

Kenya's Devolved Land Administration Marks the Start of a New Phase of Political Struggle over Land Control

Catherine Boone and Ambreena Manji examine whether long-awaited land law reform in Kenya has resolved longstanding land grievances.

Kenya's 2010 Constitution created 47 new counties and empowered them to take over key aspects of land administration, including oversight of public lands, construction of transparent land registries to combat land-grabbing and corruption, and management of community land. Much hope and energy has been invested in recent years in building the architecture of Kenya's devolved land administration in which county-level bodies were to play a major part. In this blog, we report the preliminary findings of our study of 'Decentralized, Democratic Land Management in Kenya: Implications for Land Inequality, Land Security, Land Markets' funded by the LSE International Inequalities Institute in 2016 and hosted in Nairobi at the [British Institute in Eastern Africa](#) (BIEA).



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Kenya's longstanding tensions and conflicts over land, including historical grievances dating back to the early colonial period have contributed to very high levels of pressure for [land law reform](#), as members of the LSE-funded devolution project team have argued in published work over the last decade ([Kanyinga 2009](#), [Kanyinga 2014](#), [Klopp 2000](#), [Manji 2012](#), and [Boone 2012](#)). There was a long struggle to formulate and publish a National Land Policy. There was an extensively documented and chronic pattern of land abuses of the executive branch which had led to and fuelled conflict. Presidential authority in the land domain was perpetually abused. The national executive had a *carte blanche* to use land as a patronage resource and to allocate land to favoured individuals (see [Klopp 2000](#), [Boone 2014](#)).

The post-electoral violence of 2008 brought Kenya to its lowest point since Independence and gave much needed impetus to the movement for a [National Land Policy](#) in 2009, and a new Constitution in 2010. Quick on the heels of the new Constitution, Kenya passed three important new 2012 [land laws](#) ([Manji 2014](#)). A key objective of land law reform was to deal with the politicised and corrupt "den of thieves" that was the old Ministry of Lands. Many important powers of the old Ministry of Lands were transferred to the NLC by the National Land Commission Act 2012. The National Land Commission (NLC) was to be an independent Constitutional Commission

that would establish its presence on the ground through the creation of a County Land Management Board (CLMB) in each county. The aim of the new institution was to transfer real authority over land registries, management of public land, settlement schemes and other land allocations from the central government to the NLC and the CLMBs, which would be embedded in county-level government.

The goal of the NLC and the CLMBs is to curb the political elite's land corruption. CLMBs would lead the drive to compile an inventory and repossess public land illegally or irregularly acquired by politically-connected persons and their associates, revoking ill-gotten land titles where this was necessary. The massive scale of these changes shows that the objective was indeed to achieve radical and progressive restructuring. It was hoped that a real dispersal and democratisation of control would bring land administration under the rule of law.

Our project team was made up of **Catherine Boone (LSE, Government and International Development)**, **Alex Dyzenhaus (BIEA)**, **Seth Ouma (Univ. of Nairobi)**, **James Owino (Univ. of Nairobi)**, **Catherine Gateri (Kenyatta University)**, **Achiba Gargule (Univ. of Bern)**, **Jackie Klopp (Columbia)**, and **Ambreena Manji (Cardiff)**, and **Karuti Kanyinga (Univ. of Nairobi)**. We sought to analyse the early successes and limits of Kenya's momentous attempt at institutional change. Would the new constitution and land laws produce equity-enhancing effects in the domain of land governance?

As our study documents, it soon became apparent that the ambiguities and limitations of the land laws, combined with push-back from powerful interests at all levels of the political system (as well as the electoral considerations that infused nearly all government action around land), would be obstacles to the kind of real land reform envisioned by land activists and civil society groups who had pushed for the 2009 National Land Policy and the 2010 Constitution.

Three problems with Kenya's land reform efforts were revealed almost immediately. Firstly, the proposed bills provided a poorly drafted legal framework that would be very hard to implement (eg the law evaded the question of the exact duties and responsibilities of the Ministry and the NLC, so that this question plagued the land arena for the next six years). Secondly, implementing the laws and the new land machinery at both the national and county levels depended crucially on the cooperation and indeed, the active support, of many of the very persons and government agencies the land law reforms had targeted as perpetrators of past abuses. Finally, the counties and county-level land politics were subsumed by electoral competition and the devolution of anti-democratic political practices to the county level.

After 2012 land became the key site of institutional struggle. At the national level, the Ministry of Lands and the executive branch battled against the National Land Commission in every conceivable way. It withheld funding, failed to turn over information and engaged in blatant obstructionism. The NLC was not able to get access to inventories of public land or land registries. It could not therefore identify titles or allotment letters that have been issued for holdings on public land, a key part of its mandate. Most problematically, some staff from the Ministry were transferred to work in the NLC without vetting. Some Kenyan observers criticised the staff-shifting practices as "spreading the rot."

For three years between 2012 and 2015, the Ministry openly defied the constitutional provisions designed to transfer powers to the NLC. In 2015, the NLC sought an **Advisory Opinion** from the Supreme Court. It asked the court to arbitrate key questions that had been deferred by the 2012 land laws. In 2015, the Supreme Court issued an Advisory Opinion that actually confirmed many of the Ministry's powers, finding bases for its decision at least in part in loopholes, ambiguities, and contradictions embedded in poor drafting of the laws in the first place. Then, the Land Law Amendment Act passed in 2016 significantly clawed back powers for the Ministry. As the Council of Governors pointed out, it significantly **threatens devolution of land matters**.

The success of the land law reform was also compromised by the way the reform intersected with growing intensity and complexity of party politics under devolution. Some scholars and observers

predicted that devolution would actually produce land-grabbing at the county level, as a new “sub-layer” of elites was created and empowered through the election of 47 new county governments. Devolution, in essence, would be ‘everyone’s turn to land grab.’ Others predicted that county politicians would be strongly incentivised to use their local land powers in ways that mobilise local voter support, rather than to implement reforms as envisioned in the constitution and the new land laws. Some also predicted that county governments would be dominated by single ethnic groups who claim the counties as ethnic homelands. In land politics, one could expect that ethnic groups would seek to assert ethnic claims to county land against ethnic outsiders or “foreigners,” perhaps even moving to “take back” land previously acquired by ethnic outsiders.

We found evidence that all these forces were at work, compromising hopes for reform in the land sector. Despite the attempted institutional fix, land politics and government initiatives in the land domain remain deeply embedded in electoral politics, factional struggles, and the ongoing processes of land privatisation by politically well-connected individuals. Within the counties, the roles of the NLC and the CLMBs did not follow the institutional blueprint of the 2012 laws. Those able to block progress in the counties through sanctioning powers, “no” votes, or refusal to cooperate (‘veto players’), starting with county governors who see the NLC and the CLMBs as a possible threat, have been key in blocking effective formation and action of the CLMBs. The fate of the CLMBs at the county level was determined mostly by larger political (electoral) struggles and calculations within counties, and by electorally-focused struggles between county- and national-level politicians. More broadly, devolution expanded, rather than contracted, the scope of politicised land politics, and often did so in ways that were not anticipated by land activists or the drafters of the new laws.

The history of land politics in each county goes far in determining the salience of land issues in defining political alliances/cleavages between the county government, the national government, and the NLC. Our 2016 [LSE Working Paper](#) tracks these battle lines in eight Kenyan counties: Kiambu, Machakos, Embu, Narok, Nakuru, Bomet, Siaya, and Isiolo.

Clearly, as of 2016, the attempt to create a politically-neutral technocratic or “above politics” unit, the NLC, to control land and take it out of politicians’ hands appears, has not succeeded. The Land Acts, including the Community Land Bill, passed on 31 August 2016, dismantled the CLMBs, returned control over public land and non-registered community land to the central government, asserted central government control over settlement schemes, and in a variety of other areas drained the NLC of powers that were granted to it under the 2010 Constitution and 2012 land laws. The new laws have been challenged in the press as unconstitutional, marking the beginning of a new phase of political struggle over land control in Kenya.

Read more about this project in the LSE Working Paper: [Land Politics under Kenya’s New Constitution: Counties, Devolution, and the National Land Commission.](#)

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The views expressed in this post are those of the author and in no way reflect those of the Africa at LSE blog or the London School of Economics and Political Science.

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