THE AVERTED GENOCIDE: A CASE STUDY OF KENYA'S ETHNO-POLITICAL POST ELECTION VIOLENCE OF 2007/2008

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INTRODUCTION

> *. . . since independence in 1963, Kenya was "Africa" for much of the outside world, at least the Africa it wanted to see: of preternatural landscapes and wildlife, of vibrant, liberal-minded people, of social harmony. Western countries viewed Kenya as "one of its own", a political oasis amidst the chaos of Africa. Then came the disputed 2007 election. The wide spread communal violence which erupted in its aftermath altered the image of "Kenya" in the West's popular imagination. This led to Kenya being better understood [as] a complex country facing immense social, economic and security challenges - but also [as] a subtle powerhouse, epitomical of the Africa Rising story.[1]*

> - Terence McNamee, in What if Africa's Regional Powers Did Better?

Until December 2007, Kenya was considered unique among African countries, a bastion of political stability and economic growth and a subject of international interest.[2] The country is East Africa's economic powerhouse and an international trade and investment hub. As Michael Holman asserts, Kenya has been the desirable face of Africa, a safe tourist destination, the country of surf and safari, a reliable base in a tough neighbourhood and the regional headquarters for the United Nations. Until the 2007 general election-debacle, Kenya had avoided the path of failure most post-colonial African states have taken, instead becoming a staging platform for relief operations in fragile neighbouring countries.[3] This African exceptionalism was echoed by South African Nobel Peace Laureate Desmond Tutu when he exclaimed, "[Kenya] is a country that has been held up as a model of stability. This picture has

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[1] Terence McNamee, "What if Africa's Regional Powers Did Better? South Africa, Nigeria and Kenya as Potential Drivers of Peace and Prosperity," *Rise and Fall of Regional Powers*, International Reports of the Konrad-adenauer-Stiftung. Issue 3, (October 10, 2016): 45-56, accessed online 13 March 2018, http://www.kas.de/wf/en/33.46615/.

[2] Harold D. Nelson and Irving Kaplan. *Kenya, a Country Study. Area Handbook Series,* 3rd ed. (Washington: US Government Printing Office, 1983), xxi.

[3] Michael Holman, "Kenya: Chaos and Responsibility," (3 January 2008), accessed online April 11 2018, https://www.opendemocracy.net/article/where_does_responsibility_for_kenyas_chaos_lie; Africa Report, "Kenya in Crisis, International Crisis Group," Report No. 137, 21 February 2008, accessed online 23 April 2018, https://www.crisisgroup.org/africa/horn-africa/kenya/kenya-crisis.

been shattered."[4] The 42 tribes' mosaic that had somehow held for 45 years since independence, was now in disarray, raising fundamental questions about the foundation of Kenya's democracy and stability.[5]

Within minutes after Kenya's then incumbent president Mwai Kibaki was declared winner of a fiercely contested election on 30 December 2007, the opposition Orange Democratic Movement (ODM) Party claimed widespread irregularities and fraud. The move sparked simultaneous eruptions of violence across the country pitting ODM supporters against devotees of Kibaki's Party of National Unity (PNU).[6] The ensuing chaos provided an opportunity for some groups to act on historical grievances over land distribution, pushing Kenya to the brink of ethnic conflict and even genocide. On New Year's Eve in 2008, an estimated 50 Kikuyu women and children who had sought refuge in a church in Kiambaa Village near Eldoret were burned alive, in scenes reminiscent of the 1994 Rwandan Genocide.[7]

The horrendous violence pitting the Luos and Kalenjins against the Kikuyus that saw "ethnic lines being drawn in blood and ashes" prompted swift intervention by the international community.[8] Former UN Secretary General Kofi Annan emphasised

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[4] Peter Kimani, "A Past Of Power More Than Tribe In Kenya's Turmoil," Open Democracy, 3 January 2008, accessed online 13 March 2018, https://www.opendemocracy.net/article/a_question_of_power_before_tribes (also quoted on http://news.bbc.co.uk/2/hi/africa/7169155.stm).

[5] Harold D. Nelson, *Kenya, a Country Study . . .*, 3.

[6] Jeffrey Gettleman, "Disputed Vote Plunges Kenya Into Bloodshed," *The New York Times*, 31 December 2007, accessed online 13 March 2018, http://www.nytimes.com/2007/12/31/world/africa/31kenya.html.

[7] Report of the Commission of Inquiry into Post-Election Violence (CIPEV), Republic of Kenya, (Nairobi: Government Printer, 2008), 345, 346, 351.

[8] Roger Cohen, "African Genocide Averted," *New York Times*, March 3, 2008, accessed online on April 5, 2018, https://www.nytimes.com/2008/03/03/opinion/03cohen.html; Moses Onyango, et al. *The Invisible Violence in Kenya a Case Study Of Rift Valley and Western Regions* (Nairobi: Konrad Adenauer-Stiftung, 2011), 15. A swarm of mediators descended upon Kenya including then US Secretary of State Condoleezza Rice, President John Kufour of Ghana, Nobel Peace Laureate Archbishop Desmond Tutu, Mozambique's Graça Machel, amongst others. Eventually, both parties entered into negotiations with a panel consisting of former UN-Secretary Kofi Annan. Kikuyus are the majority ethnic group in Kenya, from which then President Mwai Kibaki hailed. Luos and Kalenjins are the second and fourth largest ethnic groups in population size in Kenya, who were both supporting

the need for urgent resolution to the crisis, stating, "We can't let this happen to Kenya … [for] when you have ethnic violence, if you don't mediate quickly, you get a hopeless situation."[9] By the time a deal brokered by a mediation panel headed by Annan was reached on 28 February 2008, 1,133 people had been slaughtered and 350,000 displaced.[10]

This paper will demonstrate that while colonial era policies occasioned historical injustices over land alienation and fomented unprecedented ethnic consciousness, poor governance by postcolonial governments aggravated the situation. This predisposed Kenya to deep seated grievances, "negative ethnicity," and a potential for inter-ethnic violence or genocide which necessitates reforms in the country's political norms and national identity.[11]

The essay is organized into three sections. The first section presents a contextual background highlighting both the colonial and postcolonial era policies and their role in exacerbating historical grievances and ethnic consciousness. Using Stanton's *Eight Stages of Genocide* and Maureen Hiebert's *Theorizing Destruction: Reflections on the State of Comparative Genocide Theory*, the second section analyses the characteristics of the 2007 post-election violence in Kenya through the lens of

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the opposition leader Raila Odinga, himself a Luo.
    [9] Roger Cohen, African Genocide Averted . . .
    [10] Report of the CIPEV, 345, 346, 351.
    [11] Adam Jones, *Genocide:A Comprehensive Introduction, 3rd ed*. (New York: Routledge, 2016), 577; Koigi Wa Wamwere, *Negative Ethnicity: From Bias to Genocide*. New York: Seven Stories Press, 2003. *Ethnicity* is arguably the dominant ideological impetus to conflict and genocide worldwide; Thomas Hylland Eriksen, *Ethnicity and Nationalism: Anthropological Perspectives*. Pluto Press, 2002, 12. *Ethnicity* is an aspect of social relationship between agents who consider themselves as culturally distinctive from members of other groups with whom they have a minimum of regular interaction . . . thus also . . . defined as a social identity; Koigi Wa Wamwere, *Negative Ethnicity: From Bias to Genocide*. New York: Seven Stories Press, 2003. *Negative ethnicity* describes deep-seated tensions in Africa that have often flared so terrifyingly, as exemplified by the genocide in Rwanda and "ethnic" killings in the Democratic Republic of Congo, Nigeria, and elsewhere. These clashes cannot properly be described as ethnically motivated as ethnicity is a positive distinction that has nothing to do with hatred, but rather an invention of pre-colonial, colonial and postcolonial "ethnic" tensions. The culprits are chronic poverty, a broken education system, preying dictators, corrupt officials, the colonial legacy of hate, among others.

genocide, mass atrocities and crimes against humanity. Lastly, the third section

identifies the lessons Kenya can learn from Canada's multiculturalism policies and

proffers options through which Kenya can heal the underlying grievances and negate

their potential for cyclic conflagration.[12] The paper will only dwell on the prominent

aspects necessary to contextualise the Kenyan post-election violence (PEV) within the

purview of genocide or mass atrocities.

SECTION 1: HISTORICAL BACKGROUND AND CONTEXT

Bounding the Kenyan State and the Land Conundrum

Like many other African countries, the Kenyan state is a progeny of British

colonization. Following the Berlin Conference of 1884-1885, European powers

divided Africa amongst themselves primarily along arbitrary boundaries. The

indiscriminate borders massed different communal groups into single states and split

others amongst several states.[13] British colonial rule over the east African region

commenced in 1895 with the declaration of the British East African Protectorate,

comprising present day Kenya and Uganda. Kenya was officially declared a British

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[12] S. N Sangmpam, *Comparing Apples and Mangoes: The Overpoliticized State in Developing Countries*. (New York: State University of New York Press, 2012), 46. Sangman describes *electoral violence* as any act of actual or threatened physical coercion, occurring before, during or after elections, often committed by those keen to make their position prevail and to express disagreement over the outcome, with a view to silencing or intimidating the opposition; Jeff Fischer in "Electoral Conflict and Violence." *IFES White paper* 1 (2002), 15, defines electoral violence as "Any spontaneous or organized act by candidates, party supporters, election authorities, voters, or any other actor/stakeholders that occurs during an electoral process, from the date of voter registration to the date of inauguration of a new government, that uses physical harm, intimidation, blackmail, verbal abuse, violent demonstrations, psychological manipulation, or other coercive tactics aimed at exploiting, disrupting, determining, hastening, delaying, reversing, or otherwise influencing an electoral process and its outcome"; Barack Obama, Speech, Ghanaian Parliament, Accra, Ghana, 11 *July* 2009, accessed online 23 April 2018, https://www.huffingtonpost.ca/entry/obama-ghana-speech-full-t_n_230009. It is easy to point fingers, and to pin the blame for these problems on others. Yes, a colonial map that made little sense bred conflict.

[13] Harold D. Nelson, *Kenya, a Country Study* . . . , 3-6. Precolonial Kenya was a stateless landmass, occupied by discordant Bantu, Cushitic and Nilotic peoples who migrated into the region between 500 B.C. and 1000 A.D.13 International interest in the region however started with the arrival of the Arabian and Persian traders in the 8th century. The interaction between the Arabs and Bantu peoples developed Swahili as the lingua franca of trade. The Portuguese also arrived in the region in 1498, which led to a confrontation with the Arabs that saw them exit in the late 1600s, following a 33 month siege, leaving the coastal region under the control of the Imam of Oman; Kofi Annan, *Interventions: A Life in War and Peace*. (New York: Penguin, 2013), 171.

colony in 1920 and remained so until independence in 1963.[14]

The European scramble for Africa targeted the massive untapped natural resources of the region to support its industrial revolution, and focused on acquiring land for agriculture to feed a surging European population. Between 1897 and 1915, the British invoked the Land Acquisition Act of 1894 and the Crown Lands Ordinance No. 21 (1902 and 1915) to declare all land in Kenya as Crown land. This gave the British leeway to dispossess indigenous communities of their land in the highly productive highland areas of the Central and Rift Valley regions, then occupied by Kikuyu, Maasai and the Kalenjin peoples.[15]

By the time of independence in 1963, white farmers, comprising merely 0.25 percent of the population, owned half of the agricultural land in Kenya.[16] The colonial land policy made indigenous communities' claim to ancestral land tenuous, begrudgingly rendering them tenants of the Crown. By failing to recognise the customary land tenure systems, the British obviated any possibility for compensation. The British also prohibited indigenous communities from engaging in commercial agriculture.[17] From 1963 onward, land in Kenya has remained both an economic asset

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[14] Harold D. Nelson, *Kenya, a Country Study* . . . , 3. Following the Berlin Conference of 1884-1885, the east African region comprising present day Kenya and Uganda became the British East Africa Protectorate in 1895.

[15] *Ibid.,* Preface xiv. Kikuyu, Maasai and Kalenjin are three among the 42 ethnic groupings in Kenya who were mostly affected by the British land grab. Kenya's 42 ethnic groups can be divided into three broad linguistic groups: Bantu, Nilotic and Cushite. Major ethnic groups include the Kikuyu, Luo, Luhya, Kamba and Kalenjin who together account for 70% of the population. The principal non-indigenous ethnic minorities are the Whites, Arabs and Asians.

[16] Roger .M. Van Swanenberg, *Agricultural History of Kenya to 1939*, Nairobi: East African Publishing House, (1972). The White Highlands comprised over 3 million hectares of land.

[17] John Lonsdale, "Kenya: Ethnicity, Tribe and State, Open Democracy," 17 January 2008, accessed online 14 April 2018, https://www.opendemocracy.net/article/kenya_ethnicity_tribe_and_state. Peter Veit, Brief: History of Land Conflicts in Kenya, Focus on Land in Africa, accessed online 14 April 2018, http://www.focusonland.com/download/52076c59cca75/. The colonial masters introduced a "hut tax" (form of rent that made Africans tenants of the settlers) and granted landless Africans some token land, in exchange for their labour. This essentially made Africans squatters in their own land; Hastings W.O Okoth-Ogendo, *Tenants of the Crown: Evolution of Agricultural Law and Institutions in Kenya*, (Nairobi: African Centre for Technology Studies Press, 1991); Paul M. Syagga, *Public Land,*

and a peace liability in equal measure.

Imperial British Divide and Rule Strategy

Under the Native Trust Bill of 1926, the British hoarded displaced indigenous

communities into "Native Reserves," ostensibly to separate them from white settler

farms. Natives only had the right to use land in these reserves but not possession.

Non-natives were however entitled to 33-year land leases. As was the case in the

apartheid South Africa in 1934, the colonial powers fixed boundaries of the "Native

Reserves" (in essence creating ethnic enclaves in the process) and the European

settlements or the "White Highlands." These Native Reserves and White Highlands

came to define the country's administrative units.[18]

Besides confining indigenous Kenyans into ethnic enclaves, the British also

co-opted the conquered indigenous rulers and chiefs as allies and proxies in the

"Provincial Administration" that administered the colony.[19] This clever move gave

the infamous imperial rule an African face, presenting a buffer between the colonial

rulers and the indigenous communities who were opposed to it. As John Lonsdale

argues, both settlers and Africans colonized the state and contributed to the benefit of

Historical Land Injustices and the New Constitution, (Nairobi: Society for International Development, SID, 2011).

[18] Report of the Kenya Land Commission, Republic of Kenya, HM Stationery Office, 1934, para 1979, accessed online April 19, 2018, https://www.scribd.com/doc/74835533/CAB-24-248-The-Kenya-Land-Commission-Report-1934. The ethnic "Native Reserve" enclaves were later designated as administrative units, from the village, locations, divisions, districts and provinces. Clusters of villages under indigenous headmen formed locations, superintended by native sub-chiefs and chiefs, usually appointed by the British. Clusters of locations formed divisions, under the administration of white District Officers. Based on geographical size, two or more divisions were clustered into districts, administered by white District Commissioners. Clusters of districts formed provinces under white Provincial Commissioners. This system of administration was designed to champion colonial policies and enforce its decisions with military efficiency.

[19] "Under the Provincial Administration native village elders and chiefs were co-opted into the imperial administration structure as indigenous headmen in charge of villages, reporting to indigenous chiefs in charge of locations, through to white District Officers and District Commissioners at the division and districts levels. The districts were large administrative units, carved out as ethnic enclaves. Clusters of districts formed the seven provinces of the Rift Valley, Nyanza, Western, Eastern, Central, Coast, Coast while Nairobi, though geographically smaller, was treated as the eighth province due to its status as the capital city." Evanson N. Wamagatta, "African Collaborators and Their Quest for Power in Colonial Kenya: Senior Chief Waruhiu wa Kungu's Rise from Obscurity to Prominence, 1890-1922." The International Journal of African Historical Studies 41, no. 2 (2008): 295-314.

a select few and the marginalization of entire communities.[20] Mahmood Mamdami

agrees that by collaborating with specific groups in their direct rule policy,

colonization emboldened rather than attenuated ethnic identity.[21] The British divide

and rule policy's role in playing communal groups against each other and "turning

fluid groups of individuals into immutable ethnic units," is also affirmed by Caroline

Elkins. [22]

Moreover, faced with an 80 percent revenue deficit, the colonial state later co-

opted the Kikuyu community into commercial agriculture, previously undertaken by

white farmers only, in order to boost revenue to sustain the colony. The move made

the Kikuyu Native Reserves the second strongest economic centre after the White

Highlands. As Lonsdale notes, "By geographical accident, the Kikuyu had a head start

in making money, advancing political ambitions and acquiring modern managerial

skills."[23] This, coupled with the use of indigenous collaborators in the colonial state's

administrative structure, led to the emergence of a privileged clique of wealthy

Kenyan elites.[24]

Handover of Power and the Conduct of the Postcolonial State

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[20] John Lonsdale, Kenya: Ethnicity, Tribe and State . . . The distinction between *negative* and *positive ethnicity* sits within a continuing tradition of thinking that ethnicity is a "universal human attribute," neither intrinsically positive nor negative, but made so in specific circumstances. These include "politicised tribalism," as well as in tussles over state power, where the state is described "as a cockpit of variously contested but always unequal power."

[21] Mahmood Mamdani, *Citizen and Subject*. London: James Currey, 1996.

[22] Caroline Elkins, "Ethnic Woes a Legacy of Colonialists' Power Game." *Third World Resurgence* 211 (2008), 24.

[23] John Lonsdale, Kenya: Ethnicity, Tribe and State . . .

[24] "African collaboration was a pillar of European colonialism in Africa because collaborators were the nexus between the colonizers and the colonized. Collaborators were active or passive, educated or uneducated elites, and they collaborated commercially, administratively, educationally, and ecclesiastically. There were formal and informal collaborators such as chiefs, headmen, mission workers, teachers, dispensers, policemen, soldiers, and interpreters. They were collectively an indispensable channel through which the dictates of imperial rule are handed down; and up through them are transmitted the responses and reactions of the governed. There were many individuals who aspired to collaborate because the allure of what colonialism had to offer. Collaboration attracted those who hoped to benefit from the wealth, power, prestige, and influence derived from the colonizers, and thereby preserve or improve their social, political, or economic standing" Evanson N. Wamagatta, African Collaborators . . .; Kofi Annan, *Interventions* . . . , 18.

Landlessness and inequalities among indigenous communities stimulated intense grievances, culminating in the Mau Mau uprising of 1952; a violent campaign to force restoration of the "stolen land" that lasted ten years.[25] As the wave of independence swept across Africa in the 1960s and under pressure from the Kenyan freedom struggle, it dawned on the British that their dreams of making Kenya a white man's country would not hold.[26] Their recourse was the protection of "their land" and investments in coffee and tea plantations. Accordingly, they proposed "willing buyer willing seller" as a basis for returning land to indigenous Kenyans. Although then prime minister designate Jomo Kenyatta acquiesced, this move irked indigenous Kenyans who found it absurd to be asked to buy back land that had been unfairly taken away from them.[27]

According to Caroline Elkins, the quest to protect economic and geopolitical interests also led the British to manipulate the succession plan in the lead up to independence in 1963. This included drawing up electoral boundaries to influence ethnic representation and empowering the Provincial Administration to manipulate supposedly democratic outcomes. Elkins concludes that:

> Far from leaving behind democratic institutions and cultures, Britain bequeathed its former colonies corrupted and corruptible governments. Colonial officials hand-picked political successors . . . lavishing political and economic favours on their protégés. This process created elites whose power extended into the postcolonial era. In many former colonies, the British picked favourites from among these newly solidified ethnic groups and left others out in the cold. [They also left] behind legal systems that facilitated tyranny, oppression and poverty rather than open, accountable government . . . [thereby setting]

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[25] Harold D. Nelson, *Kenya, a Country Study* . . . , 41. The British imported Asian labourers to aid in the construction of the Kenya-Uganda railway to open the hinterland for economic reasons. Colonial society in Kenya was marked by clear physical, linguistic and cultural distinctions among the indigenous Africans, Asians and the Europeans. Asians were ranked above indigenous Kenyans, coming second to the Europeans. The political and social status of each of these groups stood in inverse relation to its numbers.

[26] *Ibid*., Preface xxii.

[27] John Lonsdale, Kenya: Ethnicity, Tribe and State . . .

dangerous precedents…[28]

Effectively, colonial rule dispossessed indigenous Kenyans of their land and provoked ethnic consciousness through divide and rule and the establishment of ethnic enclaves. Postcolonial regimes in Kenya however did little to foster national cohesion or redress the colonial era grievances over land.[29] John Linsdale argues that the postcolonial state instead retained colonial era land tenure policies, including the *de facto* ethno-territorial administrative units (Native Reserves), and the unaccountable powers of the president over land. The Kenyan Truth, Justice and Reconciliation Commission (TJRC) of 2008 also noted in its report that postcolonial leaders in Kenya skewed the British funded settlement schemes, meant to facilitate the redistribution of white settler farms back to indigenous Kenyans.[30] The postcolonial regime supported the president's own community, the Kikuyu, in forming land buying companies. Kikuyus thus ended up acquiring more land in the former White Highlands in the Rift Valley thereby disenfranchising the rightful owners, the Maasai and Kalenjin communities.[31]

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[28] Caroline Elkins, Ethnic Woes a Legacy of Colonialists . . .

[29] Harold D. Nelson, *Kenya, a Country Study* . . . , 35-43, 61-63. The postcolonial regimes in this case are Kenya's first President Jomo Kenyatta's administration which ruled from 1963 until his death in 1978 and the second President Daniel Arap Moi who succeeded Kenyatta in 1978 to 2002; Kofi Annan, *Interventions*…, 167, 187. It started with looting by Luo, of Kikuyu businesses and homes – as if in recompense for what they had been denied - and then grew, in an escalating cycle of insecurity and tribe-on-tribe violence that dragged in [nearly] all of Kenya's ethnic communities. Fear of being disallowed a turn at the feeding station of state resources was met with the equal fear of falling into the deprivation of those barred from it. Anger turned to looting. Looting created insecurity. And insecurity then drove violence, brutality and . . . systematic mass murder. Among other atrocities, there were reports of buses being stopped by gangs armed with machetes, forcing passengers to show their identification cards. These revealed family name and paternal birthplace, thus indicating tribe. If your card gave the wrong answer, you were beaten or killed.

[30] Kenya, "Final Report of the Kenyan Truth, Justice and Reconciliation Commission, Volume IV," (2013), 7, accessed online 23 April 2018 https://www.jfjustice.net/downloads/1460970274.pdf.

[31] John Lonsdale, Kenya: Ethnicity, Tribe and State . . . ; Report of the Truth Justice and Reconciliation Commission, Republic of Kenya, Volume IV, 2013, 7. Given the financial advantage Kikuyus had derived from their agricultural activities under the colonial state and their political connections under the postcolonial state, the system favoured them over all other ethnic groups. They therefore acquired land in settlement scheme in Coast Province, Rift Valley Province, and

Besides manipulating the land tenure system to benefit a few and solidify their political base, the postcolonial regimes also grossly tampered with the constitution to consolidate power and stifle opposition. As Rok Ajulu observes, the postcolonial political culture in Kenya entailed manipulation of political institutions, turning elections into platforms for rewarding loyalists and locking out dissenting voices. [32] It also continued to rely upon the Provincial Administration, a carryover from the colonial state, to control the country. By 1969, the multiparty political system was banished and the constitution subsequently repealed in 1983 turning Kenya into a *de jure* "one party state," essentially alienating any opposition.[33]

Under pressure from civil society and the international community, Kenya reintroduced multiparty politics in 1991. The move led to the mushrooming of an array of political parties formed largely along ethnic lines, with no clear ideological basis, further widening societal cleavages.[34] According to the *Report of the Commission of Inquiry into the Tribal Clashes of 1992 and 1997*, the multiparty elections of 1992 and 1997 resulted in ethnic clashes based on extant grievances over land distribution. The Commission established that the clashes were experienced mostly within the Rift Valley region in areas around the former White Highlands

other locations across the country. By 1977, about 95% of the former White Highlands had been transferred to black African ownership, principally Kikuyu, but also Embu and Meru (together these ethnic groups comprised 30% of the population). By 1989, 35 per cent of the population in the Rift Valley comprised of "newcomers," under these settlement schemes. This outraged the other ethnic groups and has been a source of long-term ethnic animosities.

[32] Rok Ajulu, "Kenya's 2007 Elections: Derailing Democracy through Ethno-Regional Violence." Journal of African elections, special issue: Kenya, 7 (2), 2008, pp. 34-51; Kofi Annan, *Interventions . . . , 172.*

[33] Jennifer A. Widner, *The Rise of a Party-State in Kenya: From Harambee! to Nyayo!* (Los Angeles: University of California Press, 1993), 145. A One Party state system meant that the president, as the leader of the ruling party could stand unopposed in elections, with no term limits. It also meant that anyone who fell out with the president could be expelled from the party and consequently barred from active politics. These personalisation of political institutions saw the marginalisation of ethnic groups whose leaders were opposed to the ruling party and served to aggravate perceptions of economic as well as political inequality and marginalisation.

[34] Rok Ajulu, "Kenya's 1997 Elections: Making Sense of the Transition Process." New England Journal of Public Policy, 14 (1), 1998, pp. 73-88.

where land was reallocated to persons deemed to be "outsiders" by the indigenous communities.[35]

Whereas the borders imposed by imperial powers were essentially random, it is worth noting that after independence, African leaders found it prudent to keep the colonial era borders, rather than precipitate inter-state conflicts over their restructuring.[36] Furthermore, it can only be a matter of speculation as to how, without colonial meddling, indigenous state formation in Africa would have played out. The inappropriateness of the heterogeneous states created by imperial powers is also negated by the plight of the volatile homogenous failed state of Somalia and the conflict prone bipolar states of Rwanda and Burundi. It is also too late in the day to keep blaming African problems on colonial era legacies. Former US President Barack Obama during a visit to Ghana in July 2009 echoed this by extoling that more than anything else, "African nations' own mismanagement and lack of democracy are to

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[35] Stephen Brown, "Lessons learnt and Forgotten: The International Community and Conflict Management in Kenya" in Gillies, David ed. *Elections in Dangerous Places: Democracy and Paradoxes of Peacebuilding* (Montreal: McGill-Queen's University Press, 2011), 127-143. Report of the Judicial Commission Appointed to Inquire into the Tribal Clashes in Kenya (Akiwumi Report), Republic of Kenya (Nairobi, Government Printer, 1999), 2. The 1992 election was the first time in independent Kenya's history that the president had to be directly elected by the people. While the election was widely seen as a major milestone in opening the democratic space within Kenya, it was marred by malpractices and well-coordinated electoral conflict, mostly in the Rift Valley region. Through propaganda and violence, the election was also reduced to an ethnic mobilisation contest. A second election was staged in 1997, where yet again, electoral malpractices and violence were witnessed in towns like Mombasa and Eldoret occasioning loss of human life and the displacement of populations in the Rift valley, Nyanza, Western and Coastal regions; Stephen Brown, "Theorizing Protracted Transition to Democracy." *Journal of Contemporary African Studies*, 22 (3), 2004, pp. 325–342. This was only the second time that postcolonial Kenya had a change of regime since independence in 1963, with Daniel Arap Moi who succeeded Jomo Kenyatta in 1978 handing over to Mwai Kibaki. The third multiparty election was held in 2002 and was rather peaceful by comparison to the 1992 and 1997 elections. The 2002 election also led to the realisation of a peaceful regime change for the second time in independent Kenya, in an atmosphere of relative, albeit temporary calm before a storm, further lending credence to Kenya's political stability.

[36] Peri Pamir, "Nationalism, Ethnicity and Democracy: Contemporary Manifestations." The International *Journal of Peace Studies* 2, no. 2 (1997): 1-12. Indeed, given that an ethnic redrawing of the African political map would give birth to over 300 new states, the OAU adopted, on the eve of its creation in 1963, the binding principle of *Uri Possidetis*, namely, implicit respect for existing boundaries, in a separate resolution from its Charter. Consequently, members of the OAU remained largely faithful to the policy of not granting assistance to secessionist movements in Black Africa, a prominent illustration being their refrain from providing support to the Biafran movement during the Nigerian civil war of 1967 to 1970.

blame for their economic and social problems."[37] Indeed, land grievances in Kenya

are more attributable to the skewed redistribution by the postcolonial state than by the

initial dispossession by the British.

An obvious nexus exists between colonial era legacies and postcolonial poor

governance in stirring grievances that continue to threaten the stability of the Kenyan

state. While colonial powers unfairly dispossessed indigenous communities of their

ancestral land, it is the postcolonial state that failed to fairly manage restitution. By

skewing land redistribution in favour of one community and failing to revert to the

customary land tenure systems, the postcolonial state perpetuated historical injustices

over land.

Further, by establishing ethnic enclaves, the British hindered the integration of

the discordant communities that were arbitrarily clustered together to form the state of

Kenya. This move roused ethnic consciousness and engendered ethnic entitlements to

land within the Native Reserves, which to date, has worked against national

cohesion.[38]

At the backdrop of the unfair redistribution of land was the evolution of a

political culture where power, resources and opportunities have been derived from the

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[37] Barack Obama, Speech, Ghanaian Parliament, Accra, Ghana, 11 July 2009, accessed online 23 April 2018. https://www.huffingtonpost.ca/entry/obama-ghana-speech-full-t_n_230009; "Since independence, Kenya was ruled by interchanging ethnic cliques who, copying the self-enrichment of the white settlers before them, used public office to accumulate wealth for themselves, their kin and their tribe. At a changeover of power, such unfairness seemed to justify a redirection of resources in equal measure to the tribe of the new rulers. Corruption grossly pretended to be righteous and swelled with every passing government." Kofi Annan, *Interventions* . . . , 185.

[38] Mohammed Ayoob, "State-Making, State-Breaking and State Failure: Explaining the Roots of 'Third World' Insecurity." In *Between Development and Destruction*, pp. 67-90 (London: Palgrave Macmillan, 1996), 104. As testament to the enduring characteristic of colonial era legacies, the 47 districts existing at independence form present day counties the second tier of government in Kenya today. Most of these counties are homogenous tribal enclaves, with some even ironically named after the ethnic groups occupying them such as Embu, Mbeere, Meru, Turkana, Samburu, Nandi, Taita Taveta, Kisii, Teso and Pokot counties. Use of such ethnic inclined administrative units as basis for governance may be counterintuitive for national cohesion. As Ayoob asserts, the idea of the ethnic nation is a permanent provocation to war, with such fragmentations likely to result either in ethnic cleansing or further enclaves.

state. This has heightened the clamour by communities to access state power. It also bred unhealthy do-or-die political competition, with mobilization occurring along ethnic lines. The centralization and consolidation of power in the presidency and stifling of opposition through a single party system led to the exclusion of leaders with dissenting opinions together with their ethnic groups from government. This served to aggravate extant grievances, inequalities and marginalization. For the most part, the 2007/2008 post-election violence was an eruption of the simmering tensions emanating from grievances over skewed land restitution in Kenya.

SECTION 2: CHARACTERISTICS OF THE POST-ELECTION VIOLENCE OF 2007/2008

. . . despite the tragic number of people already dead, we had averted a disaster of far greater potential. We had achieved something far too elusive in the history of peacemaking - halting a spiral of violence before too many of either side have little left to lose and live on only for vengeance.[39]

- Kofi Annan in *Interventions: A life in War and Peace.*

According to Roger Cohen, the Kenyan PEV of 2007 was an "African Genocide Averted."[40] But did the killings of 1,133 and displacement of over 350,000 Kenyans in the PEV constitute acts of genocide?[41] This section will review the PEV through genocidal, mass atrocities and crimes against humanity lenses with a view to identifying its true character.[42] This will be accomplished by relating relevant elements of Stanton's *Eight Stages of Genocide*, Maureen Hiebert's *Theorizing Destruction: Reflections on the State of Comparative Genocide Theory* and Israel Charny's *12 Ways to Deny Genocide*.

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[39] Kofi Annan, *Interventions . . .* , 200-202.

[40] Roger Cohen, African Genocide Averted . . .

[41] Report of the CIPEV . . . , 345-351.

[42] Africa Center for Strategic Studies Q&A: Lessons in Preventing Genocide in Africa since Rwanda April 7, 2017, accessed online 22 April 2018, https://africacenter.org/spotlight/lessons-preventing-genocide-africa-since-rwanda-lakin/. The terms *genocide, ethnic cleansing, war crimes* and *crimes against humanity* are often used interchangeably and are all classified within the larger frame of mass atrocities *mass atrocities*.

As alluded to in the preceding section, much of the electoral related violence experienced in Kenya since 1992 was in areas where "newcomers" were settled in former white farmer settlement schemes. According to John Lonsdale, the 1992 and 1997 elections were both marred by land conflicts, violence and population displacement, with much of the civil strife centred in areas where "immigrant" groups were located. Grievances arising from dispossession by white settlers and the fact that the land changed hands from the white man to "newcomers" tends to make the "immigrant" groups an "other" among indigenous communities. Lonsdale notes that the recurring ethnic violence and displacement that have followed Kenya's elections under multi-partyism largely stem from unresolved and politically-aggravated land grievances.[43]

Ryszard Kapuscinski advances two concepts at the heart of human abhorrence. One is the doctrine of *apartheid*, which he defines as "structural permanent inequality, dividing mankind … [and] belief that only … the members of our clan, our society [are human] and that … all others are subhuman or not human at all." [44] The second one is *xenophobia* which he describes as a product of inferiority complex and an aversion to the "other." [45] These two concepts at the heart of human hatred could explain why "newcomers" who purchased land in areas that had belonged to other ethnic groups are treated with hostility by their fellow Kenyans.

"Classification", "symbolization" and "dehumanization" are three among Stanton's eight stages of genocide.[46] These three stages fit in with Hiebert's *Identity*

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[43] John Lonsdale, Kenya: Ethnicity, Tribe and State . . .

[44] Ryszard Kapuscinski, *The Other* (New York: Verso Books, 2008), 19, 82-83.

[45] *Ibid*.

[46] Gregory H. Stanton, The eight Stages of Genocide. Genocide Watch (1998). *Classification*, according to Stanton, takes the form of division of the natural and social world into categories, the distinguishing and classification of objects and people between "us" and "them," between members of our group and others." *Symbolization* entails the use of symbols to name and signify human

Construction theory, by casting the victim as "Other, Sub-or Non-human." The three

stages also accord with Hiebert's *Structural Approaches* theory, which identifies

"culture and societal cleavages," as playing roles in perpetuating genocide or ethnic

cleansing. Michel Waikenda asserts: "In 2007, [Kenyan opposition leader] Odinga

rallied his supporters behind the propaganda of "41 [tribes] against one."[47]

Kofi Annan also alludes to this "41 against 1" campaign rhetoric, which

exacerbated existing societal cleavages, playing 41 communities against the one that

had one of its own as the President.[48] This exploitation of historical cleavages over

land in which Kikuyus are seen as the greatest beneficiaries led to their singling out as

the "other," thereby leading to their targeting for elimination and expulsion. The PEV

largely pitted Kikuyus against the Kalenjins and Luos, with Kisiis also targeted in

areas they had settled on land perceived to belong to the Kalenjin. This clearly depicts

major rifts within the society.[49]

Kikuyus in the Rift Valley were also derogatorily referred to as *madoadoa,*

(spots), in itself a form of dehumanization which endangered them in settlements

where they were the outright minority. In its report, *the Commission of Inquiry into*

the Post-Election Violence in Kenya in 2007 (CIPEV) noted that "threatening terms"

were routinely used against the Kikuyu such as "*madoadoa* [spots], *maharagwe*

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classifications such as the naming of some people as Hutus, Tutsis, Jewish Gypsy, Christian or Muslim. *Dehumanization* according to Stanton, is the denial of the humanity of others, which subsequently permits killing with impunity. Stanton notes that "The universal human abhorrence of murder of members of one's own group is overcome by treating the victims as less than human. In incitements to genocide the target groups are called disgusting animal names - Nazi propaganda called Jews "rats" or "vermin"; Rwandan Hutu hate radio referred to Tutsis as "cockroaches."

[47] Michel Waikenda, "Too Late for 40 Versus Two," The Star Daily, Nov. 28, 2016, accessed online April 7, 2018, https://www.the-star.co.ke/news/2016/11/28/too-late-for-40-versus-two_c1461370.

[48] "This was why, despite the warning signs, few saw what was coming. The long-held pre-eminence of Kikuyu elites in Kenyan politics meant that, in the run-up to the 2007 election, the opposition campaign positioned itself as geared to overthrowing this inequality. At the local level, particularly among the many poor communities, this political framing of the campaign increasingly developed into a sense of a coming reckoning, of '41 against 1' - referring to the forty-one Kenyan tribes other than the dominant group, the Kikuyu." Kofi Annan, *Interventions* . . . , 186.

[49] Report of the CIPEV . . . , 102.

[bean], *bunyot* [enemy], *sangara* [wild grass]" with the additional notation that they should be "uprooted."[50]

Culture as propounded in Hiebert's *Structural Approaches* theory is also manifested during the charged political campaigning period. The Kikuyus find Luos culturally repugnant for being uncircumcised. To Kikuyus, an uncircumcised Luo remains a *kihii* or "boy," who for having missed out on a culturally important initiation stage, cannot be entrusted with leadership. For this reason, male Luo victims were brutally circumcised by Kikuyu perpetrators.[51]

"Organization" is another stage Stanton advances, which looks at states or militias as perpetrators. It fits well with Hiebert's *Agency-Oriented Approaches* which assesses the role of elites, frontline killers or society in perpetrating mass atrocities. CIPEV observed that at the onset, the PEV was for the most part spontaneous, having been triggered by allegations of a rigged election. Subsequent patterns of violence however "showed planning and organization by politicians, businessmen and others who enlisted criminal gangs to execute the violence."[52] In CIPEV's opinion, the violence was more than a mere juxtaposition of citizens-to-citizens opportunistic assaults. CIPEV also identified several leaders, labelled as "elite perpetrators," who it had reasons to believe bore the greatest responsibility for the violence.[53] Secondly, CIPEV recorded the use of criminal gangs such as the "Mungiki." These were among

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[50] *Ibid.,* 63.
[51] *Ibid.,* 258.
[52] *Ibid.,* viii-ix.
[53] *Ibid.,* 15-19. Based on its findings, CIPEV handed an envelope containing the names of persons it considered to have played a key role in orchestrating the PEV to Chief Mediator Kofi Annan and recommended that either a special tribunal be established within Kenya for their trial or the names be transmuted to the International Criminal Court (ICC) to ensure that these "elite perpetrators" are held to account. Following delays in the setting up of a local mechanism for their trial, the names were handed over to then ICC Chief Prosecutor Louis Moreno Ocampo. Ocampo subsequently opened up investigations and subsequent prosecutions of six individuals from among those identified by CIPEV. All the cases against the six however collapsed for varied reasons, key among them unavailability of credible witnesses and the prosecutor's reliance on civil societies and media reports instead of launching independent investigations.

the organized youths and in some instances police officers, who carried out the

killings of the 1,133 victims of the PEV, which agrees with Hiebert's theory on

frontline killers.[54]

According to Stanton, "polarization" is yet another genocide stage that draws

in extreme perpetrators, polarizing the conflict in action-reaction cycles to such an

extent that a negotiated settlement becomes untenable. CIPEV recorded signs of

polarization in the Kenyan PEV as follows:

> On the 31st December [2007] I saw Kalenjin warriors being ferried by
> lorries from the Ziwa area. They were armed with arrows and bows.
> Immediately after alighting from the lorries they met with a rival group
> of Kikuyu youth from Munyaka . . . They were armed with *pangas*
> (machetes) and *rungus* (clubs). Then a confrontation ensued between
> the Kikuyu youth and the Kalenjin youth. The Kalenjin would shout at
> the Kikuyus who would in turn respond by charging at them with the
> clubs and machetes. Shortly thereafter, police arrived on the scene and
> dispersed the combatants. The Kalenjins retreated towards the bushes
> in the Junction area and the Kikuyu retreated to Beta Farm. The
> Kalenjins set houses on fire as they retreated.[55]

Moreover, as Hiebert argues in the *Structural Approaches* theory, genocide

often takes place under the guise of crises, revolution or war. A disputed election

provided a perfect excuse for some to take the law into their own hands, venting deep-

seated grievances rooted in historical injustices over land.[56] Prospects of a rigged

election as a trigger for mass atrocities are also affirmed by Lee Ann Fujii. She posits

that ethnicity based approaches explain the inherently competitive and often

antagonistic ethnic group relations, whose levers could lead to atrocities or mass

murders. Fujii explains that:

> . . . ethnic hatreds can persist over generations, even centuries, through myth,
> memory or both. Despite the passage of time, these hatreds do not necessarily
> lessen or alter but remain dormant or even 'simmer' until something or

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[54] *Ibid.*, 346, 348.

[55] *Ibid.*, 45-46.

[56] Kofi Annan, *Interventions . . .* , 187. Fear of being disallowed a turn at the feeding station of
state resources was met with the equal fear of falling into the deprivation of those barred from it.

someone pushes the lid off the pot at which point they may erupt or explode into mass-led violence against the hated group. [57]

Conveniently for the perpetrators, the chaos and confusion arising from violent protests over a rigged election drove them to yet another stage of genocide which Stanton refers to as "extermination," rather than murder. It implies that to the perpetrators, the victims are inhuman and therefore do not deserve to live.[58] Extermination is evinced by the 1,133 people killed in a timeframe of less than a month, invoking memories of the gruesome efficiency of the Rwanda genocide. Seven hundred and forty-four of these deaths occurred in the Rift Valley, where most White Highland farms did not revert to indigenous communities.[59]

While the United Nations proffers a clear definition of "genocide", lack of a scholarly consensus on the definition of genocide may cloud the description of the Kenyan PEV of 2007/2008 as an act of genocide.[60] However, the PEV rightly fits into the ambience of mass atrocities. As the father of genocide, Raphael Lemkin observed, "Genocide is a new word, but the evil it describes is old."[61] While history is awash with cases where democratization processes have often been bloody, this does not justify the Kenyan violence.[62] Notwithstanding the controversies surrounding the definition of genocide, failure to acknowledge atrocities like the ones Kenya faced amounts to "denial," which constitutes Stanton's final stage of genocide. By not describing the killings in Rwanda in 1994 as genocide, the United Nations caused

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[57] Ann Lee Fujii, *Killing Neighbours: Webs of Violence in Rwanda*. (New York: Cornwell University, 2009), 4.

[58] Gregory H. Stanton, The eight Stages of Genocide . . .

[59] Report of the CIPEV . . . , 311, 335-336; Lee Ann Fujii, *Killing Neighbours* . . . , 2.

[60] United Nations, Convention on the Prevention and Punishment of the Crime of Genocide (1948). Accessed online 21 April 2018. http://www.preventgenocide.org/law/convention/text.htm.

[61] Raphael Lemkin, "Genocide," *The American Scholar,* Vol. 15, No. 2 (1946): 227-230.

[62] James Livesey, *Making Democracy in the French Revolution*. Vol. 140. Massachusetts: Harvard University Press, 2001, 19; Linda Frey and Marsha Frey. *The French Revolution*. Connecticut: Greenwood Publishing Group, 2004, Preface. Hutchison, Coleman, ed. *A History of American Civil War Literature*. Cambridge University Press, 2015.

inaction over a bloodbath that could easily have been prevented.

As Adam Jones argues, bounding conflict situations conceptually helps in understanding the comparative dynamics and generating prophylactic strategies that may be applied in emergencies.[63] Jones also cautions that certain conditions predispose societies to genocide, mass atrocities or "multicides," and more so where precedents exist. It must never be lost on Kenyans, for instance, that electoral-related violence has killed at least 4,433 people and displaced over 1.8 million since 1991.[64] The similarities of the Kenyan violence with the Rwanda genocide, including killing at close range, use of machetes, clubs, bows, arrows and use of rape as a weapon have generated precedents and the potential for recurrence.[65]

Separately, Israel Charny opines that humankind has always found ways through which to deny and even trivialize genocide. This includes questioning and minimizing the statistics, claiming that the deaths were inadvertent, rationalizing the deaths as the result of tribal conflict or even shockingly claiming that what transpired does not fit the definition of genocide.[66] Failure to acknowledge the magnitude of the Kenyan crisis therefore carries the danger of leaving related social cleavages and underlying grievances unresolved. This heightens the possibility of an even more severe recurrence.

SECTION 3: LESSONS FROM CANADA'S MULTICULTURALISM AND WAY FORWARD FOR KENYA

> *The campaign for African democracy is sometimes tripped up by ideas of cultural relativism. The reasoning goes as follows: democracy is a Western value, not a naturally African one. As with views emphasizing the culpability of colonialism, this*

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[63] Adam Jones, *Genocide: A comprehensive Introduction . . .* , 23.

[64] Human Rights Watch, Ballots to bullets: Organized political violence and Kenya's crisis of governance, 15 October 2008, available at: http://www. hrw.org/reports/2008/03/16/ballots-bullets.

[65] Ann Fujii, *Killing Neighbours . . .* , 2-3; CIPEV . . . , 348-350; Annan, Kofi. *Interventions . . .* , 187-188, 195, 198.

[66] Israel Charny, Templates for Gross Denial of a Known Genocide: A Manual, . . . in The Encyclopedia of Genocide, volume 1, page 168, accessed online 18 March 2018. http://www.thegenocidereport.org/genocide/genocide-denial.

serves only those who desire the moribund status quo. More important, such arguments are built upon entirely bogus and defunct reasoning.[67]

- Kofi Annan, *Interventions: A life in War and Peace*

The challenges bedevilling Kenya can be summed up into two phrases: grievances emanating from historical injustices over land redistribution, and a "winner take all" political system that excludes election losers from government. Fears of losing elections and prospects of perennial exclusion, inequalities and marginalization lead to do or die political mobilization, mostly along ethnic lines.[68] This widens social cleavages and rekindles past grievances with violent outcomes.

In mediations to end the PEV of 2007/2008, the Kofi Annan-led team identified long-term solutions to the Kenyan crisis. These included constitutional, institutional and land reforms, addressing poverty and inequalities and fostering national cohesion.[69] A decade later, the landscape is markedly different thanks to reforms the country has undertaken to create credible institutions. The adoption of a new constitution in 2010 created a second tier of government at the county level, reduced the powers of the presidency and anchored the independence of key institutions.[70]

The contribution of the reforms undertaken so far in stabilising Kenya,

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[67] Kofi Annan, *Interventions . . .* , 172.

[68] *Ibid.*, 187. Fear of being disallowed a turn at the feeding station of state resources was met with the equal fear of falling into the deprivation of those barred from it.

[69] Kenya National Dialogue and Reconciliation: Statement of Principles on Long-term Issues and Solutions, 23 May 2008, accessed online 21 April 2018, https://peacemaker.un.org/kenya-statementlongtermissues2008.

[70] The Constitution of Kenya, Republic of Kenya, (Nairobi: Government Printer, 2010), 107-121, accessed online 2 May 2018, http://www.wipo.int/edocs/lexdocs/laws/en/ke/ke019en.pdf. Final Report of the Task Force on Judicial Reforms, Republic of Kenya, July 2010. National Cohesion and Integration Commission, "Commission mandate," available at: http://www.cohesion.or.ke/index.php/about-us/mandate. The 2007 elections in Kenya: Independent Review Commission Report (IREC/Kriegler Commission) Government of Kenya. The Final Report of the Truth Justice and Reconciliation Commission of Kenya (2013), accessed online 21 April 2018, https://digitalcommons.law.seattleu.edu/tjrc/. Some of the key institutions created or revamped under Kenya's Constitution 2010 include the Judiciary, an independent Director of Public prosecutions, the Independent Elections and Boundaries Commission, the National Cohesion and Integration Commission, the Kenya Police Service, a Truth, Justice and Reconciliation Commission to address historical injustices, among others.

especially in restoring faith in national institutions such as the Judiciary cannot be discounted. The 2017 general election for instance tested Kenya's democratic system under the new constitution. The annulment of the presidential election results of 8 August 2017 by the Supreme Court just three weeks later, cited as due to irregularities, was touted as a bold step. The opposition boycott of a rerun staged in October 2017 and subsequent refusal to recognise the president as legitimately elected however led to mounting tensions, rekindling memories of 2007. It was a stark reminder that Kenya may still be standing on a precipice. And as Abdullahi Halakhe cautions, "Kenya's reform process is inchoate."[71] Despite the impressive progress, the country still needs to do more to avoid reversals in its democratic gains.

On 9 March 2018, President Uhuru Kenyatta and opposition leader Raila Odinga agreed to work together to "build bridges to a new Kenya," ending months of tension in the aftermath of the 2017 election.[72] The two leaders cited the worrying trend of ethnic antagonism and unhealthy political competition despite numerous reforms in the system of governance, as two indicators that more still needed to be done.[73] Under the circumstances where quite a good measure of reforms have been undertaken, one is bound to wonder in accordance with what rubric then should the country proceed to ensure lasting peace and stability?

Like Kenya, Canada's demographic composition is ethnically heterogeneous. Its citizens have come from many countries of origin and cultural backgrounds comprising Aboriginal, French, British and other nationalities who combine to form a

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[71] Abdullahi Boru Halakhe, "R2P in Practice: Ethnic Violence, Elections and Atrocity Prevention in Kenya." *Global Center for the Responsibility to Protect: Occasional Paper Series No* 4 (2013).

[72] Office of the President of the Republic of Kenya, The Presidency, "Building Bridges to a New Kenyan Nation," 9 March 2018, accessed online 21 April 2018, http://www.president.go.ke/2018/03/09/building-bridges-to-a-new-kenyan-nation/.

[73] *Ibid*.

model cultural mosaic. [74] Canada has had to contend with the ongoing restitution of

Aboriginal rights, addressing historic wrongs, managing secessionist demands by the

Quebecois, and integrating immigrants from around the world.[75] Peter Li affirms the

challenges Canada faces as follows:

> Underlying the popularity of the term "diversity" is a rising public
> awareness towards differences of people, which may be imagined or
> real, based on superficial distinctions such as skin colour and other
> features. The sensitivity towards racial differences has partly to do
> with a widely held belief that immigration since the late 1960s has
> altered the cultural mix of Canadians, and that the increase in diversity
> has caused, among other things, tensions and adjustments in Canadian
> society. Such a popular view is not entirely groundless, although many
> features are distorted or exaggerated.[76]

Kenya can thus learn a number of lessons from Canada, more so on diversity and its

broad acceptance as a way to heal social cleavages and foster national cohesion. But

is Canada's multiculturalism a panacea for heterogonous societies like Kenya?

Charles Taylor alludes to the politics of recognition and equal dignity, based

on the idea that all humans are equally worthy of respect.[77] Ryszard Kapuscinski on

the other hand defines multiculturalism as the theory of independently developing

cultures and recognising their right to an inviolable identity.[78] Kapuscinski however

cautions that all civilisations have a tendency towards narcissism and a desire to

dominate others.[79] Taylor further posits that multiculturalism enforces the need to

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[74] Stuart Soroka et al, "*The Art of the State III: Belonging? Diversity, Recognition and Shared Citizenship in Canada.*" Montreal: The Institute for Research on Policy, 2007, 1; Stuart Soroka et al "Ties That Bind? Social Cohesion and Diversity in Canada" in *Belonging?: Diversity, Recognition and Shared Citizenship in Canada,* ed. Banting, Keith G., Thomas J. Courchene, and F. Leslie Seidle. (Montreal: Institute for Research on Public Policy, 2007), 565. Canada's people are of Aboriginal, French, British, Northern Europe (Austria, Germany, the Benelux countries and Scandinavia), Eastern Europe, Southern European, South Asia, Middle East, Carribean and African ethnicity or ancestry.

[75] *Ibid*.

[76] Peter S Li, *Cultural Diversity in Canada: the Social Construction of Racial Differences*. Department of Justice, Research and Statistics Division, 2000.

[77] Charles Taylor, *Multiculturalism* (Princeton, New Jersey: Princeton University Press, 1992), 25, 26, 41.

[78] Ryszard Kapuscinski, *The Other . . .* , 47.

[79] *Ibid*., 44.

uphold individual identity as shaped by religion, gender, ethnicity, race and sexuality. He emphasises the need to guard against glossing over tensions that diverse cultural dynamics may cause.[80]

Multiculturalism is however distinct from tolerance, which Wendy Brown describes as tantamount to having to put up with or endure another, smirking moral disapproval. She argues that what plural societies need is catholicity of spirit, a disposition to indulge the opinions or practices of others without bigotry.[81] Separately, Anthony Kwame Appiah advances cosmopolitanism as an antidote to intolerance, urging that humans, as citizens of the world, ought to treat others in the same manner they would wish to be treated by them. Multiculturalism therefore is a "live and let live attitude" that treats others with dignity and understanding.[82]

Kenyans pride themselves in upholding cultural heritage as a way to honour individual ancestry, which enjoys constitutional protection.[83] Cultural diversity however need not jeopardise social cohesion. Integration can be realized amidst multiple diversities and values, based more on widespread engagement, participation and unity of purpose.[84] This resonates well with Canadian multiculturalism from which Kenya can borrow a leaf.

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[80] Charles Taylor, *Multiculturalism . . .* , 25, 26, 41.

[81] Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton: Princeton University Press, 2006), 25.

[82] Kwame Anthony Appiah, *Cosmopolitanism, Ethics In a World Of Strangers*, (New York, W.W. Norton & Company, 2006), 10, 60.

[83] The Constitution of Kenya . . . , 16. The main feature of the Constitution is article 11 which recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. Article 11 which is on culture commits the government to promote all forms national and cultural expressions through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural. The article further commits the state to protect the intellectual property rights of the Kenyan people. Other Articles of the constitution which are relevant to the convention include; Article 7 on national, official and other languages, Article 33 (b) on Freedom of expression in relation to artistic expression, Article 44 on language and culture and Article 56 on rights of minority groups in relation to developing their cultural values languages and practices.

[84] Stuart Soroka *et al*, Ties That Bind? Social Cohesion and Diversity in Canada, in *The Art of the State III: Belonging? Diversity, Recognition and Shared Citizenship in Canada* (Montreal: The Institute for Research on Policy, 2007), 567.

However, Beiner and Norman caution that multiculturalism could constrain the pursuit of interests of the citizens for the sake of pursuing the interests of immigrants, which is morally problematic. They further offer that respect for minority rights does not envisage protection from forces of modernity or the replacement of self-determination with "collectivism" in liberal societies. To them, it is about full and equal participation, with guaranteed access to education, technology, literacy, mass communication, and so on.[85] It is therefore imperative that the pursuit of political and cultural diversity in Kenya be geared towards promoting equality and protection of the rights of all citizens. Ethnic favouritism which has all along characterised the postcolonial state should be discarded. The state must always be oriented to being an enabler for the full potential of every citizen.[86]

Typology of Democracy

At the heart of reconciling national cohesion and Kenya's diversity is the inescapable debate as to which system of governance best suits heterogeneous societies. Renske Doorenspleet argues that heterogeneous societies are best suited for a decentralized governance structure.[87] Canada, a model of heterogeneity, has for instance adopted a federal parliamentary democracy as its system of governance, which promotes diversity and the self-determination of its people. Any visitor to Canada comes to marvel at the power wielded by its provincial and territorial governments.[88]

With democracy being "government by and for the people," the question of

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[85] Ronald Beiner and W. J. Norman. *Canadian Political Philosophy: Contemporary Reflections*. (New York: Oxford University Press, 2000), 17, 159, 161.

[86] Kofi Annan, *Interventions . . .* , 170-171.

[87] Renske Doorenspleet and Huib Pellikaan, "Which Type of Democracy Performs Best?" *Acta politica* 48, no. 3 (2013): 237-267.

[88] Canada's Constitution of 1867 with Amendments through 2011, 14, 16, 24, aaccessed online 22 April 2018, https://www.constituteproject.org/constitution/Canada_2011.pdf?lang=en. Lawmaking is a responsibility shared among one federal, ten provincial and three territorial governments.

who would govern in a situation where people disagree and hold conflicting

preferences is bound to arise in heterogeneous societies. [89] Arend Lijphart posits that

the majoritarian model of democracy may easily govern in divisive scenarios. He,

however, offers that the consensus model, which accepts majority rule only as a

minimum requirement and aims for broader participation in government and larger

support in society is "better" placed as a democratic model.[90] This view is backed by

Doorenspleet who argues that:

> Consensus democracies have multiparty systems, parliamentarism with
> oversized, inclusive cabinet coalitions, proportional electoral systems,
> corporatist interest group structures, federal structures, bicameralism,
> rigid constitutions protected by judicial review, and independent
> central banks. These institutions ensure that only a broad majority can
> control policy. Moreover, the coalition in power can only have a
> limited (negative) impact on minority rights in such a system. The
> system aims to be inclusive, and endeavours to find compromises
> between different groups in society. In contrast to consensus
> democracies, majoritarian systems concentrate political power in the
> hands of a simple majority.[91]

Due to potential for protracted decision-making processes, consensus democracy may

not be perfect. Lijphart however argues that its pros far outweigh the cons and

produces 'kinder and gentler' policies than majoritarian democracy.[92]

Way Forward

The current Kenyan government structure as adopted in 2010 provides for a

presidential system, with a second-tier government at the county level. This ethno-

federalism or autonomy at lower levels has proved a worthy counterweight to the

central government and a vent for past political tensions. [93] It gives people some

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[89] Arend Lijphart and Peter Humphreys, *Patterns of Democracy: The Westminster Model of Democracy, 2nd ed.* (New Haven: Yale University Press, 1999), 1, 2.
[90] *Ibid*.
[91] Renske Doorenspleet and Huib Pellikaan. "Which Type of Democracy Performs Best?" . . .
[92] Arend Lijphart, "The Pros and Cons-but Mainly Pros-of Consensus Democracy." *Acta Politica* 36, no. 2 (2001): 129-139.
[93] Constitution of Kenya . . . , 75-95, 107-201.

degree of self-determination at the grassroots. While Kenya's demographic patterns as

a heterogeneous society provide a natural safeguard against dominance by any one

group, the country still needs to get away from a "winner takes all" majoritarian

political system.[94] A consensus governance structure that allows for crafting of

coalitions after elections as happens in Canada or Germany has the potential to

appease losers, especially the minorities and also ensure that there is no imposition of

autocracy by the winning majority.[95]

There have been unfounded arguments to the effect that the Westminster

model of democracy is unsuitable for pluralistic African states. Yet Kofi Annan

asserts:

> In fact, in Africa the values of pluralism and collective decision
> making are ingrained in our oldest traditions, identifiable in the deepest
> vestiges of African culture across the continent. The traditional means
> of dispute resolution is to meet on the grass, under a tree and to stay
> until a solution agreed by all can be found. African communities from
> the village level upward have traditionally decided their course through
> free discussion, carefully weighing different points of view until
> consensus is reached. Even in the system of rule by chiefs, their leader
> still had to govern with the will and support of the people, otherwise
> the chief could be removed.[96]

It is therefore not the Westminster model of democracy that is unsuitable, but the

diversity of vested interests that often usurps the will of the electorate. At the heart of

any reforms therefore must be a genuine transformation of political norms and

national identity. Fifty-five years since independence, any move to redistribute land,

the greatest source of grievances in Kenya, can only open a Pandora's Box. But as

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[94] Harold D. Nelson, *Kenya, a Country Study* . . . , Preface xiv. While none of Kenya's 42 ethnic group constitutes a majority of Kenya's citizens, the largest ethnic group, the Kikuyu, makes up only 20% of the nation's total population. The five largest ethnic groups Kikuyu, Luo, Luhya, Kamba and Kalenjin, account for 70% of the population. The principal non-indigenous ethnic minorities are the Arabs and Asians.

[95] The Central Intelligence Agency (CIA), The World Fact Book, 2018, accessed online 22 April 2018, https://www.cia.gov/library/publications/the-world-factbook/fields/2128.html; Kofi Annan, *Interventions* . . . , 196.

[96] *Ibid*, 172.

Terry Karl contends, "democracies with severe income inequalities are unstable."[97] Only a society where relatively few people live in poverty offers the prerequisites for equal political participation. Future reforms in Kenya will therefore need to foster political, economic, social, legal, and cultural inclusion of all citizens. Redistribution of political and economic resources can bridge inequality and heal ethnic-based cleavages. Political and economic participation, as well as the creation of a conducive environment within which citizens can organize their private lives must be a top government priority.

CONCLUSION

This essay has demonstrated that colonial era legacies laid the foundation for a fragile state in Kenya. Through their direct rule, the British adopted a divide and rule strategy, alienated land from indigenous communities and confined them into ethnic enclaves. This, coupled with the creation of African elite collaborators and the subsequent manipulation of succession at the time of independence in 1963, roused ethnic consciousness and cast ethnicity as a framework for Kenya's social, political and economic organization.

Manipulation of succession at independence also bequeathed the postcolonial state a corruptible culture. The postcolonial state for the most part perpetuated colonial practices to control citizens, using the very policy tools it had inherited from the colonial masters. It also failed to restore customary land tenure systems, choosing instead to retain the unjust colonial land policies. The postcolonial state also presided over a skewed land redistribution process that favoured one community thereby disenfranchising others. Besides land, the state abolished the constitutional checks and

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[97] Terry Lynn Karl, "Economic Inequality and Democratic Instability," *Journal of Democracy* 11, No. 1 (2000): 149-156.

balances, consolidated power in the hands of the executive, and stifled opposition. These measures led to the continued exclusion and marginalization of those opposed to the government of the day and served to aggravate historical injustices and grievances.

These grievances and stifling of dissenting voices continued to simmer, compounded by a "winner takes all" political system that made strife for power a "do or die" ethnic-based affair. Through negative rhetoric, incitement to violence and mobilisation of community based armed youth gangs, politicians intimidated voters from cosmopolitan regions in order to guarantee victory. These tensions flared unchecked and found an opportunity to erupt following the crisis presented by the 2007 flawed elections. The similarities of the 2007/2008 violence with the Rwanda genocide and the precedents in 1992 and 1997 demonstrates the potential for grievances to be transmuted through generations, manifesting in episodes of violence years later.

While there is no ideal typology of democracy, inclusivity and consensus remain the best way forward for Kenya, lessons that can be drawn from Canada's unique cultural mosaic. There may also be no practical approach to redistribute land fifty-five years after independence as it would only open a hornet's nest. Creating an environment where every citizen is free to pursue their desired means of subsistence, with the state remaining a fair guarantor and enabler for all, will be instrumental in helping the nation chart a new progressive course.

This paper sought to contextually bind the Kenyan problem for what it is: ethnically defined social cleavages and grievances over land alienation, with manifest precedence for mass atrocities and even genocide. The essay has presented only the salient aspects necessary to contextualise the Kenyan post-election violence through

the lens of genocide, mass atrocities and crimes against humanity.

There are many other aspects of the Kenyan crisis that mirror conflicts in other countries in Africa which are worth further investigation. Possible areas for further review include: exploring options for a system of governance for Kenya, (parliamentary, semi-presidential, and so on, including mode of elections) and the reparation for victims of the violence as well as redressing the underlying historical injustices. [98] Options for justice may be explored within the scope of a Truth, Justice and Reconciliation Commission (TJRC) rather than trials.[99] Criminal trials are problematic due to their adversarial atmosphere which makes the litigation process an all-or nothing, or zero-sum game. Such a situation would be less than ideal for Kenya, which is faced by societal cleavages. Whichever path is taken, it must be geared towards promoting healing, reconciliation and national cohesion.

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[98] The political settlement in the aftermath of the post-election violence entailed a semi-presidential power sharing structure of governance between a president and a prime minister, with both sharing executive authority.

[99] Kenya, The Final Report of the Truth, Justice & Reconciliation Commission of Kenya (2013), available at htp://digitalcommons.law.seatleu.edu/tjrc/7. The Kenya Truth, Justice and Reconciliation Commission (TJRC) was appointed in 2008 to make findings in respect of gross violations of human rights inflicted by the State, public institutions and holders of public office, both serving and retired, between 12 December 1963 and 28 February 2008. Its findings and recommendations include the fact that between 1895 and 1963, the British Colonial administration in Kenya was responsible for unspeakable and horrific gross violations of human rights, adopted a divide and rule approach that created a negative dynamic of ethnicity, the consequences of which are still being felt today; and the irregular acquisition of land by the highest government officials and their political allies in the postcolonial regimes, all of which have been the focus of this paper. Unfortunately, the findings and recommendations of the Kenyan TJRC were conceived as witch hunt, with little prospects for reconciliation as was the case with the South African Truth and Reconciliation Commission of 1995. For this reason, the recommendations of the Kenyan TJRC have never been implemented to date.

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