, were not recognised by the dominant Arab feudal state, which was then based in Zanzibar, (Kanyinga, 1997; Wolf, 2000: 3).

Arab elites used land to serve the interests of the ruling classes, (Kanyinga, 1997: 18; Hoorweg, 2000: 309-314). As a compromise with the Sultan of Zanzibar, in exchange for unchallenged colonization of the interior of East Africa, the Anglo-Germany Agreement of 1886 recognized Mwambao (the ten-mile coastal strip) as the dominion of the Sultan of Zanzibar. This gave the Sultan and his Muslim subjects rights over all land in the strip. This was a form of bribery to the Sultan of Zanzibar, which was offered by the British in order to win the support of the Sultan of Zanzibar and other selected African ethnic groups for the colonization of Kenya and to avoid fighting both the Arab and African resistance.

The onset of colonial rule instigated further loss of land by the Mijikenda. Both the British and the Arabs conveniently partitioned the Coastal land between themselves with total disregard to the indigenous peoples. The land was secured for the two powers with the passing of the Land Titles Ordinance of 1908, which required all persons with claims to land to present them to the Land Registration Court, failing which all unclaimed land was deemed Crown Land. Given the dearth of information and lack of verifiable evidence of ownership (title deeds), the Africans at the Coast, particularly within the 10-mile strip, were dispossessed of their lands and have continued to live as “tenants at will” at the mercy of those who made claims without their knowledge, (Paul Syagga: p. 8). As if the indigenous population did not exist, the British government went ahead to resettle some 5,700 ex-slaves in Kilifi in 1911. This land, though under crown land belonged to the indigenous people.

When Kenya became a British Colony in 1920, the alienation and marginalisation of Kenyans from their ancestral lands intensified. Under colonialism, all the land laws and land reforms made by the Crown refused to recognise the land rights of the indigenous Kenyans in all parts of the country. Colonialists assumed that the customary land tenure systems of the indigenous people did not recognize private ownership of land. Accordingly, “all waste and unoccupied land could be appropriated by the Crown by virtue of the Crown’s right to the Protectorate. Such land could as such be appropriated and allocated to the settlers”, (Kanyinga, 1987: 19-20). The Arabs and Swahili were fully aware of this policy and took advantage of it by registering and acquiring title deeds. Within this arrangement, the Mijikenda were left without legal claim to their ancestral land.

The Coastal land issues were part of the agenda in the Lancaster Conference of 1962 prior to independence. Since Kenya was then a colony and a protectorate, it became apparent that meetings would be held separately—one to discuss issues of the colony and the other to deal with protectorate matters, among them the future of the ten-mile Coastal strip. The Arabs pushed to either remain autonomous or secede to join the Sultanate of Zanzibar. They had genuine fear that their interests would not be addressed if the protectorate ceded to the Kenya government. KANU and KADU politicians, including Ronald Ngala, Oginga Odinga and Tom Mboya emphasised the need to have the Coastal strip incorporated with mainland Kenya.

The colonial government introduced the system of title deeds under the Land Title Ordinance in 1915. This process technically gave undue advantage to those with knowledge of the land registration matters. The Arabs took advantage of this legislation to get the land titles. The remaining land was declared Crown land and at independence, it became Trust land. The indigenous people became “tenants at will” in their land. It is a fact that to this day, the Coastal people continue paying land rents to the new ‘land owners’. As we shall see, the ‘landowner’ to whom the Coastal people must pay rent to increasingly more and more land was given out to those in government ‘good books’ during Kenyatta’s presidency and subsequent regimes. With the limited knowledge about the procedure of acquiring title deeds, the majority of the population at the coast lost their ancestral land to the incoming immigrants.

Armed with title deeds, the Arabs, Swahili and the Europeans had firmly secured the prime land at the Coast. The traditional land tenure did not guarantee the local inhabitants with security to defend the land from future alienation. Although the Mijikenda are historically the rightful owners of the land as evidenced by the presence of sacred *Kayas* within the ten-mile strip, they did not have the papers to prove their ownership of the land. Moreover, 95% of the Mwambao land was registered under the names of Arab immigrants. The independence constitution confirmed and satisfied all the land rights prevailing before 1st June 1963, regardless of how it was acquired. All





land without titles became Trust Land and the independence regime later used the trust land as inexhaustible resource to reward ethnically and politically correct individuals.

Independence did not bring the expected reprieve to Coastal communities, who had suffered land alienation by the Arabs and the British colonialists. Like the colonial government, the first post-colonial government led by Jomo Kenyatta obtained loyalty from the Coastal Arabs and Swahili landlords by sanctioning the alienation of the Mijikenda and other indigenous coastal communities from their ancestral lands and thus betraying them, (Paul Syagga, p. 21).

The Crown Lands Ordinance of 1915, which became the Government Lands Act (Cap. 280), was used as the most effective tool of political patronage by successive presidents of Kenya. The Act vests in the President all the powers regarding leasing, granting and disposition of government land. Instead of using the power conferred to him by this Act to solve the land problem in the country in general and the Coast in particular thoroughly, progressively and justly, Kenyatta (just like Moi after him) used it to accumulate enormous land for himself, his family, relatives, friends and political allies. All those who were in charge of Kenyatta's (and later Moi's) state - cabinet ministers, key government officials, heads of the police, prisons and armed forces – were "rewarded" with large tracks of land in the rural and urban areas at the expense, of course, of the poor peasants, labourers, squatters and local populations, (Mwandawiro Mghanga, 2010: p.22).

Poor and unequal distribution of land, as a key resource, is the cause of many conflicts in Kenya. This applied to Kenya's coast. This was occasioned by a system of corrupt patronage endemic in the government that made it possible for the wealthy and mighty to acquire land, thus further impoverishing the local community, (African Rights, 1997b). The situation was not made any better by land tenure reforms, which "concentrated mainly in freehold title registration without regard to distributive justice". This further has escalated the oppression and marginalisation of millions of Kenyans who were robbed of their lands and rights to land by the Sultan feudalism (at the Coast) and colonialism (in the Kenyan Highlands) and throughout the country (African Rights, 1997b).

The Kenyatta government used the provincial administration to allocate land to the 'well connected' few in the government and business sector. In the 1970s, corruption was emblematic in the manner in which land was allocated and changed hands at the Coast. Contrary to the provisions of the law – land was allocated by officers and persons without authority to do so, particularly the provincial administration and politicians. Land ceased to belong to the Kenyan people, but was vacant space to be dished out to politically correct individuals for personal enrichment without being made known to the public or other interested purchasers (Paul Syagga, p. 14).

Seven years after independence, President Kenyatta issued a quiet decree on the acquisition of beach plots in what came to be known as second-row plots. Only the Coast Provincial Commissioner, Eliud Mahihu, could identify and recommend those qualified for these plots. The reality was that those who earned Mahihu's favour were highly placed political and civil service elites and their business associates, (Paul Syagga, p.15). Ordinarily, people wishing to acquire a beach plot for development would apply to the Registrar of Titles in Mombasa, who would then forward the same to the Commissioner of Lands for consideration and appropriate recommendation, (Paul Syagga, p.14). The story was different for the ethnically and politically correct individuals, who simply filled some forms of request and allocation, made a phone call and/or wrote a note to Mahihu and the allocation was effected. For some, one did not need to know Mahihu in person, as one could go via his close associates like Charles Njonjo, the then powerful Attorney General. In one of the 'notes,' Njonjo wrote to Mahihu on a government letterhead in both English and Kikuyu as he sought help for his friends. In one of the letters, he wrote by hand asking Mr. Mahihu to approve a transaction. "Dear PC", he wrote, "If you will recommend this. I will hand them back to Njenga (Commissioner of Lands). *Turenda guthondeka development na twina Singh uria unjakagira* (we want to develop this property and we are with Singh, my contractor) and it is a good and viable project. All the best and when you have signed it please return it to me — Yours, Charles Njonjo", (John Kamau, <http://www.kenyadecides.com/2009/11/land-grabbing-appetite-has-genesis.html>). Mahihu's recommendations for allocation were normally directed to the Commissioner of Lands to facilitate the acquisition of beach plots by these powerful individuals, mostly from outside Coast Province, (Paul Syagga, p. 14).

Clearly, Mahihu did not just labour for others, he too allocated many of plots to himself and family members. Consequently, he built a multi-million shilling empire that made him one of the richest people in independent Kenya. He owned expansive land in Coast Province, including prime beach plots and hotels on the vast stretches of the Indian Ocean coastline. His signature meant the difference between being the proud owner of a beach plot or not, as he had the sole responsibility of approving purchases, (Paul Syagga, p. 15).

Having very few people of their own in the right offices, the coastal communities largely missed out on the ensuing scramble for the beach plots, now worth billions of shillings. Coast Province bears the dubious distinction of having the largest number of squatters in Kenya – an anomaly that started in the colonial period, but which was deepened by the Kenyatta government. The land grabbing by the independence elite disinherited millions of Coast residents, planting seeds of discord in the province, (Paul Syagga, p. 15).

Un-procedural settlement schemes of 1970s by the government during Kenyatta era continued to dispossess the coastal people of their land. The Lake Kenyatta I, Lake Kenyatta II, Hindi Magogoni, Witu I (Lamu) Witu II (Hongwe) and the other in



Faza was a progressive idea of settling landless Kenyans and opening up a remote area for agriculture and development. Some of the coastal people were landless but got the least of these schemes. In fact, only 20% of these schemes allottees are from the coast region. The indigenous people of have always felt that the settlement scheme was implemented without their participation and the processes discriminated against them. Further, the Government, with assistance from German development cooperation, has spent about 1.5 billion shillings for Mpeketoni Settlement Scheme. About 30,000 Kikuyu people were brought to settle in Mpeketoni. It is also said that when Kenyatta came to settle the Kikuyu at Lake Kenyatta Settlement Scheme in Mpeketoni he took the opportunity to grab 25,000 acres of land for himself that he later sold for 58 million to Swaleh Nguru who started ranching on the land, (Mwandawiro Mghanga, 2010, p. 22). Beyond disinheriting the local people of their land, this was a case where he powerful created settlement schemes for themselves. The Coast Province too had landless people who should have been the first ones to be considered in an ordinary situation.

The coastal people continued to lose their land to other Kenyans from up country deliberately bought to the coast. The governments, starting with that of Jomo Kenyatta, favoured outsiders, particularly the Kikuyu, against the local people. For example, while people living at Mpeketoni Settlement Scheme where 95% of the settlers are of Kikuyu ethnic group were given title deeds by the Moi regime, in neighbouring Mkunumbi. The indigenous people have no title deeds and therefore cannot use their land as collateral. Mpeketoni too has the best water projects and services in the whole of Lamu District. When Lake Kenyatta Settlement Scheme was designed, indigenous and Muslim villages within Mpeketoni area of Mapenya, Mkunumbi and Dambwe were discriminated against and not included in the scheme. The development that exists at Mpeketoni was thus not extended to the indigenous Bonyi, Sanye and Swahili Coastal people. The leaders of the Kenyatta regime said that local people were lazy and not accustomed to the hard work of farming and therefore there was no use of including them in the farming scheme, (Mwandawiro Mghanga, 2010: p. 83).

After Kenyatta's death in 1978, Daniel Moi became the president and promised that he would follow in Kenyatta's footsteps (nyayo). His 24-year rule exacerbated the situation of the coastal indigenous peoples insofar as land was concerned. Land as a national resource was used as a weapon of fighting the popular demands for multiparty democracy and of ensuring his continued stay in power (Mwandawiro Mghanga, 2010: p. 83). Nothing was spared—even public toilets, parks, churches, mosques, schools, police stations, forests, water catchments areas, land set aside for agricultural research, cemeteries, and sports fields among others were allocated to prominent personalities who supported the Moi-KANU dictatorship. A letter by the Commissioner for Lands to the Mombasa DC, written in May 1991 and quoted by the Kenya Human Rights Commission (1996: 75), reflects the phenomena which were (and still are) repeated daily and everywhere in the country in varying magnitudes:



You are aware that according to our Minister, Hon. D.M. Mbela, the President approved that all Coast MPs be allocated residential plots in Coast Province approximately 0.8 - 1.0 hectares. The plots have been identified by the MPs with the assistance of the Minister as per plans with the SLO (C&NE). Please arrange for documentation, (Mwandawiro Mghanga, 2010: p. 23).

Thus Coast MPs were bribed with the plots of land in order not join the opposition and to campaign for Moi and KANU in the 1992 national elections in which opposition parties participated for the first time. Thus, Moi used land as a form of patronage to perpetuate his regime in power, (Mwandawiro Mghanga, 2010: p. 23).

The current government cannot claim to be blind to the plight of the coastal people. Despite the clear understanding and articulation of the problem of land in Coast Province by the government, the same government continues to promote the alienation of the indigenous people of the Coast from their land and land resources. The 2009 decision by President Kibaki to allocate 100,000 acres of arable land in Tana Delta District to Qatar to grow food even before the land problem in the area has been solved is but an example of the cynical attitude of the government towards the Coast people. Similarly, the scramble for land by rich land speculators going on in Lamu following plans of building one of the largest ports in the East African region there, is further alienating and marginalizing the Coastal people as the government watches, (Mwandawiro Mghanga, 2010: p. 17).

While much of the Arab-Swahili control over coastal land has been eroded in the decades since independence, local communities have not profited from this process. There is failure in the part of the government and other developers to recognize natural resource rights of the local people. Instead, much land went to large-scale agro-industrial ventures (such as sisal estates), the tourist sector or private developers along the ocean shore. Most of this land is controlled by foreigners or “up-country” Kenyans, many of them “absentee landlords”. Frequently, government and powerful individuals acquired titles (often by less than transparent means) by simply bypassing what local communities regard as their traditional land rights. All this has left many local communities to feel overwhelmed, complaining that they have become merely “squatters on their own land”. At some places, local communities find it even difficult to continue fishing operations as hotels and other plot owners have blocked access roads to beaches, (Alex Harnet-Sievers, Introduction in Mwandawiro Mghanga, 2010).

After various commissions inquiring into land issues, the National Land Policy (Ministry of Lands 2007: 38-39) – its draft finally approved by cabinet in June 2009 – devotes an entire section to the “potentially explosive” land question specific to Coast Province. It recognizes that under the given legal arrangements, land adjudication in Coast Province has been systematically operating against the interests of the local communities, and in addition, many other specific proposals, recommend a compre-



hensive review of laws and administrative procedures, (Alex Harnet-Sievers, Introduction in Mwandawiro Mghanga, 2010). The misuse of state power to gain land without consultation or compensation is yet another injustice to the local people of the coast. The government officers, particularly land adjudication officers and surveyors, collude with the rich and well-connected people, both Kenyan citizens and foreigners, to rob the local people of their prime lands such as the beaches. It is said that DCs, DOs and land officers posted in South Coast become millionaires overnight at the expense of the local people. Again, the local people complain that people from the same ethnic groups who conspire against the interests of the indigenous people dominate the heads of departments of the District Development Committees (DDCs) and District Security Committees (DSCs) that are also chaired by DCs, (Mwandawiro Mghanga, 2010: p. 46).

The indigenous people of Mombasa and Kilifi furthermore complain that the Kenyan financial institutions favour certain ethnic communities in the provision of loans. Thus, as ethnic groups from the interior are empowered to prosper, the indigenous coastal people are made to languish in poverty, while being referred to as lazy people who refuse to work, instead just sit and wait for coconuts and mangoes to drop down from the trees. Further, in Kaloleni District industries and factories, which exploit local raw materials and pollute the environment, are established arbitrarily in the region without involving the locals. Pollution of the environment through mining and manufacturing of cement by Athi River Mining Company with adverse effects upon the health of the people of Kambe is cited as an example, (Mwandawiro Mghanga, 2010: pp. 62-63).

Land and land resources are an embodiment of the politics of the Taita Taveta district. In its pamphlet, the Taita Taveta Professionals Forum (2008), a registered trust which advocates for the sustainable use of the resources of the districts for the development of the area, argue that the region is rich in fertile soils for agriculture, minerals, game and hills and water that if exploited would improve the lives of the inhabitants. In 2006, Tsavo East and West National Parks maintained their lead by earning the Kenya Wildlife Services KShs. 465million. In addition, the district produces 35,000 cubic meters of water from Mzima Springs per day, which sustains the tourism industry in Coast circuit; yet it remains almost completely excluded from the tourism chain. Taita Hills which is surrounded by the two national parks and ranches and which collectively constitute 86% of the district's land mass are unique in that they sit on very old igneous rock whose origin date as far back as 180 to 290 million years on the geological time scale. The hills are very rich in crystalline gemstones including Rubies (reds), Garnets (greens) and Sapphires (blues). Taita Hills have a rich biodiversity of more than 2,000 species out of which 30% are endemic to the area. Despite being rich in terms of natural resources, Taita Taveta is statistically one of the poorest in the country, with most of its population entirely dependent on rain-fed agriculture whose production has declined over the last couple of years as a result of land degradation,

unprecedented droughts and destruction of crops by wildlife, (Mwandawiro Mghanga, 2010: p. 28).

Shimba Hills National Park, situated in the beautiful hills and forests of Kwale District, is endowed with rich wildlife, especially elephants. However, the population of elephants that is too huge for the national park is a source of conflict between human beings and wildlife. The elephants often invade nearby farms, destroying crops, damaging houses, injuring and killing people in the process. Some of the elephants have been moved to Tsavo National Park in Taita and Taveta Districts where they have continued with the damages. Furthermore, the local people of Shimba Hills complain that KWS cares more about the wildlife than they do human beings. Compensation for injury from wildlife is very little, (Mwandawiro Mghanga, 2010: p. 46).

Education in pre-independent Kenya and in the early post-independence period was largely a missionary and colonial government led venture. Most of the missionaries emphasized the establishment of the three pillars to win the hearts and minds of the people. Education was based on racial descent. There were schools exclusively for Europeans, Asians and Africans. The most developed schools were for the Europeans, followed by those of the Asians and least developed were for the Africans. In this arrangement, the Muslims were not catered for, and they had to do by establishing their own schools. After independence, the formerly European schools slowly began to admit the children of the rich and influential in the country. The arrangement laid the foundation for perpetual inequalities in accessing education in Kenya.

Regions that did not have the opportunity to engage with the Christian missionaries in the past have continued to lag behind in matters of education. Indeed, modern education had invaluable returns. Economically, education is viewed as investment in human capital and this has strong links with employment and provides skills and competences. Education promotes social equality and has strong links with reduction of poverty as well as improving quality of life in general. The coastal residents have accepted that they have been slow in embracing modern education and this has contributed to the dilemma they are now facing, (Goldsmith, 2011).

Historically, the Muslim leadership at the coast had impressed on the British that Arab interests must be maintained, and that they be allowed to conform Islamic traditions, including education. This stand made it difficult for missionaries to make real inroads in converting the population let alone establish schools. This historical foundation paved the way for marginalisation of the coast people in relation to socio-economic and political opportunities.

Enrolment in both primary and secondary schools at the coast remained low compared with other regions of the country. In 1963, for example, only 55,100 of the school-going children were in school. In 1966, about 6.800 students were in secondary



school compared to 15,000 in central and Nairobi. Since opportunities are determined by educational qualifications and jobs are often based on merit, the coast region continued to source skilled employees from the inland. One Member of Parliament in 1968 argued that “opportunities came with education. The inequalities of the moment were not our fault. It’s a challenge to us but not our fault”, (Rothchild, 1969). Although it was not fully the government’s fault then, the fact there are 3 secondary schools and 17 primary schools in Lamu East is an obvious case of the government’s attitude towards provision of education to some sections of the population. The government knowing that it was not its fault that some areas did not have adequate educational facilities did very little to improve the situation. In the coast region, the schools are very few, and poverty levels very high with inequalities between indigenous people, Tana River and Lamu are the most affected regions, (Keriga, 2009).

Low standards of education in most parts of the coast are not the fault of the indigenous people. To build schools, even on harambee basis requires some resources, which people who have been reduced to squatters cannot afford. Illiteracy is high across the region, with a high number of children who do not attend school, particularly girls. At the same time, the indigenous people complain of continuous marginalisation as far as education is concerned. For example, Kisauni Constituency, with a population of over 300,000, has only sixteen primary schools and four government secondary schools. This contributes to the prevalence of illiteracy in the area, which is in contrast with other constituencies in the region, such as Wundanyi Constituency (Taita) which has less than 100,000 people, but 56 primary schools and 15 government secondary schools. Without access to quality education, coast people will continue being excluded from mainstream economic and socio-political spheres.

The distribution of universities and colleges in the country has also been skewed to favour Central and Rift Valley provinces. Until very recently, the coast province had no university college, let alone a fully-fledged university. The establishment of Pwani University is a great milestone for the region. However, the enrolment is dominated by students from inland Kenya. Due to general poverty and a lukewarm attitude toward western education, this situation is bound to continue. The absence of quality primary and secondary educational institutions has made and will continue to make the province lag behind other regions in terms of education.

The high levels of poverty at the coast, especially in the rural areas and indeed in the towns have affected education, health, etc. The overall poverty index for Coast Province is 62%, the third highest in the country behind Nyanza Province with 63% and North-eastern Province, which by all accounts is the poorest part of the country. Furthermore, Coast Province has the second-highest rural poverty levels in Kenya (after North-eastern Province), while even urban poverty levels in Mombasa were found to be somewhat higher than in other major cities in Kenya. While the statistics clearly illustrate the socio-economic marginalisation and neglect of many rural communities

in Coast Province, the perceived marginalisation of Coast Province in terms of politics appears to be similarly strong, though it can be less well captured by “objective” measurements, (Mwandawiro Mghanga, 2010: p. viii).

Most recently, the coast province has dominated Kenyan news because of the real and perceived terrorist threats to national and international community. The Muslim community concentrated in (though not limited to) Coast Province widely feels that central government’s security agencies (backed up by U.S. policy, especially after the terrorist attacks in Nairobi and Mombasa in 1998 and 2002) treats them as second-class citizens, regarding the entire community as a security risk. Thus committing human rights violations against individuals who are alleged to be linked to terrorist organizations, (Mwandawiro Mghanga, 2010, p. viii)

### 3.1.1.1 Unscrupulous Land Allocations

Old and run down government buildings have been condemned for destruction and later sold to “private developers”. Consideration has never been given to local residents. Of course, many run down government dots many places at the Coast. Therefore, what this means is that a lot of land that should revert to local residents has been turn over to the so-called “private developer” who are largely people from outside of the area. Illustrative examples include what happened to the land that was once the Civil Servants Club at Kilifi and Kwale.

Identification by local politicians of “vacant” plots: Title Deeds are subsequently issued fraudulently without knowledge of original owners. Equally, untitled land outside of villages is presumed ownerless and thus can be appropriated (the irony of the trust land argument).

### 3.1.1.2 Land Adjudication

Land adjudication started in earnest in 1980, however, until recently few people in Kwale and Kilifi, for example, had been issued with tittles. As we speak, the lands office is trying to issue titles to Lamu landowners in the wake of the construction of the new Lamu Port. People owning land around the area need to be compensate for the loss of their land in case it is need for this development. It is madness to think that these Kenyans have not enjoyed their right to a land title and the benefits accruing forty-eight years after independence.



Over the years, issuance of titles became for the state a reward system in which those who supported and voted for KANU particularly in the 1990s were given titles especially at campaign times. Thus issuing titles became a bribe for votes –and not a right, to date-many do not possess title deeds. Even worse, there have been several cancellations in the issuance of titles because of “double” registration of land parcels. It is no secret that land adjudication officers apportioned land to themselves, which they later sold to unsuspecting upcountry citizens. Cases of people appearing to claim land that has been owned and occupied by local residents for over 100 years are common. The consequences of all this have been enormous. The lack of title deeds has meant that people cannot use their land as collateral to access credit from financial institution. Investment on land has been almost negligible. Poverty has been mainstay.

### 3.1.1.3 Role of the Provincial Administration

As already observed the Provincial Administration played a key role in the dispossession of land. Through the key office of the chief, local residents were forced to vacate beach land. The faint hearted quit these properties-they were said to be state property. Several years down the line, these properties are occupied by upcountry residents to the dismay of local residents. Questions abound whether a local resident does not qualify to own a beach plot. This has left a bitter taste in people’s mouths. In a recent case, a prominent Hotel chain owned by upcountry people wanted to build a hotel at Uyombo beach in Kilifi County. They owned 35 Acres of prime land. Asked by the National Environment Management Authority (NEMA) on how they came to possess the land, they did not have the answers. Such blatant dispossession and lack of consideration to local residents in the allocation of such property is annoying to say the least.

In mid-1997, the President issued a decree to have allocation of land to be done by land committees of local representatives. Majority of local representatives were not locals nor could they be overseers of land allocation (Planning officers, District Officers and the District Commissioners, Land Adjudication officer). As a result, many of the allotted were cronies of these officers a majority of whom were from upcountry. The provincial Commissioners allocated, while committees endorsed his decisions. It is not a secret to hear a former OCPD in Kilifi or Kwale boasting of having land close to the District Commissioners Office or a beach plot or even allotted land that one does not even know where it is located. The local residents continuously ask why they are not considered for these allocations. They demand to be involved in the decision of appropriation of such property.

It is true that it will be foolhardy to think that any government official who served a tour at the Coast does not own land at the Coast. In the often abused guise that the constitution of Kenya bestows rights on citizens to own property and land in



any part of the country, land grabbing became the norm under this pretext ('right') and consequently civil servant deployed to the coastal region utilized this opportunity to arbitrarily apportion land unto themselves - especially the endless acres of first-row beach property.

Routes to the ocean have been blocked due to land demarcation and private fences, thus fishermen cannot access the ocean to fish.

There is also the whole question of marine dispossession and the destruction of cultural assets including the Makaya - their decimation deprives future generations of important cultural assets.

Immigrant purchasers of land fraudulently enhance their small plots by staking a claim on neighbouring land.

Public properties like schools, playing fields, government farms have been fraudulently appropriated and handed to private developers without consideration of local residents.

### 3.1.1.4 Profiling of Coast People

The Coast residents of Arab descent have complained of being profiled and discriminated against when it comes to issuance of Identification Cards. This is because they are seen by the state as not belonging to Kenya and have to be 'verified'. This has led to non-issuance of identity documents to this group. This has been compounded further by the rise of international terrorism and the concomitant effort to contain it. This means that coastal citizens of Arab descent have been profiled because of their possible linkages to terrorism. This form of prejudice and discrimination has been applied to citizens of African descent who have taken up Muslim names.

### 3.1.1.5 Mombasa Republican Council

Lately, the Mombasa Republican Council (MRC) has zeroed in on these grievances and escalated the stakes by stating that "Pwani si Kenya " (the Coast is not part of Kenya) and that the Coast wants to secede. The main reasons for their secession demands are that successive post-colonial governments have paid lip-service to the plight of the Coastal people's including the land issue, poverty, dominance of upcountry people in the region's economy and employment , discrimination and religious profiling, etc. Indeed, what MRC is raising are fundamental issues that need to be addressed. Nonetheless, their demand for secession needs to be interrogated further



and be put into proper historical context. There seems to be confusion about the visit of the Mijikenda delegation to the Sultan of Zanzibar just before independence and the claim that there was an agreement that Coast could secede at some point in time. The expansion of a one off visit to the sultan as proof of possibility of secession is overstretching the point. Moreover, who says the idea resonates with all people of the Coast?

The foregoing discussion indicates that the Coast region has had its fair share of historical injustices that must be addressed. The Constitution of Kenya (2010) has provisions for remedying these injustices, but the issue must be approached from the point of knowledge of the past, which has contributed to the current situation. The Mombasa Republican Council, for all it is worth, serves as a reflective lens to past wrongs, which the state, the county governments and Kenyans individually and collectively must endeavour to resolve. The Fund, if well utilized will go a long way toward uplifting marginalised communities from poverty and integrating them politically and economically with the rest of Kenya, establishing and equipping more schools and making education a priority will enhance the capacities of future generations to understand and respond adequately to policies, manoeuvres and proposals that would affect them. Illiteracy, poverty and disease should be fought from all fronts. This can only be possible if the local people have a say in making decisions about themselves, their resources and how they should be distributed.

The Coastal people have many grievances against the state and issues with their fellow citizens that need addressing in order to promote mutual co-existence. The question of land like in many other parts of the country is the fulcrum around which many of these other problems rotate. Indeed, the dispossession of land after independence was anchored on the idea of open spaces and African land that was considered Crown by the colonialists becoming Trust land. Hitherto the answered questions of who benefits from this land and whether the trustees of these lands have done their job well remain an issue that needs deliberation. The nation expects that the New Constitution and the resulting National Land Commission will address the fundamental issues upon which the problems of the Coast are centred. In the meantime, the Equalization Fund can be a good beginning to bridge the gap of development in the region.



## 3.2 Northern Kenya

The genesis of the injustices of the people living in what the colonialist termed the Northern Frontier Districts (NFD) and later christened North Eastern Province (NEP) by the Post-colonial government was in the attitudes of the colonialists and later the post-colonial rulers. Both the colonial and post-colonial governments came to view the inhabitants of this region as stubborn and indifferent. This indifference (in itself an observer's description and therefore likely to be biased) gave rise to conflict between the state and the communities in this region. The conflict manifested in the form of exclusion, partisan administration or systems and a manipulation of populations to serve interests of the state and state functionaries. Such was the state of affairs not only in the Kenyatta and Moi regimes but also in the current one.

### 3.2.1 Setting the Stage for Discrimination:

#### 3.2.1.1 The Colonial Laws

The colonial government in Kenya, in an effort to control the movement of the peoples of Northern Kenya into the hinterland of East Africa and of their integration with others in Kenya, enacted several legislations specifically targeting NFD. The first was the Outlying District Ordinance 1902, which applied exclusively to NFD. The effect of the Ordinance was to declare NFD a closed area. Movement in and out of the area was restricted and only under a special pass. The second was the Special Districts (Administration) Ordinance, 1934, which together with the Stock Theft and Produce Ordinance (1933), gave the colonial administrators in the region extensive powers of arrest, restraint, detention and seizure of properties of "*hostile tribes*". The definition of what constitutes a hostile tribe was left to the Provincial Administration to determine.<sup>9</sup>

#### 3.2.1.2 Collective Punishment

Further, the Stock Theft and Produce Ordinance legalised collective punishment of tribes and clans for the offence of their member once that tribe was declared

<sup>9</sup> Ahmed Issack Hassan, "The Legal Impediments to Development in Northern Kenya", a paper presented at the Consultative meeting for the members of Parliament at Naivasha, Kenya, 22<sup>nd</sup>- 23<sup>rd</sup> August, 2008, p. 3.

“a hostile tribe” by the Provincial Commissioner. The long title of the said ordinance stated thus:- *“An ordinance to provide for the recovery of fines imposed on Africans (including Somalis) for the theft of stock or produce by levy on the property of the offender or his family, sub-tribe or tribe…….”* The meaning of what constitutes “stock” was as defined in Section 278 of the Penal Code. Under this Section stock is defined as to include any of the following that is to say; horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, whether goat or pig or the young thereof.

### 3.2.1.3 NFD a Closed Zone

The net effect of these early colonial legislations was to turn NFD into a closed zone, which had no contact or relation with the other parts of Kenya. Indeed, the other Kenyans did not know much about NFD. This situation continued even after independence and is best captured by the statement of the American writer, Negley Farson, that, *“there is one half of Kenya about which the other half knows nothing about and seems to care even less”*.

### 3.2.1.4 Birth of a Secessionist Ideology

By the time, political activities were legalised in Kenya in 1960, the people of NFD, with the active moral, diplomatic and material support of the newly independent Republic of Somalia, formed the Northern Province Peoples Progressive Party (NPPPP) whose main agenda was the secession of NFD and re-union with Somalia. One of the objects of the new Somali government as stated in the Independence Constitution (article 6(4)) was, *“the union of Somali territories by legal and peaceful means”*.

### 3.2.1.5 Somali Interests Neglected: Origin of Unrest

On the eve of independence, the British government sent a special committee to Kenya to investigate the situation in the NFD. In its report of December 1962, the committee emphasized that most of the area’s residents, especially the Somali Muslims, wanted to break away from Kenya after independence and unite with Somalia. Nevertheless, the British went ahead to ignore the interest of the people of Northern Kenya and included the region as part of independent Kenya. This was the beginning of the problem between the Somali and the government of Kenya, (Oded, 2000: p. 79).

After the British decided to include the area as part of independent Kenya, the Somalis boycotted the 1963 general elections that set the stage for independence. The Somali had interpreted the British behaviour as a betrayal of the wishes of the people of NFD in general and NEP in particular. The leaders of NPPPP started what

came to be known as the “*shifita war*”. There was unrest in the region, including violent clashes between Somali guerrillas, and the Kenyan security forces. Somalis also attacked convoys and police stations, and the Kenya government declared a general emergency, which instituted a mounted a campaign against both the guerrillas and the residents. The consequence of this was a deliberate discrimination of the Somali at all levels of life (Ibid, p. 80: Hassan, p. 6). The state of emergency lasted for close to 30 years leaving behind a trail of death, destruction violations of human rights, marginalisation and underdevelopment.

### 3.2.1.6 Amending the Constitution to Suppress the Somali

The government went ahead to amend the Independence Constitution to facilitate its repression of the people of this region. Kenyatta invoked section 19 of the Kenya Independence order in Council (Kenya subsidiary legislation, 1963), which provided that the Governor General could make regulations and by “*he may by such regulation make such temporary adaptations, modifications or qualifications or exceptions to the Provisions of the Constitution or of any other Law as appear to him to be necessary*”.

The Powers granted in relation to N.E.P. were complimenting the already existing draconian legislations that applied to the region e.g. the Preservation of Public Security Act, the Outlying Districts Act, the Special District (Administration) Act, the Stock and Produce Theft Act, etc.

When Kenya became a Republic in 1964, the powers enjoyed by the Governor General under Section 19 of the Independence Constitution, were transferred to the President and this became Section 127 of the Republican Constitution giving the President the Power to rule NEP by decree. There were several other amendments to the Independence Constitution since then.

### 3.2.1.7 The Three Main Amendments

Act No.14 of 1965 altered parliamentary majority required for approval of a declaration of a state of emergency from 65% to a simple majority. It also extended the period after which a parliamentary resolution must be sought from seven (70 to 21 days. Declaration of the state of emergency was made valid for 3 months instead of two (2).

Act No. 16 of 1966 extended the President’s Power to rule N.E.P by decree to Marsabit, Isiolo, Tana River and Lamu Districts. The regulations were published under the Preservation of Public Security Act, Chapter 57, Laws of Kenya as N.E. Province and



contiguous Districts Regulations, 1966.

Act No.18 of 1966 had the effect of enormously enlarging the government's emergency powers. It completely removed existing legislation relating to parliamentary control over emergency legislation and the Law relating to Public order. Existing Constitutional Provisions were repealed and replaced by one that gave the President a blank cheque power:-

"at any time by order in the Kenya Gazette to bring into operation generally or in any part of Kenya, part III of the preservation of Public Security Act or any part thereof."

Following these amendments made specifically for the Northern Frontier Districts, in effect Kenya had two separate legal regimes - one applied exclusively to NFD and one for the rest of Kenya. The Regulations formed the basis for the derogation of human rights and explicitly endorsed instances in which the fundamental human rights of the person could be violated.<sup>10</sup> In the process, the government arrogated to itself in the region powers that could only apply to the rest of the country when Kenya was at war. The Northern region was thus technically a war zone and virtually became a Police state. The Regulations created certain offences that were punishable without the due process of the Law. It also created "*prohibited*" and "prescribed" zones in the region. The Regulations defined a "*prescribed*" area to mean the area comprising the North Eastern Province and the Isiolo, Marsabit, Tana River and Lamu districts and a "*prohibited zone*" as the aggregate of the areas within the prescribed area. In these areas the offence of possession of firearm, consorting or harbouring one with a firearm was punishable by death. The offence of harbouring anyone who may act in a manner prejudicial to the preservation of public security was punishable by life imprisonment. Even the owning, operating or use of boats or any other means of transport on Tana River was made a crime liable to imprisonment.

### 3.2.1.8 Suspicious Attitude towards the Somalis

Increasingly the Kenya government adopted a suspicious attitude toward the Somalis thus affecting Kenyan-Somalia relations, which were generally hostile and alternated between periods of high and low tension. Kenya accused Somalia of assisting the Somali underground movement in its operations. Although tension was reduced when the two countries signed an agreement in 1967 and Somalia declared that it had no territorial claims against Kenya, the latter's fears remained.

<sup>10</sup>Ibid, p. 6-7

### 3.2.1.9 Isolated from the Rest of Kenya

Northeastern Kenya became a pariah region to the rest of Kenyans. Entry into the region by members other than Civil Servants and members of the Security Forces was prohibited. Members of the Armed forces were empowered to carry out the functions of a Police Officer with wide powers of search, arrest, restriction and detention of persons in the region. Members of the Provincial administration and the security forces were given power to preside over "*judicial trials*". District administrators were at times sitting as "*Magistrates*" in Courts. The regulations also suspended the application of Sections 386 and 387 of the Criminal Procedure Code (which requires the holding of an inquest on the death of persons in Police custody or under suspicious circumstances) and instead stated that the Provisions will not apply in the case of persons dying or found dead in the "*Prohibited*" zone.

The Constitutional and legislative framework for the application of emergency Laws in the northern region can be said to have been completed in 1970 with the passing of the Indemnity Act, Chapter 44 of the Laws of Kenya. This Act, which came into force on 5th June 1970, was meant to indemnify government agents and members of the security forces working in the region against any claims on account of any loss or damage occasioned by their actions.

*The objective of the Act is clear in the long title of the Act. It states that it was an "Act of Parliament to restrict the taking of legal proceedings in respect of certain Acts and matters done in certain areas between the 25th December 1963 and 1st December 1967". Section 3 of the Act states that, "No proceeding or claim to compensation or injury shall be instituted or entertained by any Court or by any authority or tribunal established by or under any Law for or on account of or in respect of Act, matter or thing done within or in respect of the prescribed area, after the 25th December 1963 and before 1st December 1967... If it was done in good faith or done in execution of duty in the Public interest by a Public Officer or member of the armed forces.....".*

Members of the security forces, including but not limited to the army, Police, the paramilitary G.S.U. and the anti-shifita force, have been accused of committing gross violations of human rights in the course of their duties, including instances of genocidal killings, mass murders and rape, extra-judicial killings, arbitrary arrests and



detention of persons and communities and illegal confiscation and theft of properties.

## Specific Cases

The following cases and incidents illustrate the foregoing:-

- (i) Bulla Kartasi Estate Massacre in Garissa in November 1980: This was the first well-documented massacre that occurred in Northern Kenya and was blamed on the members of Kenya Army. Following the killing, in an ambush, of six (6) government officials in Garissa town by one bandit known as Abdi Madobe, the security forces, in retaliation burnt the whole of Bulla Kartasi Estate in Garissa town killing people, raping women and herded the town's residents to a mini-concentration camp at Garissa Primary School playground where they kept them for 3 days without food or water. Human rights organizations' estimates put the dead at over 3000 with an equal number unaccounted for.
- (ii) The Wagalla Massacre in Wajir in February 1984: This was the second documented incident this time blamed on the General Service Unit (GSU). In February 1984, the security forces launched an operation in Wajir targeting the Degodia sub-clan of the Somali. Most of those rounded up in the swoop were summarily executed after days of incarceration at the Wagalla airstrip. Close to 5,000 people are said to have lost their lives during this incident.
- (iii) Other instances of extra-judicial killings and collective punishment of Communities include those in Malka-mari, Garse, Derakali, Dandu and Takaba areas of Mandera District.<sup>11</sup>

### 3.2.1.10 Discrimination

Kenyan Somalis in general and those from NEP and indeed NFD, complain of discriminatory Laws, regulations, practice and procedures that apply to them only and not to the other Kenyans. This is especially acute in the area of citizenship and immigration Laws i.e. in the issuance of Birth Certificates, Identity Card and Passports. Their complaints have centred on the fact that they have to produce more documents and undergo additional scrutiny and procedure to acquire these documents; which is not the case with other Kenyans.

The screening exercise of the Kenyan Somalis and their issuance with a Pink Card by the Government in November 1989 is also cited as a clear case of discrimination of the people of NEP and NFD. The justification for the screening of the Kenyan

<sup>11</sup> Ibid, p. 10-12

Somalis was contained in a government statement, which stated thus:

“The Government is to register all Kenyan Somalis and expel those found to have sympathy with Somalia. The Government cannot tolerate citizens who pretend to be patriotic to Kenya while they involve themselves in anti-Kenya activities. The Government has therefore found it necessary to register Kenyans of Somali ethnic group to make them easily identifiable by our security forces.”

The Provisions of the Registration of Persons Act, Chapter 107, Laws of Kenya, was used to implement the screening exercise. The Principal Registrar of Persons then issued a notice in the Kenya Gazette being legal Notice No.5320 of 10th November, 1989 which stated as follow:-

“In accordance with Section 8 of the Registration of Persons Act, the Principal Registrar requires all persons of the Somali ethnic Community resident in Kenya who are of eighteen (18) years and above to attend before registration officers at the centres specified in the second column of the schedule and furnish such documentary or other evidence of the truth of their registration between 13th November, 1989 and 4th December, 1989”.<sup>12</sup>

The screening exercise, which was in effect a mass verification exercise, was carried out through the use of vetting committees made of some selected elders and members of the Provincial Administration and Civil Service. All those who appeared before the committee were basically required to justify why their previous registration should not be cancelled. This meant that the Somali and people of Northern Kenya were always in a state of limbo and therefore vulnerable. Conducting business was almost impossible given the importance of proper legal documents. Missing out on these spelt doom for many.

### 3.2.1.11 Marginalisation and Underdevelopment

One of the most visible legacies of the emergency law period in the region is the state of underdevelopment in all aspects of life. The government’s energies and resources were largely directed towards security and the maintenance of Law and Order. No constructive or meaningful development ever took place during this period. Indeed, over 80% of the region’s budget was always spent on security leaving nothing for development. The net result is that the region is today the most underdeveloped and marginalised in Kenya. There are very few institutions of higher learning in the region. At Independence, there were only two (2) Primary Schools in the whole of NFD one in Wajir and another in Isiolo. The level of illiteracy in the area is over 80% while

<sup>12</sup>Independence Constitution, chapter 107 (8)



over 85% of the people live below the poverty line.

There are no major health facilities in the area. The infrastructure of the region is deplorable. While the region covers over 130,000 square kilometres, it has only six kilometres of tarmac road. Education standards in the region are poor due to the lack of adequate facilities. The whole of NFD sends to the Public Universities a fraction of what one (1) school in Nairobi sends. Suffice to state that the region's cry for affirmative action and a marshal plan for development are not without merit.

The state of underdevelopment is often cited as evidence of marginalization. The lack of government support to develop the market for the livestock industry, which is the main economic activity of the region, and the location of the Kenya Meat Commission at Athi River, far away from the NFD, is cited as marginalization of the people and the region.<sup>13</sup> Over the years, the tendency for government to declare agriculture as the backbone of the Kenyan economy meant that the livestock sector was excluded in the scheme of things making this as key to marginalization. No effort was made to harness the potentials in the livestock sector. There were no marketing or development board or research institutes for the livestock sector unlike in the other sectors of the Kenyan economy.

Based on the foregoing discussion on the Northern Kenya historical injustices it can be rightly argued that Kenyatta prepared the stage for the woes of the people of Northern Kenya. The emergency law was in place for forty years and was only lifted five years ago. The army's *modus operandi* was shooting off the limbs of the camel, the highly prized beasts of burden among Somalis. Soldiers used to rape daughters in front of their parents and brothers, wives in full view of their husbands. Killing, maiming and torturing was refined into an art form during Kenyatta's regime. Kenyatta was continuing with what the colonialists had started earlier. Forced security vigilance, restriction of movement and livestock confiscation criminalized a whole community, and the resultant uprising of the *Shifita* was a justification for the mistreatment by the government. The Moi regime was not different. It treated people of Northern Kenya with suspicion. It did not matter whether your father was a colonial chief; increasingly people of this region had to prove at any time that they were Kenyans by show of their identity cards. Failure to do so mean that one would be in problems with the authorities. The people of Northern Kenya became foreigners in their own country.

<sup>13</sup> This may have changed with the introduction of a specific ministry in the office of the Prime Minister in charge of Northeastern Province following the National Accord but it says much about the fact that it had to take the conflict of 2007/2008 for this to happen.



## 3.3 The Rift Valley: Samburu, Turkana, West Pokot, Narok and Kajiado

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The Rift Valley region of Kenya extends from the border with Tanzania in the south to the borders of Ethiopia and Sudan in the north. More than half of the western border of the province is shared with Uganda, with the lower third of the border shared with Western and Nyanza provinces. On the east, it borders Central and Eastern provinces. The North Rift region is generally accepted to comprise the districts of Turkana, West Pokot, Trans Nzoia, Uasin Gishu, Marakwet, Baringo, and Samburu.

Generally, this area suffers from developmental and educational neglect, and violence from cattle rustling both within Kenya and across the border with Uganda, Ethiopia, and Sudan. Marginalized under the colonial government and isolated politically and developmentally after independence, the North Rift shares characteristics of pastoralist poverty with other Arid Lands districts such as Marsabit, Moyale, Mandera, and Wajir.

Administratively, the Rift Valley comprises of the North and South Rift. The North Rift region (generally accepted to comprise the districts of Trans Nzoia, Uasin Gishu, Marakwet, Baringo, Turkana, Samburu and West Pokot, the latter three having endured the most of historical injustices. Both these areas have suffered from developmental and educational neglect. The North Rift has experienced insecurity and violence due to cattle rustling both within Kenya and across the border with Uganda, Ethiopia, and Sudan than the South Rift.

The communities have defended the key elements of their culture in the face of rapid westernization that has swept across other parts of the country. The respect for traditional norms of authority is paramount, traditional dress is the standard, and the age group system remains the principal means of social organization.

A number of changes have affected this system: the creation of district borders has reduced the ability of communities to migrate in search of water and pasture, the creation of large commercial estates and national parks has reduced access to land, and the availability of outside employment has expanded opportunities, especially for younger people. Yet while many other ethnic groups to the south have transformed their cultures drastically in the last century, the Samburu and other



pastoralists in northern Kenya continue to adapt their traditional values and practices to the current context without giving up its essential elements.

## 3.3.1 The Samburu and Turkana

### 3.3.1.1 Prejudice and Discrimination

To understand the trajectory of historical injustices of these pastoral groups we need to look into the genesis of their marginalization by revisiting colonial policies, settlement patterns and how this were utilized to consolidate the alienation of pastoral groups. In pre-colonial Kenya, pastoral communities traversed vast tracts of land at defined intervals establishing an ecological balance between their animal and natural resources. That these traditional grazing lands remained unoccupied for considerable periods made it easy for the colonial governments to seize it.

A key challenge that faced both colonial and post-colonial governments faced with the pastoralists was their transcendental cross border relations. By nature of their pastoral life, they spread across at least four countries. Due to their transhumance lifestyle, the Turkana and Samburu were in many instances denationalised by the Kenya state when at any time they crossed into Uganda searching for pasture. Significantly, with other groups dominating politics the nomadic pastoralists were equally relegated to the periphery, (Ruto, Ongwenyi and Mugo, 2009).

There was ignorance or lack of appreciation of about pastoralist livelihoods by both the colonial and post-colonial governments. The pastoral economy was rendered fragile and weal by policies and institutional frameworks. Pastoral communities could not access credit. The resultant attitude trickled down in early policy formulation in independent Kenya, which emphasised "sedentarization of nomadic pastoralist with a string focus towards crop farming", (GOK, 2006). The paternalistic attitude to nomadic pastoralism did not take cognisance of the fact that their land was best suited to livestock production. There was impatience with the tendency to accumulate cattle albeit the fact that it protected them against the vagaries of the hostile climate and provided "social capital that beefed up status and violence. Contemporary views such as the "pastoralism is the problem", (Hill and Peart, 2005) the Turkana with their cattle" capture the stereotypes associated with the vast populations of Northern Kenya. The following are some of the stereotypes about them:

- This way of life contributes to their poor integration into the state and the national economy;

- Their tradition of raiding encourages widespread possession of modern weaponry, which poses a threat to law and order;
- Their “cattle complex” is irrational and the cause of overgrazing and land degradation

Their mobility is inconsistent with the principles of private land ownership (Ruto, Ongwenyi and Mugo, 2009).

Because of the above attitude pastoralist increasingly felt alienated from the rest of the country. A good example of the extent of alienation experienced by Kenya’s pastoralists is how the people living in these areas regard the rest of Kenya as “down Kenya”. It is little wonder to hear those arriving in Kakuma being asked how Kenya is. The north was easy to ignore due to political expediency. Pastoral populations lack in numbers for significant political capital and therefore do not exert influence to swing votes in any election. As a result, these areas continued to lose in terms of political power relations. At most, they were politically marginalised, (Ibid). Thus pastoralist communities experienced both official and non-official marginalisation over the years, and are often viewed by the rest of the country as a people who do not deserve a share of the country’s ‘cake’ due to the many years of violence and conflict that have bedevilled these communities. This has informed government attitude towards these areas for much of the independence period, (KHRC, 2010: p. 10).

Throughout the country, the pastoralist tribes of northern Kenya are widely viewed as primitive, violent, and lawless. Colonial and independence governments devalued pastoralism as a means of livelihood, and provided little support for it in terms of water, pasture development, and veterinary or marketing services. In fact, alienation of historic pastoral areas by farmers, commercial ranchers, and wildlife reserves threatens the viability of pastoralism in this semiarid and arid region.

This sidelining has resulted in gross under-development of the ASALs manifested in high levels of poverty and constant tension and violence in these regions. The high levels of desperation and the sense of feeling abandoned by the rest of the country has provided the perfect excuse for some people (both from among the pastoralists and non-pastoralist communities) to engage in criminal activities such as livestock theft (euphemistically referred to as “cattle-rustling”) both for self-enrichment and commercial purposes. Over the years, pastoralist communities have engaged in a vicious struggle over control of grazing land and watering points mostly under the cover of cattle rustling. Oftentimes, these struggles over land and water have ended with devastating consequences, (KHRC, 2010)

While the traditional practice of cattle rustling was carried out within clearly established ‘rules of engagement’, the current practice has fundamentally deviated



from such rules, into a criminal venture where the laws of the land are flouted and egregious human rights violations such as loss of life, rape and torture are visited on innocent citizens with alarming regularity. The Government makes matters even worse through the acts of its security agents who inherited the colonialists' negative "war-like" tag attributed to pastoralist communities. Hence, the government security agents have been known to approach security challenges (like disarmament) in the ASALs with imperial ruthlessness, which has oftentimes led to the perpetration of serious human rights violations by the very security apparatus meant to restore law and order in these regions, (Palmer, 2010: KHRC, 2010:p. 9).

### 3.3.1.2 Successive Marginalisation of the Pastoralists

As has already been discussed herein, the pastoralist communities have experienced years of successive marginalisation at the political and economic fronts from the time of colonisation to the present independent Kenya. This may be attributed to the fact that at the advent of colonialism, many pastoralist communities were unwilling to adopt new cultures and changes that the white man brought, and consequently, they were relegated to the unproductive regions of the country. Further, the pastoral communities, due to their deep culture and their nomadic way of living, failed to obtain the white man's education. Lack of western education among the pastoralist communities partly explains their failure in participating actively in the political governance of the country at independence and after.

The post-colonial government sidelined the pastoralists from the mainstream of the countries socio-economic and political fronts. To date pastoralists seem not to matter because they do not contribute much to the country's economic GDP. Pastoralist areas are the least developed and the infrastructure is underdeveloped. There are few schools, health facilities and poor telecommunication services. Indeed, the disparity in the economic and living standards between most of the pastoralists and the rest of the country is extremely wide, (Ruto, et al, 2009).

Sessional Paper No. 10 of 1965 governed the allocation of the state's resources for over 40 years. This development policy document gave resource allocation preference to the so-called high potential areas (which cover only 20% of Kenya's total land coverage) while consciously ignoring and marginalizing the ASALs in the developmental agenda of the state. A well illustration of the extent of the marginalisation is in a document prepared by the Ministry of State for the Development of Northern Kenya and other Arid and Semi-Arid Areas. Colonial and post-colonial governments have consistently invested more in development of the south than the north. In many

parts of northern Kenya, government presence is minimal, and communities continue to rely on traditional means of making a living, resolving disputes, and dealing with education and health care. In fact, until 1991, separate emergency laws governed parts of northern Kenya.

In terms of education, in parts of the region people rely on churches to provide the only schools, clinics, and hospitals. Roads are few and in poor repair, clean water is hard to come by, and electricity and cell-phone access are scarce. Kenyan civil servants often consider it a punishment to be posted to northern Kenya, and few stay longer than necessary. Cultural prejudice is common as well.

### 3.3.1.3 State Repression

Both the colonial and the post-colonial governments have subjected the pastoralists to undue repression through the state security agents. During the colonial period, the Turkana, Samburu and Pokot suffered under the same fate as the Somali as they were denied free movement, which adversely affected their economic and social development. The military heavily controlled the region. It was common practise to relate with pastoralists with suspicion because other Kenyans labelled them as 'war-like'. Equally, the state denied them many privileges. Further, any incidents of traditional cattle-raids amongst the pastoral communities were handled with maximum brutality, often leading to the deaths of many pastoralists, (KHRC, 2010).

While ethnic prejudice and discrimination fed the criminal behaviour of police and other security agents toward the Turkana and Samburu, police violence and impunity are national problems in Kenya. In February 2009, a United Nations report documented "systematic, widespread and carefully planned" extrajudicial killings by Kenya's police forces (Palmer and Allan, 2010). However, this was the first time this was happening in Kenya and in the Northern Kenya. Since independence, state security agents have contributed to the continued repression of the pastoralist communities by perpetrating serious human right violations among the communities during their so-called 'state-operations' in Samburu and Turkana and generally in ASALs. Often-times, these violations are carried under the terms of collective punishment where everyone—the young, the old, the women and the men— suffer in equal for committing real or imagined transgressions against the state. This blanket approach by state-security agents to security concerns in these frontier areas has increased tension and animosity between the security agents and members of the communities, thereby impeding the likelihood of being any effective collaboration in efforts aimed at curbing livestock theft, (KHRC, 2010: p.9)



The arming of the Kenya Police Reservist (KPR) by Kenya's national government in response to the cattle rustling issues and the compounded problem of insecurity in the area has had mixed results but at most has caused harm to the residents. The reservists are civilians who are given guns but are not supervised or paid for their work. In some ways, the KPR legitimises 'civilian' gun ownership and use in insecure areas. However, the KPR system does not establish a viable system of registration, leading to the perception by some communities that the government allows some civilians' use of guns and not others.

Generally, the brute force meted out on the pastoralists by the colonial government only lead to the resistance from the pastoralists to colonial domination and influence, and in return, hampered the development of the new colonial economy that was taking root in other parts of the country. Unfortunately, the independent Kenyan Government seems to have borrowed a leaf from their colonial predecessors in that they adopted the same heavy-handed approach to the issue of cattle rustling among the pastoralist communities, (Ibid, p. 2)

### 3.3.2 West Pokot

West Pokot is a rugged remote part of Northern Kenya inhabited by the Pokot whose livelihood is largely pastoralism. A section of the Pokot are agriculturists and live in the Chemerongoi Hills, Mnage Hills close to the Trans Nzoia county boundary and those who live on the Seke hills from Chachai to Turkwel Gorge. These have come to be referred to as the hill Pokot or agriculturalist Pokot. Like other ASAL regions of Kenya, West Pokot has suffered from marginalisation. Education, health facilities and services hardly exists; if they exist at all, it is NGOs and church organisations operating in the area that offer them. Movement around in the county is hampered by poor road infrastructure. There are hardly any tarmacked roads and therefore it is difficult to move around.

The Pokot are an independent, individualist lot who defied external influence. Their social and economic institutions functioned to maintain the status but good at adapting to economic conditions. The Pokot saw no necessity to alter their old and proven ways and no intention of changing them at the bidding of even the most powerful outsiders. That explains why they were little affected by the colonial administration. To this day, the Pokot still live in their traditional way of life, (Ruto Pkalya, Mohammed Adan and Isabella Masinde, *Indigenous Democracy: Traditional Conflict Mechanisms Pokot, Turkana, Samburu and Marakwet*, Nairobi, ITDG, 2004). Christianity and education entered Pokot land in 1928 but had little impact on the Pokot. The only people that were influenced by Christianity and education were those residing in urban centres including where mission centres were established.

The Pokot's encounter with colonialism was unfriendly. The British treated them with disdain because they regarded the Pokot as one of the unwilling 'tribes' to change and therefore governed under the Closed District and the Outlying District ordinances. This meant that like other parts of Kenya under such low, Pokot region was a pariah area. There was restriction in the movement of people in and out of the region. Overall, the Pokot saw no necessity to alter their old and proven ways of life; they did not intend to change them even under the might of the British.

### 3.3.2.1 Land Injustices

The Pokot were dispossessed of their land by both the colonial and independence governments. The acquisition of land by white settlers meant the displacement of entire communities from their ancestral land. Upon independence, the lands in question either remained in the hands of the settlers or were acquired by other communities through purchase by government (Boone, 2012). The most pronounced of this scenario is the land which had been occupied by the Pokot and which now forms Trans-Nzoia District in the Western Rift. Following on this action the Pokot were pushed into marginal areas, which have not adequately catered for their pastoral needs.

The Pokot claim that the British government compensated the Kenyatta Government for onward transmission to the community. They have frequently agitated for compensation or resettlement. On occasions, they have threatened to re-enact the land clashes of the 1990s so as to reclaim land that historically belongs to them. The threatened invasions could lead to serious disruptions of peace and actual civil war not to mention the harm to the country's economy. Could the government provide economic incentives to the communities in lieu of the land they lost to other communities? In return, the Pokot could undertake to recognize and respect the rights of the titleholders to the land. Such agreements could form the basis of declarations to be honoured by the communities involved.

### 3.3.2.2 Unequal Distribution of National Resources and Services

The Pokot compete for cattle, space and pasture with the Turkana and the Karamajong. The Turkana and Karamajong often gang up against the Pokot. This explains the conflict in the area. However, this is not just about the neighbourhood. The situation illustrates the national disparities that should be bridged to render guns irrelevant. The perceived "Pokot hostility" commonly exhibited in the incessant cattle





rustling, is an ecological tension that should be addressed in national development through redressing the historical injustices these people experienced. For instance, nine sub-locations in Pokot have no schools. In fact, the right punishment for the Pokot (and even the Samburu and Turkana) should be free compulsory education, not annihilation by the government. Another good example of economic injustice on the Pokot is in the area of political representation. West Pokot County, which is larger than the former western Province, has only three Members of Parliament (MP) representing Sigor, Kacheliba and Kapenguria. Western Province has 25 MPs. This illustrates the injustice that the Pokot have endured over the years. Security may be at the heart of the problem, but it is one of many. The Pokot problem has more to do with marginalisation of the people and significantly the absence of state in Pokotland.

### 3.3.2.3 State Repression and Collective Punishment

Government intervention in Pokot in the name of maintaining law and order has been interpreted by the local population as collective punishment. Most Pokot have no regard for the government for what they term 'harsh and unreasonable way of intervening in their land'. Although the government has the constitutional obligation to provide security to all, the Kenya government at times has been complacent in curbing cattle raiding and banditry in Pokotland. This has resulted in spiralling insecurity in the region and the resultant underdevelopment of the area.

There has been inappropriate use of strategy and tools to deal with the problem of insecurity in Pokot. This in turn eroded the communities' faith and confidence in the government's ability to bring peace and development. In many instances, the government was accused of favouring some of the communities at the expense of the Pokot. Over the years, they have felt that the rule of law is applied selectively. That other persons from neighbouring communities were arrested for raiding but were never prosecuted confirmed their fears.

The Pokot see themselves as a targeted group. This is because other communities plan with elaborateness pre-raid ceremonies and the government pretends not to see or know what is going on. The government has not been prompt with counter-offensive initiatives, depicting it is complacent and that the intelligence service is reluctant to act. According to the Pokot, the failure by the security agents to control the illegal arms trade in the region exposes them to attacks by their neighbours, (Kamenju, Singo and Wairagu, 2003). They feel unjustifiably discriminated in the provision of protection resulting in unending conflicts with their neighbours. For example, during Moi's 24-year rule, there were about 20 operations, an average of one a year to disarm the Pokot. Colonialists also had their operations to tame this community. The lack of protection by security personnel and its inability to rein on cattle raiding has

adversely affected pastoral mobility and economic livelihood. While focus should have been on finding pasture and watering holes, much time and energy has been spent on ways to protect the few livestock.

In the 1970s and 1980s, the communities in the region acquired guns in large quantity from the Karamajong of Uganda. When the situation worsened, the Kenya government established Home guards popularly known as the Kenya Police Reservist (KPR), who were given guns to protect their communities from the Karamajong and Turkana raisers. The KPR had no strict rules governing the storage and usage of the gun therefore, most of these guns were used to cause harm on the people, (Nkutu, 2004)

In 1984, the Kenya and Uganda armies launched a brutal Operation Nyundo (Operation Hammer), which lasted for three months. The army used helicopter gunships that many civilians, including women and children, killed and property destroyed (J. Akoule, "Rural women peace links: reflective conference 2005. Women Peace and Security," Conference of 6th-9th December 2005 on Operationalization of UN Security Council Resolution 1325 at Grassroots level).

In the course of the 1980s and 1990s, Pokotland experienced several military and police operations, which were aimed at disarming the pastoralists. In fact, during former President Daniel Toroitich arap Moi 24-year rule there were about 20 operations on the Pokot, an average of one a year to disarm the Pokot. The Colonialists had their operations too to tame this community. The operations remained ineffective as far as disarmament was concerned, but were usually accompanied by acts of violence against civilians. Maltreatment, rape and torture on the part of task forces shaped the common opinion that the local population is generally at the mercy of the state.

In August 2004, a group of young men raided cattle from neighbouring Samburu. The OCPD (Officer Commanding Police Division) of Samburu District decided to pursue the young raiders with some police officers and was killed during the pursuit by a herd's boy in Pokot territory while trying to seize cattle from the boy. The death of the OCPD instigated the first punitive operation in East Pokot after the change of government: task forces confiscated livestock to compensate Samburu herders for their losses and demanded that the juvenile who killed the police officer be handed over to the administration. Accordingly, an innocent young man was then captured by other Pokot and taken to the police instead of the culprit. By acting in this way, the community seized the opportunity to get rid of an unpopular person who had been internally outlawed for his criminal activities. The real culprit, however, is still at large.

For example on 16th May 2004, the commander of the GSU contingent from Tot and the commanding officer of the District Police from Kabarnet visited the DO (District Officer) of East Pokot to talk about punitive actions against the Pokot. The two



commanders favoured an act of collective punishment: they proposed seizing livestock at the pan-dams of Kading'ding and Chömaril, (Ibid).

Thus, the Kenya government through its security authority, 'The Ministry of Internal Security, launched a series of attacks against IlChamus as a measure of collective punishment: massive military forces were deployed in East Pokot and seized livestock in great numbers to compensate IlChamus for their losses. Only a few days later an ultimatum was delivered to six districts in the North Rift to surrender voluntarily all 'illegal' automatic guns.

On 26th April 2005, a military operation carried out by troops from the Kenya army confiscated livestock from many households in East Pokot – mainly in an area along the Loruk-Tangulbei road, which borders the territory of IlChamus. Another selective operation targeted the small pan-dam at Tilaam near Mount Paka, where 650 head of cattle and 48 donkeys were seized by soldiers. Some households lost almost all their animals during the incident, (Ibid: p. 207). Consequently, many people from West Pokot District started migrating to Uganda in order to avoid disarmament and the collective punishment. In East Pokot, a number of households migrated to Samburu District becoming refugees in their own country while others buried their guns in the ground or hid them in other safe places.

The people of Pokot heavily criticise the recent military operation, for it mainly affected households whose members were not involved in the raids against IlChamus at all. As the Pokot warriors are feared for their ability to fight in the bushy terrain, which is most familiar to them, and gives them excellent cover, the army commanders considered it too risky to follow the real raiders on difficult terrain. Instead, they decided to confiscate animals from the people living along the main road. Consequently, the simple fact of being Pokot made them a target for punitive measures by the state.

The decision of the government to call in the Kenyan army for the operation is criticised as well, and is widely taken as a clear sign that the government treats the Pokot as if they were alien enemies of Kenya. Moreover, the army has been blamed for stealing livestock itself, as people observed that some army trucks with seized animals did not stop to hand over the animals to IlChamus, (Ibid: p. 209).

Many households were economically affected by the operation and a number of them are literally ruined. The operation at the pan dam of Tilaam affected some of the households; some families lost almost their entire herd of cattle at once. People here expressed their feeling of complete powerlessness at being collectively punished by the state. They called the attacks on them by the state as "Operation Kill the Economy", (Ibid: p. 210).

### 3.3.3 South Rift: Maasai

The Maasai have experienced historical injustices and marginalization during the colonial and postcolonial periods, (Hodgson, 2011). During the colonial period, the Maasai lost their land to the European settlers. The Anglo-Maasai Agreement of 1904, signed between the Governor Donald Stewart and Maasi Olonana ole Mbatany stated that the Maasai willingly gave away land, (Ndaskoi, 2012). By entering into this treaty, the Maasai technically signed away land rights to seasonal grazing lands in the Rift Valley. The promise in this treaty was to leave the Maasai in Laikipia 'for as long as Maasai as a race shall exist' (Hughes, 2006). The British betrayed this trust by signing the second treaty in 1911. By this treaty, forcibly moved the Maasai from the prized pastures of Laikipia plateau confining them to poorly watered 'native reserve' in the southern parts of the country. The Maasai would not have 'come to a unanimous and even enthusiastic decision to move to the southern reserve' because they knew too well that Laikipia had the best pastureland, (Hughes, 2006). Laikipia was some two million acres of land in the former northern Maasai Reserve. Since then, the Maasai have lived in the southern reserve where again in the name of 'development'; have continued to lose more land, (Kantai, 2007)). Therefore, it must be understood that the Maasai do not live in the southern region by choice because their grandparents suffered the horrific removal by the British regime. The eviction of the Maasai from the Rift Valley and Laikipia perpetrated great injustice that has repercussion to this day. As if losing land was not enough, the Maasai have continued to lose a wide range of habitat necessary for transhumant pastoralism, (Hughes, 2006). Acute population pressure, land degradation, erosion of subsistence livelihoods, increased vulnerability to drought and famine has its roots to horrific land alienation.

The Maasai struggle for land is not without justification. They have been holding demonstration against what they still affirm as historical events that robbed them of their ancestral land. In 2004, for example, John Letai, the then president of the Organization for Indigenous Peoples of Africa (OIPA) clearly articulated the Maasai land issue when he said that the settler ranches have wild animals having a holiday behind electric fences while the rightful owners are languishing in abject poverty, (Ndaskoi, 2012). Laikipia has white settlers, who are the descendants of the colonial settlers still occupying large tracks of land and in the past century have been joined by wealthy and well-connected Kenyans have established commercial ranches, representative of the new forces of dispossession, (Daily Nation, 25, 2004). For example, Michael Dyer who owns some 32,000 acres of Borana Ranch in Laikipia is among the landed few who have forced the Maasai in the unpleasant state of limbo, (Ndaskoi, 2012). Other ranchers who have continued to enjoy the government's nursing treatment include



Ms. Odile de Weck, who inherited some 3,600 acres of Loldoto farm from her father and Mr Jack Kenyon who owns 16,000 acres of ranch, (Kantai, 2007). When the Maasai seek to graze their cattle in these farms, they are often referred to as illegal invaders and are forcibly evicted. Thanks to history, the Maasai lost the right to use land and now have no chance of getting back their right of ownership as the land is privately owned by others.

The Maasai are unfortunate victims of 'development' since the colonial period. The wildlife conservation is a case of point. Nowhere in Kenya are there so many game parks and reserves than Maasai land. The area is highly desirable as wildlife conservation and numerous national parks and reserves have been created. These include the Serengeti National Park, Tarangire National park, Maasai Mara game Reserve, Amboseli Game Reserve, Nairobi National park, Tsavo National park, Mkomazi Game reserve, to name a few. These game parks have obviously taken away land the much needed land from the Maasai and allocated to the wildlife conservation for tourism and investors without little regard to the welfare and development of the Maasai, (Ndaskoi, 2012). In 1960s, the Maasai were further evicted from the Mara Triangle to give way for more national 'development', which clearly was not to their benefit. In the most recent past, the Maasai are up in arms due to wildlife-human conflict, which the government has done little to address.

Wildlife-based tourism business has continued to complicate the Maasai lives even more and has made the redistribution of land more complex. There is extreme emphasis by the Kenya government to step up tourism and get more foreign exchange necessary for national development. The unequal sharing of the income from this national development business has hurt the Maasai further. It is indeed a parasitic structural development, which strengthened the tour and travel companies while weakening the local communities. It is polarization of wealth and poverty at two opposite extremes. In short, it is sheer robbery, criminal plunder of the weak by the strong. The multiplier effect of such great national investments not only spills outside the Maasai, but spills more often into the pockets of the lavishly rich western investors and a selected well-connected Kenyans.

Land is not the only case of marginalization of the Maasai. The government has since independence alienated the Maasai from the mainstream national development, relegating them to a situation of underprivileged and often overlooked minority group in Kenya. They fell behind in development and education, a situation, which persist in many parts of Maasai land to the present. The Maasai land has poor infrastructure, few schools, health centres and training institutions, poor access to clean water and is characterised by high levels of poverty. Lack of education is perhaps one of the key issues that make the Maasai one of the poorly serviced communities in Kenya. Other problems that have continued to compound the Maasai misery is widespread corruption, polarization, monetization and widening gap between rich and poor,

encroachment by other ethnic groups, expansion of cultivated areas, privatization and subdivision of land under the land adjudication programme in small plots makes not economic sense. Wheat cultivation by farmers and land speculation have continued to produce riches but not been equitably shared. Worse still, these 'developments' have essentially continued to disposes the poor Maasai of the remaining land, (Hughes, 2006). With limited education among most of the Maasai, the will continue to suffer land alienation and other related problems.

In conclusion, pastoralist communities are citizens and should enjoy all rights applicable to all Kenyans. Their repression and marginalization should be history and should now enjoy equality and freedom from discrimination as provided for in Article 27 of the constitution. They should equally enjoy freedom and security of the person as stipulated in Article 29 of the constitution which inter alia states that no one should be subjected to any form of violence from either private or public sources. Cattle rustling often entails violence and violations of human rights, which is largely either due to the unwillingness or inability of the State to protect its citizens from such violence.

The Samburu, Turkana, Maasai and Pokot should also enjoy the protection of right to property as provided for in Article 40: the State is obliged to protect the property of individuals or a group of persons. The practice of cattle rustling deprives the victims of their property and the State must therefore put in place measures aimed at the protection of their said cattle and other property. Many pastoral communities claim that their communal land has continued to be encroached by the State and private developers, hence depriving them of their property. This issue needs to be investigated and remedied, as it is in violation of the pastoralist's right to property. The Bill of Rights under Article 40 clearly provides for adequate compensation in the event the government compulsorily acquires the said communal land. Further, the Bill of Rights recognises, under Article 56, the special needs of the minorities and marginalised groups, and obligates the State to provide affirmative action initiatives including, inter alia, ensuring their participation in governance and other spheres of life, special opportunities in educational and economic fields and reasonable access to water, health services and infrastructure.

An increasing understanding and appreciation of the pastoral production system can bring about meaningful integration of the North in national development. There should be genuine concern to redress the socio-economic inequities of the past. While there has been progress since 2003 to inject diversity to the political arena by entrusting political positions with people from previously neglected areas like Northern Kenya, this has not been seen in the socio-economic arena. The North is the "new development frontier" in the country. In a little way, CRA, through affording the counties here can lead the way to this journey. Narok and Kajiado has great potential in farming and tourism business, they need to be romped into the fold of Kenya's development agenda.









# 4.0 Recommendations

Historical injustices in Kenya predate independence, and the post-independence governments did not make any effort to redress the problems created by the colonial government. Instead, successive governments abated or accentuated these problems. Unfortunately most of these injustices have not been resolved to date and continue to be the basis on which conflicts happen.

The political and economic elites have retained significant control of land ownership through market purchase, government credit arrangements and political rewards, with the resultant high degree of land concentration, which seems to increase in every successive government. A majority of places where land was grabbed and the local population excluded poverty is the norm than the exception. Indeed, there is a correlation between land holding and poverty in Kenya. The regions with a high proportion of landless households also have high poverty levels.

Under the unfettered powers of the presidency, Northern Kenya suffered the brunt of state brutalisation. From the clumping down of the region due to its quest for secession to the zoning and screening of the 1980s the area became a pariah to other Kenyans. This suppression and marginalisation led to the underdevelopment of the area.

Misaligned policies, stereotypes and cultural prejudices associated with the areas discussed in this paper meant that the regions did not receive the requisite and attendant attention like other parts of the country. This resulted in the poor or non-existent infrastructure, poor health facilities and schools, no credit facilities and so on.

In all the regions that experienced historical injustices, the refusal to provide education (because of the nomadic economic lifestyles, that the people practiced Islam) was the most long lasting gross injustice to these people. Education still lags way behind the rest of Kenya in all the spheres of neglect by the colonial and post-colonial government.

Questions may arise as to why these particular communities have been singled for special treatment if any given that all communities in Kenya were dispossessed in one way or another. The answer is that these are the most glaring of the



injustices meted against Kenya's numerous communities. These are injustices that cannot be repudiated as these communities remain in the pits of underdevelopment because of the injustices of the past.

The marginalization and historical injustices experienced by Kenyans were egregious. They are not easy to forget, since their experiences are imprints in people's lives and psyche. People died, others were maimed, while others were economically deprived to the extent that 49 years after independence some parts of the country still depend on humanitarian aid and food aid. Some cannot access basic needs because of the heinous injustices of the past. Overall, this is why peace has eluded the country; it is partly why Kenyans fought each other in 2007/2008. The inequalities were manmade; they had nothing to do with being a pastoralist. They were about prejudices and self-aggrandizement on the part of Kenya's leadership and ethnic bigotry. The Constitution now than never before provides avenues of change for a shared present and future. Such provisions like the Equalization Fund are indeed an opportunity to right the wrongs of the past.

While decisions are made on how to share the Equalization Fund through recognition of these historical injustices, it is important to mention that the integration of these formally social excluded and marginalised groups requires an extended approach by mainstream communities, which should entail:

- i. Attitude change towards other cultures;
- i. Attitude change towards and recognition of other forms of livelihoods;
- ii. De-emphasizing potential versus low-potential areas as each region has potential areas and the potential to generate economic gains.

Delivering equal opportunities and reducing the social and economic gap created by past regime policies is a difficult task but insurmountable. A rethinking of the ways in which things are done is one way of achieving progress in this area. This requires transformative leadership. Kenya has a new constitution but a new constitution is as good as its leadership. A leadership bent on undermining the constitution that Kenyans approved overwhelmingly is a recipe for disaster. CRA has the onus of making sure that what the provisions of the new Constitution with regard to minorities and the marginalised are upheld and followed through.

Kenya's record with regard to the rights of minorities and the marginalised reflects its colonial past, with laws and structures that favoured agricultural peoples and commercial interests. In addition to persistent discrimination, deliberate marginalisation on national resources, successive post-colonial regimes egregiously trampled these peoples' human rights: their right to decent livelihoods, right to education, right

to life, right to protection and more so right to and respect of private properties. A redressing of the historical injustices is possible through the Equalization Fund, which the CRA has the onus to advise on and ensure its equitable distribution.

This paper therefore recommends the following:

1. That historical injustice is adopted as a criterion in the allocation of the Equalization Fund. The list of counties and counties to receive the fund is given elsewhere in this document.
2. That the state acknowledges these historical injustices meted on specific communities as a way of reconciliation.
3. That land restitution should be of essence and that the National Land Commission should provide guidelines that will guarantee community or public land alienated and unscrupulously allocated is given back to the communities affected.
4. That a greater part of the Equalization Fund be allocated to the provision of Education since this is the unlocking key to the future of these marginalised areas. County governments must be sensitised on the need to prioritise education in the development of their areas.
5. In particular, this paper recommends that the Central government and County governments pay close attention to the provision of education to marginalised areas and groups. There is need for a “Marshal Plan” on the provision of education to regions and groups that suffered historical injustices, an education plan that will prioritise the matter beyond the areas benefitting from the Equalization Fund. The central government can provide conditional grants to county-specific development issues (for our purposes Education). What these marginalised communities do not have, but many Kenyans have is the opportunity for a good education, an injustice meted by both the colonial and independence governments. The historically marginalised areas continue to send very few students to the public universities and much less in the private universities and colleges. Owing to the importance of education in the socio-economic development of communities, it is imperative that the CRA considers recommending the setting up a special fund for areas lagging behind in terms of education.

The Commission on Revenue Allocation can utilize the precedence of ‘special admission’ instituted by public universities in 1989, which utilizes affirmative action to enhance enrolment of students from disadvantaged districts. This affirmative action was instituted as a way of correcting the inequalities and inequities, which they have experienced due to longstanding historical, cultural and structural barriers, leading



to inadequate access to education opportunities. The criteria used for determining disadvantaged districts included arid and semi arid areas, which were determined by the government based on the degree of aridity, rainfall patterns, temperatures, humidity, overall agricultural production/productivity and evaporation rates and soil types, (Kenya Parliamentary Hansard, 2009). The other key criteria used were based on the Gichaga and Ogot Committee Reports (1989; 2001). The former used population density, school enrolment rates, wage earners, and earnings per capita as parameters, while the later used poverty index, student/teacher ratio, and school dropout rates and gender ratio of school enrolment to determine disadvantaged districts. These parameters have been used by the Joint Admission Board (JAB), as the basis for affirmative action in increasing enrolment of students from Garissa, Wajir, Mandera, Ijara, Tana River, Moyale, Marsabit, Turkana and Isiolo districts in public universities under 'special admission' provision.

In the same spirit, the government must make deliberate effort under the auspices of the Fund to institute systemic educational improvement as well facilitate educational development in all historically marginalised areas of Kenya. As a matter of urgency, a multifaceted approach intended to enhance educational opportunities for these communities much in the way the missionaries did for mainstream communities, (Sifuna, 2005). The main key recommendations include:

- a) Establishment of affordable boarding government primary schools to complement educational services offered by religious and development organisations;
- b) Facilitation of school feeding programmes, especially among the poorest and pastoral communities (studies have shown the interlinked nature of nutrition and child development);
- c) Construction of more pre- and primary schools, to reduce distance —this will help raising enrolment for children, as they can attend school without compromising their security;
- d) Establishment of fixed schools, where children can remain while the parents migrate in search for water and pastureland;
- e) Increase the number of mobile schools, and employ the collapsible classrooms, which can easily be assemble and dismantled and portable via donkeys and camels.
- f) Promote and support traditional schools, especially the madrassa schools to incorporate regular pre- and primary school curriculum with the religious instructions;

- g) Increase the number of secondary schools in all the marginalized areas, and improve existing ones;
- h) Facilitate the establishment of tertiary educational institutions in all ASAL and marginalised areas of Kenya to serve communities in these regions;
- i) Promote and support vocational training institutions to enhance skills uptake and expand livelihood opportunities; and
- j) Establish equip and adequately staff more health facilities to enhance access to and uptake of health education and services.

The Fund should be utilized to not only improve pre-and primary education and secondary education, but also tertiary education in these historically marginalised areas, which would in essence render the issue of special admission in public universities null and void.







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# Appendices: Summary of Counties and Minorities who Experienced Historical Injustices

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## Appendix 1: Northern Kenya: Counties that Experienced Historical Injustices

	<b>Marsabit</b>	<b>Wajir</b>	<b>Garissa</b>	<b>Isiolo</b>	<b>Mandera</b>
<b>Closed zone/cut from the rest of the country</b>	No contact or relation with the rest of the country.	No contact or relation with the rest of the country.	No contact or relation with the rest of the country.	No contact or relation with the rest of the country.	No contact or relation with the rest of the country.
<b>Legal discrimination</b>	Closed District Ordinance Act 1902 Post-colonial government rule by decree following constitutional amend Act No. 14, 16, and 18. Northern Kenya was technically a war zone and virtually became a Police State	Closed District Ordinance Act 1902 Post-colonial government rule by decree following constitutional amend Act No. 14, 16, and 18. Northern Kenya was technically a war zone and virtually became a Police State	Closed District Ordinance Act 1902 Post-colonial government rule by decree following constitutional amend Act No. 14, 16, and 18. Northern Kenya was technically a war zone and virtually became a Police State	Closed District Ordinance Act 1902 Post-colonial government rule by decree following constitutional amend Act No. 14, 16, and 18. Northern Kenya was technically a war zone and virtually became a Police State	Closed District Ordinance Act 1902 Post-colonial government rule by decree following constitutional amend Act No. 14, 16, and 18. Northern Kenya was technically a war zone and virtually became a Police State
<b>Cultural prejudice/ Negative attitudes towards pastoral communities of Northern Kenya</b>	Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans	Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans	Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans	Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans	Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans
<b>Misaligned policies/ Exclusionist policies</b>	Sessional Paper no. 10 1965 the prioritization of high economic potential areas excluded ASAL areas	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded ASAL areas	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded ASAL areas	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded ASAL areas	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded ASAL areas
<b>Policies hostile to pastoralists</b>	Sedentarization confined pastoralists to particular places hence ignoring the type of livelihood that requires constant movement to survive the harsh environment. Pastoralists felt alienated from the rest of the country	Sedentarization confined pastoralists to particular places hence ignoring the type of livelihood that requires constant movement to survive the harsh environment. Pastoralists felt alienated from the rest of the country	Sedentarization confined pastoralists to particular places hence ignoring the type of livelihood that requires constant movement to survive the harsh environment. Pastoralists felt alienated from the rest of the country	Sedentarization confined pastoralists to particular places hence ignoring the type of livelihood that requires constant movement to survive the harsh environment. Pastoralists felt alienated from the rest of the country	Sedentarization confined pastoralists to particular places hence ignoring the type of livelihood that requires constant movement to survive the harsh environment. Pastoralists felt alienated from the rest of the country
<b>State repression</b>	Amendment of the independence Constitution to complement existing draconian legislation to suppress the Somali and other people of North Kenya	Amendment of the independence Constitution to complement existing draconian legislation to suppress the Somali and other people of North Kenya	Amendment of the independence Constitution to complement existing draconian legislation to suppress the Somali and other people of North Kenya	Amendment of the independence Constitution to complement existing draconian legislation to suppress the Somali and other people of North Kenya	Amendment of the independence Constitution to complement existing draconian legislation to suppress the Somali and other people of North Kenya

<b>Under-representation in politics and national development</b>	No one to lobby government to develop the area	No one to lobby government to develop the area	No one to lobby government to develop the area	No one to lobby government to develop the area
<b>Treated with suspicion because of idea of secession and shifto war</b>	Confined to villages hence economically handicapped-anti-pastoralist plans	Confined to villages hence economically handicapped-anti-pastoralist plan	Confined to villages hence economically handicapping pastoralist livelihood	Confined to villages hence economically handicapped-anti-pastoralist plan
<b>Massacres</b>	N/A	Wagalla massacre 1984. 5,000 people estimated killed.	Burning of the whole of Bulla Kartasi Estate in Garissa in November 1980. 3,000 people estimated killed	N/A
<b>Discriminatory laws, regulations and practices</b>	-Screening exercise of Somali and other people from the North of Kenya-Pink Card. - Discrimination in the issuance of Birth Certificates, passports, Identity Cards. They have to produce more documents than other Kenyans.	-Screening exercise of Somali and other people from the North of Kenya-Pink Card. - Discrimination in the issuance of Birth Certificates, passports, Identity Cards. They have to produce more documents than other Kenyans.	-Screening exercise of Somali and other people from the North of Kenya-Pink Card. - Discrimination in the issuance of Birth Certificates, passports, Identity Cards. They have to produce more documents than other Kenyans.	-Screening exercise of Somali and other people from the North of Kenya-Pink Card. - Discrimination in the issuance of Birth Certificates, passports, Identity Cards. They have to produce more documents than other Kenyans.
<b>Religious Profiling</b>	Muslims associated with Al-Qaida. (terrorism)	Muslims associated with Al-Qaida. (terrorism)	Muslims associated with Al-Qaida. (terrorism)	Muslims associated with Al-Qaida. (terrorism)
<b>Deprivation of education</b>	- Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education	- Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education	- Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education	- Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education

## Appendix 2: Coast: Counties that Experienced Historical Injustices

	<b>Kilifi</b>	<b>Lamu</b>	<b>Kwale</b>	<b>Taita Taveta</b>	<b>Tana River</b>
<b>Land: Arab Land alienation</b>	The Mazrui land question in Shariani/Takaungu area, Shiekh Omar bin Dhahaman, Bakshein land in Malindi claimed by the Mijikenda-local people are squatters on their ancestral land	N/A	N/A	N/A	N/A
<b>Land: (1)Delayed Land adjudication</b>	No title to use as collateral for credit from financial institutions	No title to use as collateral for credit from financial institutions from financial institutions	No title to use as collateral for credit from financial institutions	No title to use as collateral for credit from financial institutions	No title to use as collateral for credit from financial institutions
<b>Land ownership</b>	Beach plots owned by 'upcountry' people-	Beach plots owned by 'upcountry' people-	Beach plots owned by 'upcountry' people-	The Kenyatta family own half of the land - local people living on land as squatters.	N/A
<b>Mining Rights</b>	N/A	N/A	N/A	Vast area under concessions from "outsiders"	N/A
<b>Land: Unscrupulous allocation by corrupt officials grabbing government plots and Buildings</b>	No consideration on land allocation for local population	No consideration on land allocation for local population	No consideration on land allocation for local population	No consideration on land allocation for local population	No consideration on land allocation for local population
<b>Un-procedural Settlement Schemes</b>	N/A	Lake Kenyatta 1, Lake Kenyatta 11, Hindi Magogoni, Witu 1 (Lamu), Witu 11 (Hongwe), Mpeketoni. All these schemes did not consider local people	N/A	N/A	N/A
<b>Double issuance of title deeds</b>	Owners have not been able to access credit because of lack of title deeds.	Owners have not been able to access credit because of lack of title deeds.	Owners have not been able to access credit because of lack of title deeds.	Owners have not been able to access credit because of lack of title deeds.	N/A



<b>Legalised discrimination</b>	Non-issuance or delay in issuing of IDs, passports and birth certificates to people of Arab descent. - Made it impossible to take up employment, seek credit from banks or travel abroad.	Was one of the adjoining areas to Northeastern region under the District Ordinance Act 1902, which created the 'closed district' policy. Isolated from the rest of the country.	N/A	N/A	Was one of the adjoining areas to Northeastern region under the District Ordinance Act 1902, which created the 'closed district' policy. Isolated from the rest of the country.
<b>Religious Profiling</b>	Muslims associated with Al-Qaeda. (terrorism)	Muslims associated with Al-Qaeda. (terrorism)	N/A	Muslims associated with Al-Qaeda. (terrorism)	Muslims associated with Al-Qaeda. (terrorism)
<b>Misaligned policies/ Exclusionist policies</b>	Sessional Paper no. 10 1965 the prioritization of high economic potential areas excluded coast region	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded coast region	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded coast region.	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded coast region.	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded coast region.
<b>Un-procedural land allocations</b>	Old government houses allocated to people outside of region	Old government houses allocated to people outside of region	Old government houses allocated to people outside of region	Old government houses allocated to people outside of region	Old government houses allocated to people outside of region
<b>Deprivation of education</b>	-Through lack /poor provision of education infrastructure. - Prejudice against areas that had Islamic influence	-Through lack /poor provision of education infrastructure. - Prejudice against areas that had Islamic influence	-Through lack /poor provision of education infrastructure. - Prejudice against areas that had Islamic influence	-Through lack /poor provision of education infrastructure. - Prejudice against areas that had Islamic influence	-Through lack /poor provision of education infrastructure. - Prejudice against areas that had Islamic influence

## Appendix 3: Rift Valley: Counties that Experienced Historical Injustices

	<b>Turkana</b>	<b>Samburu</b>	<b>West Pokot</b>	<b>Narok</b>	<b>Kajiado</b>
<b>Closed zone/cut from the rest of the country</b>	No contact or relation with the rest of the country.	No contact or relation with the rest of the country.	No contact or relation with the rest of the country.	Limited contact with the rest of the country	Limited contact with the rest of the country
<b>Legal discrimination</b>	Closed District Ordinance Act 1902. And outlying areas ordinance	Closed District Ordinance Act 1902 and outlying areas ordinance	Closed District Ordinance Act 1902 and outlying areas ordinance	Closed District Ordinance Act 1902 and outlying areas ordinance	Closed District Ordinance Act 1902 and outlying areas ordinance
<b>Cultural prejudice/ Negative attitudes towards pastoral communities of Northern Kenya</b>	- Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans - Unwilling to change their livelihood style, they were to be left alone	- Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans - Unwilling to change their livelihood style, they were to be left alone	- Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans - Unwilling to change their livelihood style, they were to be left alone	- Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans - Unwilling to change their livelihood style, they were to be left alone	- Pastoralists ungovernable/ hostile tribes hence becoming pariah zones to the rest of Kenyans - Unwilling to change their livelihood style, they were to be left alone
<b>Misaligned Policies</b>	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded ASAL areas	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded ASAL areas	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded ASAL areas	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded ASAL areas	Sessional Paper no. 10 1965 and the prioritization of high economic potential areas excluded ASAL areas.
<b>Policies hostile to pastoralists</b>	- Sedentarization confined pastoralists to particular places hence ignoring the type of livelihood that requires constant movement to survive the harsh environment. -Pastoralists felt alienated from the rest of the country	- Sedentarization confined pastoralists to particular places hence ignoring the type of livelihood that requires constant movement to survive the harsh environment. - Pastoralists felt alienated from the rest of the country	- Sedentarization confined pastoralists to particular places hence ignoring the type of livelihood that requires constant movement to survive the harsh environment. - Pastoralists felt alienated from the rest of the country.	- Land expropriated from the Maasai by the colonial state, and allocated to European - Maasai sedentarized them to south of the railway.	- Land expropriated from the Maasai by the colonial state, and allocated to European - Maasai sedentarized and pushed to south of the railway.
	No credit offered to pastoralists.	No credit offered to pastoralists.	No credit offered to pastoralists.	No credit offered to pastoralists.	No credit offered to pastoralists.

<b>Under-representation in politics and national development</b>	No one to lobby government to develop the area or those present had little voice or were silenced	No one to lobby government to develop the area or those present had little voice or were silenced	No one to lobby government to develop the area or those present had little voice or were silenced	No one to lobby government to develop the area or those present had little voice or were silenced	No one to lobby government to develop the area or those present had little voice or were silenced	No one to lobby government to develop the area or those present had little voice or were silenced
<b>Land Allocation</b>	N/A	N/A	N/A	N/A	N/A	Selling of land because of lack of alternative livelihoods resulting from low levels of education.
<b>State repression</b>	Disarming of residents to stop cattle rustling has largely been mismanaged leading to death of residents.	Disarming of residents to stop cattle rustling has largely been mismanaged leading to death of residents.	Moi and Kibaki regime have been accused of unleashing terror against citizens in this area in the name of state security and wanting to 'defeat' militias.	Through unfriendly wildlife utilisation regimes, local people are excluded from direct benefit from the resource	Through unfriendly wildlife utilisation regimes, local people are excluded from direct benefit from the resource	Through unfriendly wildlife utilisation regimes, local people are excluded from direct benefit from the resource
<b>Right over private property not protected</b>	Cattle rustling treated by government as 'normal' yet the residents have right to protection of their cattle by the state. Cattle rustling is not treated as a crime.	Cattle rustling treated by government as 'normal' yet the residents have right to protection of their cattle by the state. Cattle rustling is not treated as a crime.	N/A	N/A	N/A	N/A
<b>Deprivation of Education</b>	- Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education	- Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education	- Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education	- Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education	- Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education	Through lack /poor provision of education infrastructure. - Prejudice on nomadic pastoralism denied them opportunities to education

## Appendix 4: Listing of Minority and Marginalised Groups by County

Minority and marginalised groups	County
Yakhu	Laikipia
Sengwer	Elgeyo Marakwet
Ogiek	Nakuru
Pokot	West Pokot
Sanye	Kilifi
Suba	Homa Bay
Boni	Tana River
Gabbra	Marsabit
Dassanatch	Marsabit
Dorobo	Baringo
Endorois	Elgeyo Marakwet
Rendile	Marsabit
Oromo	Marsabit
Ilchamus	Baringo
Burji	Marsabit
El Molo	Turkana
Waata	Kilifi
Talai	Nandi
Malakote	Tana River
Sabaot	Bungoma
Teso	Busia
Nubi	Nairobi
Amu	Lamu
Shela	Lamu
Siyu	Lamu
Vumba	Kwale
Kauma	Kilifi
Jibana	Kilifi
Mvita	Mombasa





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