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The Politics of Land Rights and Squatting  
in Coastal Kenya

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## Chapter 1

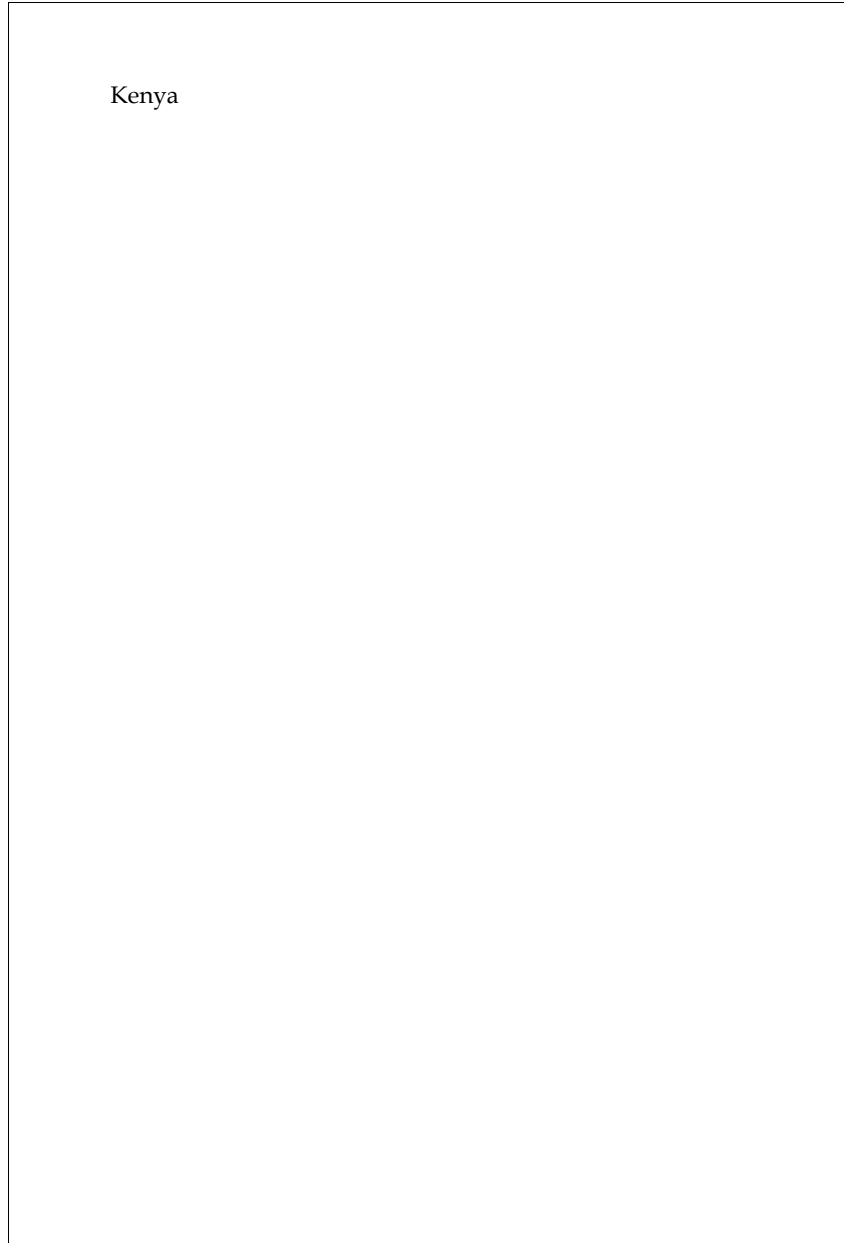
### Introducing the “Land Question Complex”

Until recently, there has been little systematic discussion of the socio-political conditions that shape the Land Question. This is particularly so when it comes to the issues of the control and ownership of land in sub-Saharan Africa. Most of the academic interest that has been shown in the Land Question has been concentrated on tenure reform and agriculture production. Especially debated is the issue of whether to transform Africa’s customary tenure systems or not. Some of these discussions, especially those that were published from the 1980s onwards, have been linked to efforts at mitigating the continent’s agrarian crisis. They, therefore, tended to focus more on the interrelationships between tenure changes/regimes and agricultural productivity in sub-Saharan Africa (see Migot-Adholla and Bruce, 1994).

Interest in issues of governance that began to dominate policy and political discourses from the late 1980s in the context of Africa’s deepening economic and political crisis also side-stepped questions of access to and control of land in spite of the fact that access to land is an important component of economics and politics on the continent. Even then, where access and control are discussed, there are clear overtones of “economic reductionism” which seem to becloud the quest for useful insights. In this regard, discussion is particularly focused on the connections between agricultural production and changes in land tenure systems in the framework of the conventional wisdom that the “communal” land tenure systems that are prevalent in much of sub-Saharan Africa are an obstacle to increasing agricultural production.

Economic reductionism has resulted in some observers arguing that the transformation of land tenure systems through the introduction of land individualization and titling will “provide investment security” which is necessary for increased agricultural output. This thinking has been reflected, not surprisingly, in the World Bank’s sectoral work and in the structural adjustment programmes it has supported across Africa. The Bank has been supporting titling efforts on the assumption that this will “ensure secure land rights, activate markets and increase agricultural production” (World Bank, 1989; also Platteau, 1992 for a critique of the Bank’s position). Experience has, however, led to a revision of this thinking, with attention shifting to support for naturally-evolving tenure systems rather than interventions for the imposition of individualization even in communities with low demands for individualization (see Platteau 1992; 1996; Bruce, 1993).

Map: Kilifi District



Source: Kilifi District Development Plan, 1994-96. Rural Planning Department. Office of the Vice-President and Ministry of Planning and National Development.

While there is a rich literature on the link between tenure and economic output or performance, there are very few studies on the socio-political aspects of the post-colonial Land Question. Recent attempts (Berry, 1993, and, to some extent, Mamdani, 1996) at elucidating these aspects have focused more on the evolution of the Land Question in the colonial period and appear to be aimed at moralising "customary tenure systems". They are, nonetheless, welcome efforts at shifting focus away from the "economic reductionist" approach that has for too long dominated discussions on African state-society relations (see, for instance, Bates, 1989).

The Land Question needs to be seen as one embedded in a dynamic and broad socio-political context (Basset and Crummey, 1993; Berry, 1993) and with a bearing on patterns of social relations in the society. How land is held and, specifically, how access to land is regulated are dimensions which are important to the mode of organisation of the economies and politics of particular social formations (Njeru, 1978; Glazier, 1985). Indeed, recent studies (Berry, 1993; Basset and Crummey, 1993; Mamdani, 1996) are increasingly premised on a recognition that changes in the structure of land ownership amount, essentially, to the re-orientation of an entire social formation. Therefore, any changes to land tenure systems, and particularly in the structure of ownership, must be seen in the context of a wholesale restructuring of the social formation and not just its agrarian system.

Of fundamental concern is that demands for the privatization of land ownership have not been accompanied by demands for the reform of agrarian structures and the conditions under which production takes place. The debate has not fully acknowledged that the Land Question is not about issues of production only; it is also about socio-political relations and the organization of society, and touches on virtually all structures of a given social formation. Even in Kenya where a land reform programme was started in the mid-1950s, the wider socio-political consequences of the reforms have not always been assessed or fully appreciated. Studies of struggles for access to land appear to receive little academic attention as if the Land Question was definitively settled after decolonisation. Yet, the Land Question has been crucial to the evolution of the main events that have shaped the country's post-independence politics at the local and national levels. This points to the need to look at the Land Question from a broader perspective.

The Land Question does not just consist of a single issue but several issues, each of which has other separate aspects and dimensions. It includes aspects such as land use and agrarian production; population growth/movements and changing settlement patterns; agrarian accumulation and class formation; ethno-regional identities; and peasant politics/social movements. These different aspects have additional dimensions anchored in continually changing social, political and economic structures. This dynamism, in turn, affects the content of the Land Question, thereby making it a "complex" issue of both economic and socio-political concern. Thus, the Land Question cannot

be reduced to a single issue and solution. Nor is reform of land tenure and its relation to agricultural production and/or land use by any means the only important component of the Question.

### **1.1 The Point of Departure**

The interpretation of Africa's economic crisis by foreign aid donors, agronomists, economists, and policy makers in terms of the prevalence of non-individualized tenure systems has led to the significance of other equally—if not more—important aspects and dimensions of the "Land Question complex" being given relatively less attention. But, to repeat, as equally important as the tenure system are dimensions such as land use and politics; relations of access to land and agrarian accumulation; and struggles of access to land and their linkages to broader struggles for democratization.

This study is about the "Land Question complex" in Kenya and it pays particular attention to issues of access to land and community politics; land and accumulation; and the politics of land tenure reform. The study discusses the various dimensions to each of these aspects of the Land Question and attempts to show the outcome of their interrelations. It is based on the results of a survey conducted in Kilifi district, Coast Province, between September 1995 and November 1996 as part of a wider one that covered two other districts—Nyambene and Uasin Gishu.

A case study drawn from Kenya, and the coastal region especially, is highly instructive and relevant to the on-going debates on the Land Question because the land reform programme in that country was fairly comprehensive and is one of the oldest in Africa. It began during the colonial period as a result of a report prepared in 1954 by the then deputy Director of Agriculture, R. J. M. Swynnerton, on how "to intensify the development of African agriculture in Kenya". The Swynnerton Plan (as the report is widely known) aimed at the privatization of land ownership through the displacement of indigenous land tenure systems in the Native Reserves and their replacement with a system that entrenched private property rights along the lines of English land law. The "scheduled areas" (the White Highlands) had already been re-organised along those lines since the beginning of colonial settler farming; the challenge that was left, as Swynnerton saw it, was to extend the reforms to the Native Reserves.

The reform programme was introduced in response to a growing economic and political crisis in the African Native Reserves that had been created by the colonial authorities as part of their strategy for alienating prime lands for settler agriculture. The rapid spread of the Mau Mau peasant resistance movement led to a deepening political crisis which the colonial state thought could be contained through the introduction of land individualisation. It was also assumed that the transformation of customary tenure would lead to increased agricultural production in the Reserves and,



thereby, weaken the ideological bases of the peasant resistance movement. However, contrary to the expectations of the colonial authorities, the reform led to more problems than those it aimed to solve. It generated more disputes over land ownership and resulted in a more skewed distribution of land. It also produced and reinforced ethnic-based interests in land, and made the Land Question more complex than ever.

The post-independence government simply retained the colonial land laws and pursued the same land reform objectives without any major alterations. The land policy also did not change in spite of the complex issues that developed around it, and despite the fact that the government, after independence, identified landlessness as a major constraint to the national goal of self-sufficiency in food (Republic of Kenya, 1965). Although these policies increasingly emphasised optimum land utilization and—supposedly—equitable redistribution, the repression of "radical land politics" through the exclusion of those nationalists who advocated "radical land redistribution policies" as a means of giving true meaning to decolonization, meant that the government only paid lip service to these objectives. This led to the neglect of inequalities in land ownership, even though this was one of the most important dimensions to the growing socio-economic inequalities in Kenya. This was so in spite of the existence of large tracts of under-utilised and/or idle land, even in high potential agricultural areas and in the former White Highlands in particular.

Besides the land reform policy, land market and political patronage have, over the years, become major instruments for regulating access to private and public land. With regard to public land, granting of rights tends to be linked to concerns about procuring and maintaining political support. The economic constraints that the country has been experiencing since the late 1970s have also had an equally important role in shaping the diverse context of the Land Question.

Although Kenya's economy grew vigorously in the 1960s, the oil crisis of 1973 and the drought of 1974 put the country on the path to an economic recession from the late 1970s. The coffee boom of 1977 did not help the country to recover fully. Indeed, the effects of the recession continued into the 1980s when the country also began to experience foreign exchange shortfalls. Its experience with SAP began during that period, although nothing much was implemented for a variety of reasons. Authoritarian tendencies and political opposition grew as politics took precedence over economics; there was increasingly excessive state intervention in the economy for the purpose of achieving political goals. The image of "Kenyan exceptionalism", characterised by high growth rates (compared to many countries in the region) and political stability began to fray. Poor economic growth rates characterised the 1980s and by the early 1990s some sectors such as agriculture started to show negative growth rates. The economy as a whole registered near negative growth rates in the early part of the 1990s. Only a few sectors recorded a rela-

tively good performance: finance, insurance, real estate and business services (average of 6 per cent growth) and domestic services (about 9 per cent growth).

Alongside a deteriorating economy, there was also change in the class and ethnic content of politics. President Moi ascended to the presidency in late 1978 after the death of President Kenyatta who had already established a tight patronage network that rewarded some of his clients with grants of public and former settler lands. Moi, thus, had to construct his own political support base. This he did by deconstructing the constituencies established by Kenyatta. But Moi's support base declined fast with the spread of the country's economic difficulties. To retain support, he began to rely extensively on even more direct forms of political patronage. Public economic institutions, especially state-owned corporations that were doing relatively well, provided the required resources for this purpose. The focus soon shifted to land in the prime areas of the coast where there was increased interest in tourism which had now become the main source of foreign exchange, the value of traditional agricultural commodities having declined. Grants of land were given to maintain or expand patronage networks and to get support from different sections of the political elite. This had the effect of making them indifferent to the spreading political and economic crisis ravaging the country.

Those who obtained these grants—especially in the coastal belt where there is land suited to tourism—generated capital for investments in the growing urban real estate, insurance and financial institutions, and in Asian owned companies.<sup>1</sup> In the meantime, the re-introduction of multi-partyism in early 1992 was accompanied by the reactivation of ethnic-based interests in land (territorial claims) which led to intense ethnic conflict between several groups.

The Land Question on the coast has a distinct history from the one up-country. Along the coast, and particularly along the ten-mile coastal strip which was under the "suzerainty" of the Sultan of Zanzibar, problems around the control and ownership of land have roots in the pre-colonial situation. The Land Question here began to form with the arrival of different Arab groups, particularly the Yarubi, Busaidi, and the Mazrui. Arabs, together with the Swahili,<sup>2</sup> settled in the area and consolidated the slave trade. Consequently,

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<sup>1</sup>. Several indigenous banks—owned by Kikuyus—collapsed during the period in what was widely believed to be a move to dislodge the Kikuyu from economic and political power so as to give room to Moi's own clientele. Soon his own clients began to start similar institutions using the Asian partnership.

<sup>2</sup>. The term Swahili refers to numerous groups identified mainly by the Kiswahili language, their adherence to Islam and the construction of their livelihoods in urban settlements along the coast of Africa. These different groups were a product of intermarriages between the different groups of Arabs and the Bantu people of the East African coast. There is a tendency among them to socially and politically identify with

slavery, more than anything else, was associated with eventual Arab and Swahili control of land. Abundant slave labour (and open access to land) enabled them to establish large plantations around the coast and on land whose ownership was not a subject of dispute since the Mijikenda inhabitants had fled into the interior.<sup>3</sup>

The colonial state contributed to the deepening of the problem by introducing legislation that enabled only the subjects of the Sultan (comprising mainly Arabs and the Swahili) to register land as private property on the coast. Administration of the legislation neglected the land rights of the Mijikenda and ex-slaves (Ghai and McAuslan, 1970:29; Charo, 1977; Cooper, 1980). The post-colonial state worsened these problems by giving grants of land to politicians even in areas already occupied by the indigenous Mijikenda groups. As a consequence, there was increasing landlessness and squatting on the coast. These developments underscore the need to study the Land Question in areas where relatively different socio-political processes occasioned alienation and accumulation. Generalizing from what took place in the central parts of the country, as most authors tend to do, gives only a partial picture of the Land Question complex. Kilifi in coastal Kenya provides an appropriate entry point into this endeavour.

### 1.2 Kilifi: An Overview of Its Socio-Economic Profile

Kilifi district is on the south east coast of Kenya and is bordered by the Indian Ocean to the east, Mombasa and Kwale districts to the south and Tana River district to the west and north (see map p.6). The district has five administrative divisions which are also delineated as parliamentary constituencies. These are Bahari, Ganze, Kaloleni, Magarini and Malindi. Of these five, Malindi and Bahari have a relatively high economic potential because of their extensively developed water front and a long tradition of commerce that began with Arab and Persian traders several centuries ago. Kaloleni, in the interior, and Bahari are the only divisions with a high agricultural potential. The district is also rich in cultural heritage and Swahili influence, the result of several centuries of contacts with different groups.

The district has a population of about 700,000 and a population density of about 57 persons per square kilometre. Generally, population densities are low in the interior of the district where the agricultural potential is also low. It

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the Arabs. The distinction between the two is sometimes blurred by this fused identity but may open up depending on the issue confronting either of them.

<sup>3</sup>. We need not be detained by the question of who among the Mijikenda, the Arabs and the Swahili were the first to settle on the coast. This is a controversial question as each group claims to have had a presence that preceded that of any other group. What most accounts show, however, is that slavery disrupted the settlement pattern along the East African coast, with consequences for the land question in general.

is high in the high potential areas and, in particular, around the coastal strip due to modern sector employment and well-watered soils, in addition to recent government settlement policies. For instance, the population density in Bahari and Kaloleni is high (both had 281 persons per square kilometre in 1996) because of the relatively high agricultural potential in the two divisions, while Magarini has the lowest population density—22 persons per square kilometre. Malindi has a higher density than Magarini—37 persons per square kilometre—but its main urban centre has the highest population concentration in the district due to the concentration of tourist and related activities in Malindi town and Watamu beaches.

The district is predominantly inhabited by seven of the nine Mijikenda sub-ethnic groups, comprising about 90 per cent of the district's population. These groups are the Giriama, Jibana, Chonyi, Rabai, Kambe, Kauma and the Ribe sub-ethnic groups. Each group is identified by settlement in a separate geographical territory, although recent government resettlement efforts have led to a relatively more mixed settlement pattern. The numerically smaller groups, namely, the Rabai, Duruma, Waribe and Kambe are settled in the southern part; the Chonyi and the Kauma are roughly in the middle belt and near the shoreline; the Giriama, the largest group, inhabit most of the area from the middle belt to Malindi. The 1989 National Population Census indicates that there are numerous other groups in the district, although their numbers are quite small. These include the Arabs and the Swahili (roughly 2.59 per cent of the district population) who are mostly settled in the major urban centres of Malindi and Kilifi; the Kamba (1.75 per cent); the Luo (1.13 per cent); the Kikuyu (0.67 per cent) and the Taita (0.54 per cent). Other ethnic groups have fewer people than these.

The geographical pattern of settlement informs the current socio-political divisions among the seven groups: each group has its own social identity and prejudices about others. These prejudices revolve around what each sees as the weaknesses of the others. In Mtwapa, inhabited mainly by the Chonyi, I was frequently told that the Giriama are quite conservative, practise witchcraft, and do not know the value of land. In Malindi and around Kilifi town, I was told, again frequently, that the Chonyi are crafty. The smaller groups were regarded as inferior in all respects and were said to be good only at tapping *tembo* (palm wine). Generally, respondents interviewed pointed out that the Chonyi were better off than others.

Kilifi has a land area of about 12,414 sq. km. with four main physical zones, namely, the coastal plain, the coastal ridge, the "foot plateau", and the Nyika plateau. The coastal plain is a narrow belt with a width of between 2 and 20 km and a height of less than 30 m above sea level. The plain is a mixture of medium and high potential agricultural areas. Tree crops and some food crops are also grown here. This is in addition to one large sisal plantation. The zone also has deep alluvial soils good for intensive agriculture. A coastline of about 75 km has made it highly attractive for invest-

ment in infrastructure for tourism development which has, consequently, attracted different socio-economic interests.

The coastal ridge is a well rain-fed area with a height of 150 to 420 metres above sea level. This zone also contains some of the best soils for agricultural farming: tree crops, including cashew nuts, coconuts, palms, and several horticultural crops are grown here. The "foot plateau" lies to the west of the coastal plains and supports grassland suitable for livestock-keeping. The Nyika plateau, on the other hand, is further into the hinterland in the north and the western parts of coastal range. The area has poor rainfall and a semi-arid condition that can only support extensive livestock-keeping.

The district also has four major agro-ecological zones as shown in Table 1. These are: a coconut-cassava zone, a cashew nut-cassava zone, a livestock-millet zone, and a lowland ranching zone.

Table 1. Kilifi—Type of Land and Agro-Ecological Zones

Type and zone	Size of land ('00 ha.) Estimates	Zone as per cent of agricultural land	Zone as per cent of total land area
Total land area	11,964		
Coconut-cassava zone	496	7	4.15
Cashew nut-cassava zone	2,045	29	17.09
Livestock-millet zone	2,658	37	22.22
Lowland ranching zone	1,914	27	15.99
Total agricultural land	7,113	100	59.45

Source: Hoorweg et al., (1995)

The coconut-cassava zone which lies in the southern part of the district around the coastal belt is a major cropping zone. It covers only about 4 per cent of the district's total land area. Food crops (and rain-fed rice in the flooded grasslands of Chonyi), horticulture, and the tree crops mentioned earlier are also grown here. There is dairy farming as well. The cashew nuts-cassava zone covers about 17 per cent of the land area and stretches northwards along the coastal plains to Malindi. It supports crops similar to those in the coconuts-cassava zone. The livestock-millet zone is a medium potential area and covers about 22 per cent of the district's land surface. Other crops grown here are cashew nuts, coconuts, cowpeas and sim sim. The lowland ranching zone covers about 15 per cent of the total area. The area is used for livestock ranching. Both the coconut-cassava and cashew nut-cassava zones cover most of the land within the ten-mile strip. Land in the two zones is under three competing uses: small scale agriculture, plantation farming (sisal, cashew nut, and livestock farming) and tourism. This competition has reproduced intense conflicts over access to land and small scale peasant farmers, as

shown in the subsequent discussions, are the main losers compared to other more influential social groups. Small scale farming practices in these zones are labour-intensive, i.e they depend a lot on family labour and generally reflect the physical conditions in the four agro-ecological zones.

Food crops are often grown in combination with tree crops—cashew nuts and coconuts mainly. The area under maize in 1980, for instance, was 26,900 hectares. By 1994, the area had increased to 47,000 hectares which reflects increasing demands for agricultural land in the two zones best suited to food crops. The areas under coconut palm and cashew nut (usually combined with food crops) show a similar increase. In 1981, for instance, the area under cashew nut was about 12,520 hectares while that under coconuts was about 13,940 hectares. By 1994, this had increased to 18,467 hectares and 21,586 hectares respectively (Annual Reports, Department of Agriculture). Coconut is apparently more valued because it yields a variety of products—nuts, copra, makuti (thatch) and Mnazi (palm wine)—which many households sell to supplement incomes from other sources.

Most respondents complained about the poor marketing of cashew nuts, one of the main cash crops in the area, as an obstacle to the development of agriculture in the area. There is only one marketing channel in the district—the Kilifi Cashewnuts Factory—which was owned for a time by the government. It was privatised in 1996. Before then, most respondents said that the factory had contributed to the near collapse of cashew nuts farming because of mismanagement. This had left most of them without alternative marketing outlets as the parastatal had monopolised the sector for a long time. Moreover, the parastatal was protected by regulations that made it illegal for farmers to sell their produce to any other body than the Kilifi Cashewnuts Factory. This regulation still obtains despite the liberalisation of cashew nut marketing and the privatisation of the factory. As a result, the factory has continued to monopolise the marketing of the crop. One consequence of this is that, in spite the high expectations placed on the economic liberalisation process, prices have maintained their downward spiral. Although I was unable to get details about the new owners, some of the respondents spoken to speculated that it had been bought by some Asian businessmen probably linked to influential politicians. Some of my informants were even of the opinion that it would take a long time to have the regulation withdrawn because it benefited the new owners and that if it was maintained, then the prices of cashew will continue to drop due to lack of competition in the buying of this important cash crop.

Estimates by the Economic Welfare Unit of the Ministry of Planning and National Development state that over 50 per cent of households in the district have holdings of between 0.01 and 1.99 hectares. Table 2 presents a summary

Table 2. Percentage Distribution of Households by Holding Size in 1994

Size of holding (Ha.)	Per cent of households
Landless	22.7
Landless with animals	-
0.01-0.59	9.8
0.6 -0.99	18.3
1.0-1.99	22.6
2.0-2.99	9.5
3.0-3.99	1.7
4.0-4.99	11.0
5.0-7.99	1.7
8.0+	2.6

Source: Welfare Monitoring Survey II (1994), Ministry of Planning and National Development.

of this information. The table shows the skewed distribution of land ownership in the district.<sup>4</sup>

The size of holdings varies from one agro-ecological zone to another and depends on population density. In the low population density areas that make up the livestock-millet zone, individual holding sizes are above five hectares on average while in the high density areas around the coastal plains, i.e., the coconut-cassava and cashew nut-cassava zones, the average sizes of holdings is about two hectares. The same source estimates the number of landless households to be over 22 per cent. A majority of the squatters are concentrated in the arable coastal belt. (Squatters and the landless are used interchangeably here and refer to those without land (especially the indigenous Mijikenda groups) and those who lost their land rights, firstly, to the Arabs and, secondly, to the Crown.) Some have been squatting on private Arab and Swahili land, as well as government land, and they continue to contest ownership of both types of land (see sections 5 and 6 below).

Land in the medium and high potential zones, notably the coconut-cassava and cashew nut-cassava zones, is adjacent to the sea front where there is an extensively developed infrastructure for tourism. This applies particularly to the Malindi coastline and most of the coastal plains. These are the areas where mass allocations of prime lands or plots—hereafter referred to as

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<sup>4</sup>. This survey did not collect data on landlessness. It was assumed that "a household residing on a piece of land without practising agriculture, including those doing so on small plots of less than 0.01 hectares, were landless regardless of whether a household owned or did not own land within or outside the district".

“grants from above” – are made to politicians, influential senior civil servants, military officers, aides to senior leaders, and other influential people or those who have the necessary connections to get presidential consent for such allocations. Most of the beneficiaries are allocated land already occupied by squatters, the landless or other occupants who have settled on the land whilst awaiting the formalisation of their tenure rights. The occupants are always evicted to give way to “development”. They are not compensated for their tree crops or any development undertaken on the land. Arguably, local demands for access to farm land and economic (and political) demands by national elites for the development of tourism have led to the belt being a site for different types of disputes over land rights. Attempts by the state to alienate governmental land for the purpose of settling the landless added to the complexity. How both the alienation and the resettlement projects are carried out have contributed to the deepening of the Land Question in the district.

The growth of tourism on the coast has contributed to this phenomenon. Records show that the coast – particularly Mombasa, Kilifi, and Kwale districts – have a higher concentration of hotels than elsewhere in the country. The number of rooms available attests to this. In 1970, the number of rooms available in hotels on the coast was 761. The number of rooms grew at an average of less than 5 per cent a year throughout the 1970s. This trend continued into the 1980s. The number of rooms available in 1980 was 1919, increasing to 2,455 in 1989. From the early 1990s, there was a dramatic rise in the number of rooms and other tourist-related activities: the number of rooms available rose from 2,913 in 1990 to 29,592 in 1991 (*Statistical Abstract*, various issues). This growth needs to be viewed against a similar growth in demand for agricultural land on the coast, for both types of uses are competing for the same type of land – arable land in the high potential agro-ecological zones.

Land adjudication and registration (reform of land tenure programme) began in Kilifi in the early 1970s and are still on-going. A majority of the people do not have title deeds to the land on which their families have been living for generations. What seems to concern most residents in the area is that those given grants of land from above often get titles prepared very quickly while the registration of land for the ordinary people is still going on and is far from complete. Indeed, some of the respondents interviewed conceded that it is only the influential individuals and corporations investing in tourism that have been able to get titles to land on the coast.

Although the reform programme was initially confined to the Trust Land category of land, it now also covers government lands (see discussion in section six). Government land (representing about 41 per cent of the total land area) comprises all public land held by the central government. It includes the former Crown Lands, all land that has not been leased or allocated for any purpose, and national game reserves and parks. It also includes land that the state has alienated by way of lease or privatization or set aside for public use. Some of the government land has been allocated to private companies and



individuals, or alienated for the resettlement of the landless and squatters. On the other hand, Trust Land (58 per cent) refers to customary land that is owned by the different ethnic groups inhabiting a particular district and is held in trust for them by the respective local authorities (mainly the local government). Most of the areas designated as Trust Land are the former Native Reserves and include all land that is held under the customary tenure system.

There are three other sub-categories of land besides these two. These are leaseholds, freehold, and corporate private land. Leaseholds refer to individually-owned land whose use is subject to specified terms of lease. Leases can be given by the Commissioner of Lands (and local authorities with approval of the commissioner) on both government and Trust Land. Annual rent is paid for such land and the period of ownership is defined in the lease. Upon the expiration of the lease, the land reverts back either to the government or the Trust depending on who owned the land in the first place. On the other hand, freehold refers to individually-owned land held under minimum user restrictions. All individualized land – adjudicated and registered – falls under this category. There is another category of private land: land under lease or freehold and held by corporate interests. It includes land owned by companies, land buying cooperatives, and state parastatals.

Ownership of all categories of land is not absolute in the real sense of the word. The state owns the "radical title" and has an unlimited control over access to land. The doctrine of "eminent domain" allows the government to compulsorily acquire land for public purposes provided it compensates the owners (see note 33). Individual ownership of land is limited to the piece of land only in so far as the state has no immediate interest in the piece of land.<sup>5</sup>

#### *1.2.1 Research Sites and Methods*

This study was conducted in Bahari and Malindi divisions of Kilifi district (see map p.6). These divisions were selected for a number of reasons. Firstly, the pre-colonial roots of the Land Question can be easily traced in the two divisions. Both have large tracts of land which are registered as the private possessions of Arab and Swahili land owners dating to the beginning of the 20th century. Most land ownership disputes centre around the ownership of these lands.

The reform of the indigenous land tenure system began in the early 1970s in the two divisions and has been going on since. Finally, the coastal belt of

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<sup>5</sup>. If mineral deposits are found on an individual's land, then the individual ceases to own the land. It reverts back to the state for purposes of exploration. In Kenya, this has origins in the 1930s experience with Native Reserves in Kakamega. Gold deposits were found in the Native Reserve and the colonial state had to set aside other land for the natives as the land reverted back to the Crown. See below for colonial land policies and their effect on the structure of access to land.

the two divisions has a well developed infrastructure for tourism whose growth has tremendously increased the value of land in the area. This has resulted in heightened competition between economic and political elites for the land in the area, competition which has changed the structure of land ownership and contributed to the loss of the land rights of the peasant occupants. Consequently, the two divisions have become sites of intense struggles over land rights.

The survey was conducted in several phases: phase one involved identifying and training research assistants, designing survey instruments (a questionnaire and check list of issues), doing archival work, and visiting the relevant institutions in the district. During the first visit, research assistants were introduced to the relevant government departments and permission was obtained from both the District Commissioner and heads of the Ministries of Agriculture and Lands and Settlement to review relevant government records. Geographical locations for the survey were selected on the basis of information obtained from archival materials and other sources. Factors considered include, *inter alia*, the intensity of land disputes, the presence of particular categories of land, the presence of land markets, and physical accessibility. Individuals and institutions representing various interests in land matters in the district were also identified preparatory to the interviews that followed.

Phase two involved pre-testing of the study questionnaire using a relatively small number of respondents drawn from various parts of the divisions. This was done to familiarize the research assistants with the interview process and to ensure that the questions raised were clear to respondents. Phase three involved extensive interviews using both the structured questionnaire and a checklist of issues for informal discussions with the individuals selected in phase one and two.

A variety of methods was employed during the field work for this study. These methods ranged from questionnaire-based interviews and focus group discussions to direct observation and informal dialogues. The informal interviews and most of the focus group discussions were conducted by the author while structured interviews were conducted by both the author and a team of resident research assistants.

Two structured questionnaires were administered to a sample of purposively selected respondents. The first questionnaire sought generalised information from respondents who were familiar with the Land Question. The questionnaire was administered to 67 respondents who were knowledgeable about the district's land problems. These included those in the local Provincial Administration, elected leaders, officials and activists of the political parties, elders, local committees dealing with various land matters, leaders of self-help youth and women's groups, and local elites (or those in privileged positions and having considerable influence on public opinion and recognised as such by the residents and included local political leaders,

prominent business people and certain farmers). Individuals who have been involved in land disputes or in the articulation of grievances regarding land ownership were also interviewed.

The second questionnaire was administered to 34 households which were identified in the course of administering the first questionnaire. Respondents here were deliberately selected on the basis of broad criteria which included form of occupancy and involvement in disputes about ownership of a holding. The questionnaire sought household-based information on matters such as how much land the household had, how the land was acquired, the uses to which it was put, and the difficulties experienced in acquiring it. This was done to complement the general information obtained through the first questionnaire.

Another 26 semi-structured interviews were held with groups and individuals who either were very knowledgeable about some but not all issues or had an exclusive and detailed story on certain issues. The unstructured interviews were also held with several others who declined formal interviews based on the structured questionnaires. Some of the interviews here followed a checklist of issues while others centred around a specific issue which the respondent was familiar with. In all, the study is based on a total of 127 interviews, secondary data from archival materials, repeated observation of activities in the offices of the local Provincial Administration and the Ministry of Lands and Settlement, and dialogues with different actors at the district and national levels.

Several problems were experienced in the course of collecting data for the study. Some people were not very keen on the interviews because of the sensitivity of the Land Question in the area. Others thought that the research was aimed at finding a solution to their plight and, therefore, sought to give information that was beyond the scope of the research issues. There were still others who showed keen interest because the interviews provided a forum and an opportunity to recount problems they had over the ownership of 'their' holdings (some did this obviously thinking that the researcher would be of some help to them). Squatters also hoped that the information they gave would probably help them acquire land.

The survey was conducted at a time when public land was being allocated to squatters and the landless by the Ministry of Lands and Settlement and the local Provincial Administration. The survey, thus, coincided with a period of intensification of emotions around the question of access to land. It was for this reason that some respondents were suspicious of the interviews while others showed a lot of willingness to be interviewed. This was a problem and an advantage at the same time. It was a problem in the sense that some respondents were emotional about the subject and treated the research as an exercise in finding solutions to their problems. But it was also an advantage because the survey was never short of people to interview.

The sampled survey locations were far from each other. This presented transport difficulties which made the research process quite laborious. The long distances also presented difficulties of coordination with research assistants, a problem which could not be easily solved due to budgetary constraints.

Tracing some of the local leaders and elites for interviews was difficult. Some gave appointments and failed to show up or rescheduled the dates and interview times altogether. Attempts were always made to follow up and interview such individuals because some had been mentioned by other respondents as people who had valuable information or as people who were involved in the articulation of different land matters. Government officials were reluctant to answer some of the questions. Some officers even asked to be allowed to read the questionnaire or to see the checklist of issues before discussing or speaking on any matter. Notwithstanding this censorship, some of them provided very useful information in the "private" informal discussions which I held with them in the "evenings away from offices".

## Chapter 2

# Perspectives on the Politics of Land Rights

Although the subject of access to land has been extensively studied, most of the publications available concern themselves with the relationship between land use and tenure changes. It is also no accident that some of the studies focus exclusively on the African agrarian crisis; indeed, efforts to resolve the crisis either motivated or influenced some of them. Others have concerned themselves with the historical, mainly colonial origins of the Land Question, thereby paying scant attention to the struggles for land rights in the post-colonial period. Only in the very recent past have other dimensions of the Land Question been brought into the debate.

A close look at the literature reveals at least three overlapping perspectives on the Land Question, although none of them offers a truly comprehensive overview. The perspectives include those that focus on the transformation of land tenure systems; those on the agrarian question; and those concerned with peasant politics. The section below attempts a brief review of these three perspectives and identifies theoretical and methodological gaps that the current study aims at filling in order to move us nearer to a full understanding of the "Land Question complex."

### 2.1 Transformation of Land Tenure Systems

The literature in this area is devoted to a discussion of the advantages and disadvantages of transforming indigenous land tenure systems in sub-Saharan Africa. It first began with the anthropological studies that were carried out during the colonial period and which largely influenced the colonial administration's thinking on how to improve agriculture in the colonies. The "need to reform the customary land tenure system" engaged the colonial administration constantly from the mid-1930s<sup>6</sup> until the independence period in the 1960s. Most of British colonial Africa, particularly Kenya, Northern Rhodesia (Zambia), Southern Rhodesia (Zimbabwe) and South Africa, experi-

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<sup>6</sup>. The Kikuyu elites were demanding land titles from as early as 1928. Njonjo (1978) notes, for example, that the Native Commissioner in 1928 refused to allow them titles for fear that this would widen inequalities among them (Njonjo 1978:69). See also the Kenya Land Commission Report (1934). Representations made by some communities clearly underlined the need for individual titles.

enced attempts at reforming indigenous land tenure systems because these systems were seen as detrimental to efficient land use. The current content of the debate has roots in the concerns of governments immediately after decolonisation to increase agricultural output. Here again, post-independence governments inherited colonial land laws and some, such as the government of Kenya, began to pursue the reforms in earnest (for details see Basset and Crummey, 1993; Berry, 1993; Okoth-Ogendo, 1993).

The pro-titling argument was one which appealed to many post-independence governments, and by the early 1970s, it had crystallized into a policy perspective which identified poor agricultural growth with the tenure systems obtaining in most African countries. This official thinking was reinforced by a similar one within the World Bank which, from the 1970s, had shown a strong inclination towards supporting efforts to transform land tenure systems.

In this debate, Africa's indigenous land tenure systems have been characterised as "communal" and, therefore, incapable of accommodating modern methods of agricultural production (see Falloux, 1987; Feder and Noronha, 1987; Harrison, 1987). This critique, largely influenced by Hardin's (1968) thesis on "the tragedy of the commons", emphasises that communal or common rights to use land fail to include the right to deprive others of access to it and, therefore, "carry with them the risk to ruin and overload the land".

This argument emphasises that individual farmers are reluctant to invest in agricultural improvements under communal tenure systems because "these lack a clear definition of property rights or that such rights are often contested and, therefore, insecure for private investments". It is then suggested that indigenous land tenure systems be restructured to allow for private property rights in land because "this would promote efficiency in agriculture and, thereby, positively influence the course of economic development".<sup>7</sup> They generally conclude by recommending the privatization of indigenous tenure systems so as to escape from the horrors or tragedy brought about by the common ownership of land. The argument also emphasises that property rights in land will bestow exclusive rights which would, in turn, act as an incentive for husbanding and conserving (or improving) land.

A counter-argument to, and a strong criticism of private property (land) rights has emerged even from within the World Bank itself where it has been emphasised that there is no relationship between land privatization and increased agricultural production (Barrows and Roth, 1990; Migot-Adholla et al., 1994; Migot-Adholla and Bruce, 1994). This criticism points out that the

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<sup>7</sup>. A detailed review of the pro-titling debate is provided by Platteau (1996) and Barrows and Roth (1990). The World Bank also published several studies in the 1980s emphasising the importance of titling. See, for instance, Feder (1987) and Bromley and Cernea (1989).

principle of exclusive rights in land generates disputes over usufruct rights because the privatization of land does not extinguish all rights institutionalized under the indigenous tenure systems. It is then concluded that efficiency and production in agriculture cannot be explained, alone, by rules governing property rights in land because other factors such as the social structure of production and community organization have a bearing on this.

This critique of private property rights also emphasises that, generally, land reforms have facilitated the disparagement of indigenous tenure systems. The reforms create the basis for inequalities in land ownership (and, therefore, socio-economic inequalities) and undermine the structure of social security developed under the indigenous tenure systems (see Haugerud, 1983; Bruce, 1986; Downs and Reyna, 1988; Berry, 1993). Others stress that changes in the rules of tenure have promoted a multiplication of claims over ownership as a result of clashes between new or emerging rights and those rooted in customary regimes (Okoth-Ogendo, 1976; Berry, 1988; Lund, 1994; Platteau, 1996).

Studies now show that customary tenure systems are not as static and rigid as the critiques made of them have claimed. Instead, African indigenous tenure systems have been characterised by a complex array of rights ranging from "open" communal ones to individualized transmission via kinship arrangements and/or a combination of these. In some societies, control of land was vested in "a descent group and access was determined by social identity and status in the society". Certain conditions encouraged the individualization of land rights such that private property rights developed alongside communal ones. It was, indeed, a common practice among many agricultural communities for a family or a kinship to consolidate exclusive cultivation rights in a "claim-free" holding if the family was the first to occupy it and invest labour in clearing the bush. Such claims were updated by continued use by the owners to avoid creating an impression of unoccupied holdings (Berry, 1993; Migot-Adholla et al., 1994). There was, thus, "no necessary contradiction between notions of community rights and corporate and individual rights: the existence of one did not necessarily preclude that of the other" (Mamdani, 1996).

Fundamentally, in the customary tenure system, man-land relationship had always been specific to various land use functions, so that in a community, a number of rights could coexist with varying degrees of control and be exercised at different levels of the social organization. The result was a degree of equity in the distribution of these rights among all members of the community (Okoth-Ogendo, 1976; 1991; Glazier, 1985; Migot-Adholla and Bruce, 1994). Those holding this position conclude that other factors besides land tenure have more influence on agricultural productivity and that attention should shift to this other sphere which includes such variables as government policies, agricultural infrastructure, and the relations of production, among other things.

A third school within this broad perspective has been evolving in recent years and is inspired by the second of these positions. This school – associated with Platteau's (1996) evolutionary theory of land rights – generally points out that land tenure systems can change on their own as a result of the increased commercialization of agriculture and increasing population. What needs to be done, therefore, is to support these evolutionary trends rather than imposing them. This thinking urges that governments should intervene only to provide technical support where there are spontaneous trends towards individualization. A similar line of argument is advanced by Bruce (1986).

One may tentatively conclude, therefore, that tenure systems obtaining in sub-Saharan Africa cannot be blamed for the agrarian crises plaguing many countries. Despite these findings, pressure is still being mounted on the countries of sub-Saharan Africa to pursue orthodox approaches to land tenure reform. In the meantime, little attention is being paid to the socio-political consequences, including the disruption of social order, that accompany these reforms. Analyses continue to focus on the implications of the reforms for agricultural production and ignore the political processes attending the reform process itself. These analyses ignore struggles around the control of land and their relation to changing tenure systems. It is a gap in the literature which this study is designed to fill by focusing on the struggles that lie behind the institutionalization of private property rights in land.

## **2.2 Agrarian Accumulation and Class Formation**

The literature on agrarian accumulation and class formation emanates from the Leninist tradition, especially its concern with the pattern of land ownership and the need for a radical redistribution aimed at promoting agrarian development and democratic revolution. Historically, this argument was developed in a context where inequalities in land ownership were based on the survival of semi-feudal production relations.

The central argument in this tradition is that the political question arising from agrarian inequalities can be resolved in two ways, both of which are democratic: a bourgeois "revolution from above" or a popular "revolution from below." "Revolution from above" would lead to landlords losing their rights to social domination and an end to all forms of "extra-economic coercion." This development would, however, leave behind some traces of bourgeois domination and is, therefore, considered a less democratic form of social change. On the other hand, "revolution from below" would abolish glaring inequalities in land relations by redistributing land to the class of the propertyless made up of peasants and squatters. Once the peasantry has been afforded easy access to land, its members would begin to compete among themselves. This competition would become the basis for rapid economic development. And since such a revolution would entail leadership by the



popular classes whose main objective was necessarily the consolidation of democracy to protect their own rights, landlord rights to land would be abolished as would be all forms of "extra-economic coercion". Because of the peasants' differential access to the forces of production—land and the instruments of labour—there would gradually develop socio-economic differentiation, but one whose form would be different from the one arising from state-led "extra-economic coercion" (Mamdani, 1987).

Although there are only a few instances of landlordism in Africa, Africanists in the Leninist tradition have nonetheless sought to interpret the land question within the general framework of a capitalist versus a "pre-capitalist" accumulation process. One line of argument sets out from the claim that "the state in Africa is the landlord" and has tended to be the main agency for the organization of "extra-economic coercion", in the process linking economic backwardness and political repression. In line with Leninist thinking, they conclude that both the democratic and the agrarian questions could be resolved through the "spread and consolidation of popular democracy, a democracy that is influenced by popular forces and, therefore, less restrictive than the one from above" (see Neocosmos, 1993).

Studies here also see the democratic question in Africa as having roots in the agrarian question which implies that its solution lies in first resolving the agrarian one. The state, by virtue of being in control of the "regime of agrarian accumulation", restricts access to this "regime" only to those organically related to the political class. The state, thus, is in a position to inhibit the growth of popular forces because as a landlord, it regulates the conditions of access to land and those of agrarian accumulation. Because the state shapes the conditions of access to land and those of generating and distributing economic surpluses from land and non-land related activities, economic plunder prevails over freer forms of capitalism and the growth of popular democracy and the organization of popular forces is impinged on.

Another line of argument drawing from the Leninist literature sees capitalist development in Africa as having been thwarted primarily by the control exercised by exogenous capital over natural resources, including land. This argument, drawing especially from the "Kenya debate," claimed, on the one hand, that the emergence of an indigenous Kenyan (Kikuyu) private bourgeoisie had not at all been prevented by the presence of exogenous capital, and, indeed, that its formation occurred primarily through accumulation in land. On the other hand, the advocates of this position also claimed that state-led initiatives had played little or no part in this process, and had in certain respects deliberately retarded agrarian accumulation. This attachment to the Kikuyu and intra-Kikuyu aspects of accumulation blinded those involved in this side of the debate from seeing the extent of ethnic fragmentation or even inter-ethnic tensions—and more recently racial ones—which accompanied the

process of agrarian accumulation especially outside central Kenya, and which gave it a much less than rational flavour.<sup>8</sup>

The main shortcoming of these studies is that they subordinate the Land Question to the agrarian one. Concerns about class control over agricultural resources, control over labour, credits, and access to markets exclude attention to local social dynamics of access to land and struggles over it. These studies tended to reduce the issue of access to that of accumulation and to assume that questions of access were in this way exclusively articulated with those of class formation and domination. There were no specific non-economic layers to agrarian struggles (except the democratic impetus thought to derive from peasant control of land) and no material contradictions amongst economic adversaries.

### **2.3 Access to Land and Peasant Politics**

Partly in reaction to the tendency to submerge the Land Question into those of class formation and accumulation, writers like Berry (1993) have more recently tried to link it to concerns raised by the earlier literature on peasant politics (e.g. Lamb, 1974). In this tradition, land is seen essentially as a political rather than an economic resource, and as a means of establishing and consolidating a following rather than as a productive asset. Berry's work on access to land in sub-Saharan Africa (Zambia, Kenya, Ghana and Nigeria) is a detailed account of the realities that operate around the socio-political institutions which regulate access to land and which, she argues, are key to an understanding of how conditions of access to land change over time and impinge on productivity. Striving to move away from conventional "economic reductionism", Berry points out that social identities and other non-market factors play an important role in regulating access to resources. She emphasises that "access depends on the influence that one brings to bear in negotiations over property rights" and that this influence "is enhanced by having followers" and the necessary social networks as channels for resources. Influence and social capital are then the key principles around which access to land is organised and negotiated and, therefore, are also factors that impinge on agricultural productivity. Berry adds an interesting dimension to the land tenure systems debate as well: she points out that security of tenure is linked to the overall security of the social formation and, therefore, tenure systems must be seen as part of the broad socio-political and economic context of the society.

Berry's analysis centres on the colonial period and she underlines the point that changing conditions of access to land during the period evolved

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<sup>8</sup>. Some of the main works on the Kenyan debate include Leys, (1975); Anyang-Nyong'o (1981); Njonjo, (1981); Kitching (1985).

through basically two modes of land acquisitions or accumulation: through the state and through kinship. One could use colonial-based "influence to negotiate access to resources" at either of the two levels. However, her detailed study denies that any long-term dynamic is inherent in either of the dual modes. Those in privileged positions recognised by others (local elites) could gain more as a result of the "influence that they could bring to the social negotiations over access to resources", but this was often contested by other forces from below. Such accumulators became a target of resistance movements as did those who accumulated via the state. Some lost access and control rights through the state mode of domination and negotiation while others lost them through the social dynamics of social institutions that dominated access to and control of resources as the colonial state's role in regulating access to resources was consolidated. But how the losers interpreted and reacted to the dual framework of losing rights to resources is neglected in this and similar other works.

Other writers have paid some attention to land as an object of state politics and pointed out that distortions around customary ownership of land became the basis for not only land alienation but also the consolidation of the colonial state. Mamdani (1996), for instance, notes that the invention of "customary authority" for the administration of the Native Reserves led to the entrenchment of "decentralized despotism" through which the state consolidated its hold on the peasantry. Invented customary authority impacted on the conditions under which the peasantry accessed land in the Native Reserves because it introduced several distortions. Notably, it introduced the notion "of community as customary proprietor of land, its appointed political leaders as holders and executors of that proprietorship, and the right of access to community land on a customary basis as tribally defined and therefore excluding strangers" (138-145). These distortions developed a notion of the customary that was specific to the colonial situation and aimed at undermining the conditions of access to land by the peasantry. This invention inhibited the effective organisation of popular movements to contest state power.

Although it is not disputable that "the regime of compulsions" that breached and marked the limits of freedom has its origins in the "despotic native authorities" and was responsible for the consolidation of the colonial mode of oppression and domination and for unprecedented "tribalization" of both the rural and urban sectors, Mamdani fails to show the limitations to the "regime of compulsions" and contradictions internal to the regime. A "regime of compulsion" is a limited political tool when used without a complementary something else. Most post colonial states have perfected the "regime of compulsion" by complementing it with patronage and "trivialized" politics. Why "detrivialization" has reproduced ethnicity instead of democracy as "deracialization" has done in South Africa is another matter of current importance to the study of local politics that Mamdani raises but does not settle. Mamdani clearly settles the issue of the social content of

peasant movements (e.g. Ruwenzoruru) but the relation of the social movements to conditions of access to land fades into the distance as primacy is given to resistance to the administrative powers of the local state structures.

But access to land did not cease to be of concern to peasants after decolonisation. Invented customs and the attendant distortions on what is customary land have their own legacy which peasant movements still contest. Indeed, access to land is currently high on the policy agenda even in countries with little or no experience of settler colonialism and land alienation (see Shivji, 1995, 1996; and Sundet, 1997 on Tanzania). Furthermore, land and agrarian reforms cannot be understood in isolation from struggles for democratization since differential access to land reproduces the social, economic and political inequalities which most of the peasant-based social movements aim at dissolving. Motives for such reforms can be traced to two main social forces opposed to each other: radical revolutionaries and liberal nationalists.

On the one hand, radical revolutionaries pursue or did pursue land redistribution as a central element of the reforms and added to their struggle the aim of weakening or destroying the landed elite and the latter's organic relation to the state. On the other hand, liberal nationalists pursued reforms that would foster economic growth through a capitalist mode of development and often side-stepped the issue of land redistribution which they saw as an impediment to national economic growth (Rehman, 1993). Land reforms in the post colonial period can be traced to the same forces. Their outcomes have also been varied. Kenya's land reforms originated from political upheavals which resulted in transitions in the composition of political power but left scope for differentiation because of the contradictions that drove them. The liberal nationalists undermined whatever possibility there was for land redistribution to the land-hungry peasantry and, instead, constructed a specific ethnic dimension to the Land Question, a dimension that spilled over to both local and national politics.

Reform outcomes are sometimes a big departure from initial objectives: those driven by the desire for growth may legitimise existing inequalities and/or even enhance social differentiations between the landed and the landless. On the other hand, but rarely though, those based on radical demands may eliminate the basis for inequalities in land ownership and, therefore, the foundations for both political and economic inequalities (but on condition that more peasants acquire land).

Conditions under which peasants access land have changed considerably as have the institutions regulating access to land. The latter have become even more fluid as the principle of private rights in land is institutionalised. Access is seen more as a means of building political constituencies and political power by state elites. Most of these changes are traceable to the colonial invention of the customary mode of land acquisition and ownership. What should be of fundamental concern is to identify those structures that inhibit or facilitate peasants' struggles over resources, and especially over land, since

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access to it has been and continues to be the main issue around which most of these struggles are organised and played out. Attempts should be made to find out what exactly brings them together or divides them in articulating their concerns and who are those acting on what issues, how and with what leadership. The changing conditions under which peasants access their land, and in particular the tendency to “divest the customary” and to vest the “radical title” on the executive (Shivji, 1996) suggests new forms of peasant-state relations that should be fully understood. There is need to understand the kind of social relations (with other social groups, e.g. the landed elites) that tend to constrain or facilitate peasant struggles over access to land. Only by doing so can a full understanding of the “Land Question complex” be achieved.

## Chapter 3

# Politics of Land Rights in Kenya

“The rules which regulate the manner in which land can be owned, and used, and disposed of, must always be of great importance to the state. The stability of the state and the wellbeing of its citizens at all times depend, to no small extent, on its land law” (Holdsworth (1927) quoted in J. P. W. B. MacAuslan (1967).

Kenya’s Land Question has its roots in the colonial situation where events stemming from three distinct but interrelated processes shaped it. The first, from which others followed, was the alienation and acquisition of land by the protectorate as a prelude to the establishment of a colonial state. The sequel to this was the imposition of British property law and its acclamation of title and private property rights. This, together with other legislation introduced at the time, provided a juridical context for the appropriation of land that had already taken place and that which was to follow. Land tenure reform capped it all by both deepening the Land Question and diversifying its content. Each of these processes gave rise to unique but related sets of problems regarding access to, and control of land. They also produced a rather complex context for the Land Question, making a solution intractable. Before discussing how these processes disrupted the social and political order of the society, the discussion below gives a general overview of the structure of access to land in pre-colonial Kenya. This is meant to highlight salient features of the customary tenure arrangements which their critics often gloss over in their hurry to dismiss them as unviable and inimical to agrarian and social change. This discussion will also provide a background against which the evolution of the Land Question and its politics will be traced.

### 3.1 The Pre-Colonial Situation

Land tenure systems in pre-colonial Kenya varied from one community to another and were influenced by several factors which included topography, climatic conditions, and the socio-political organisations and cultural values of the various ethnic groups. Significantly, all were predicated on the presence of abundant land in the frontiers and the absence of population pressure in any given social formation. The effects of these factors on the conditions of access have led to a tendency to idealise customary tenure regimes and the evolution of certain ideologies about land. Such ideologies

became the basis for mobilising against the colonial mode of land expropriation and largely inform current contestations over access to different types of land as shown in section six below.

Most writers emphasise that a common feature of pre-colonial tenure arrangements was that principles relying on kinship (and in some communities, the main political authority responsible for that kinship) regulated conditions under which land was held. Migot-Adholla et al. (1993), for instance observe, as many others do, that:

Access to land was based on membership in a land controlling social entity defined by birth, marriage, ritual adoption, or incorporation. Once individuals acquired those rights to land, those rights remained inheritable within the family ... persons unable to find suitable land often migrated elsewhere as segments of their lineage or isolated individual families, and were incorporated into their communities of destination (Migot-Adholla et al., 1993:122).

Access rights were also open to each and every member of a social group and were equitably distributed on the basis of individual needs to members of the social organization that was in control of a particular territory. The evolving relations to land also tended to be predicated on functions such that several people could hold different rights to the same piece of land for different purposes. Illustrating how these overlapping rights were articulated in pre-colonial Africa to provide a stable society, Okoth-Ogendo (1976) points out that:

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

Writers also tend to stress that this arrangement emphasised the equitable distribution of rights to land. Elsewhere Okoth-Ogendo (1991) underlines the point that:

the *raison d'être* of control was to guarantee these rights and to ensure their equitable distribution among all members of the community. This control, although exercised by family, clan, or in some cases territorial sovereigns, did not ...entail (*de jure*) ownership... (Okoth-Ogendo, 1991:11).

Additionally, it is often pointed out that the lack of *de jure* rights of individual ownership was an insurance against landlessness and a guarantee of equitable rights of access. The manner in which land was held and used, therefore, enabled all members of the land-controlling group to enjoy access rights but not those of alienation to outsiders or "strangers". Absolute rights of proprietorship were vested not in a single person but in a "collective

authority" which acted as a check and balance to the internal process of land appropriation and alienation among the members of a social group. Such a system of checks and balances in the processes of access to and control of land laid the foundations for the internal social stability which most groups enjoyed. And, as underscored by Berry (1993) in regard to most pre-colonial African societies, such a security of tenure was linked to the overall security of social and political life (Berry, 1993:105).

Initial rights to land were established by first occupation and the continued investment of labour in bush clearing and cultivation.<sup>9</sup> Land obtained through first settlement became the property of the pioneer occupant who then assumed rights of control over it. Such rights were analogous to an individual title (belonging to the pioneer) and assumed a communal form of ownership only after the death of the "pioneer" occupant. Thus, the land holding, though initially the individual property of the pioneer, subsequently became the common property of his descendants.

As observed above, the only right that individual members did not have was the right to alienate land to non-family members or outsiders. Such rights were vested in the hands of those to whom the pioneer had entrusted control rights or in the oldest of the elderly members of the founder's kinship group. This was a common tenure system among groups that did not have centralized political authorities. Indeed, with regard to the Kikuyu of central Kenya, Sorrenson (1967) observes that "land which was once the individual property of the founder became the common property of his descendants although they continued to cultivate it on an individual household basis". The Mijikenda of coastal Kenya, whose struggles over access to land are the subject of this study, had similar tenure practices: collective inalienable rights of ownership by the clan coexisted with individual usufructuary and appropriation rights (see Mkangi, 1975; Ciekawy, 1988). This structure of access to land obtained until the arrival of the Arabs and their consolidation of the slave trade along the coast (Charo, 1977; Republic of Kenya, 1978).

In areas of high population density, eldest sons relieved the pressure on land by migrating to the frontier zones controlled by their lineage or into new areas altogether. Fallow systems in these areas were made fairly short to avoid giving the impression that the holding had been abandoned and, therefore, open to access and control by someone else. Where there was conflict over access rights, it was common for the members of the land-controlling group to move out to establish new residence elsewhere (and therefore new kinship), either through military conquest or peaceful incorporation or

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<sup>9</sup>. It is a matter for debate whether one could establish such rights through redeemable purchases from a group that did not have exceedingly high pressure on land. Although Sorrenson (1967) observes that the Kikuyu in Kiambu purchased and obtained irredeemable ownership rights from the Dorobo by exchanging stocks with them, this remained a subject of controversy throughout the colonial period.



through elaborate adoption rituals (Sorrenson, 1967; Migot-Adholla and Bruce, 1994).

In conclusion, it should be pointed out that the ideology about land in the "customary tenure system" in Kenya underlines the system as having had both elements of individual usufructuary and appropriation rights coexisting with different forms of communal ownership and control of land. How this tenure arrangement was mediated provided the basis not only of tenure security but also social security and political stability in the society. Equitable distribution of access rights and out-migration to frontier areas also enabled each social group to manage landlessness and preempt tension and conflict. This does not mean that there were no social conflicts over access rights or even over control over land by different social groups. Familial, inter- and intra-group conflicts were also a feature of the pre-colonial societies. These were largely resolved by the appropriate authorities or traditional institutions which were increasingly disrupted by the imposition of colonial rule.

The land alienation that took place at the time of the establishment of the colonial state cut off most communities from the frontiers through which they adapted to land shortages. The imposition of new forms of administrative authorities and the subsequent concentration of powers in the institutions of indirect rule, particularly that of the chiefs, undermined the traditional and customary structures of land administration, thereby shaking the basis for social and political security, and of a secure land tenure system itself. The economic organisation of the society was similarly disrupted: alien forms of land tenure resulted in land holdings becoming relatively small and overused and, therefore, less able to support household needs. Political unrest developed as land problems intensified. Thus, as the colonial state was consolidated, the Land Question also evolved in all of its complexities.

The remaining part of this section devotes attention to the evolution of the Land Question as an adjunct of colonialism. The discussion also aims at showing that the Land Question, unlike what is currently assumed in the literature, comprises different aspects anchored on distinct but interrelated historical processes. Inability to capture this complex nexus between the Land Question and the consolidation of the colonial state, and the failure to appreciate that the Land Question is about the social and political security of the society, has made most discussions on the subject unintelligible.

### **3.2 Evolution of the Land Question**

#### *3.2.1 Phase 1: The Protectorate and Land Appropriation*

A generally stable and flexible structure of access to and control of land obtained in pre-colonial Kenya until the establishment of the protectorate in the early 1890s and the colonial state at the beginning of the 20th century. Even in the coastal region which the Arabs "colonized" before the advent of

British rule, a stable and secure structure of control of land obtained but was partially disrupted first, by the slave trade, and secondly, by the establishment of private claims over land by the Sultan of Zanzibar and his subjects. It was finally and totally altered by the establishment of the colonial state since the consolidation of that state was predicated on land appropriation for settler capitalism which was, in turn, expected to support the colonial administration. The discussion that follows aims at showing that the "Land Question complex", both on the coast and upcountry, evolved from the processes via which the colonial state was forged and that any attempts at resolving the Question must begin by gaining a full understanding of its origin.

The creation of a people without rights to land—the squatters—and the pre-eminence of land in the political process began with the incorporation of Kenya into the British colonial empire during the late nineteenth century and the subsequent initiation of a process of capitalist development out of which the Land Question gradually emerged. The process of incorporation began with the formal control of the region now occupied by Kenya and Uganda but this control was constrained by the enormous amount of influence that the Sultan of Zanzibar had over the region, influence that prevented both the British and Germans from penetrating into the interior. Faced with this disability, the British and Germans formed a commission in 1886 to establish ways of delimiting the Sultan's sovereignty along the coast. In their view, delimiting the geographical and political authority of the Sultan would allow them access to the interior where they would sign trade treaties with various groups. For the British administrators, this would enable them to gain access to Uganda.

The Anglo-German agreement of 1886 resulted in the creation of *Mwambao*, a ten-mile strip of coastal land extending from the mouth of the Ruvuma River in Tanzania to the delta of the Tana River in Kenya and spreading to a distance of ten miles from the high water mark into the interior. The creation of *Mwambao* left the interior "ownerless" and, therefore, prey to competition between the Germans and the British, competition that was somewhat tempered by the fact that the 1884 Berlin Conference had delineated, for each of the powers, specific territories for occupation and, therefore, colonization. To forestall intense rivalry, which tended to be accompanied by a high potential for conflict, boundaries for the British and German spheres of influence were quickly demarcated. Britain assumed control of the region occupied by Kenya and Uganda while the Germans took what is present day mainland Tanzania (see Low, 1965; Ghai and McAuslan, 1970).

Initial steps to control Britain's sphere of influence were undertaken by the British East Africa Association (BEAA) which was formed in 1887 to open up East Africa to commerce and to help the government gain control of the interior up to the head waters of the Nile by signing treaties with local

communities and through conquest. In 1888, the Association became a chartered company, the Imperial British East Africa company (IBEAC) and an imperial arm of the Crown with the responsibility of exploiting the interior on behalf of the Crown. During this period, the company entered into an agreement with the Sultan of Zanzibar ceding *Mwambao* and the sultan's land rights to the company. The latter, in return, offered to protect his dominion and to respect his sovereign rights over the area. But the company's rights were restricted to what was within the ten mile strip and to what was unoccupied by the sultan and his subjects since their possessions, according to Muslim law, amounted to individual title and were recognised as such by both Muslim law and Arab customary practice.

The IBEAC's commercial ventures failed abysmally. The company went under in 1894 and surrendered its charter and all its concessions to the British government. An East African Protectorate was then declared in 1895. The Protectorate now took responsibility for the administration of the agreement signed between the Sultan and IBEAC regarding the administration of *Mwambao* which had been leased to the company earlier. By the terms of the new agreement, Britain acquired

full powers of executive and judicial administration, the right to levy customs, regulate trade and other works, and the power to deal with all questions affecting land and minerals. Nominally, the Sultans's sovereignty was preserved over the coastal strip: he could fly his own flag, and there was a promise not to interfere with Muslim law and custom (Sorrenson, 1968:18).

The declaration of the East Africa Protectorate was followed by a plan to link the coast to Uganda through a railway line. But growing parliamentary criticism and the attendant decline in official financial grants prompted the Foreign Office to look for alternative financing and/or investments to cover the cost of the line and the administration of the protectorate in general. The Foreign Office decided on settlement schemes on the land between the coast of Kenya and Uganda hoping that this would develop the area and that gains from such a development would provide a prompt and complete return on Britain's investment in the railway.<sup>10</sup> The only problem foreseen in this regard was the lack of adequate legislation to facilitate the acquisition of land for settlement.<sup>11</sup> It was only in *Mwambao* that land had been acquired by virtue of an agreement with the sultan. But even in *Mwambao*, the agreement

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<sup>10</sup>. Initially doubts had been expressed about the viability of European settlement but after several years of consultations with administrators of the former company and others who had been to the region, the Foreign Office reluctantly consented to the idea (see Sorrenson 1965; 1968; Brett, 1973).

<sup>11</sup>. This was seen as a major problem because the Colonial Office had warned that "the protectorate did not carry with it any title to soil and alienation in the form of grants should be avoided" (Sorrenson, 1965:673; Ghai and McAuslan 1970).

applied only to unoccupied land, otherwise expropriation of land from Arabs for railway purposes had to be done under *fetwa*, a Muslim legal device authorizing compulsory acquisition, but subject to the sultan's assent.

A relatively different legal device, the Indian Land Acquisition Act of 1894, was used to expropriate land from Indians and Europeans who had already acquired land speculatively pending the completion of the railway. This administrative and quasi-legislative "device" set the stage for the imposition of laws and institutions that were to have fundamental consequences for the later structure of access to and control of land. The obstacles encountered also paved the way for the revision of imperial conceptions of the notion of political sovereignty and its implications for the effective administration of a colonial territory. This had one important effect: it resulted in the imposition of legal institutions that, in turn, considerably influenced the land-related political and economic choices made at the time.

### *3.2.2 Phase II: Importation of Alien Laws and Creation of Native Reserves*

In the light of earlier warnings that the protectorate did not carry with it any title to land, the colonial administrators imported a series of legislative regulations to guide future appropriations and to give the previous ones the required or necessary judicial support. Future appropriations had to be carried out within the confines of imported legislative and administrative regulations. But an even more important guide in the introduction of these regulations was the long-standing assumption that the relations of local communities to land did not carry the notion of individual title and that their rights to land were confined only to occupation, cultivation and grazing and unoccupied land reverted back to the territorial sovereignty. On the strength of this assumption, whose crystallization began during the early days of the IBEAC's presence on the coast, "waste" and "unoccupied" land could now be appropriated for the Crown by virtue of the Crown's right to the protectorate.

The administration issued several regulations to facilitate both the appropriation and the making of grants to settlers. The first ones included the Land Regulations of 1897 which authorized the commissioner to issue certificates of short-term occupancy of twenty-one years renewable for a further twenty-one years if occupation had taken place and the conditions attached to it had been fulfilled (Sorrenson, 1968:49). These regulations were incorporated in the East Africa (Lands) Order-in-Council of 1901 which empowered the commissioner to dispose of or sell or lease waste and unoccupied land in the protectorate.

The settlers were at first unhappy with this arrangement because of the short leases it allowed. One, indeed, remarked that "the regulations were the most idiotic land laws that were ever seen and that no man in his right senses

would ever think of taking up land on such conditions".<sup>12</sup> This prompted the then commissioner, Sir Charles Eliot, to request the Foreign Office to allow the granting of freehold titles arguing that no settler would touch land under such a lease and that those who wished to make their home in the protectorate demanded freehold titles. His efforts led to the promulgation of the Crown Lands Ordinance of 1902 to provide for sales of land and leases to settlers (Sorrenson, 1968:55; Okoth-Ogendo, 1991). This Ordinance further underlined that the Crown had original title to land and that where Africans vacated or deserted land, that land was considered waste and reverted back to the Crown to be given to the settlers "subject only to such directions as the Secretary of State may give". Settlement began in earnest but was restricted to Europeans.

The Crown Lands Ordinance of 1902 did not affect land in the coastal belt because it was assumed that private property rights had been institutionalized through the practice of Muslim law and Arab custom. Despite the Ordinance permitting sales and leases, the settlers were still dissatisfied with its provisions. They argued that the time period for the leases was short and nothing less than absolute ownership could give a secure foundation for the organisation of settlement and investment in agriculture. In the absence of a title, the settlers argued, the 1902 Crown Lands Ordinance effectively treated the state as a landlord, in which case the settlers were to be subjected to strict state control. It also "created and maintained a personal and feudal relationship between the state and holders of the land, a factor that was to considerably constrain the business drive in the colony" (Sorrenson 1965).

Another Ordinance had to be promulgated in response to the demands of the settlers: the Crown Lands Ordinance of 1915. This declared all "waste and unoccupied" land in the protectorate Crown Land and, therefore, subject to the governor's powers of alienation. The Ordinance gave the settlers leases of nine hundred and ninety-nine years and some form of autonomy from the state. This was more attractive to the settlers and had the effect of arousing demands for more land suitable for settlement and large-scale settler farming. Land adjacent to the railway line and that which was already occupied by the "subjects" was earmarked for expropriation.

The 1915 Ordinance redefined Crown Lands to include land occupied by the natives and all that had been "reserved" by the governor for their use. It created the reserves for the "natives" and located them away from areas scheduled for European settlement. The process of the creation of what Mamdani (1996) refers to as citizens (settlers) and subjects (natives) began in earnest, and it involved the evolution and practice of a dual system of land tenure and administration both of which were seen as necessary conditions

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<sup>12</sup>. Quoted in Okoth-Ogendo, 1976:154. Details of the settlers' reaction to the regulations are found in Sorrenson (1968).

for the consolidation of colonial rule. Customary tenure governed the natives' relation to land and was enforced by chiefs, appointed to help in the administration of the natives and, therefore, the consolidation of the colonial state. An individualized tenure regime, to which was attached a high level of civil rights relative to those enjoyed by subjects, pertained for "citizen" settlers (Mamdani, 1996:145-165).<sup>13</sup>

The Ordinances had major consequences for the structure of access to land for "subjects". The Ordinances took away all the subjects' rights in land and vested such rights in the Crown. The result was that occupants became tenants at the will of the Crown on the land they actually occupied or as Okoth-Ogendo (1991) puts it, the occupants became "tenants of the Crown".

The state also located the reserves in areas deemed unsuitable for European settlement, drew their boundaries along ethnic lines and ensured by law that subjects were not allowed to reside in any reserve other than the one allocated to their ethnic groups. This set the stage for the construction of ethnic identities and divisions and another one for, administratively, relating ethnic identities to the control of land.

The imposed laws grossly ignored both the principles and practice of indigenous land tenure arrangements and the native claims and rights to land in the protectorate. And since in the eyes of the natives, all land had been occupied "subject to exigencies of situations such as warfare and temporary abandonments due to land use systems" (Mbithi and Barnes, 1975), blatant appropriation through the Crown Lands Ordinances—first of 1902 and then of 1915—created land shortages for the subjects. This contributed to the conditions that were to shape future political crises in the colony.

A secure and stable land tenure for the settlers was not obtained through legislative and judicial means only, for these were complemented by a "regime of force" through which the state subdued different communities opposed to land expropriation. More subtle methods were also used. Peace accords were signed with different groups to prevent them from interfering with the settlement project: treaties were concluded with the Maasai in 1904 and 1911 and peace made with the Nandi by 1905 after punitive expeditions. Buffer zones were created through European settlement on land disputed by various African peoples. After this, alienation of land followed in earnest in areas proximate to the highlands—parts of central Kenya and the Rift Valley (see Sorrenson, 1967; 1968; Mbithi and Barnes, 1975; Alila et al., 1985).

Although the settlers acquired land, they lacked labour and skills to utilise their farms. They had to secure a series of laws and administrative arrangements from the colonial administration to enable them, directly and indirectly, to acquire African labour. Settler pressure saw the introduction of a hut tax and the forced recruitment of Africans into the army. While this

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<sup>13</sup>. Mamdani (1996) and Berry (1993)

generated some amount of opposition from the Africans, it had the general effect of inducing Africans into wage labour and, specifically, into employment on settler farms (Van Zwanenberg, 1975; Berman, 1990).

In the long term, the problems in the reserves led to unrest and eventually to a political uprising—the Mau Mau resistance movement that organised around the issue of control of land. The state found a quick solution to the unrest—reform of land tenure in the reserves. On the coast, however, the Land Question assumed different aspects, although developing simultaneously with the upcountry one. The Land Titles Ordinance of 1908 allowed the subjects of the Sultan to register private property rights in order to help the protectorate determine what was public and private land. The various issues that were specific to the coastal Land Question are discussed further later in this report.

### *3.2.3 Phase III: African Agriculture and Land Tenure Reform*

Contradictions in the colonial settler economy and mode of state domination engendered pressures for land tenure reform: the state's neglect of African agriculture in favour of the settler one gradually resulted in political unrest and an economic crisis both of which could only be addressed by paying attention to the demands of Africans for more suitable land and for their integration as producers into the expanding cash economy. The reform programme was introduced in 1956 to arrest both the political and economic crises arising from land alienation, the creation of Native Reserves, and the imposition of laws to govern agricultural development and, specifically, to promote the settler agricultural economy. How these were effected had several significant consequences for the structure of access to land in the African areas and for the control of land in the whole colony.

Expropriation of land for settler capitalism and the establishment of a legal framework to facilitate expropriation meant, respectively, a reduction in the amount of land controlled by the affected African groups and the subordination of customary law and practice, particularly in regard to control of land, to the new legal framework. Imported laws on private property rights and their gradual institutionalisation meant that the question of control of land was being appraised from a political and legal perspective that was fundamentally different from customary law and practice. Customary law was also increasingly interpreted in ways that suited the state's mode of domination and expropriation which materialized through a "regime of compulsions".

The establishment of Native Reserves had an additional profound consequence. The reserves "eroded the virtues of customary structure of access to land, for in the reserves individual families rather than clan or kinship evolved as an important medium of acquiring land" (Okoth-Ogendo, 1976;

Bruce and Migot-Adholla, 1994). Relatedly, boundaries designed for the reserves made it impossible for people to acquire land rights elsewhere because they "halted migrations into frontier lands, thereby adding pressure to the land-carrying capacity which the African customary tenure practice of out-migration easily addressed whenever there was a population increase or shortage of land" (see Okoth-Ogendo, 1976; 1979).

Contradictions in the colonial settler economy had a more direct bearing on the origins of the reform of land tenure in the reserves. The settler economy was based on the principle of the development of European agriculture and an official neglect of the African one but a re-thinking of how the latter could be promoted, in the wake of the effects of the Second World War and the subsequent need to increase production in the colonies,<sup>14</sup> saw a considerable amount of attention being given to the idea of land tenure reform. The state, as Brett (1973) argues, initially gave the settlers monopoly over the economic, and much later political, infrastructure. This monopoly enabled them to undermine African initiatives towards incorporation into the growing capitalist economy. Attempts to integrate the "subjects" into the colonial economy evolved with the crisis emanating, firstly, from the aftermath of the economic depression of the 1930s, and secondly, from the need to increase exports that were required to support the post-war process of reconstruction in Britain.<sup>15</sup> The view that African farmers were not supposed to compete with the settlers slowly faded as the need to increase production to satisfy colonial demands became urgent.

Prior to this official rethinking on African agriculture, attempts had been made at "improving" the agricultural infrastructure in the reserves but this was driven only by a "conservationist mentality". Interventions here were confined to issues of soil erosion which agronomists had argued were the single most important cause of declining returns to land in the reserves. This, in turn, engendered mass political unrest as those in the reserves had no adequate means to secure livelihood and/or were coerced into conservation programmes. Possibilities of looking for additional land to resettle surplus population were usually considered remote. This was purposeful: an expansion of the reserves would have led to encroachment on areas scheduled for the settlers. By now, the effects of land alienation were being felt in central Kenya where population density was high and where the alienation of land

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<sup>14</sup>. How the European agriculture was organised and supported by the colonial state and the restrictions placed on the African farmers, especially with regard to the growth of cash crops, has been extensively reviewed (see Smith 1976; Okoth-Ogendo, 1976; Brett, 1973).

<sup>15</sup>. See Cowen, M. (1982). Cowen clearly shows that the British schemes for expanded production in the colonies were based exclusively on the economic premise that they would enhance production in Britain and possibly resist the Russian influence in certain strategic areas (ibid: 155).



had already taken place. This had put small land owning households in a vulnerable position which, in turn, started to trigger migrations to the Rift Valley, thereby adding to the mass of squatters (over 100,000) who had settled on European farms and estates in the period between 1918 and 1928 during the first wave of displacements (Kitching, 1985). These migrants, a majority of whom were Kikuyu from central Kenya, were attracted to the Rift Valley by "availability of land and possibilities of building wealth" (ibid.). High numbers of squatters on settler farms led to a review of labour regulations which occasioned more displacements or evictions from settler farms and, therefore, more unrest in the reserves and the White Highlands as well (see Kitching, 1985; Bates, 1989).

Concerns over surplus population and the need to increase production (provided none of these measures reduced the steady supply of labour to the settler farms) finally resulted in the establishment of settlement schemes. A Settlement Board was set up to help resettle the landless in Makueni in Machakos, Shimba Hills and Gedi on the coast, and at Olenguruone in the Rift Valley, among other areas. The policy of resettlement failed, however, "because there was no high-priced cash crop suitable for the marginal land used for resettlement" (Smith, 1976:124). Many of the schemes had to be abandoned fairly early:

nearly all of them were highly unsuitable for human occupation, being riddled, for example with dangerous game, tsetse fly... . Little attempt was made to render such land habitable prior to the settlement of human population. Many of the original settlers moved out soon after being brought there, while others were ejected, allegedly for failure to comply with the rules of proper management... . Little attempt was also made to deal with any claim to lands earmarked for settlement that neighbouring residents might have had before people were moved into them (Okoth-Ogendo, 1976:160).

The schemes had other problems as well:

Attempts were made to introduce innovations without a close examination of whether they were economically and technically feasible, and in particular whether the settlers had access to sufficient finance to introduce and sustain a more intensive farming system than the traditional one. Neither was the success of the schemes helped by the presence of a great number of lethargic settlers who had been pushed into the settlement by an administration which wanted to get rid of them (Smith, 1976:124).

The re-settlement schemes failed to address problems of access to land. They were not a solution to the congestion in the reserves and declining land-carrying capacity, both of which were central to the growing unrest.

In the meantime, the administrators, especially the agronomists among them, responded by intensifying—through coercion—conservation measures such as soil conservation, livestock improvement, construction of water supplies, and the gradual introduction of cash crops. These measures were by

no means a solution to the political unrest and agrarian problems in the reserves. The “regime of force” that mediated them, after all, became another source of consternation for the “subjects” in the reserves. Neither did these measures satisfy demands for titles by the indigenous proto-capitalists whose agitation for title deeds in the reserves and integration into the cash economy dated back to the 1920s. The idea of the privatization of land had been debated for decades by both the administration and different African political organisations (Kikuyu Central Association) but the state feared the political repercussions of such reforms. Foremost, it was feared that the reforms would entrench class divisions and possibly arouse class conflict in the countryside which would later spread to settler areas. Secondly, it was feared that this would occasion mass displacements especially of *ahoi* or tenants who would then seek to be settled in areas scheduled for settler agriculture (see Njonjo, 1978).

As long ago as 1934, the Kenya Land Commission appointed to investigate the problem of land within the Native Land Units, had recommended that “in areas where people were ready for it (individualized tenure), tenure should be guided progressively in the direction of individual titles”.<sup>16</sup> This was not immediately implemented as different Governors designed different solutions to the agricultural problems facing Africans. In much of the 1930s and 1940s, instead of encouraging the trend towards individual tenure, “the government sought to revive what was referred to as community control ... to guard against the harmful effects of the growth of individual rights” (Sorrenson 1967:56).

The policy of administering land through indigenous authorities, at least in central Kenya, was maintained through much of the period until early 1948 when Provincial Commissioners “inquired about the possibility of setting apart land for those who wanted individual titles” and recommended a study on how this could be done. The government accepted the proposal for the selective registration of titles but did not come out with formal rules to govern any land consolidation exercise. This was left to officers on the ground and was initially confined to a few areas in central Kenya—Nyeri in particular. By 1952 when the emergency was declared, the government appeared implicitly to have abandoned the idea of community control in favour of a “slow individualization” benefiting those who were considered “progressive farmers”—notably chiefs and other loyalists and civil servants (Sorrenson, 1967; Lamb, 1974; Njonjo, 1978). But this individualization and issuing of titles was done under the fear that if “the government gave open support to progressive farmers, the Kikuyu politicians would step in and

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<sup>16</sup>. Report of African Land Development Board, *African Land Development in Kenya, 1946–1962*, quoted in Sorrenson, 1967:54.

discredit the movement as another government attempt to rob the Kikuyu of their land, just as they had done to halt terracing in the late 1940s" (ibid.: 70).

The rise of the Mau Mau resistance movement altered this thinking; the problem of land had to be addressed to arrest its spread. Thus, before the publication of the report of the East African Royal Commission, which was appointed in 1952 to look, *inter alia*, at how land reform could be effected, the state produced its own programme—the Swynnerton Plan—intended to address the Land Question. Nonetheless, it was the emergency which, ironically, triggered the need for the urgent execution of the reform plan on the assumption that this would prevent the spread of the Mau Mau. Under the guise of reform, the government even confiscated the land of Mau Mau leaders "to teach them a lesson" (Sorrenson 1967; Lamb, 1974; Njonjo, 1978).

The "conservationist mentality" having failed, and there having been developed no explicit policy on land tenure reform in the reserves, the Mau Mau became a stimulant to fast thinking on the reform of land tenure in the reserves. As mentioned earlier, the thrust of this was provided by the then Assistant Director of Agriculture, R. J. M. Swynnerton, to whom the responsibility of drawing up the programme for the Native Land Units was entrusted. Swynnerton finally came up with a *Plan to Intensify the Development of African Agriculture in Kenya*, which diagnosed the problem of agriculture in the reserves as one of the system of land tenure prevailing in the reserves, a tenure system which Swynnerton argued was characterised by diffuse rights and some form of collective control of land. The Plan underlined that:

sound agricultural development is dependent upon a system of land tenure which will make available to the African farmer, a unit of land and a system of farming whose production will support his family at a level..comparable to other occupants. (Swynnerton Plan, 1954:9).

The Plan proceeded to point out that the reform required for such development was one that would provide the African farmer with a security of tenure through indefeasible title so as to encourage him to invest his labour and profits into the development of his farm (Swynnerton Plan, 1954: 9). The Plan also spelt out that "once registered, farmers would be able to mortgage titles to land against loans from Government or other approved agency" to improve their farms. This was seen as having a positive bearing on the growth of the economy in the entire colony. Swynnerton, nonetheless, warned that evolving land markets would create landlessness since they would "enable energetic rich Africans to acquire more land and bad ones less land, thus creating landed and landless classes" which is a "normal step in the evolution of a country" (ibid.: 10). The plan concluded that the reserves would have an "agrarian revolution"—experience significant economic growth—only if the customary tenure constraints were removed and replaced with an alternative system based on private land ownership in the form of individualized holdings such as obtained in the "settler sector".

In general, the Swynnerton Plan had the objective of introducing private property rights in land by first consolidating individual holdings and then registering them as freeholds. The process of registration began, first with the ascertainment (*adjudication*) of individual rights in land by way of recording rights over different fragments. This was followed by aggregation (*consolidation*) of such fragments into single units on which a title was registered. This has remained the practice except that consolidation does not apply to all areas (see below).

The Swynnerton Plan was implemented in Central Kenya (the heartland of Mau Mau) but with different consequences from those envisaged. More non-master or peasant farmers began to grow cash crops contrary to the expectations that this would be confined to master farmers or the squirearchy that would emerge from the evolution of land markets in the wake of the registration of land. Nevertheless, the reform, as expected, led to a markedly skewed distribution of land. The chiefs, loyalists, and the wealthy acquired more land than others while others lost considerable amounts of land, especially if they did not participate in the adjudication of their rights. The reform generated disputes rather than resolved them and it decreased people's security in land. The exercise itself was—and continues to be—open to abuse by those involved in defining the existing structure of rights. Furthermore, in its initial stages, most fighters, while in detention, lost their land rights as well as use rights in the former *mbari* or communal land to chiefs and other loyalists (Sorenson, 1967; Lamb, 1974).

There were several political factors that hastened the exercise of consolidation and registration. Firstly, it was expected that the Plan would create a stable class of yeomen or relatively wealthy farmers who would be too busy on their farms to participate in politics or collaborate with the Mau Mau rebels. The reform aimed at establishing “the economic bases for the emergence of a new African political leadership cadre, one which would cooperate with Europeans in opposing African nationalist leaders when they were freed... rather than pressing for more rapid African political advancement” (Harbeson, 1973).

The reform state did not solve the Land Question. The Swynnerton Plan of 1954 did not attempt to address the issue of land alienation, the need for redistribution or even that of inequalities in ownership between the settlers and Africans and inequalities between and within the various African communities. In addition to the reform of land tenure in the reserves, the government introduced in the early 1960s, a parallel programme for “re-Africanisation” in the White Highlands. This programme aimed at altering the racial structure of land ownership in the Highlands as a way of addressing some of the ethnic and political dimensions to the Land Question complex. Accordingly, the government established several settlement schemes for the landless who had been displaced by the reform of the land tenure in the reserves and for some of the squatters already occupying parts

of the Highlands. A land purchase programme was also introduced to provide for turning over of some of the settler farms intact to African farmers in a way that did not affect the stable structure of agricultural production.

Both the reform of land tenure and the “re-Africanisation” programme had a profound effect on the nation-building project, particularly because they allowed the Land Question to remain at the centre stage of some of the main political events in the country. Both considerably shaped the politics of transition and have continued to shape local and wider national-level politics ever since.

## Chapter 4

# Independence Eve and After

### 4.1 Phase I: The Political Impasse

At the time of the transition to independence, the Land Question directly influenced the debate on the constitutional and economic arrangements that the country was to assume. On the one hand, the constitutional debate revolved around whether Kenya should adopt a unitary or federal form of government while, on the other hand, the economic one centred around issues of whether markets or political processes should determine the allocation of basic resources. Also central to these issues was the question of the status of colonial settlers and what was to become of landed property on the coast and in other parts of the country (Bates, 1989; Harbeson, 1973).

Contestations over some of these issues ensued with two groups emerging, founded largely on the basis of ethnic identities rather than political ideology. The first consisted of an alliance of the numerically large groups, namely, the Kikuyu and the Luo ethnic groups, whose bonds of solidarity had antecedents in the colonial labour economy. The second group was made up of Kenya's smaller communities, notably the Kalenjin, the Maasai and the related Turkana and Samburu pastoralists or the KAMATUSA group and other smaller groups such as the Mijikenda. The fear of domination by the larger group brought the smaller groups together. They took on board the Luhya, a relatively large but internally divided community that allied itself with the KAMATUSA and the Mijikenda for fear of being dominated by the Kikuyu and Luo. Another relatively separate group, namely the political wing of the settlers, vehemently opposed land reforms or agreed to them only if it could determine the manner and course the reforms would take.

Group interests in land, and their approach to the Land Question, caused socio-political divisions that spilled over to the political party formation processes. The main parties were the Kenya African National Union (KANU) for the Kikuyu-Luo alliance; Kenya African Democratic Union (KADU) for the KAMATUSA and Luhya groups; New Kenya Party for the settlers; and several other parties representing smaller groups and interests.

Divisions around the land issue, thus, became the foundation for different projects of "national independence". On the one hand, KANU preferred a unitary form of government and a stay on further land reforms until political independence was obtained or pending the release of Jomo Kenyatta—their leader—from detention. On the other hand, KADU, because of the

KAMATUSA fear of domination by the Kikuyu and the Luo, preferred a federal system of government (*Majimbo*) with regional assemblies whose most significant duty would be the administration of land matters. KADU saw this arrangement as the best guarantee of KAMATUSA protection against land-hungry Kikuyu squatters who were already settled in the White Highlands to which the KAMATUSA had historical territorial claims (Harbeson, 1973; Bates, 1989).

Internally, both African parties were also deeply divided over the land reforms. In KANU, a radical faction rooted in the nationalist position on the Land Question championed *nyakua* (a Kiswahili word meaning seizure—referring to the wholesale seizure of expropriated land) in the White Highlands to settle the landless and squatters who had lived in the Rift Valley for decades. To them, the resettlement schemes of 1961 did not make sense since squatters and other landless persons were required to pay deposits and acquire loans to buy the farms. Opposed to the radical wing were groups of liberals and proto-capitalists who sought to encourage the emergence of a free market in land—from a liberal viewpoint—in order to promote more rapid economic growth and —from the viewpoint of the proto-capitalists—provide a basis and greater security for accumulation by the landed elite. Those in the radical wing included Oginga Odinga (a Luo), who later became the country's Vice President, and Bildad Kaggia (a Kikuyu), among others.

Within KANU, Odinga and Kaggia advocated *nyakua*, warning that “the settlers must realize that the land they are farming is not their property”. They maintained the same position way into independence (Harbeson, 1973:90–101). KANU's liberal group, led by Tom Mboya and Kenyatta, preferred a cautious approach to the Land Question, fearing that any radical departure from what the reforms had achieved would jeopardise economic growth by antagonising relations with foreign investors. On the other hand, the liberals also expressed preference for a unitary and centralized system of government because of their desire to protect Kikuyu territorial gains outside of their ancestral heartland.

KADU, with its membership base that consisted of several numerically small pastoralist groups, wanted as much land as possible for its political constituency and a secure place at the centre of the post-independence state. Like the KAMATUSA groups in KADU, the Luhya and the coastal groups rallied behind KADU for fear of being dominated by the Kikuyu-Luo alliance. KADU leaders sensed that the small ethnic groups which they represented might be in danger of domination by the alliance of the two largest groups and proposed a federal system of government (*Majimbo*) with regional assemblies as their defence against a prospective KANU-dominated centre. Led by Ronald Ngala and Daniel arap Moi, they made it clear that they wanted a constitutional provision that guaranteed their ethnic groups fair compensation for land that had already been effectively expropriated. They also emphasised that respect for property rights in land should apply to

individuals as well as ethnic communities (Harbeson, 1973:115). They got support from the white settlers who led the New Kenya Party. This support made their bargaining position stronger. In the pre-independence constitutional deliberations—the Lancaster House Conference—KADU secured a federal (*Majimbo*) system of government. The geographical distribution of the major ethnic groups and their subdivisions increasingly influenced the drawing of the boundaries of each of the *Jimbo* and the administrative districts within the *Jimbo*. The evolving structure also increasingly reflected the geographical coverage of the main parties in terms of political support: each *Jimbo* was identified with a particular political party.

Following the concessions which they were able to win, KADU politicians in the regional assemblies became increasingly aggressive in pushing the land claims of their constituents against those of outsiders, by which they meant the Kikuyu. The Nandi and Tugen Kalenjin sub-ethnic groups pressed for the eviction of Kikuyu settlers and threatened them with land seizures (Bates, 1989: 59–60). This divided the nation-wide independence struggle further. Indeed, it was on account of the concern among the leaders of KANU that a failure to make the concessions demanded by the leaders of the minority groups might result in further delays to the independence of the country that KADU was able to have its way.

The country assumed independence in 1963 without a resolution of the Land Question, although national-level disputes over land had subsided. The divisions between KANU and KADU were overtaken by the emergence of sharp contradictions within each of the parties revolving around the settlement schemes and the land purchase programme in the White Highlands. Intra-party conflicts were a common phenomenon in all the main parties. This prevented them from articulating the Land Question in the same manner as they had done during the transition period. Significantly, after formal independence, the radical faction in KANU activated the *Nyakua* position. This began to tear the party apart. But whereas in the past, during the transition, they could threaten to defect to KADU, KADU's post-independence decision to dissolve itself into KANU and shelve the land issue robbed the radicals of that card. As a result of this, the effectiveness of KANU's radical wing gradually declined, until it finally lost out in the struggle for the party's policy direction.

The radical faction, including non-Luo members such as Kaggia, remained opposed to all forms of "accumulation from above" and, therefore, both as individuals and constituencies, tended to be economically marginalised by the post-independence government even as the liberals and loyalists pursued a capitalist path of development, including their private accumulation strategies. The radicals advanced the course of those like them who had not benefited from the state, including nationalists who had lost their land while in detention or had their land confiscated under the Land Forfeiture Act of 1953 (Sorrenson, 1968; Lamb, 1974). Other factors also affected KANU as a party:



the Luo became increasingly concerned over their relatively weak economic position and their failure to benefit from the expansion of commodity production under the Swynnerton Plan (Shipton, 1988).

The liberals won against radical demands for redistribution. Consequently, in 1966, the radical faction resigned their positions in government and formed an opposition political party—the Kenya Peoples Union (KPU). In the “little general election” that followed, several of them, including Kaggia, lost their seats to KANU candidates. Several factors contributed to the defeat of the KPU in spite of its popular stand. The state mobilised its entire human and financial resources against the KPU: the President, cabinet ministers and senior government officers, including members of the Provincial Administration, campaigned for KANU candidates, and portrayed the KPU as having betrayed Kenyan unity. Secondly, KANU launched a personal attack on Odinga, whom they accused of “establishing a personality cult to promote his own position and power”. The government and KANU portrayed the KPU as “a clique that owed its existence to Odinga and, thus, could have no national legitimacy” (Gertzel, 1970).

Furthermore the contest had strong ethnic overtones—Luo versus Kikuyu—besides being equated with a struggle, not between the competing parties and ideologies, but, primarily, between two personalities (Kenyatta and Odinga) and between the government and an “illegitimate” opposition. Additionally, liberals around Kenyatta, including Tom Mboya, a Luo, cast the KPU as a party comprising dissidents who had subversive objectives that could undermine “the young nation state’s” efforts to meet popular post-independence expectations (*ibid.*). The KPU was eventually banned in 1969 and several of its leaders detained. This paved the way for a *de facto* one party state that prevailed until 1982 when the latter acquired the force of law and Kenya was transformed into a *de jure* one party state. By 1970, therefore, the radical nationalists who challenged the resettlement schemes were contained and the state was able to carry out its land policies without any organised challenge.

The political conflict at the time of the transition to independence, and the overwhelming defeat of the radicals, had two significant outcomes. Firstly, a constitutional arrangement evolved that favoured the sanctity and inviolability of private property rights and which also provided for protection from deprivation of property without compensation. Secondly, it resulted in the adoption, without alteration, of the legal framework on which the colonial reform of land tenure was based. These outcomes, and the protection of private property in particular, encouraged the unlimited accumulation of land in the scheduled areas by the liberals in KANU and KADU, for it allayed the fears that accompanied the radicals’ threats to confiscate land in the settler sector. The liberals assumed central positions in the government from where they, in turn, influenced the direction of economic policy and ensured that private property rights retained a sound foundation in law. Relatedly, the

liberals were keen not to disturb the legal framework for economic development laid down by the colonial state because they were convinced that consolidating property rights in land would lead to intensified agricultural productivity on which the economy had to depend. Important also is the fact that the dissolution of KADU led to a centralized form of government in which most of the powers, including the regulation of access to land, were concentrated in the hands of the president and executed through the Provincial Administration.<sup>17</sup>

#### **4.2 Phase II: Freezing the Land Question**

Funding from the British Government, the World Bank, and the West German government facilitated the decolonization of the White Highlands from the early 1960s onwards. The Land and Development and Settlement Board (LDSB) organised land redistribution and resettlement schemes "to give the White Highlands a dose of African ownership". During the period, the Kenyatta administration bought off some European farms for the purpose of settling the landless in a programme known as the Million Acre Settlement Scheme (see Leys, 1975; Wasserman, 1976; Njonjo, 1978; Okoth-Ogendo, 1991; Leo, 1985).

The resettlement schemes provided grounds for further inter-ethnic conflicts. These conflicts had their origins in the amount of land apportioned to the Kikuyu in the eastern part of the Rift Valley and elsewhere (about forty per cent of the total land reserved for the schemes) because they (the Kikuyu) had been identified by the administration as the most land-hungry and threatening group (Leys, 1975; Leo, 1985; Bates, 1989). On the other hand, as argued by Bates (1989:60–61), violent conflict was averted because of the mixture of motives surrounding KADU's approach to the land issue, and because the structure of political institutions governing the land resettlement programmes enabled Kenyatta and other national politicians to exploit this mixture of motives to disorganise regional political opposition. It is noteworthy that due to their wealth and numbers, in addition to the support they enjoyed from the Kenyatta state, the Kikuyu found their way into schemes meant for other ethnic groups: they could be found participating in the resettlement schemes established in places as far away as Lamu and Kilifi on the coast, Trans Nzoia, and Uasin Gishu.

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<sup>17</sup>. This trend towards the centralization of state power was common all over Africa and was based on the argument that there was a need to secure a united nation state and patch up the widening socio-political and economic divisions occasioned by long periods of colonial rule (see contributions in Olowu, 1990). In Kenya, this resulted in the concentration of state power in the hands of the President and in the Provincial Administration (Office of the President) in particular (see Oyugi, 1986).

National-level political conflicts were settled via the resettlement efforts and, more so, by Kenyatta's approach to the issue of land. Kenyatta incorporated the Kalenjin into a relatively central political position by appointing Moi (then the most senior politician among the numerically smaller groups) to the position of Vice President. This had the effect of brushing under the carpet substantive issues about land in the Rift Valley, including those that threatened the eviction of the Kikuyu from the area. Kenyatta also contained the potential for conflict in other areas by addressing individual leaders rather than communities. Some were rewarded with positions in the cabinet and parastatal organisations, thereby muting the articulation of ethnic grievances on land.

Meanwhile, the British government had entered into a pre-independence agreement with Kenyatta's administration and the Sultan regarding control of land in *Mwambao*. Kenyatta conceded to the Sultan's demands for the recognition of private land rights on the coast and promised to adjudicate and register such rights where they were not adjudicated, notwithstanding that this would further negate the land rights of the indigenous groups, namely, the Mijikenda and ex-slaves. The agreement, thus, did not resolve the squatter problem but, instead, intensified it by giving full recognition to the freehold titles acquired through the 1908 Land Titles Ordinance. The evolving constitution also protected property and existing land rights irrespective of how they had been acquired and in spite of protest from radical politicians. Both the agreement and independence, thus, concluded the process of creating the squatter phenomenon: they transformed the Mijikenda into squatters or tenants of Arab and Swahili landowners.

#### 4.3 Phase III: Thawing the Land Question

Kenyatta's political style was key to the suspension of the Land Question in that he addressed the leaders of various groups as individuals without attempting to redress communal or ethnic concerns about land. Moi, on the other hand, upon ascendancy to presidency after the death of Kenyatta in 1978, was as interested in the suspended Land Question as he was while in KADU in the 1960s. Most of his public pronouncements underscored this; they touched on controls over land acquisition "in order to protect popular interests". Government officials often interpreted his populist pronouncements to mean directives. These pronouncements, nonetheless, had an important consequence: they led to the closure of the frontiers in the Rift Valley to which land-hungry groups used to migrate to acquire land. From as early as 1980, and in the process of constructing his own independent base of political support, he began to order the rapid individualization of farms owned by land-buying groups (cooperatives and companies and partnerships) and the registration of titles for the individual shareholders. This too was aimed at

closing avenues of further entry into the heartland of the Rift Valley by all land-hungry groups in general and the Kikuyu in particular.

Moi's pronouncements on land were made alongside an increasing tendency to use it as a patronage resource. Moi's inchoate retinue, convinced that this was how Kenyatta's political machine dominated the economy and politics of Kenya, pressed him for grants of farm lands in the Rift Valley and the coast where there were vast amounts of government land. This proceeded at a rather regulated pace up to the mid-1980s when his social bases of support began to decline. The decline took place in the context of a deepening economic recession. Relatively poor economic growth rates, compared to the much better ones recorded in the Kenyatta period, eroded the capacity of the government to deliver public goods and services; they also circumscribed what the president could promise the nation. It was for this reason, among others, that Moi turned to resource-rich parastatals, especially those in the agricultural sector, where he placed his own people in managerial positions to act as political gatekeepers, to tap resources for patronage purposes. Declining returns from public agricultural economic institutions—a decline that was stimulated by both the low prices of primary commodities in the international market and farmers' dwindling interest in farming the main cash crops due to the patronage that characterized their marketing—led to an increasing shift to using public lands for patronage. In the second half of the 1980s, land became a more important resource for establishing and maintaining patronage relations with leaders of groups that were considered to be of strategic significance in terms of political support.

From the early 1990s, and with pressures for political liberalization, the appropriation of government land by political elites assumed an even faster pace as Moi struggled to retain as loyalists, a constituency that was otherwise rapidly disintegrating. At the same time, the KADU group which hitherto constituted the KANU leadership began to appropriate the Land Question for a different but related political project. They began to use it as a political tool to fight those opposed to them, in the conviction that multi-partyism would imply the end of Moi's leadership. They reactivated demands for territorial land claims in the Rift Valley and on the coast as they had done in the 1960s. This resulted in ethnic land clashes between groups that originally constituted the support base of the former KADU and the immigrant population in Rift Valley and, much later, on the coast between the Mijikenda and upcountry Kikuyu and Luo immigrants. KANU won the 1992 elections but left behind a simmering Land Question, an issue that has continued to influence political developments in the country.

#### **4.4 Continuity in Legal Framework**

Independent Kenya inherited, virtually unaltered, the colonial legal framework on the reform of land tenure and the protection of private property

rights in land. The state adopted all the ordinances relating to the control of land and made them laws by which the post-colonial state was to regulate access to land. The Land Titles Ordinance of 1908 (which initially applied to the coastal areas because the Crown Lands Ordinance of 1902 covered the interior) became a law (Cap. 285) under which a person could become the absolute owner of a piece of land and the immovable properties therein by registering a claim or a right to the land. This ratified titles or claims registered under the 1908 Ordinance: registered claims became conclusive evidence of absolute ownership of land, thereby sealing the fate of the landless and squatters and intensifying their tenure insecurity. The titles and claims registered then gradually became the source of incessant land ownership disputes and conflicts.

The Crown Lands Ordinance of 1915 became the Government Lands Act (Cap. 280). Like the Ordinance which gave the governor all the powers regarding control of the Crown Lands, the Act vested in the President, all the powers regarding the leasing, granting and disposition of government land or former Crown Lands. The Act also retained the provision for the Commissioner of Lands (an appointee of the President) as the administrator of all public lands. This Act, again like the Ordinance, treated the state as the main landlord. Enormous powers of control over land that had been vested in the state through the governor were now transferred to the President to hold in trust for the state. This allowed the President to make grants of land to individuals and corporate interests. The concentration of power over land in the presidency and the central government also reflected tendencies towards the centralization of political and economic activities generally. It is noteworthy that control over land was central to the organisation of the struggle for decolonization but after independence, land grew into the single most important "political resource", especially in the context of the concentration of the power to determine access and control in the Presidency. It is this development which Shivji (1996) has described as the monopoly of the radical title by the executive arm of the state. This meant a big departure from the objectives of the struggle for decolonization since it undermined the quest for the democratization of land ownership: the Act did not seek to democratize the structures governing the control of land, neither did it invest powers over land in popular institutions. The result was that both the presidency and land increasingly became intertwined in the exercise of political power. The prevailing legislative framework was specifically utilized to enable the president to give grants to politicians in KANU and KADU with a view to neutralising their interests in regional-based politics of land rights.

The Registration of Titles Act (a 1920 Ordinance) was enacted to provide for the transfer of land by registration of titles guaranteed by the state. It was hoped that all future grants of government land and certificates for land on the coast would be registered under this legislation and that any landowner whose land was registered under the Governments Land Act or Land Titles

Act would apply to have their land registered under the new one since it would give them the benefits of a state-guaranteed title. However, land owners chose to register under either of the laws since there was no provision for compulsory re-registration.

The Registered Land Act (Cap. 300) was enacted in 1963 to confer absolute and indefeasible title on the registered land owner. This eroded the principle of multiple rights in land and enforced exclusivity as espoused in the land reform programme. The Act aimed at replacing all other laws on land registration and, therefore, required those who had registered land under other Acts to re-register under the new one. By this time, however, very few districts had completed the process of adjudication and registration of land. The enactment of this Act meant that several different systems of land registration had to operate concurrently.

Reform of land tenure was consistently pursued. To individualize as much land as possible, it became the practice to gazette intentions to individualize without going through the local authorities as required by law. The Land Consolidation Act, which was based on Swynnerton's recommendations in the 1950s, was complemented, in some areas, by the Land Adjudication Act of 1968. The reason was that the consolidation exercise tended to be accompanied by disputes over property in land and had, therefore, become quite unpopular in many areas. Moreover, the "regime of compulsions" which the colonial state used to implement it in central Kenya was morally inapplicable given that the country had just assumed independence, and also because the "radicals" who had temporarily consolidated their watchdog positions in both KANU and the government would have opposed its application. Officials specifically noted that consolidation caused disputes about land boundaries and about *songa songa* or displacements of individuals from one holding to another in disregard of individual investments in land. Additionally, there was a general complaint that the customary tenure system of some communities prevented consolidation from taking place and, therefore, hindered the achievement of the set objectives (Republic of Kenya, Development Plan, 1994/96). This led to the enactment of the Land Adjudication Act of 1968 which was to apply in areas where consolidation was inappropriate. The new Act allowed for registration and subsequent issuance of separate titles to fragments held by one individual. In the meantime, the Land Consolidation Act applied only in districts where consolidation was already at an advanced stage—parts of Taita Taveta, Meru, and Baringo districts.

Legislation regarding control of sales and transfers and arbitration of land disputes was also adopted intact from that enacted by the colonial state. The Land Control Ordinance of 1944 evolved into an attempt to control land sales. It had two objectives: to prevent people from becoming landless through unregulated land sales and to stop a scramble for land by foreigners. The Act provided for the establishment of Land Control Boards from the level of

administrative divisions to the provinces. These Boards were to be headed by the respective Provincial Administration officers.

Meanwhile, the coexistence of traditional institutions for arbitrating disputes with the modern ones has meant the prolongation of disputes and an increase in litigations. As a result of this, the state has made several attempts to redirect the arbitration of land disputes (including those around registered land) from the magistrate's to the elders courts. These efforts have been based on the argument that the modern law courts give those with access to professional lawyers an advantage over those without and, therefore, result in the poor people losing land. Based on presidential directives, the Disputes Tribunal Act of 1984 removed the jurisdiction to determine land disputes from the courts and, instead, placed it in the elders courts. Disputes have continued to increase notwithstanding this legislation. The current legal challenges, however, centre around disputes arising from the unregulated privatization of public lands and the attendant multiple allocations. Some of the disputes have evolved with legal rulings that are a challenge to the principle of indefeasibility of title. The application of customary law, which differs from one ethnic group to another, ceases altogether after land adjudication and the registration of land.<sup>18</sup> Thus, customary law in regard to the control of land is held "in ransom" by modern land laws and its security depends on the prevailing administrative fiat and political disposition.<sup>19</sup>

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<sup>18</sup>. See Wanjala, S. (1990) for details. He argues that both customary and British land laws are in operation but are not in conflict since they address different types of land and interests in land i.e. trust lands or former reserves and registered land.

<sup>19</sup>. This is not peculiar to Kenya. It was a political tool sharpened in the wake of indirect rule in British colonial Africa (see Mamdani, 1996) and has become an important relic of the post-colonial state. Shivji (1996), in the context of Tanzania, points out that "both during the colonial and post-colonial periods, the legal land regime while recognising customary rights—deemed rights of occupancy—did not entrench them in law...deemed rights have had least security dependent on the prevailing administrative policy and fiat rather than the law. Whenever granted rights and deemed rights conflicted or deemed rights and the interests of the state collided the deemed rights gave way" (Shivji, 1996:4).

## Chapter 5

# The Coastal Land Question

### 5.1 Creation of Squatters

The arrival of the British and the establishment of the protectorate helped the subjects of the Sultan to consolidate their control of land along the coast in disregard of the possessions of the indigenous Mijikenda groups. The 1886 Anglo-German agreement, which created *Mtwambao*, specifically gave the Sultan rights over land in the strip and made no attempts at preserving Mijikenda land rights. The declaration of the Protectorate in 1895 and the subsequent lease of the coastal strip to the Protectorate by the Sultan was followed by the formal acknowledgement, in principle and practice, of the private possessions of Arabs and the Swahili, thereby laying the socio-political and administrative bases for the exclusion of Mijikenda rights to land on the coast in general and along the strip in particular. The regulations promulgated in 1897 and the Crown Land Ordinance of 1902 facilitated the acquisition of unoccupied land owned by the Mijikenda under their customary tenure. The state acquired land here rather than from the Arabs because it was assumed that the Mijikenda did not have private land rights.

The creation of a people without rights to land—the squatters and the landless—did not only evolve with the establishment of the Protectorate. Alongside the development of the Protectorate, an equally important political question regarding the abolition of the slave trade and the future of former slaves was rapidly developing and impacting on the question of access to and control of land along the coast. Between the early 1890s and 1907, many slaves owned by Arab and Swahili land owners, and engaged in the coastal plantation economy, were freed. Some continued to stay on their former masters' land, where they began independent cultivation of food crops. Others proceeded to the reserves that had been set aside for them (see Cooper, 1980 for details).

The abolition of slavery impacted on the structure of access to land and on the coastal agrarian economy, for it was accompanied by a decline in the significance of the plantation economy which underpinned Arab and Swahili political and economic power. The Arabs and the Swahili lost the ability to use land through the control of labour, although powerful families increasingly retained most of the productive land in the area.

The post-abolition period was marked by a tendency among the former slaves to squat on land which their former masters could no longer occupy.



Others simply settled on land adjacent to former plantations in what came to be the Crown Land or simply any unoccupied land that they could find. On their former masters' land, they could be forced off or made to pay rent but whether they paid rent or not depended on the arrangements they had with their former masters. Some of them paid nothing but occupied the land with the implicit consent of the owners. Other landlords simply abandoned the land and left it to the squatters who comprised the Mijikenda and ex-slaves (Cooper, 1980). As argued below, the registration of individual land holdings for the Arabs and the Swahili occasioned massive losses for the ex-slaves, for they lost even what they had acquired outside the plantations.

The promulgation of the 1902 Ordinance and its declaration of waste and unoccupied land as Crown Land meant further losses to the Mijikenda. The Ordinance aimed at acquiring for the Crown, all unoccupied land in and outside of *Mwambao* or all land that was not owned by the Arabs, the Swahili, and Indians. The assumption that Arab and Swahili and African rights to land were confined to the land they occupied and, therefore, that all that was unoccupied could be alienated for the Crown facilitated this expropriation. The Ordinance, by seeking to restructure man-land relations on the coast, impacted not only on the structure of access to land but also on Arab and Swahili- dominated structures of social power. Their economic, and to some extent, political influence waned as a result of, firstly, the abolition of slave labour, and secondly, the rapid growth of the Protectorate and the attendant British administrative and political influence over the entire ten-mile coastal strip.

Difficulties in ascertaining what and where were the private possessions of the Sultan and his subjects hampered initial attempts to expropriate land for the Crown. Although ownership of land used for plantations was not in dispute, adjacent land was subject to multiple claims either between and among Arab and Swahili families or between these and ex-slaves and/or the various Mijikenda sub-groups.

All claims to land had to be adjudicated to forestall a deepening of conflicts and disputes over land between the private land owners and the administration which was determined to take all unused land (Sorrenson, 1968:220). The Land Titles Ordinance of 1908 was subsequently promulgated to enable the colonial authorities to determine the extent of private possessions before they could alienate land for the Crown or give grants to individual settlers. The administration also thought that allocation of titles—through this Ordinance—would encourage European settlement on the coast which promised to be a good site for plantations of tropical produce.

The 1908 Ordinance required claimants to any land on the coast to make claims—with documentary or oral evidence—to the land registration courts. This was to be followed by the registration of those claims found valid

according to the Torrens system of land registration,<sup>20</sup> while the residual unclaimed land was to be regarded as Crown Land. The 1908 Ordinance meant giving absolute and indefeasible title to land owners whose claims were accepted. It is noteworthy that the implementation of the Ordinance did not provoke any opposition from the established property-holding groups on the coast because its aim of introducing land as a commodity was not new to the Arabs or the Swahili or the Indian land holders. Land here had already been treated as a commodity through Islamic law. But this was new to the Mijikenda whose customary tenure system was at variance with the conception of land as an alienable commodity and as an entity whose absolute ownership could be vested in an individual.

This Ordinance, and its version of land tenure on the coast, began by altering the distribution of land, first, among the Arabs and the Swahili. "The communal rights and claims" of some members of these groups were denied registration and their land instead turned over to the Crown. The Ordinance then closed avenues via which the Mijikenda and ex-slaves could have made any claim to land in the coastal belt: it "cut off" Mijikenda legal rights to land in the fertile coastal belt. Larger but less fertile and more arid reserves were set aside for them in the hinterland away from claims of the Arabs and Swahili, Indians and Europeans. This left behind large tracts of land for expropriation for the settlers and supposedly preempted conflicts (over land) between the Mijikenda and other groups. With regard to its outcome, Cooper (1980) points out that

The process of allocating titles clearly discriminated in favour of people whom officials could accept in the role of landlords. The result was to fortify the ownership of land by individuals and to cut off the legal rights to land of people who could not make—or make stick—claims on such an individualistic basis (Cooper, 1980:192).

Registration of rights under this Ordinance was not based on a procedure for establishing the validity of claims. Only one person did the work of recording the claims. Registration progressed at a slow pace while demands for titles by land owners increased rapidly. To speed up the exercise, the recorder began to accept claims on the basis of old Arabic documents or allegations of possession or inheritance (Charo, 1977; Republic of Kenya, 1978). Status and social identity in the Arab and Swahili-dominated structures of power lent credence to particular claims. The registration favoured claimants from powerful families because social status made it more likely they would find a witness "to pinpoint boundaries and testify to the long occupation of land". It also made them "more likely to find witnesses who were in some way

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<sup>20</sup>. Demarcation of an individual's land holdings and issuing a certificate of ownership to the individual if no one disputes its ownership.

involved in reciprocal relations with the claimant, notably ex-slaves" (Cooper, 1980:197).

The Ordinance did not seek to establish Mijikenda claims, even those which had been recognized by the Sultan, because their "rights amounted to a tribal and not an individual title". Very few non-Muslim Africans registered any claim "partly because the process of making claims was controlled by the Arab administrators and partly because the announcements were done inside mosques where there were very few Mijikenda Muslims or none at all".<sup>21</sup>

The Ordinance was applied in Malindi and Kilifi in 1909 and 1914 respectively. Generally, those whose claims succeeded were the Arabs, the Swahili and Indians. In Malindi town alone, over 95 per cent of the land went to Arabs and the Swahili but some, the less powerful, were left out through the biases of the adjudication process as the land holding patterns of the old plantation economy were left intact. Thirteen landholders from the major Arab and Swahili communal groups were given title to over forty per cent of the privately-owned agricultural land; one family alone took sixteen per cent, nearly as much as all European and Indian land owners combined" (see Cooper, 1980:198-201). Large tracts (over 40,000 acres) in Kilifi central were assigned to the benefit of the Mazrui Arabs, some of whom later sold blocks to other Arabs, private businessmen and Indians. Most of the remainder was later acquired by the Mazrui Land Trust. Squatters occupied most of it hoping to secure tenure rights on it. My scrutiny of patchy records at the Department of Survey, Kilifi district, confirmed the impression of large tracts of land having been registered in the names of Swahili and Arab families. One plan whose survey began on 13 December 1910 and which was completed on 23 January 1911, a period of about a month, had 281.49 acres around Kilifi town registered in the names of several Arab and Swahili families. Two others dated 1955, one near the harbour and another near Kilifi Creek, also had two blocks of 1,000 acres each registered under other different Arab and Swahili families. Numerous other parcels, of 20 acres on average, were recorded as "registered for the children" of such families.

Adjudication of claims under the 1908 Ordinance was suspended in 1922 because it was considered laborious and expensive for only one Recorder to adjudicate all the claims. Moreover, the collapse of European, Arab and

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<sup>21</sup>. Interview with a local elite in Mtwapa. His sentiments were echoed by several other respondents in Bahari and Malindi. Their observations corroborate those of a parliamentary Committee appointed in 1978 to investigate the problem of landlessness on the coast. The Committee identified several other factors for the massive dispossession that took place at the time. These were lack of knowledge by the Mijikenda about the existence and requirements of the legislation; their different conception of what constituted *de facto* ownership of land; biases against the indigenous groups by the administrators of the legislation; and the small amount of time scheduled for the registration of claims.

Swahili plantations on the coast meant that the issue was “no longer acute” and could be suspended to provide room for preparations regarding the opening of the White Highlands. The process resumed again in the 1930s and was speeded up in the 1950 but was still slow and expensive. Registration of the claims made during the period was completed in 1976 but those who failed to record their claims under the ordinance hoped to do so under the post-colonial statutes.

The single most important consequence of the Ordinance was that it ruled out the possibility of the Mijikenda and ex-slaves acquiring title to land in the coastal strip and adjacent areas. Particular injustice was done to the ex-slaves settled in the remote parts of the coastal belt because Arab and Swahili administrators insisted during the registration that these could not have acquired freeholds (Cooper, 1980:196). Similar injustice was done to the Mijikenda: the administration through conversations with Arab and Swahili landowners and administrators, assumed that the Mijikenda had no rights or claims to land in the coastal strip because they “owned land communally in the interior” (Republic of Kenya, 1978). The fact that they had escaped into the interior away from the slave trade was not taken into consideration; neither was the fact that Arab-Swahili military strength and the plantation economy had kept them at bay in the interior and only allowed them to move back to the coastal belt when the Arab and Swahili plantation economy collapsed. With the recognition of the Sultan’s private possessions and those of his subjects, the Mijikenda on the coast, like the ex-slaves, were made squatters while others became tenants of the Arabs whose land use rights depended on extra-legal arrangements or the relationship that formed between them and the landlords.

The introduction of the “Native Reserves” in Kilifi worsened the situation for the indigenous groups. In 1912, an attempt was made to remove the Giriama, the largest sub-group of the Mijikenda, from the fertile banks of the Sabaki river in order to create room for the settlers. They were to be forcefully removed and confined to less fertile reserves to give way to European settlement. In the reserves, they would be brought under effective administrative control to facilitate the systematic collection of taxes and the extraction of labour (Temu, 1972). But the Giriama resisted this attempt and, instead, went to war with the British in 1914. Already they had taken to “hidden forms of resistance” against the Protectorate Administration: they refused to labour and instead sold grains to Indian and Arab traders or raised loans from them to pay taxes (ibid.:224). Their war with the Protectorate administrators began when the latter dynamited the *Kaya* (forested fortresses in which they lived)<sup>22</sup> to force them into the reserves. They in turn burnt down government offices

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<sup>22</sup>. A *Kaya* carries a wider meaning than that of defence; it is from them that religious and political authority is derived .

and the houses of the loyalists. They also began taking to the bush upon the arrival of tax collectors or responding to their arrival by attacking them (ibid.).

The creation of the reserves did not help resolve the problem of dispossession and squatting among the Mijikenda. The reserves instead both sealed the "order of things" and made the Land Question more complex. The reserves were also established far in the interior and the colonial administration prohibited the Mijikenda from leaving them to settle elsewhere. Furthermore, some of the subjects of the Sultan "proceeded to the interior and acquired land to which they got certificates of ownership" (Charo, 1977). The rest of the unclaimed, unoccupied, and waste land was declared Crown Land which the Commissioner could grant to settlers.

A combination of legislative, administrative, and judicial tools was used to facilitate the control of land on the coast by both the Arabs and the colonial state. These, often effected by a "regime of compulsions," contributed to the dispossession of the Mijikenda and ex-slaves. The state created administrative and political obstacles that later obstructed, and continues to obstruct, the success of Mijikenda claims to land. All the same, the evolution of the Land Question on the coast entered into a new phase with the negotiations for political independence in the wider colony.

## **5.2 The Eve of Independence and Coastal Land Rights**

The issue of land rights on the coast generated political conflicts similar to those experienced upcountry. Differences among the Arabs, the Swahili and the Mijikenda groups led to socio-political divisions along which numerous political parties were formed: the Coastal Peoples Party, the Coastal League, Shungwaya Freedom Party, the Kenya Protectorate Peoples National Party, and on the eve of independence, the Mwambao United Front. This fragmentation revealed significant political differences and jealousies born of a history of conflicts over political and economic power between and among the various coastal Arab and Swahili groups.<sup>23</sup> Some of the differences had their origins in the struggles for power between these groups which were prevalent during the consolidation of the Sultan's rule on the coast. Nonetheless, it was the Land Question which again was responsible for most of the fragmentation. Arabs founded, amongst other organisations, the Mwambao United Front and the Coastal League to bargain for the protection of land rights acquired and registered under the provisions of the Land Titles Ordinance of

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<sup>23</sup>. Slavery, among other factors, facilitated the exclusion of the Mijikenda from the control of economic resources and politics at the coast. The only significant role they played in the economy was one of acting as middle men between coastal Arab and Swahili traders and groups in the interior.

1908. They saw political activity as a means to safeguard their landed and other properties since they could use these parties—and the issue of land rights—to mobilize political support on the coast for the recognition and protection of private land rights generally. Activity was “politically necessary” given the widespread fears about the fate of land in the White Highlands and given that white settlers had begun to sell their land in panic as the transfer of political power progressed. Like the upcountry settlers, coastal “landlords” feared that unless there was a commitment to respect and protect their private land rights, they risked losing them (see Ghai and MacAuslan 1970). Some feared that squatters who had already occupied land that was used for plantation farming would be given secure tenure. There was also an additional fear of invasion by land-hungry upcountry squatters, especially the Kikuyu, some of who had come to labour in the plantations early in the century, and immigrants who had expected to be apportioned public land on the coast.

Attacks on Arab and Swahili land rights by Mijikenda politicians, mainly in KADU, stirred up political tension between the Arab and Swahili landlords, on the one hand, and the Mijikenda groups on the other. The socio-political divisions further widened when some of the Mijikenda and KADU politicians publicly denounced Arab land rights by asserting that “Arabs did not enter East Africa as rulers but as missionaries and, therefore, could not claim any territorial rights” (Salim, 1968, has details). Convinced that they had undisputed sovereign rights on the coastal strip and hoping that Zanzibar would support their claim to autonomy instead of letting them be submerged within a new state that would probably not be sympathetic to their case as the British had been, Arabs and the Swahili began to push for the secession of Mwambao.<sup>24</sup>

As a consequence of their fears, the government appointed a Committee in 1961 to inquire into advisable changes to the future status of the coastal strip in the light of the 1895 agreement in which the strip was leased to the Protectorate. The report of the inquiry recommended both the full integration of the strip into the rest of the “colony” and an abrogation of the 1895 agreement. But the Sultan was more interested in the future of his subjects than in preserving his sovereignty which was, in any case, purely nominal. Keen to ensure that any future government would respect land rights and the Muslim law and religion, and that the coastal system of Arab administrative officers—Liwalis and Mudris—would be maintained, the Sultan agreed to the integration of the strip with Kenya only if these conditions were met. A separate

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<sup>24</sup>. The Zanzibar Nationalist Party (ZNP) was defeated in the 1957 multiracial elections. It was no longer willing to take a radical position on the strip because of the political animosity that ensued with the elections in Zanzibar and because of the fear that anti-Arab sentiments would spread to other parts of the strip (see Salim 1968).

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Lancaster House conference was held in 1962, parallel to the one that discussed constitutional changes for the wider colony, to negotiate the status of the ten-mile strip. Further discussions were held in late 1963 between the representatives of the British Government, Kenya, and the Sultan. These resulted in the new administration, under Kenyatta, undertaking to recognise and protect private property rights on the coast. The agreement stipulated that "freehold titles to land in the coast that were registered would be recognised at all times and that steps would be taken to ensure the continuation of procedures for the registration of new freehold titles" (Salim, 1968:220-225; Ghai and MacAuslan, 1970:187-190). With regard to squatters, both the colonial and the evolving Kenyan administration favoured establishing various schemes on government land or on land purchased from those who were willing to sell. This clearly had the aim of preserving the principle of private land ownership and circumventing the possible invasion of private land by squatters.

## Chapter 6

### The “Land Question Complex” in Kilifi

While slavery and colonialism clearly disrupted the existing structure of land tenure on the coast among the indigenous Mijikenda, the absence of a comprehensive land policy on squatters and an expanding tourist industry have further deepened the “Land Question complex” in the post-colonial period. On the one hand, the growth of tourism as an economic activity around the coastal belt led to a sharp increase in the value of land and to the emergence of an active land market that extended beyond the coastal strip. Arab and Swahili landlords began to sell their acquisitions to private developers from both the coast and upcountry. Central state elites, mainly comprising Kenyatta’s cabal, also began to develop an interest in land on the coast for purposes of investing in tourism or for making money by selling to private developers. To the Arab and Swahili landlords who had already left farming in favour of commerce in the towns, land became an important source of capital to expand their commercial ventures. To state politicians, especially those close to Kenyatta, coastal lands became an important source of capital required to get into business and/or maintain patronage networks. On the other hand, no comprehensive policy on landlessness and squatters was formulated, nor was there a firm commitment on the part of the government to address the issue as it did with the resettlement efforts upcountry in the 1960s and 1970s. This may be partly explained by the different character of the Land Question on the coast, and partly because similarly dynamic approaches to those pursued upcountry were difficult to pursue on the coast given the nature of the social and political forces involved.

These factors have had several consequences for the structure and pattern of land ownership on the coast. They have had effects on the security of tenure of the squatters who were using the land for the cultivation of food crops, commercial tree crops—cashew nuts and coconuts—and the tapping of *tembo* (palm wine). Land owners sold their land after first evicting occupants whose occupation of the land was largely seen by both the sellers and buyers as an obstruction to the transfers: sellers saw them as causing the depression of prices while buyers thought they would have difficulties evicting them if existing owners did not do it themselves and before any transactions could take place. The sales or transfers that took place with regard to both Arab-Swahili land and “grants from above” were effected in disregard of the use rights of occupants, a majority of whom did not have land elsewhere. This



was followed by the mass eviction of occupants and intense struggles against evictions or expulsions from the land. Displacements and loss of land rights became a central feature of the evolving structure of land ownership in the area.

In the meantime, the number of landless people in Kilifi alone continued to swell with some sources in the early 1970s estimating them to comprise about 61,000 people (or over 130,000 on the coast as a whole) (Republic of Kenya, 1978). This number has obviously doubled or even tripled since the early 1980s if one considers the effect of increasing population and the increase in the number of immigrants lured by the expanding tourist business and the possibilities of resettlement on government land. Moreover, as argued below, resettlement efforts have been rather slow and the number of beneficiaries has been too small to make any impact.

After independence, the government attempted to resolve local land problems through three interrelated approaches. First among these was establishment of settlement schemes whereby the government bought land from some of settlers and land owners to settle squatters, or converted some Crown Lands—now government land—into settlement schemes. This had the aim of “bringing idle and under-utilised land into production with a view to expanding agricultural production and creating employment opportunities in agriculture for the unemployed”.<sup>25</sup> The second approach, pursued from the early 1970s, centred around the reform of communal tenure which was seen as a “canopy” for landlessness and as an impediment to improved agricultural productivity in the area. Related to both approaches was also another one of settling squatters on government land and registering their rights on the basis of where they were settled and cultivating.

The struggles over access to public land are discussed further in the sections that follow. Particular attention is given to resettlement efforts since these were the first attempts at resolving the land problems in the area and elsewhere in the country. Also discussed are more recent resettlement efforts and the effects of political patronage in regulating access to public land. An attempt is made to answer the question of the extent to which resettlement efforts resolved the Land Question and/or the extent to which the schemes compounded the “Land Question complex” in the area. This discussion will be followed by an assessment of the land tenure reform programme. Land tenure rights on government lands will be discussed together with the reform programme since the data available was not sufficient to allow a separate discussion of this subject.

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<sup>25</sup>. Annual Reports, Ministry of Lands and Settlement, cite this as the reason behind establishment of the schemes throughout the period. The reports noted that, with secure tenure, allottees would devote time to farming which would improve agricultural production in the area.

### 6.1.1 Resettlement Schemes, 1960–1980

The history of resettlement efforts in Kilifi dates back to the colonial period. In 1911 and 1913, the colonial authorities settled a group of former slaves in settlement schemes around the Kilifi creek. In 1938, with a view to relieving pressure on government land, about 10,000 acres was set aside at Gedi, near Malindi, for a settlement scheme in which 850 families were settled and provided with twelve-acre plots each. The beneficiaries were squatters in private holdings but this was not an adequate solution to landlessness, for there still remained groups of squatters on former plantations and on private and Crown Lands.

In the post-colonial period, several other schemes were introduced to cope with the increasing squatter problem and to bring under-utilised land into use. What needs to be noted with regard to these schemes is that both an economic and a political rationale guided their establishment. Independence and pressures from radical politicians underpinned the political rationale which centred around giving land to the landless as a response to the looming political conflict between the landless and the settlers upcountry, as well as between squatters and the Arab-Swahili “landlords” on the coast. Independence also caused panic among some settlers, who then sold land the government could use for resettlement of the landless. On the coast, Arab and Swahili land owners, however, let the squatters continue cultivating on their lands or left their parcels idle altogether.

The economic motive centred around the need for an equitable redistribution of land without affecting agricultural production in the scheduled areas. The government also wished to pursue the policy of optimum utilization of land to boost agricultural production on which the economy depended. It was the aim of the government to put into use as much idle or under-utilised land as possible by giving it to the landless and squatters both upcountry and on the coast.

These objectives were to be achieved by transferring most settler land to “yeomen” or efficient African farmers who could utilize it without affecting, in any negative way, agricultural production. Secondly, the objectives were to be met by resettling the landless and squatters on state land or under-utilised private land. This thinking evolved with the settlement schemes of the 1961/62 period—the *Haraka* schemes—and the Million Acre Schemes of the post-1962 period. The latter were a phenomenon of the upcountry White Highlands, while the former were started in both the White Highlands and elsewhere, including the coast.

While upcountry schemes have been extensively studied (see Njonjo 1978; Leys 1975; Leo, 1985), data for those in Kilifi is patchy, repetitive, and inconsistent (different sources show discrepancies on several elements of the schemes). Nonetheless, Table 3 gives an overview of these schemes. The table presents the different figures from these sources in order to provide a rough

idea of how much land was alienated for resettlement and how many people benefited.

Four settlement schemes—Tezo Roka, Mtondia, Mtwapa and Ngerenya—were started in the 1960s under the *Haraka* project. The schemes were established on both government and freehold lands and were meant to benefit squatters on government and private land. They provided settlement to about 3,000 people in different areas on plots of about five hectares on average. Two other schemes were started in the 1970s—Vipingo (four hectare plots) and the Magarini "Complex" (six and twelve hectare plots) which is the largest of all the schemes in the district. Another one—Kijipwa (one hectare plots)—was established in the early 1980s while Kibarani was established in 1992. Resettlement has been going on in the latter while disputes about allocations continue to simmer in Kijipwa.

With regard to the size of the schemes, data from the various reports by the Department of Lands and Settlement does not tally with that obtained from the Parliamentary Select Committee or that from the Department of Survey, a department that surveys, plans, and demarcates the plots on behalf of the Department of Lands and Settlement. Neither do these figures correspond with those quoted in Hoorweg et al. (1991).

Table 3. Size of Settlement Schemes by Source

Name of Scheme	Plan Period	Hoorweg et al. (1991)		Committee's Report (1978)		Annual Report (1994/95)		Survey of Kenya (1995)		Official Plot Sizes (ha.)
		Scheme Size (ha.)	No. of Plots	Scheme Size (ha.)	No. of Plots	Scheme Size (ha.)	No. of Plots	Scheme Size (ha.)	No. of Plots	
Tezo-Roka	1960-64	6,500	1,357	3,763	-	1,649	199	-	1,119	4.8
Mtondia	1962-67	3,000	235	-	-	1,228	234	318	233	4.8
Mtwapa	1964-68	3,986	607	3,370	-	1,986	605	1,986	607	4.8
Ngerenya	1967-72	5,236	950	5,235	-	1,732	950	1,732	955	4.8
Vipingo	1974-77	1,052	260	1,051	-	1,052	260	1,052	260	2.4
Magarini	1978-79	60,000	4,000	40,469	-	-	-	-	-	6 and 12

Kijipw a	1982- 85	350	350	-	-	490	355	600	354	1
Kibara ni	1992- 96	-	-	-	-	-	769	,078	785	1
Total		87,1 24	8,7 09	53,88 8	-	8,1 37	.372	1,76 6	4,313	

Source: Hoorweg et al., 1991; Republic of Kenya, 1978, *Report of the Select Committee on the Issue of Land Ownership along the Ten-Mile Coastal Strip of Kenya*; Annual Reports, Department of Lands and Settlement (1994), and Records by Survey Department (1995).

The four sources give different figures on scheme size and show slight discrepancies on the number of plots in each of the schemes. The figures are only consistent with regard to the size of the Mtwapa and Vipingo settlement schemes. Data for Magarini was unavailable in both the annual reports and the records kept by the Survey Department allegedly because the scheme is administered from the head office of the Department of Lands and Settlement. Figures for Mtondia differ significantly in all the sources as do those on Tezo-Roka, Ngerenya, and Kijipwa. This discrepancy is even more revealing if the size of the schemes is read against the size of plots. One would get different numbers or sizes of plots. Some sources also showed that not all land has been allocated: resettlement is going on in the remaining parts of the schemes. Indeed, the 1994/96 Development Plan for the district shows that resettlement has been an ongoing exercise even in schemes such as Mtwapa and Ngerenya which were started in the 1960s (District Development Plan, 1994/96, Kilifi: 118-120).

A possible explanation for the discrepancies is also that records on the schemes—like other records on land and agriculture—are irregularly provided but repetitive in content suggesting that, at times, they do not correspond with the reality on the ground. Secondly, there are several government institutions with overlapping responsibilities for the schemes and each has its own records. The responsibility of the Survey Department, for instance, ends with the planning and demarcation of the plots. The Department of Lands and Settlement, in collaboration with the local Provincial Administration, then identifies the beneficiaries and provides them with allotment letters. These two may even add beneficiaries if there is some land remaining.

None of the schemes have been of the same magnitude as those started upcountry. The area covered by the schemes, if Magarini is excluded because of patchy records, is about 18,000 hectares with about 4,000 beneficiaries. If Magarini were included, the area would be about 68,000 hectares and over 8,000 beneficiaries.

Very few of the beneficiaries of these schemes were provided with land purchase and development loans by the Settlement Fund Trustee (SFT), a state body that was formed to help the landless buy land from settlers at what the government thought were “easy and cheap” terms. For those that did,

repayments include principal and interest and vary with the size of plots. Those on the 4.8 hectares pay Ksh. 5,650 (currently USD 113) per annum. Those with the 2.4 and 1 hectares pay Ksh. 2,830 (USD 56.60) and Ksh. 1,114 (USD 22.88) respectively (Annual Reports, Department of Lands and Settlement and District Development Plan—1983–93, Kilifi). But between 1983 and 1988, only about 250 settlers received loans amounting to Ksh. 3,000,000 (then USD 200,000). Assuming that each farmer got an equal share of the total amount, then each got about Ksh. 12,000 (USD 800). Beneficiaries used the loans to buy dairy cattle and billy goats, and to construct water troughs (Annual Reports, Department of Lands and Settlement; District Development Report, 1983/88). Complete repayment of loans was a condition for getting a title deed but some settlers had difficulties with repayment because, according to local officials, plots were sometimes mismanaged. Possibly because of the inability to repay the loan, and possibly because of low returns from the farms, in addition to poor infrastructure in the schemes, some settlers reportedly abandoned their plots. These have since been occupied by squatters with expectations that they would eventually be allocated the lands.

The resettlement schemes were not specifically and exclusively established for the landless in Kilifi district. This was particularly true of those established in the 1960s, for they were open even to upcountry groups in spite of the prevailing landlessness among the Mijikenda, and in spite of the fact that the nature of the Land Question here differed considerably from the upcountry one. Some upcountry people, and the Kikuyu in particular, found their way into the Mtwapa, Mtondia, and Tezo-Roka schemes either directly through buying from allottees or through the allocation procedure. Magarini was even started as a national multi-ethnic scheme.

These schemes, thus, could not have been expected to eliminate, or even reduce, the problem of landlessness, particularly on the coast and in Kilifi. Increasing numbers of "outsiders" and malpractices in the allocation of plots gradually engendered hostilities between the Mijikenda, especially the Giriama who are the majority in Kilifi, and other groups. The cause of this hostility was the Giriama fear of domination by the Kikuyu and other immigrants—a fear that their leader, Ronald Ngala, had also expressed on the eve of independence. The Giriama were further concerned that the schemes were not specifically/exclusively aimed at redressing landlessness among coastal groups and yet, the upcountry ones were aimed at benefiting only the landless upcountry groups. Local leaders, therefore, widely accused the local Provincial Administration of aggravating the land problem by resettling "outsiders", the high numbers of squatters on the coast notwithstanding. The officials are simultaneously said to have prevented this antagonism from degenerating into a violent one by frequently "tantalizing" squatters with promises of more land. These promises were rarely fulfilled.

In recognition of the magnitude of the local land problem and the attendant social conflicts on the coast, the Kenyatta government set up a special

committee in 1972 to investigate the extent of the problem and make appropriate recommendations. The committee recommended, among other things, that government land be freed to establish settlement schemes of the same magnitude as those established upcountry and give priority to the resettlement of the coastal squatters.

Throughout the 1970s, however, little attempt was made at implementing these recommendations. Only one settlement scheme was started in Kilifi—the Vipingo scheme in which about 260 people were each allocated 2.4 hectare plots. This scheme, however, was born out of a long history of conflict between squatters and the Vipingo sisal plantation whose “expansion project” had been impeded by squatters occupying the lands to which the plantation wished to expand. A resettlement scheme had to be established to clear the way.

In 1976, coastal politicians, alarmed by the slow pace of the government in addressing local land problems and by the failure of the state to establish schemes of the same magnitude as those started upcountry, presented a motion in parliament calling for a parliamentary select committee on the issue. The parliament passed a resolution that led to the setting up of another committee to “investigate the origins of the problem and write recommendations to the House on how to resolve the problem”. A 10-man committee was appointed in November 1976 and it began its investigations in 1977. The committee, like the presidential one, recommended, *inter alia*, the reconstitution of the office of a Commissioner for Squatters, the initiation of coast-specific settlement schemes, the control of agricultural land prices to enable squatters to buy land, and the prioritisation of the landless whenever the land they occupied came up for sale (see Republic of Kenya, 1978).

Again, little attention was given to these recommendations. Instead, as field interview respondents argued, government land was set aside and given as grants to politicians and national economic elites. The local Provincial Administration fronted this process of “exclusion”. Respondents, especially the local elites, repeatedly emphasised that “the entire line of the Provincial Administration officers on the coast, from the Provincial Commissioner (PC) to the District Officers (DOs), was dominated by “land-greedy” officers who were keen to request for authority to alienate government land to settle the squatters but always turned such land into private property or sold it to rich private developers”.<sup>26</sup>

Politicians and senior civil servants, among others, acquired large tracts of land through “grants from above”. This had the effect of precluding the Mijikenda from both use and land control rights, and reducing the amount of public land on which the landless could be settled. Secondly, it made the land

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<sup>26</sup>. Interviews with local political activists. Other local elites and some of the elderly people whom I interviewed had similar observations.

rights of the Mijikenda more fragile as it resulted in mass evictions. These problems intensified from the early 1980s and introduced another set of issues to the "Land Question complex" on the coast. Violent confrontations between the squatters and the new land owners became widespread as a new structure of land ownership—induced from "above"—evolved. The section below discusses some of these issues in the light of resettlement efforts in both multi-ethnic national projects and others that were started to specifically address landlessness on the coast.

Irregular allocations contributed to the already growing mass of landless people. As shown later, this form of dispossession was accompanied by the concentration of land by the politically powerful and others connected to them. One interviewee who has been articulating local grievances on lack of access to land in the area from the early 1970s pointed to "grants from above" as the most important factor responsible for the ever-increasing problem of squatters and landlessness on the coast then and now. To him, officers in the Provincial Administration and upcountry elites were "second to Arab and Swahili landowners in acquiring private land rights and titles in the area: they not only "grabbed" land meant for the landless but also invited others to do the same".<sup>27</sup>

#### 6.1.2 Post-1980: "Grants from Above" and "Professional Squatters"

The government established several settlement schemes in the 1980s while resettlement efforts continued in those established earlier. Unlike the schemes of the 1960s, and except for the Magarini scheme, those started in this period had the objective of providing secure land rights to the squatters settled on government and private land. It is mainly the existing government land that has been alienated for the purpose. But neither the landless squatters nor the local elites view these schemes as a solution to the Land Question. They all cited gross irregularities in the land allocation procedures and the excision of land for allocation to influential economic and political elites as impediments to the solution of the squatter problem. They charge that the national political elites' expropriation of land has resulted in less land for resettlement and has added to the mass of people without use rights. What is clear from the cases that are discussed below is that "allocation of land grants from above" has had the effect of reducing the extent of the land on which the landless can be settled. It has also had the effect of concentrating land in the hands of the politically influential and those with the ability to buy from state allottees.

A fundamental point, however, is that "grants from above" are made on prime land in the coastal plains where there are occupants cultivating differ-

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<sup>27</sup>. Interview with a local opposition party activist who later switched to the state party ostensibly so that he could address the land question from "within".

ent food crops and growing commercial tree crops. Land adjoining the beaches is often "reserved" for such allocations and is never demarcated as part of the resettlement schemes. Indeed, a senior officer in the Ministry of Lands and Settlement confided in me that demarcation and survey officers had clear instructions to leave a stretch of about 200 metres or more between the sea line and the schemes as a reserve for other developments. This zone often comprises the first and second row beach plots which are suitable for the tourist industry.

"Grants from above" have been the cause of protracted disputes over the control of land in the area and also a cause of widening divisions between the local residents and officers in the Ministry of Lands and Settlement, those in the Provincial Administration, and new land owners. A discussion on resettlement efforts in Magarini and on the struggles around Kijipwa settlement scheme provides a clear picture of these issues.

The Magarini Settlement Scheme Complex was started in 1978, on a pilot basis, with support from the Australian government. The scheme's expenditure for the period between 1978 and 1983 was estimated at Ksh. 21 m (about USD 215,000) and was expected to cost more on completion. As indicated, planning for the Magarini scheme coincided with a report by a Parliamentary Select Committee on the issue of landlessness on the coast. It was, therefore, expected to respond to some of the challenges of the "Land Question complex". The scheme was a national project meant to provide about 4,000 landless families with twelve hectare plots. Although data on the project is scant, available records show that only 1,100 plots had been allocated by end of 1983. In 1984, a decision was made to reduce the size of future allocations to 6 hectares (Hoorweg, 1991). This was possibly done to give room to more people and/or because some of the allottees could not effectively use the relatively large holdings given the limited financial support—farm development loans—from the government.

Disputes over allocations and resettlement beset the scheme from the outset. On several occasions, coastal politicians complained of the resettlement officers' attempts to deprive the coastal landless by giving "outsiders undue attention". Politicians often complained of biases by settlement officers in the allocation of the plots and of the eviction of coastal beneficiaries and their replacement with upcountry ones. Controversy over these allocations extended to parliament where the questions raised and the answers given were more revealing. In May 1984, two Malindi Members of Parliament, Francis Tuva and Katana Dzai, raised questions with the Minister for Lands and Settlement, Paul Ngei, about "political influence" in the allocation of holdings in the scheme. The MPs complained that the Minister and one of his Assistant Ministers, Shariff Nassir, from Mombasa, had sent a "list of 53 people to the chairman of the Allocation Committee, who was the DC, to be allocated land—irregularly—in the scheme" (*Weekly Review*, May 4, 1984). The MPs also complained that settlement officers, including the DC, ignored the



original inhabitants: they were evicting them from the plots already allocated to them, and on which they had planted various crops, so that the plots could be re-allocated to "outsiders". Other plots were being marked "reserved" so that they could be allocated to others with similar political connections and/or to settlement officers. Dzai specifically charged that "a committee that had been appointed to identify genuine landless people from the area had questioned why some plots were being reserved and as a result of questioning the DC, the committee was dissolved" (ibid.).

The Minister for Lands and Settlement admitted that a list had been given to him but emphasised that he had no personal interest in the scheme nor did the list contain anyone from his parliamentary constituency. The list was compiled from lists of people that had been submitted, with requests or recommendations for allocation, by several politicians, senior civil servants, or politically influential individuals. The 53 people had been recommended by the Office of the President, the Presidential Press Unit, an Assistant Minister in the Office of the President, the Coast Provincial Commissioner (PC), the Minister for Agriculture and the Assistant Minister for Lands and Settlement. These requests, therefore, were made by politically influential individuals whom the minister or the district settlement officers, would have found difficult to deny plots. To avoid embarrassment and a possible political backlash, the minister replied that all land in Kenya was national land on which anyone could be settled irrespective of ethnic identity and that "Magarini was not a scheme only for the coastal people". He promised to give priority to original inhabitants many of whom he said had been settled on the scheme. Since then, allocation of land on the scheme has continued to be at the centre stage of politics in the area, with local politicians promising to ensure that the government gives priority to the local people.

Struggles over access to land in Kijipwa, on the other hand, date back to the colonial period when a German farmer obtained land to start an experiment with sisal farming (see section below). After the success of the experiment, he obtained more land for a plantation. This was followed by the eviction of those already settled there. An attempt was made to resettle them elsewhere but some turned down this offer, arguing that the new place was rocky and less productive than where they had been moved from. They, instead, moved to adjacent empty public land (near the beach and relatively fertile) in the belief that they would get their land back or would be settled in a better place. This also was a better option because they occasionally worked on the plantation.

In the mid-1960s, the plantation owners began to expand their land after obtaining a new lease for a large area extending to where the former occupants had moved. This time they refused to move out. They fought those who came to enforce the eviction order. These included the plantation *askari* (security guards), labourers, and the local chief and his assistants. Police moved in moments later and arrested several "leaders" of the resistance. They

marched them to the local police post and locked them in. The squatters regrouped and marched to the police post to demand the release of their colleagues or to be locked in as well. The police responded by beating, dispersing and arresting them. As the struggle intensified, an officer from the DC's office arrived and requested the plantation owners and the squatters to hold talks on the matter. Apparently, senior politicians in the district had already petitioned the president for the government to give land to these and other squatters.

The squatters won several concessions among which was the authority to occupy the area while "the government looked for land to settle them" but on condition that "they lived in peace".<sup>28</sup> They continued to occupy the land and even subdivided it among themselves in the "conviction that they were the rightful owners of the land and hopeful that the government would give them secure tenure."<sup>29</sup>

Meanwhile, pressure was building on local politicians, particularly the then senior and influential cabinet minister, Ronald Ngala, to petition the government for land allocation and for titles to the land occupied by squatters around Vipingo, Kijipwa and elsewhere in Kilifi. Ngala made several appeals at public meetings and whenever Kenyatta visited the coast. He got Kenyatta's assurance that a settlement scheme would be established for the squatters and the landless in the area. The Vipingo settlement scheme, established in 1974, was one result of this assurance. Area residents who had knowledge about these events, nonetheless, complain that land for the scheme was set aside in a rocky place and far away from where they had established themselves. The best land was left for use by the plantation. Much later in 1982, another scheme, Kijipwa, was established in the area that had been occupied especially by those who refused to move to the Vipingo scheme after the first wave of evictions.

Several informants pointed out that the resettlement area was initially designed for hundreds of five-acre plots that would probably have been enough for the registered households. The procedure for allocation began with the identification and recording of the names of pioneer households or squatters by the chief, his assistants, and staff of the department of settlement. Although the establishment of a "village" Committee to assist with the identification of legitimate occupants is the procedure in resettlement programmes, informants here were emphatic that there was no local committee elected to oversee the exercise. The whole exercise was left in the hands of the chief, his associates or appointees, and officers from the Ministry of Lands. These were

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28. Interview with the Chairman and a Committee member of the squatters, 14 August 1996.

29. *Ibid.*

supposed to have been answerable to another settlement committee at the district level chaired by the DC.

The absence of a local committee resulted in the abuse of the procedure for the allocation of land in the settlement scheme. Those families that had poor relations with the chief or his associates had their names omitted from the list of occupants while "friends of the chief" had both the "household heads and eldest sons listed separately as occupants" to increase their chances of getting more than one plot. Other officers also listed the names of their relatives and friends who were not residents in the area.

Several occupants berated government officials for corruption and other malpractices that accompanied the listing of occupants but those who protested had their names deleted from the list as well. One occupant, a carpenter, had his name omitted from the list after learning and informing other residents that the chief "listed, separately, married women and their husbands as occupants" and that "settlement officers had registered names of relatives and friends" so that they could be allocated land on behalf of the officers who would then sell it. The local chief immediately cancelled the name of the complainant from the list and rudely told him to "appeal to higher authorities if he had time to waste". The carpenter's attempts to appeal through the hierarchy of the Provincial Administration, indeed, proved a waste of time. He was unsuccessful as the officers to whom the case was directed were the same people he had complained about and/or were themselves involved in other irregularities. Others simply told him that there was nothing that could be done since the allocation could not be revoked.

In the actual distribution of land that followed, fewer people than those initially planned for got plots. About 350 out of over 600 families—and more if dependants who had their own families in their parents' homestead are counted—got plots of two and half acres each (one hectare). Some families acquired more than one plot while others got none at all. This was more disappointing for those who had occupied the area from the mid-1960s, for they lost not only their holdings but also tree crops and other investments they had made during the long period of occupancy. Others were unfortunate in other respects—they were allocated land away from where they had settled and grown tree crops, in virgin areas where they had to start settlement life anew. Displacements, dispossession and relocations gradually became another source of intense dispute as some of the allottees either paid tree owners very little money or bluntly refused to compensate them. Others had spent their savings on moving to "new lands" and had no money to compensate former holders.

The problem of access to the settlement scheme did not lie only with irregularities in the registration and allocation procedure. There were problems regarding the amount of land that had to be allocated to the occupants and the amount to be reserved for influential politicians and senior civil servants. Initially both the demarcation officers in the Ministry of Lands and

Settlement and the local Provincial Administration had announced that the scheme was designed as hundreds of five acre (two hectare) plots, enough for the registered occupants. This was not to be as the size of the holdings was reduced from five to two and half acres, with those responsible giving the excuse that "this would enable all the occupants get land".

But the excuse was just a smoke-screen for the "grants from above" that had been made in the area which effectively reduced the size of the area meant for the scheme. A large area meant for the scheme was appropriated and given as grants to several government officials and politically connected individuals who included cabinet ministers, permanent secretaries (some from the coast), senior officers in the Ministry of Lands and Settlement, a judge, a prominent member of a national choir group and a District Officer (DO), among others. Some of these were given land on which squatters had lived and cultivated since the 1960s. Most of it was in the area the squatters considered very productive and, therefore, relied on since the "plantation had already acquired the other better part". These beneficiaries were given grants of land whose sizes ranged between twenty five and a hundred acres. The grants consumed the area for resettlement and resulted in the squatters getting what most of them said were "small uneconomical units which could not even support small scale farming given the relatively low potential of some of the land".

Other similarly influential people, who included a former Minister for Lands and Settlement and a powerful State House official, were given plots of five acres on average on the stretch between the sea and the scheme in what were the first and second beach rows. These are the plots on the roughly 200m stretch between the sea and the resettlement area that were often "reserved" for those who had the ability to invest in tourism (the area does not have extensively developed infrastructure for tourism despite its potential – quatters were often cited as a drawback in this regard). The official in the district's Department of Lands and Settlement also confided that although the scheme was meant to benefit the squatters, the department, as a rule, settles the local landless and squatters on about 85 per cent of the land. The other 15 per cent is often allocated to "needy" people from elsewhere. Notwithstanding the disputable meaning of "needy", obviously lacking in his explanation was the reason why the politically influential got large tracts of land whose sizes were far above the "small uneconomic units" that the squatters got.

"Grants from above" considerably delayed the settlement programme as the survey had to be repeated each time an allottee came with his grant. Several local elites who had knowledge about what went on at the time stated that the Survey Department re-designed the scheme several times to accommodate the new grants. Around three maps and plans were drawn and boundaries adjusted to match the size of the grants. Each drawing had a different number of plots.

Those who lost their land rights took their complaints to the Provincial Administration but no one could interfere with the grants. Most complainants were turned away and told "to keep the peace, for the *Nyayo*<sup>30</sup> government will solve the plight of the homeless". Others were listened to by the DC but were told that the land now "belongs to the allottees because they had titles to it". Aware that they probably would have got land were it not for the huge tracts that had been allocated from above, those who missed out on the plots continued to occupy the land. They refused to give way to the new owners and hoped that their persistent appeals to the Provincial Administration and local leaders (they had requested the area Member of Parliament to assist them to get land elsewhere) would bear fruit. But some of the land had already changed hands without their knowledge: some of the allottees had already turned over the land to private developers. These began to expel the occupants. The build-up to another struggle had begun in earnest.

Some of the new owners began to enforce evictions through the local Provincial Administration. Others were simply impatient with the occupants. They "brought in bulldozers and flattened the area without a warning to the occupants". These evictions did not spread fast, however. Occupants decided to resist being evicted arguing that "they had more rights to the land than the allottees and that they should have been given priority in the allocations by virtue of having been the first occupants". Moreover, it was taking a long time for anyone, including senior politicians, to be of any help. Consequently, they organized themselves to fight off evictions. They agreed to sound an alarm and to mobilise resistance, any time anyone saw an "outsider" in the company of government officials and surveyors. From then onwards, they began to violently confront the new land owners and kept them at bay.

While some of the allottees sold their grants, others were unable to utilize them because they were "kept at bay" by the squatters. Although it was not possible to establish with certainty how much the allottees sold the land for, most informants quoted Ksh. 400,000 (USD 8,000) an acre for the beach plots—on average and depending on accessibility—and between Ksh. 100,000 (USD 2,000) and Ksh. 200,000 (USD 4,000) an acre for land in the scheme. Proximity to the sea front and the roads determined the price in the latter. Land in Mtwapa scheme was selling at similar prices. Apparently, these were low prices compared to what similar land would fetch in Malindi—Ksh. 1 M. (USD 20,000) an acre for the prime areas—where tourism is extensively developed. Buyers were largely Asian businessmen and Italians, Germans and other foreign hoteliers (using locally registered companies since the law requires foreigners to get presidential exemption to buy land). The Italians, however, were well organised and were said to be linked to the President or

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<sup>30</sup>. Literally footsteps—but refers to Moi's regime (because of his initial populist promise to follow Kenyatta's footsteps).

his aides through a prominent Mombasa lawyer who also helped in securing their land deals.

Other buyers were upcountry economic elites with interests in the hotel industry or who were simply buying speculatively. Those who did not sell left their land to be occupied by the squatters. Other grants remained idle. Neither the squatters nor the land owners could use it, for both had a common fear: disturbances and violent conflict. The cause of idle land was opposition to "grants from above". One old informant summarised the apparent impasse by pointing out that "grabbed and contested land is often left idle which gives the impression that local people do not cultivate or are lazy". Clearly, the economic interests of the elites were in conflict with the survival needs of the squatters whose livelihood was dependent not even on land control rights but use rights which were now jeopardised by "accumulation from above".

Some of the allottees, alarmed by the possibility of not getting buyers because of the evolving conflicts, requested the Ministry of Lands and Settlement the Provincial Administration to give those "squatting on their land" priority whenever and wherever government land was alienated for the resettlement of the landless and squatters. Some of the squatters eventually got land far away from Kijipwa or went to squat elsewhere. 10 families evicted from Kijipwa to give way to a company owned by three individuals who included a senior officer in the Ministry of Land and a Kalenjin businessman, were promised 100 acres (10 each)—and titles—of government land in Mavueni by the DC if they vacated the land. A letter of commitment was given to that effect. They did vacate and their letters of allotment were processed quickly. There were still others who continued to occupy the land in protest at "allocation from above" and the presence of "outsiders".

Allottees who were unable to get alternative land for occupants through the Provincial Administration decided to enforce evictions through the courts. They charged that the occupants were "professional squatters" who had sold their land and that they had the aim of politicising what they (the allottees) had got regularly from the Ministry of Land. But rarely did the courts enforce these requests for eviction. In several cases, the new owners were ordered to give the occupants time to look for alternative land. In other instances, the disputes became more intricate because of the occupants' claims of ownership and demands for secure tenure.

Allottees who did not have political power to enable them to find alternative land for occupants tried to use the local Provincial Administration, often by monetary inducements, to expel the squatters. Occupants, on the other hand, began to look for alternative legal solutions to the disputes. The Land Control Act provided them with interim measures for stopping the sale of occupied land. They began to file legal "caveats" on the sale of the land they

occupied.<sup>31</sup> This had the effect of preventing some of the land from being sold but some owners had already sold their allotments immediately they got allotment letters and before they completed registration formalities. Some of the "caveats" succeeded as owners were told to give squatters time to get alternative land. But given the influential role that the Provincial Administration plays in the Land Control Boards (DOs are the chairmen), it is debatable whether all the "caveats" could have succeeded. Nonetheless, the occupants continued to live under severe insecurity—and the ever present threat of eviction.

The resettlement efforts, thus, were not an adequate solution to the Land Question. They deepened rather than solved it. It was also deepened by the economic interests of politically influential elites. Their interests were certainly in direct conflict with the survival needs of the peasantry. Perhaps these conflicts over access to land would not have been so intense had the elites managed to provide alternative land for the squatters. The cases also demonstrate the limitations of "accumulation from above" and political patronage in general. Those affected are able to resist it, to make the machinery for accomplishing political patronage unreliable and ineffective and to generally put such forms of accumulation on hold. Also significant is that "accumulation from above" has its own costs: taking advantage of it incurs costs that not even the politically influential can circumvent. Idle and unutilized land and violent conflicts are evidence of such costs and of limitations to the success of patronage in regulating access to land.

#### 6.1.3 Public Land on Private Plantations

The dispute over land ownership between the Vipingo Sisal Plantation and squatters has historical antecedents that reach back into the early colonial period. The current struggles over the control of the land covered by the plantation reflect changes in the nature of the dispute since the start of the plantation in the first quarter of the 20th century.

Some informants said that the dispute began when the colonial state leased several acres of land belonging to the Chonyi sub-ethnic group to a white farmer for research on sisal farming in what later became the Vipingo Sisal Plantation. After the success of the pilot project, the farmer began to expand the holding by buying more land from Arab and Swahili land owners whose interest in plantation agriculture had by now declined due to the lack of slave labour. Squatters were evicted from these newly acquired lands as the plantation expanded into "unoccupied" public land. The boundaries of

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<sup>31</sup>. The Act, a mechanism controlling transactions in land and its use regulates distribution and disposition of agricultural land. It provides that buying and selling of land should have the consent of the Land Control Board and that the consent should not be given where there is an objection to the sale.

the new acquisitions were marked by trees that were planted around any part that was acquired. It did not occur to Chonyi elders that the trees would be used to claim ownership of the land several decades later.

Other informants said that a German farmer acquired the land independent of the state in the early 1920s by renting several acres of land in Jeuri (near Vipingo) from a former slave to experiment with sisal farming, his research on the same having failed in Nyali, Mombasa. The farmer disagreed with the former slave over rent after only one year. He abandoned the land and instead "borrowed" from Chonyi elders who gave him a few acres, near a *Mpingo* tree, on condition that he paid annual rent. Here again he refused to pay after the first two years and at the same time added more land beyond the *Mpingo* tree. He also negotiated for a lease with the state and the Sultan. He eventually got one for over 30,000 acres and for a short period—presumably 25 years—after which all the occupants were evicted. The elders who complained were silenced—they were arrested. After the Second World War, the farm changed hands and the lease period was increased to 99 years. The land under the plantation was converted into a freehold after independence in 1963. It continued to grow and was estimated by informants to cover an area close to 60,000 acres (24,300 ha.). Sisal, horticulture, and livestock keeping are the main farming activities on the plantation.

Victims of the first and the second wave of evictions that accompanied the expansion of the plantation expected to get back their land upon the expiry of the lease, an expectation that arose from Ngala's public appeals to Kenyatta in the 1960s for the resettlement of the victims. But it was only in the early part of the 1970s that the Vipingo settlement scheme was started and it provided about 260 people with plots of six acres. The scheme was not an adequate response to the growing landlessness and squatter problem: it was established in a remote and rocky place while the best land was left for use by the plantation. Some of those who had occupied Kijipwa were resettled in the new scheme while others declined the offer and were evicted from one part of Kijipwa to another. Nonetheless, the squatters' use rights to land owned by the plantation became restricted and began to be defined more by the ability to pay rent. While some said the current rents are affordable (Ksh. 50 per acre or USD 1 per crop season), they at the same time pointed out that the land rented out was usually in the "exhausted sections of the plantation where food crops were not doing well". There were also restrictions on the growth of permanent tree crops (cashew nuts and coconut palms). Elsewhere, on Arab and Swahili lands or lands owned by upcountry elites, the rents were above Ksh. 600 (USD 12) an acre. Similar land use restrictions applied here, however.

In 1992, the lease on one block of about 900 acres expired but it did not revert back to those who had been evicted. It allegedly reverted back to government ownership. No sooner had this happened than the lease was renewed and part of it subleased to a cement company. The company



constructed a brick perimeter fence around the disputed land in an effort to fence off the squatters. To the squatters, this was an open testimony that the land was not reverting back to the people and that they were not to be resettled there. The plantation retained the other part. Both events put a lid on the rising expectations for the resettlement of squatters who were evicted or who did not get land either in the Kijipwa and Vipingo schemes or in other areas where government land had been alienated (see section below). To regain the land, some of the area's residents approached two local Members of Parliament (a cabinet Minister and an Assistant Minister) while others directed their appeals to the District Commissioner (DC) and the Provincial Commissioner (PC). All these appeals were said to have been unsuccessful. The politicians simply said the matter would be resolved by the Provincial Administration while the latter asked the squatters to "keep the peace as the government inquired into the matter".

All those consulted apparently skirted the issue possibly because more powerful actors had been involved in the lease negotiations or possibly because they feared a political backlash. In addition to this, both the cement company and the plantation owners had maintained relations with central state elites over a long period of time as a way of keeping the state away from the land question in the area. As informants observed, "the plantation's principal shareholders had institutionalized the practice of buying off local politicians after every general election". This practice had extended to cover maverick local elites. But since some of the local-level leaders were squatters or had no secure tenure in the land on which they lived, it was difficult to develop a comprehensive patronage approach and specifically one that would have "silenced" all the "land-needy" elites.

A politically-loaded differentiation between the district's national- and local-level elites was clearly evident in relation to the issue of patronage. Some of the district's elected politicians had ministerial portfolios and it would have been foolhardy of them to mobilize the squatters on an issue in which the government had a hand. They had to adhere to the principle of collective responsibility. Some of them had also benefited from "grants from above"—one had about 1,000 acres near Kilifi town which he used for live-stock and sisal farming—and were closely linked to the most influential central state elites. Their national positions and how they related to the Land Question brought them riches and connected them to the powerful. This tended to deter them from involvement in actual struggles over land; they often blamed and sought solutions through the administrative context, while side-stepping the issue of land grabbing by influential national-level political and economic elites.

On the other hand, there were also local level elites who commanded considerable local support for consistently articulating local land issues. In their ranks were several local state party officials—including a councillor—members of the opposition political parties, a local cleric, a school teacher,

and a local women's group leader. All had actively participated in organising resistance to "grants from above". Their approach was distinct from that of national-level elected officials in several ways. This group mobilised resistance against land grabbing and articulated the problem within both its administrative and political contexts. The local-level elites acted as a link between the mass of the squatters and the elected officials and the Provincial Administration. They were *de facto* leaders of the opposition to irregular allocations of land and had constituted a "squatters committee". This committee articulated popular concerns on landlessness and squatting and kept abreast with all aspects of the Land Question.

While incomes seemed to differentiate the local-level elites from the rest of the squatters, common to all of them, and the bottom line for their solidarity, was a lack of secure land rights and a general threat of eviction from the land they occupied. The local elites had non-agricultural income sources and did not wholly depend on the cultivation of food crops. Some were local entrepreneurs, salaried employees, leaders of local grassroots socio-economic groups, and officials and/or activists of different political parties. Their popular positions did not translate into riches but gave them access to the officials of the Provincial Administration and national-level politicians.

The local elites involved in these struggles had more to lose from them than most of the other squatters. The chairman of the committee had occupied two separate beach plots that had been allocated to influential upcountry elites. One of the plots had a quarry which the chairman exploited: he was cutting and selling stones to builders in nearby towns. The local councillor had also declined to move out from a plot allocated to a former Minister for Lands and Settlement and was using it for small scale horticultural farming. The cleric was also rearing livestock in the area in which he was squatting and was selling milk to the neighbours. It was only the women's leader who appeared not to have been doing well and, indeed, told me that she was "afraid of any investment in the farm because of frequent evictions that she and her family had suffered since the 1960s".

From late 1995, it was this group of local level elites that mobilised the squatters into occupying the section of the plantation whose lease had expired with a view to redistributing the land among themselves. By early 1996, they had devised a plan for redistribution: they began listing the names of the rightful occupants and made several attempts to discuss the subleased land with the DC and the PC but neither of these officials was willing to meet them until they got to know about the plans to subdivide the land.

In February 1996, the PC conceded to a meeting with them. At the meeting, they cited three problems to which they wanted a solution: landlessness, squatting, and acts of racism or violation of human rights by the owners of the plantation. They related the deepening of the first two grievances to the grabbing of land and particularly "grants from above". They emphasised that "Mijikenda land was and continues to be grabbed by "deceitful outsiders"

while a lot more of the land was "expropriated and used for plantation farming by the Vipingo sisal plantation and a state cashew nut farm". These were the chief causes of squatting and landlessness on the coast: two problems which had become "wounds pasted" on their daily struggles. They said:

individuals are coming with allotment letters from Nairobi and asking us to move out of the land; we have moved from place to place for many years. ...Presidential directives that we be given titles to the land we occupy have not been heeded...We are tired of promises. We need action now.<sup>32</sup>

They stressed that squatting had become a permanent condition, "like a wound stuck on us from the days of our forefathers". They emphasised that they had been "chased like wild pigs from one place to another... today here, tomorrow there" and wondered "how come a stranger (*foreigner*) owns our property while we are made slaves in our ancestral land?"

The committee presented the details of their disputes with the sisal plantation:

Today it is illegal for Vipingo people to drink tap water...the owners of the plantation prefer their cattle to the squatters. We take salty water and their cattle drink tap water which we are not allowed to take despite the pipes passing in our homesteads.<sup>33</sup>

They complained about land use restriction by the plantation owners, adding that:

We are not allowed to grow tree crops. One has to cover his palm tree up to a height that is impossible or to uproot it. Nor are we allowed to graze animals: we are indicted for this; our goats are "arrested" and given as gifts to the police at the Kijipwa station...It is prohibited to build a brick house (*permanent house*) or to extend the building whether one's family has grown or not (*ibid.*).

The committee also cited the exploitative labour relations that had evolved between the squatters and the plantation owners as another cause of the dispute. They emphasised that the plantation owners disrespected them and frequently harassed them over trespass. They underlined that "they farmed but could not use their produce" because the plantation owners appropriated it despite their paying rent for the "small farms". They described how the "regime of compulsion" was effected in appropriating their produce and its implications for their subsistence:

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<sup>32</sup>. Memorandum by the Squatters Committee to the PC, Coast Province, 23 February 1996. I am grateful to Mwandawiro Mghanga of Kenya Human Rights Commission, Uppsala, Sweden, for his help in translating some of the coastal Kiswahili texts.

<sup>33</sup>. *Ibid.*

At the beginning of the rainy season, the white farmer ostensibly rents us small portions on the fringes of the forest. This has the aim of reducing his labour costs in clearing the forest because each time we clear the forest and plant our food crops, his cattle are brought in to graze on what we have planted...we clear the bush for him, pay him rent and ...then he grazes his cattle on the farms...this has been the practice for years now...<sup>34</sup>

The committee finally explained that all the squatters wanted were secure rights to land and an end to intimidation and harassment by the plantation owners. They repeated the need for compensation for demolished and burnt homesteads and destroyed crops. They complained that consultations resulted only in "promises of finding land for them". The PC only promised to "soon look into the problems raised at the meeting" and assured them that the Presidential directives on the resettlement of squatters and adjudication of rights on the land they occupied would be effected.

Afraid that the promise would turn into an empty one like the previous ones, the committee organised the landless to "invade" the farm and subdivide it. Some of our interview respondents who were involved in this project estimated the number of those who turned up to have been in the hundreds. However, there was a much smaller group of occupants that declined to join the invasion and just stood by. These were afraid of the being beaten by the police as had happened in the past. They were also not sure of the success of the project, for evictions had become a main component of their struggles for settlement. Others were said to have been afraid of the chief and the local Provincial Administration in general or the "regime of force". There were, however, more squatters who joined the project.

The land "redistribution project", unlike the one in the formal resettlement schemes, was organised through a committee that was appointed by the occupants. The committee comprised elders, the youth, and the local-level leaders mentioned above. This committee helped identify genuine inhabitants and listed their names. The youth watched out for intruders and possible attacks by the police. The local leaders continued to consult with the Provincial Administration at different levels.

The redistribution exercise began with the uprooting of sisal, the subdivision of holdings and the allocation of plots to those listed by the committee and/or those who participated in the project. As the exercise went on, the plantation owners called for the intervention of the DC who came in the company of the police. The DC did not manage to stop the redistribution partly because of the hostility of the squatters who had already prepared to fight back, and partly because further consultations were planned or were continuing between the PC and the local-level elites. Moreover, there was an impending presidential visit to the coast. This meant that the matter had to be

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<sup>34</sup>. Ibid.

cautiously managed because issues of squatting and dispossession in the area had already been presented to President Moi, and because the president had issued directives, on about nine occasions, to coastal DCs and the PC to settle squatters on government land. The PC, therefore, followed a strategy of courting members of the opposition political parties involved in the "project". He appears to have persuaded them not to politicise the redistribution project—instead consultations were held between the administration and the "project" leaders.

The consultations became a turning point in the struggle: some of the leading opposition political party activists involved promised to switch their loyalty to the state party if the problem at hand was solved. This was a welcome relief, at least to the PC whom several senior district politicians, apparently jealous of his rapid popular support, had accused of flirting with opposition activists. The PC, who also came from Coast Province, had maintained an "open door" relationship with the squatters but this was to the chagrin of the senior politicians who had all along failed to deliver on the Land Question.

A public meeting was held by the PC on the disputed land on the second day of the occupation and after the squatters had refused to stop subdividing the farm. In attendance were the local-level elites who again presented a memorandum of grievances to the PC. In this second memorandum, they once again underlined the main problems: squatting, landlessness, abuse of human rights by the owners of the plantation, and lack of secure land rights in general. This time, they took issue with the elected politicians in the district for their "selfishness" and their cavalier attitude to the "plight of the electorate". They "prayed to be given titles to ancestral land (referring to all disputed lands); to be compensated for destroyed crops and demolished houses and graveyards; and a lasting solution to the squatter problem and landlessness".

The chairman of the squatters' committee underlined that they had lost patience with waiting for a solution to their plight and that they were unhappy with being told to be "patient as their grandfathers and their fathers were, for they died without a solution on dispossession". They were categorical that all they needed were secure land rights as "this was their land and they had rights to it". They warned that

We have been told to be patient like our grandfathers and fathers did...This we refuse to do...We strongly reject any attempts to subjugate and oppress us while we are alive... We totally reject this scheme of enslavement and of denying us our rights...Coastal people have rights like everyone else. Coastal people have

made demands for their legitimate rights: they should be given those rights now.<sup>35</sup>

The committee, on behalf of the squatters, was categorical that they would violently resist any attempts to “rob them of their land” or any attempt to “reduce them into slaves in our land”. They warned that “unless a permanent solution was found to the struggle for their land, then the problem would deepen and the consequences would be terrible”.

The PC, in response, announced the setting aside of about 1020 acres from the plantation for the resettlement of squatters in Kijipwa. The land set aside was inadequate for the over 1,000 people that had been registered by the committee during the “invasion” and others who had stood on the sidelines. They requested additional land and a promise was given to obtain government land to resettle those who would still remain landless in a new site that was yet to be planned and surveyed.

The struggle did not come to an end with the setting aside of the land: the plantation owners insisted that they would not transfer the 1020 acres unless they got title to another block whose lease had expired and which had reverted back to the government. The chairman of the squatters’ committee explained that this block, said to cover 3,000 acres, had initially been converted into a resettlement scheme but the commissioner of land had revoked the scheme after several politicians, civil servants and Provincial Administration officials developed an interest in it and obtained grants of different sizes. The block stretched from the plantation to the sea and contained coveted beach plots. Land near the sea was divided into blocks of 5, 10 and 20 acres and given to influential individuals. The allocations were said to have been revoked through the influence of the plantation owners who needed it back. Whether they really succeeded in having the allocations revoked is debatable but it cannot be ruled out given that the plantation owners had over the years sharpened their “political skills” to deal with the political and administrative contexts of the land they controlled and to which they regulated access.

Virtually all the interviewees spoken to attributed their success in this struggle to the fact the PC was from the Coast Province and was conversant with the structure of land ownership and landlessness on the coast. Others attributed the success recorded to the fact that opposition politicians had promised to switch their support to the state party if that would help solve the problem. This they did later at a presidential meeting where, as a result of the defections from the opposition, a promise was made to set aside more land for the squatters. The role the PC played with regard to the allocation of land to the squatters and the switching of parties by the opposition politicians

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<sup>35</sup>. A speech by the Squatters Committee’s Chairman read to the PC, Coast Province, on 14 March 1996, at Kijipiwa.

brought him into conflict with senior politicians in the district, some of whom had declined to help the residents get back the land and to court the influential opposition politicians. Some attempted to circumvent the defectors who were their rivals in local politics, since bringing them into the state party would effectively reduce the monopoly the incumbents had in party politics, a monopoly that was cast in terms of proximity to power and resources.

The PC was moved from the province several months later, a transfer which was blamed on the senior politicians. They were thought to have effected the transfer out of fear that his success in solving the Land Question would undermine their support base since they had been unable to deliver on the issue. Moreover, they were widely accused of maintaining links with upcountry politicians to appropriate land meant for squatters.

The discussion above has clearly demonstrated the effects of political patronage in regulating access to land. Patronage deepened rather than solved the squatter problem because "grants from above" reduced the size of land meant for resettlement. There was more concentration of land in the hands of the political and economic elites and, consequently, the dispossession of the squatters. Patronage as a means of accessing land rights became so institutionalised that even some of the squatters depended on it to secure their rights. Significantly, counter-patronage strategies or popular modes of acquiring land rights evolve when patronage fails or where patronage hierarchies are weak and unable to deliver to popular demands. It is precisely because patronage failed to yield that squatters invaded the sisal plantation and redistributed land amongst themselves. In addition both the landless and squatters could not effectively utilize the holdings they squatted on because of the ever-present threat of eviction, a threat they considered an "immutable wound" in their daily struggles.

On the other hand, those allocated land "from above" were speculating and not using it, or were planning to put up hotels. Few used the land they got for agriculture as the squatters did. These allocations, therefore, need to be seen as having aroused conflict over access as well as conflict over land use. The discussion also shows that patronage has its own costs for the elites too. It generated disputes among them as it did between them and the squatters. Patronage is not, therefore, an open-ended mode of acquiring rights or building political constituencies.

#### *6.1.4 Not Single but Multiple Allocations*

The increasing value of land on the coast and the desire by central state elites to build political constituencies led to a scramble for land in the area. Allocations were made even in areas already occupied by squatters. This scramble became so unregulated that a single piece of land could be allocated to two or more people and separate allotment letters prepared in the names of different allottees. The factors responsible for this include unregulated

“grants from above” and land grabbing, the existence of several institutions with authority to grant land, and corruption in the Ministry of Lands and Settlement.

Interviewees in the relevant ministries who were familiar with the procedures and regulations governing the sale or alienation of government land pointed out that “grants from above” contributed to the phenomenon of multiple allocations because they were made in gross violation of procedures or regulations governing the disposal of government land, particularly the requirement that government land be advertised any time it was available for sale. The policy, in theory, requires that before government or Trust Land is alienated, the Director of Physical Planning should draw up a development plan for the land (showing the proposed uses) and present it to the Commissioner of Lands for approval and authorization of alienation either through advertisements, direct applications, or reservations. The mode of alienation also depends on the uses to which the land will be put but reservations apply only to requests by government departments.<sup>36</sup> These informants were categorical that, in practice, alienation of government as opposed to Trust Land (administered by the County Councils), was never advertised but distributed to members of the central state elites and their close associates. Furthermore, although applications were supposed to be made to the Commissioner of Lands, the latter could not have approved those for land in major urban areas and for tracts of rural farmland without the approval of the President. This requirement has led to some members of the elite applying for grants directly to the President. Others made applications through the President’s aides in State House, a venue which became an important site for dispensing patronage resources to the President’s clientele at the national and district levels. Additionally, those who were well-established in terms of political power—measured in terms of accessibility to State House and/or the President’s private residence in Nairobi and/or his rural Kabarak home—could “simply invoke the President’s name to get allotment letters for themselves and friends”.

Overlapping land allocating authorities were a common feature at all levels as well. In the districts, the District Commissioners (DCs)—in collaboration with the Ministry of Lands and Settlement—and the local authorities could allocate government and Trust Land respectively but in consultation with and via the authority of the Commissioner. Local authorities, however, had further restrictions on how much they could do with regard to “the land

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<sup>36</sup>. Advertisements (in the official government paper, the *Kenya Gazette*) concern land or plots for ordinary residential and commercial use; direct applications concern plots or land for special projects such as industrial and commercial projects or for “public purposes”, while reservations apply to requests by departments and parastatals. (For more details see *Handbook on Land use Planning, Administration and Development Procedures*, Ministry of Lands and Housing 1991.)



they hold in trust for the residents of a particular district". They operate under the close supervision of the District Commissioner who also participates in council meetings and—by a convention dating back to the colonial Native Trust Lands—has to give assent to allocations by the councils. This is in addition to further controls by the parent ministry—the Ministry of Local Government—which by law has powers to revoke or overrule decisions by the councils.

Allocations by both the District Commissioner's office /Ministry of Lands are supposed to be made through a committee system (District Development Committees—chaired by DCs—and Plots Allocation Committees for government and Trust Land respectively). These procedures have not prevented multiple allocations, especially with regard to public land. Neither do they prevent Trust Land from being allocated to influential individuals.

The various political avenues through which applicants obtain their grants has led to an increase in multiple allocations. The reasons for this were summarised by a middle-level officer in the Ministry of Lands and Settlement as follows: "there is enormous competition for public land everywhere by those who have the right political connections; the commissioner receives many applications with recommendations or requests for consideration from State House and other places but the relatively poor method of keeping data does not enable the staff to quickly know who has been allocated what and where". Allocations are made on the basis of survey maps and sketches which rarely show the current status of occupancy. Very rarely are efforts made to verify whether there are occupants or not. And even where such efforts are made, as one informant in Bahari, Kilifi, pointed out, "they are made through the local Provincial Administration (chiefs and DOs) who are bribed both to certify that the area is unoccupied and undertake to evict occupants once allotment letters are obtained".<sup>37</sup> Some of the grants are made for land already occupied by other people or for land which has been allocated by another body such as the local authority or the district's Provincial Administration.

New allottees, even those whose allotment is only for a particular piece of land, do not compensate original occupants in spite of the improvements that may have been made to the land during a long period of occupancy. In Mtwapa, Bahari, there was, nonetheless, an exceptional case of an allottee, a Kalenjini disabled woman, who had been allocated about 75 acres in early 1990s. This land was already occupied by many families, a majority of whom had grown tree crops on the farm and had believed the land would be allocated to them. The occupants initially resisted moving out but she developed a counter strategy, negotiating compensation for tree crops—at market

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<sup>37</sup>. Interview in Shariani with a local women's leader who was involved in struggles against evictions from the 1970s.

rates—with the owners and paying them Ksh. 700 (USD 14) for each coconut tree and Ksh. 45 (US 90 cents) for a cashew nut tree. Not all families were paid, however. Those who were paid were asked to leave while those she did not manage to pay were allowed to continue cultivating and occupying the land while she looked for money to compensate them, after which they would leave.

Multiple allocations have occasioned different types of disputes between and among different social groups. A variety of mechanisms ranging from legal ones to violent confrontation (or the squatters taking the law into their own hands) were used in conflict resolution. Success or failure of the mechanisms depended on the nature of the dispute and the actors involved. These disputes also widened the divide between “occupants” and the state and between the national-level and local-level elites.

Disputes were most common and widespread along the coastal belt. Some people had been allocated land through the Provincial Administration while others obtained allotment letters for the same land from the Commissioner. Within the same belt where these allocations took place, squatters had occupied land, awaiting “formalization” of their tenure as had been promised on several occasions even by the President (see above).<sup>38</sup> The local Provincial Administration had full knowledge of their occupation and had, indeed, not bothered to interrupt their occupancy until new allottees came into the picture. Those occupants who had lived there for years had believed they owned the land and had hoped to get titles in the course of time. Some even rented or sold parts of their holdings to others because they believed that “their long period of occupancy was equal to ownership”.

It was in such a context that a local farmer bought five acres from a village headman—an assistant to the local chief. The local Provincial Administration formalised the transfers by acknowledging that a sale had taken place. The farmer put up his residence and began to cultivate the land whilst awaiting a title deed from the Ministry of Lands and Settlement. He used the land for several years until 1995 when an influential elite from upcountry, a Kikuyu, appeared with an allotment letter for the same piece of land and began to put up a residential building as well. He also employed a watchman at the construction site, which he chose in one corner of the already developed section and on which the farmer had planted coconut trees. The local farmer objected to the putting up of the building and insisted that he was the legitimate owner of the land.

The upcountry elite, undeterred, proceeded to construct the building insisting that he was the registered and rightful owner of the land. He

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<sup>38</sup>. Two annual reports by the Department of Lands and Settlement show that the exercise of adjudication in both Trust Land and government land was speeded up after 1986 as a result of the directives (see the section on tenure reform below).

consequently instructed his guard not to let anyone onto the farm. The farmer too employed a guard and gave him similar instructions. Soon, a conflict erupted between the two guards over coconuts that the local farmer's guard was picking, possibly under the instructions of his employer. The conflict spilled over to the two claimants: the local farmer mobilized area residents to stop the construction from going on and to evict the upcountry elite from the land altogether. A violent confrontation ensued and the upcountry elite was chased away after which he proceeded to the courts and sued the farmer for illegal occupation of his land. By now he had acquired a title deed to the disputed land which he showed as evidence while the farmer produced old sale agreements and letters of consent from the Provincial Administration.

Although the dispute may take a long time to resolve, it is probable that the courts will rule in favour of the upcountry allottee as the registered proprietor, the local farmer's allotment letters from the Provincial Administration and a long period of occupancy notwithstanding. Whether the influential elite would be able to utilize the land is a matter for debate, given that area residents had resolved not to give him—or any other stranger allottee—access to land in the area. Their resolve was aimed at fencing off "allottees from above" as a majority of them were squatters awaiting re-settlement on the same land but for whom the available amount of land was rapidly dwindling due to "grants from above".

In the meantime, the local farmer's motivation to utilize the land declined considerably given his fear of losing the case and of having his property destroyed by the other disputant. Allocations which disregard the occupancy status of land were said to have led to similar confrontations between old occupants and new allottees. The registered owners often went to the courts of law certain that the settlement of the dispute would be in their favour on account of the title deed they had. Old occupants, on the other hand, depended on the support they could mobilize from others whose land rights were similarly precariously placed. Their solidarity in the resistance against "grants from above" was determined by the common situation of precarious rights and attendant threats of evictions.

Although most disputants resort to the courts for the arbitration of disputes involving double allocations, interventions by members of the political elite connected to others with access to State House have increasingly become an important method of solving disputes. In Bahari, again, a local businessman and a close associate of the district's senior politicians had his twelve-acre piece of land, which he bought in the 1970s, allocated to a senior officer in State House who subsequently sought assistance from the local Provincial Administration to evict the occupant. The businessman insisted that he was the rightful owner of the land and, like everybody else, was awaiting a title deed. He resolved to challenge the eviction order in court if an attempt was made to enforce it. In the interim, he was approached by several politicians (probably at the urging of the State House official) and urged to

accept an offer of a tract of farmland elsewhere. He declined this offer, arguing that he had owned and used the land for too long a time to move elsewhere. Weeks later, a team of surveyors and officers from the Department of Physical Planning came to survey the land in the company of police officers. The businessman mobilized area residents to help stop the survey which they did successfully. Alarmed by the possibility of losing the land, the businessman now requested assistance from several senior politicians. These consulted with the allottee and the dispute was "finally" resolved. The businessman retained his land. Whether the official will reactivate his claim in the future is a matter of speculation. Probably he will, given that the land was in a prime area. Such allocations will be disproportionately concentrated in "prime areas", in spite of the local people using them, for it is such areas which are of interest to the elites.

There were several reasons that made other "vulnerable" residents protect the businessman from eviction. Important among these was that they had a high regard for him: he was a highly influential person who was seen as "a wall that shielded them from evictions". They thought of him as a highly connected person and were surprised by the ease with which his land was targeted for grabbing. Consequently, they mobilised everyone to "violently stop the wall that shielded them from being demolished". The villagers also emphasised that he lived among them and had helped in the articulation of local land issues for a long time. Accordingly they had to defend him at all costs since his loss would have been followed, immediately, by their own dispossession. But of more fundamental interest was the intervention by the politicians. Although the "allottee" was "politically untouchable" by virtue of having unlimited access to State House and to the president, the politicians' interventions were revealing in several ways given that they had shown relatively little interest in similar cases. Their attempt at helping resolve the case was driven by the fact that it involved "one of their own" and they were afraid of the backlash effect the case would have on local-level politics. The businessman had considerable local support among the squatters and this social base of support would have easily been turned against the politicians.

Land appropriation was not confined only to land occupied by local residents. Also vulnerable was land reserved for use by public institutions or for public projects. The appropriation of such land was often concealed by officers in different government departments concerned with land matters, sometimes in collaboration with the heads of the institutions owning the land or for whom such land is set aside. For instance, south of Malindi town, a 23 acre block of land reserved for a public university's marine research programme was grabbed and distributed to senior national politicians and influential civil servants. This process began some time between 1994 and 1995 when the District's Survey Department was instructed by the Head Office to urgently survey the land to enable the university to acquire ownership documents. The university paid the required fee and witnessed the surveying. Later, the same

department received instructions to subdivide the land into four blocks of 5 acres and one of 3 acres. This they did and then learnt that these had been allocated to individuals and/or companies owned by individuals constituting President Moi's inner cabinet.

The reason for the ease with which land set aside for public institutions is appropriated lies in the fact that those appointed to head such institutions owe their loyalty to those who appoint them or those who helped in their appointments. They possibly consider it foolhardy to "bite the hand that feeds them". Significantly, some of them are appointed in the first place to act as gate keepers to tap the flow of the resources allocated to these institutions on behalf of those who appointed them. Additionally, most public institutions have no titles to their land because its ownership is vested in and guaranteed by the state. It is easy to acquire such land and for titles to be prepared for it without the knowledge of even the institutions concerned.

Land belonging to local authorities was also grabbed with similar ease and often without the knowledge of the clerks of the councils. In the early 1990s in Malindi town again, a public park that a colonial settler had donated decades ago to the town for recreation, was allocated to a local Member of Parliament who immediately sold it to a company fronting for a "foreign developer" to put up a shopping mall. Since the law prohibits foreigners from buying land except with presidential approval, foreign hoteliers and other investors were increasingly forming companies in partnership with established Kenyan businessmen and particularly those with political connections. This enabled them to acquire or buy land and seal other business deals that required political influence.

A local councillor heard about the allocation and the subsequent change of ownership and began to organise against the construction of the shopping mall and for the revocation of the allotment. The councillor and local residents appealed to the municipality. The mayor of the town insisted that the allocation had not been made by the municipality but by the Commissioner of Lands. Unable to get the allocation revoked, the residents mobilised themselves and began to pull down the fence and to destroy the structures that had already been put up. The developer asked for the intervention of the police who dispersed the group. This was followed by a warning by the DC to the residents that "that was a private property because the owner had a title to it and that the district administration would not tolerate acts of lawlessness and destruction of private property". To the DC and the municipality, both public use and ownership of the park had ceased with the acquisition of the title by the private developer irrespective of how the developer had acquired it and irrespective of whether the park was a public asset or not. It required a private appeal to the minister by a relative of the colonial settler who had donated the park to the municipality for the scheduled construction to stop. This particular development was stopped but

at the same cost to the public—the developer was promised a similarly prime plot elsewhere in the town.

The privatization of public land and the award of grants of land to individuals on account of political considerations have had several effects on the structure of land ownership in the area. Dispossession has tended to accompany the privatization process as some lose their land or are prevented from using it by the legal claims that multiple allocations tend to generate. “Grants from above” are made in disregard of formal rules and procedures and in disregard of the occupancy status of the land or, in the bitter words of one woman informant: “they subdivide everything on a piece of paper (survey sketches) in Nairobi and think there are no occupants”.<sup>39</sup>

The various modes of land acquisition, ranging from legal alienation to appropriation and expropriation have become the main source of disputes over the control of land not only between the occupants and the elite beneficiaries but also among the elites themselves. Disputes among the latter, however, are mainly resolved by way of political interventions while those between occupants and allottees are mainly resolved through informal negotiations. Importantly, solutions that do not give alternative land to the occupant squatters are not, in effect, binding as the latter often continue to resist evictions. On the other hand, their tenancy is rendered more insecure because of the frequent interruptions and confrontations that accompany attempts to evict them. Even land owned by local authorities in trust for the residents is vulnerable to grabbing and allocation by way of allotment letters issued elsewhere away from the eyes of the local authorities. The grabbing of Trust Land, however, was not as intense as that of government land because most of the Trust Land was located away from the former ten-mile coastal strip, i.e. away from possible tourist industry uses. Most of it lies in what was the colonial reserves, set aside in less productive areas away from the fertile plains that were used for plantation agriculture during the early period of colonial rule.

## **6.2 Contesting Access to Arab and Swahili Land**

After the registration of land holdings under the 1908 Ordinance, Mijikenda families and the families of ex-slaves continued to occupy land without the knowledge of other claimants. Some had the permission of the land owners to use the land and engage in the husbandry of commercial trees. Others occupied what they believed was public land that had gone to waste. Generally, those who settled on Arab and Swahili land continued to do so until the eve of independence when, at the height of political conflicts between Mijikenda politicians and the Arabs, the latter issued eviction notices or asked for nomi-

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<sup>39</sup>. Interview in Shariani, *op. cit.*

nal rents. It is then that the Mijikenda and ex-slave families say that they realised the land belonged to someone else. In Kijwe Tanga, Malindi, one old interviewee said that the general trend around the area was to cultivate any waste land, particularly land where no one prevented them from doing so. This they did until early in the 1960s when Arab land owners came from the towns to which they had retired to do commerce, and insisted the land was theirs: they allowed them to continue to cultivate the land on condition that they did not grow tree crops, which Arab and Swahili landowners feared would be used to support ownership claims by the occupants.

Being restricted to the cultivation of food crops did not satisfy the family needs of the occupants and, therefore, some moved into other areas where they could grow cash crops to supplement family farm incomes. They moved to areas they thought were public lands only to learn later that they were also owned by different Arab and Swahili landowners. Others obeyed the order to cultivate only food crops and stayed on the land they occupied. In the meantime, there are those who have continued to squat on land whose owners they have never seen but have been told are Arabs who may have settled in Zanzibar and may have family members coming to register the land. Such land owners are very few, however. I encountered only one case in Malindi where occupants had contributed money on several occasions to send representatives to Zanzibar to look for the owner of the land on which they had settled with a view to buying it. They were unable to trace the owner but hoped to do so before the land was grabbed.

Economic changes brought about by the growth of tourism and an increasing number of upcountry migrants, forced more changes in the structure of land ownership in the area. This intensified from the mid-1980s when land prices began to rise rapidly in line with increased government and private sector interest in tourism. Most land owners, especially those who had kept the land speculatively, found this as an ideal opportunity to sell and to cash in on the growing land market. Prices for the land on the coast have continued to appreciate as tourism expands.

With increased land values, most land owners began to sell and to terminate the use rights of occupants. Mass expulsions followed these changes as new owners wanted the land cleared of any squatters before transfers could be completed. This resulted in the swelling of the ranks of the people without land rights as a majority of those evicted had no alternative land to which to move. Indeed, one interviewee, disappointed by the turn of events particularly in the 1990s, stated that Arab and Swahili land owners who were "now streaming into the area with eviction notices should have come earlier when there was abundant government land: they are coming when government land has been exhausted and when we have made a lot of investments on the

land they claim to be theirs".<sup>40</sup> But occupants were also concerned about what would become of their tree crops which were the main source of income for most families. Rarely were the new owners or the old ones willing to compensate them.

It was even more disappointing for those occupants who expected to own the land through a legal provision on ownership by prescription and adverse possession. Although this provision gives an occupant the right to own land on account of long periods of uninterrupted occupancy,<sup>41</sup> one magistrate in Kilifi told me that it would have been difficult to realise ownership using this legal provision since one has to prove uninterrupted occupancy for a period not less than twelve years. This would have been difficult to prove because of overlapping interests. Besides, the costs of legal suits would have been beyond the financial resources of most occupants. Other occupants hoped that the government would buy off the Arabs and Swahili land owners and settle them on the land as had happened with occupants on government land. There were still others who expected to be given the "right of first refusal" or priority to buy the land but this was not possible because of the high prices most land owners asked. Prices often depended on the proximity of the land to the town, roads and the sea front and were, in some instances, extremely high. Near Malindi, one land owner was selling his 20 acres on which there were about four families, at Ksh. 100,000 (USD 2,000) per acre. The occupants said that this was above what they could raise. They were, therefore, heading for landlessness. Although some had formed land buying companies or cooperatives to buy land in the area, prices for most of the land that came onto the market was beyond their reach.

Difficulties in retaining access to land here were not related to prices only. Some of the land owners changed their minds even after occupants had paid a deposit, usually after the owner got a promise of a more lucrative deal. This happened with both Arab and non-Arab land owners. In Kijwe Tanga again, one retired school teacher told me that his family had occupied Arab land but were evicted from the land in 1953. They challenged the eviction in court but lost the case. The land owner decided to "evict all the trouble makers" but allowed the "humble and the meek" to continue staying on the farm as long as they did not grow tree crops. The "trouble makers", to which the family of the school teacher belonged, moved to adjacent land owned by a white settler, a veteran of the Second World War, who allowed them to squat on the farm used largely for livestock, horticulture and tree crops. In early the 1970s, the

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<sup>40</sup>. Interview in Gedie, 25 August 1996

<sup>41</sup>. This is provided for in the Limitations of Actions Act of 1968. It erodes the indefeasibility of registered interests (in land) if another person has continually occupied the land for over twelve years without interruption from a registered owner. Multiple interests and claims override this provision (see Onalo, 1986; Wanjala, 1990).



settler, who was now ageing and unable to utilize the entire farm, agreed to dispose of the few acres occupied by the squatters. He sold 5 acres to each family at Ksh. 1,000 (then at about USD 130) an acre. In 1982, he again sold each family an additional 4 acres at Ksh. 2,500 (then at USD 210) per acre. In the second sale, relatives of the occupants were also allowed to buy land. The Africans now occupied a total of about 70 acres.

Despite the transactions that had taken place over the years, actual legal transfers were not effected by the veteran soldier. The families got neither title deeds nor any certificate of ownership other than the agreements signed between them and the settler. By early 1980s, the settler's son had taken over the management of the land and this seemed to worry them a lot as the son started selling part of the farm to affluent individuals who included Arabs and Indians. The new buyers started putting up magnificent residential buildings and the old occupants were wondering whether the new neighbours would like having them in their neighbourhood. They were worried that the new residents might influence the son of the veteran soldier to refund them the money they had paid so that they could be evicted to make the area an "all affluent zone". The issue was still unresolved at the time of the field work for this study. Their efforts to get the transfers concluded might fail given that the soldier has turned over the management of the land to his son. The occupants were, in the meantime, contemplating legal action but were financially constrained.

The loss of use rights through inability to buy land or because land had been sold without occupants' knowledge was common many occupants of Arab and Swahili land along the coastal belt. One family, now living in Shariani, claimed to have lived on land that was registered to an Arab land owner in 1914 and, as was common with most Arab land owners, the registered proprietor continued to live in Mombasa town but permitted the family to cultivate the land on condition that they paid rent (*ijara*). The family invited others to cultivate the land and help pay the rent. In the late 1960s, the landlord died. His son inherited the land and immediately put it up for sale. The occupants learnt about the intended sale and requested time to buy the land but the transaction was completed with a German hotelier. The sale was concluded at Ksh. 20,000 (then about USD 3,000) in the period between late 1969 and 1971 and before they could raise the money.

The new land owner gave all the occupants eviction notices but they refused to move out, stating that they had no alternative land and would have bought the land had they been given time. The hotelier filed a suit in court against them seeking their eviction. It was ruled, however, that he had no right to evict them without giving them adequate time to find alternative land; he was advised to construct the hotel on one section of the farmland without interrupting their use rights and until they got alternative land.

The land changed hands again: the hotelier sold the property to another group of investors who were more ruthless. The new owners forcefully

evicted some of the occupants without compensating them for their tree crops and the structures they had put up. Others simply resisted the eviction and continued to live on the land, although at the cost of frequent harassment and the destruction of their properties. In the mid-1980s, the same land changed ownership again because “the owners could not effectively utilize it”. The new owners were influential economic elites who opted to look for new land for the squatters. The occupants were finally settled on government land elsewhere but without compensation for their tree crops and other investments.

Struggles over access to Arab land are characteristically different from those involving the ownership of public land and those against evictions as a result of “grants from above”. The knowledge of a registered proprietor tended to prevent some of the struggles from turning violent. The main issue here revolved around the question of having not been given time to look for alternative land or funds to buy the land (although prices for some were way above what they could raise). Those who expected to acquire the lands through ownership by prescription would have found it difficult to do so because of the high legal costs required for a suit of that nature and because of multiple interests around land. Most landowners were effectively holding on to their former plantations without effectively utilizing them. Some did so for the purpose of speculating on land prices and, therefore, did not mind the presence of the squatters as long as they did not make ownership claims on the land. To them, cultivation of the land and growth of tree crops – although the latter tended generally to be subject to restrictions – were investments that increased the value of the land. They also played another strategic role: their land could not be termed idle and, therefore, could not have been subjected to the policy of eminent domain or compulsory acquisition by the government.<sup>42</sup> Such fears, which date back to the resettlement efforts of the early 1960s, are widespread among the owners of large holdings in areas inhabited by a mass of landless persons and squatters.

### **6.3 The Politics of Land Tenure Reform**

The above discussion has shown the limitations of the state’s efforts in the resettlement of the landless and squatters in the district. Political patronage and “grants from above” in particular, increasingly undermined these efforts

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<sup>42</sup> The doctrine of eminent domain gives the state the right, by virtue of owning the radical title, to compulsorily acquire or expropriate land for the public interest on condition that full compensation is paid to the owner of the land. This doctrine justified the “expropriatory project” of the 1960s and 1970s in which land was bought for the resettlement of the landless. The fear of political backlash has not allowed effective enforcement of the doctrine but many large landowners fear that with growing landlessness, this may be enforced.

because such allocations were made in areas already "owned" by squatters or to which they were to be transferred. Access to Arab and Swahili land also remains a contentious issue: squatters cultivating such land resist evictions since they have nowhere else to go, state land having been exhausted through "grants from above". Thus, while resettlement efforts were officially aimed at resolving landlessness and the squatting phenomenon, they reproduced the same problems in a concentrated form. The reform of indigenous land tenure—individualization—needs be read alongside this fluid context. The reform was being pursued amidst a deepening crisis over control of land rights. This has had an effect on the outcome of the reform in several respects.

The reform of land tenure in Kilifi district was taking place both on trust and on government land. Driving the reform in the former was the "market ideology" that has underlaid the programme elsewhere in the country since the mid-1950s. Since the beginning of the 1970s when the programme of land individualization, titling and registration was introduced in the district, the thinking that the reform would improve agricultural production by enabling farmers to get access to loans for farm improvement has legitimised the carrying out of the reform. To this was added a coastal specific justification: that communal rights provided a "canopy to the landless and squatters" and, therefore, the reform would help determine the "real extent" of these problems.

The adjudication of "squatter" rights on government land began in 1986 after the President directed the Ministry of Lands and the Provincial Administration to adjudicate land to the squatters settled on such land and on the basis of what each individual "owned". Several blocks of government land have since been individualized and registered in the names of "occupants". The discussion below pays particular attention to the process of and disputes over individualization both on trust and government land.

#### *6.3.1 Individualization on Trust Land*

The reform programme began in the early 1970s in the high potential areas of Bahari and Malindi before spreading to other divisions. Several factors determined the selection of areas that first benefited from adjudication and registration. Priority was given chiefly to areas of "high agricultural potential" because of the official thinking that the reform in such areas would most probably improve agricultural productivity. Secondly, and related to this, government officers required "evidence of local demand" to initiate land adjudication. Such demand was certainly present in areas of high population density where declining land capacity had naturally generated "informal individualization" through the subdivision of family and/or clan land, thereby creating opportune conditions for the reform. Similar priority was given to ranches in the interior owing to demands by affluent owners and to

the ease of demarcating, adjudicating and registering these fairly large but few ranches.

The Land Adjudication Act, which provides for separate registration of holdings as well as the registration of family or lineage land under the names of at most five people, applies in Kilifi but demarcation officers often advised against separate registration by arguing that "separate registration of fragments did not allow land owners to enjoy economies of scale since farmers would consume a lot of time on fragments widely spread from each other; time would be saved by consolidating the fragments and registering them as one farm holding".<sup>43</sup> Land officers also argued that restricting the exercise to the adjudication of separate fragments not only wasted time for the poorly staffed department but also undermined the basic objective of the reform, namely, the efficient utilization of farm holdings. The officers, thus, were insistent on owners of neighbouring holdings negotiating and compromising on some consolidation where possible and appropriate.

The procedure for reform under the Act begins with the appointment of an Adjudication Committee by the adjudication officer in consultation with the Provincial Administration. The Committee assists Demarcation and Adjudication Officers to ascertain individual interests in the land and to make decisions on matters that require knowledge of customary law and practice. Those appointed to the Committee are then assumed to have adequate knowledge of the pattern and structure of land ownership under the relevant indigenous tenure system. In spite of the assumption that the venerability and knowledge of the members of the Committee would prevent disputes and, therefore, speed up the exercise, most informants were of the opinion that disputes over land rights and claims are the main feature of the reform and have increased with the spread of the programme. Indeed, many cited disputes as a factor holding back the benefit of the reform programme.

The reform programme is far from complete. By 1994, only about 136,000 hectares of Trust Land, representing 20 per cent of unregistered and alienated Trust Land in the district were adjudicated and registered. Adjudication work was in progress in another 42,990. Table 4 below gives a general impression of progress that has been made since the 1970s. The low figures for the period 1986-90 were the result of the concentration of efforts in adjudication on government land in relation to squatters and the landless, and on work in the various settlement schemes.

Table 4. Progress of Registration of Trust Lands in Kilifi District

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<sup>43</sup>. Interviews with Land Demarcation and Adjudication Officers at the district and the divisional level.

Period	Estimated Hectares ('000)
1970-75	13.5
1976-80	106.9
1981-85	9
1986-90	1.8
1991-94	5.2

Source: Statistical Abstract, various issues, and Annual Reports, Ministry of Lands and Settlement, Kilifi.

Large ranches in the interior of the district contributed to the high figures of hectares adjudicated and registered in the 1970s. Adjudication also proceeded fastest in areas where there was a high demand for the reform—the high potential areas of Bahari and Malindi. A close scrutiny of the various records also shows that most of the land was registered during 1976 and 1977 (77,000 and 23,000 hectares respectively) and that the pace of the reform slowed in the mid-90s but picked up again before the end of the period.

### 6.3.2 Individualization on Government Land

Although the progress of the reform has been relatively slow compared to reforms in central and western Kenya, political impulses have considerably speeded up the exercise since the mid-1980s, particularly with regard to government land. Between the mid-1980s and 1995, 40 blocks of government land in different places and covering an area of over 12,920 hectares were adjudicated to over 14,040 squatters already settled there. This was in addition to the settlement schemes discussed earlier. A majority of the blocks were in Bahari division which has a high concentration of squatters. Table 5 gives an overview of the adjudication and registration of squatters on government land by divisions.

Table 5. Estimates of Government Land Adjudicated to Squatters (1980-1995)

Division	No. of blocks	Size of Area (Ha.)	No. of Parcels
Bahari	15	7,612	4,590
Malindi	12	5,308	4,099
Kaloleni	9	-	5,351

Source: Annual Reports, Ministry of Lands and Settlement, Kilifi, various issues.

Although there were no figures on the size of land adjudicated in Kaloleni and 10 other areas in both Malindi and Bahari divisions, the figures clearly show that the numbers of parcels involved are roughly similar to those in the resettlement schemes. Further, Bahari seems to have had more land adjudicated.

cated to squatters than either of the other two areas. Three more blocks of government land were planned for adjudication and registration in the course of 1996 in the division and another two in Malindi. The policy here required registration of individual rights on the basis of where one had settled and cultivated or the holding to which an individual laid ownership claim by virtue of occupation, settlement and cultivation. In some areas, occupants got equal plots while in others, the land was adjudicated on the basis of what one owned and cultivated. In the former, some received about 12 acres ( 5 hectares) on average, while in the latter the amount one "owned" determined the size registered for an individual.

First occupants had more land than "newcomers" as they had lodged large claims before competition became intensified, and before the eventual reduction of the overall size of the land. The Residents' Committee, the Provincial Administration and the Land Officers usually decided on the approach for registration. Land not occupied by many people was equally distributed to those already on the ground and those squatting in private holdings, since the exercise had the objective of reducing the number of squatters and giving them security of tenure. In areas with high "concentrations of squatters" and those that had been occupied for many years, occupants got what they owned. That is, long periods of occupancy and the amount of land owned generally determined the amount of land an occupant received. The procedure for registration here was similar to the one in the Trust Land, while that used in the resettlement schemes applied to areas that did not have such a concentration of squatters.

The presidential directives mentioned in the previous discussion considerably influenced the pace of the demarcation and adjudication of land in Kilifi. The Kilifi County Council's annual report for 1987/88 was revealing in this regard. The report noted that:<sup>44</sup>

following the directive of His Excellency the President that government land in Kilifi district which is occupied by Wananchi<sup>45</sup> should be adjudicated and be given to the occupants...government officers have been busy throughout the year implementing the directive. By the end of 1987, all people whose land had been adjudicated had paid the required money for their land certificates. The Kilifi people miss some words to thank the President for his fatherly advice and in turn they wished him be (sic.) elected unopposed in the 1988 general elections.

The government officers finally went into action to implement a presidential directive on an issue that had festered for a long time. People paid money for their land certificates and capped this with a "loyalty pledge": they wished the President would be unopposed in the next elections. Control of land had

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<sup>44</sup>. Annual Report, Kilifi County Council, 1987/1988, Kilifi County Council: mimeo.

<sup>45</sup>. Kiswahili word for "citizens" but usually refers to ordinary people.

clearly become a political resource for both "low" and "high" politics, in addition to providing economic resources for mediating patronage-based politics. One may conclude, therefore, that while both administrative fiat and political whims influence the pace or the progress of the reform, they have also largely contributed to the deepening of the land problems and to a rising number of disputes over the reform process.

### *6.3.3 Disputes over the Reform*

In Bahari and Malindi where land registration was going on, most disputes centred around boundaries and ownership of land. Some of the disputes were occasioned by disagreements between and among family members. Still others resulted from some people reneging on previous agreements on the rights allowed while others resulted from instances where parents died without clarifying to their children the kind of rights they possessed, especially given that the indigenous tenure allowed the coexistence of tree and land rights in the same holding. Disputes were common in instances where pioneer occupants acquired land to cultivate or to grow tree crops but lent out some sections or fragments to other families or even allowed borrowers to cultivate food crops under their trees on the understanding that the borrowers acknowledged having nothing more than use rights. The reform procedure of recording rights or claims to a holding was said to be causing disputes in these instances because those who had temporary or borrowed use rights also "went to the adjudication officers and the Committee to register those rights often claiming that they were actual owners of the sections they cultivated or occupied." This was common among those who had inherited "use-based" holdings from their parents or grandparents without clarification on the kind of rights they enjoyed. In other cases "even those who very well knew that they were living off or using a borrowed piece of land but had no other land to go, or whose own land was unproductive" created disputes over ownership. Some of the latter group hoped "to win something either by virtue of the use rights they enjoyed or from the sympathy of the Committee".

Arbitrators in some of these disputes were village elders who were assumed to have knowledge of "which family used to own what and where". They heard these disputes in the presence of both the local chief and the adjudication officers and if they were unable to resolve it, they often advised the disputants to take their dispute to the local land Adjudication Committee who would hear it and advise the adjudication officer on how to proceed with the registration of disputed rights.

Disputants, especially those with less legitimate claims, often made attempts to bribe influential members of the Committee to prevent them from asking difficult questions and/or to silence them. But bribes were not offered by only those who had less legitimate claims. Informants were emphatic that

offering bribes was "a common practice and is done as a measure of precaution whether one considers his claim valid or not".

If any of the disputants was dissatisfied with the decisions of the local Adjudication Committee, then the adjudication officers recommended that the dispute should proceed to the next legal stage, namely, the Land Arbitration Board, a body comprising between six and twenty-five residents from within the district and appointed by the Provincial Commissioner. Most of the members of the Board were retired government officers, elders, and other prominent people "who are likely to avoid bribes". This Board heard cases from all over the district but met quite irregularly. Cases brought to the Board took slightly longer than those heard by the local land Adjudication Committee.

Once the adjudication register was published those still dissatisfied with the Arbitration Board could make an appeal to the Minister of Lands. But cases brought to both the Arbitration Board and Minister took an unusually long time to determine and involved costs that ordinary disputants were not able to bear.

Table 6 shows the main trends in the 1991/94 period in the filing and hearing of disputes by the authorities provided for by the reform legislation. The table shows that the Adjudication Committee was fast in hearing and deciding on disputes brought before it during the land demarcation process. The Arbitration Board heard and decided on only very few of the cases that were brought to its attention every year. Appeals to the minister for the entire



Table 6. An Overview of Land Cases in the 1991/1994 Period

Type of Case	1991	1992	1993	1994
<i>Adjudication Committee</i>				
Cases pending from previous year	170	80	1	11
Cases filed	30	46	80	61
Cases heard	120	125	70	24
<i>Arbitration Board</i>				
Cases pending from previous year	204	218	237	279
Cases filed	24	27	43	10
Cases heard	10	8	1	29
<i>Appeals to the Minister</i>				
Cases pending from previous year	91	97	110	110
Cases filed	6	13	0	-
Cases heard	0	0	0	-

Source: Annual Reports, Department of Lands, Kilifi

period were not heard at all. Both the few cases heard by the Board and the absence of ones heard by the Minister are an indication that the higher the level of arbitrations, the longer it took to resolve disputes. Delayed arbitration was viewed as leading to under-utilization of a holding especially if the disputants had violently confronted one another at any time during the disputes.

It is only the Adjudication Committee which was active in hearing and deciding on cases regarding both demarcations or the ground marking of boundaries and the registration of existing rights or adjudication records. What accounted for this was that local committee members were drawn from the areas under adjudication and, therefore, were familiar with the disputes. Furthermore, the cases they heard had also been heard informally by local elders or by the chief and were, therefore, easy to rule on, based on past rulings—particularly if disputants did not have new evidence or facts to support their claims. Moreover, a disputant had to consider the costs and time involved in filing and hearing the case before taking the dispute further up the ladder of arbitration. This led to the DO's office becoming an important institution of appeals outside of the Land Adjudication Act.

All cases of dissatisfaction were referred from the lower legal authority to a higher one. Some were resolved by informal negotiations outside of the arbitration authorities while other disputants preferred to appeal to higher levels of the Provincial Administration. This was generally practised by those who lost cases at the level of the Adjudication Committee. Moreover, whether to go to the local Provincial Administration or any other authority depended on various considerations. Some chose to go to the chiefs or DOs if their rivals had already gone to the Committee. For others, the choice was influenced by

the costs involved in filing a case. Attempts were always made by each of the arbitrating bodies to ensure that all disputants were present when the case was being heard. Both the DOs and the adjudication officers (for the Committee) often consulted to decide on who would hear any case brought to their attention because "some were civil cases that had issues of land subordinated to them".

The option of going to the courts was generally discouraged because of the presidential directive that land disputes should not be heard by courts, and also because jurisdiction to determine land disputes *per se* had been transferred from the magistrate's law courts to the elders courts chaired by District Officers. The "modern" court's responsibilities are currently confined to giving the decisions of the elders court legal force by certifying its proceedings. Family disputes over boundaries cooled down faster than those about actual ownership and records of existing rights i.e., records of who owns how much and where. These were often the main subject of arbitration by the different bodies.

Most of the respondents interviewed felt that the reform programme has progressed at a very slow pace. They identified several of the factors responsible for this. A majority observed that the reform was held up by delays in solving disputes over the demarcation of boundaries and the "recording of existing rights". Although the law provides for a grace period of 60 days to contest any anomalies in the records, complaints were often too many to address within that period. Furthermore, those dissatisfied with decisions at this stage proceeded to the other levels of arbitration discussed above.

The rich, officers in the Provincial Administration and Lands Office, and corruption in general were also identified as impediments to the progress of the reform. Those who cited corruption specifically accused the committee and the adjudication officers of settling disputes in favour of those who had bribed them. The rich, the influential and local elites in general, were perceived as instrumental in the registration process because they had *uwezo* (monetary means) to influence the committee and the adjudication officers to do them favours, irrespective of whether they had legitimate rights and claims or not. This had the effect of intensifying disputes over both boundaries and the "records of existing rights" between such people and others who had legitimate claims but no "*uwezo* to sway the Committee or the land officers to their side".

Although some of the respondents saw the adjudication staff as being vulnerable to elite manipulation, the local elites resented the staff in the Departments of Lands and Settlement, Survey, and Physical Planning because "they all come from upcountry and therefore have little regard for the pace of the programme". To some of these respondents, the Adjudication Officers only had interest in enriching themselves by grabbing and selling off government land and through accepting monetary offers from the wealthy and the influential.

Where government land was being adjudicated such as in Ganda, Malindi, area residents blamed their loss of land rights on the practice by adjudication officers of bringing "outsiders" into areas meant for those already settled there. For the older occupants, this resulted in the adjudication of smaller holdings relative to what they had cultivated previously while others lost their holdings altogether. These practices caused hostilities between area residents, on the one hand, and land officers and "outsider-allottees" on the other hand. In areas such as Jimba, Kibambamche, and Mbarakachembe, demarcation was disputed and annulled several times because of what the residents described as their "resistance against the influx of outsiders" but which some of the land officers described as "simple disagreements by the residents on adjudication procedures".

Officers in the Department of Lands and Settlement gave other reasons for the slow pace of the reform programme. They claimed that the department lacked both funds and enough personnel. They specifically cited transport difficulties, lack of field allowances, lack of equipment, and a shortage of aerial and base maps as handicaps to their work. The department had to make do with only one vehicle because others had broken down and there were no funds to repair them. The use of this one vehicle also depended on the availability of funds for fuel. Pressing assignments were sometimes carried out with vehicles borrowed from other departments, but again their use depended on the availability of funds for fuel which when not obtained led to the abandonment of assignments altogether. These constraints led to funds for many activities such as the re-demarcation of boundaries or the subdividing of holdings being solicited from those who came for such services. Some of the staff, indeed, confided that they often told people that the office had no transport and "it was upon such people to read the situation and see what to do". Those who were able to pay for the transport had their problems attended to while those who were unable to pay had to wait for the department to get funds from the parent ministry which also depended on availability of funds from the Treasury.

With regard to survey maps, the staff blamed the Survey Department for failing to provide them on time. On the other hand, the Survey Department blamed its head office for the delays by emphasising that they also depended on what the head office prepared. Both departments also blamed a flood of sketches of development plans from the Commissioner's office for the delays. These departments, together with that of Physical Planning, were presented with too many sketch plans to prepare development plans for those who wished to be allocated land by the Commissioner of Lands.<sup>46</sup> Approvals for such plans and some of the allocations were often delayed, thus holding back the exercise.

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<sup>46</sup>. Cf 25.

The adjudication staff also blamed delays on the slow progress on the resolution of disputes among residents, arguing that some of the disputes often degenerated into violent confrontations thereby making some areas inaccessible. They cited disputes involving families, clans, and the adjudication of the rights of occupants on government land as the main examples in this regard. The latter land was said to be even more inaccessible because of disagreements among squatters about the boundaries of their rights. The status of Arab and Swahili land, whose owners had not registered their rights, also hindered the progress of the reform, particularly where such lands bordered government land and/or were occupied by squatters. Since the policy required the presence of land owners in the adjudication processes for purposes of determining boundaries, it was difficult to register any land that bordered on Arab and Swahili land in the absence of these land owners. In Goshi in Malindi, residents complained of delays in the allocation of government land where they had settled because Arab and Swahili land owners had not made themselves available themselves to clarify the boundaries between their land and the government one where these squatters lived. Moreover, some of the owners had disputes with occupants over ownership.

The reform program, both in the trust lands and government land was, thus, being implemented under severe constraints. The financial burden was slowly being transferred to the community, and particularly to those who sought land-related services. The restrictions on government spending on the land reforms meant that the increasing costs of the reform would have to be borne by the local communities. Meanwhile, there already existed an informal “rent seeking” mechanism that benefited land officers and wealthy residents.

#### *6.3.4 The Reform, Accumulation and Land Market*

The reform programme was perceived by some respondents as having had some desirable effects. Some of respondents said that the individualization ensured security of ownership as a result of which they could now undertake long term investments in their farms. Some underlined that tenure insecurity had in the past prevented them from growing tree crops (cashew nuts, coconut palms and mangoes, among others) but that they could now do so without the restrictions that accompanied their occupancy as squatters on private or government land. Those who had been able to resolve disputes over ownership and boundaries also observed that individualization had considerably reduced such disputes and that they could now undertake long term investments in their farms by using the title deed as collateral for credits from banks.

However, not all registered land owners had acquired titles. Bureaucratic hold-ups in the Department of Land Registry in Kilifi and failure and/or inability by some land owners to pay registration fees—which was a condition for obtaining the titles—had delayed the issuing of titles. Between 1991

and 1993, only a total of 2413 titles (see table 7 below) were issued and these included titles issued for land in the settlement schemes, trust land, and many plots in urban centres and towns. In the period between 1989 and 1990, coinciding with the directive on faster registration, the department had issued 11,494 titles for different types of land.

Table 7. Registration of Dealings in Land in Kilifi (1989-94)

Land Deal	1989	1990	1991	1992	1993	1994	Total
Titles Issued	4518	6,976	558	1665	690	685	15,092
Charges	625	764	104	72	103	197	1,865
Discharges	305	266	92	104	168	139	1,074
Leases	28	116	24	27	13	16	224
Transfers	2,410	2,138	274	349	513	632	6,316
Subdivisions	724	785	64	83	138	134	1,928
Combination	16	14	-	-	-	-	30

Source: Annual Reports, Ministry of Lands and Settlement, various issues, Kilifi.

Although many respondents welcomed the allocation of private titles and argued that they could use them as collateral to obtain loans for farm development, some of the few who had acquired such loans used the money to start new businesses or buy another piece of land while others bought dairy cattle. Generally, most informants claimed they had not yet gained anything from titling other than the "realisation" of security of land ownership. They emphasised that "if there was any improvement at the level of the household, then this was limited to households which had off-farm incomes".

High interest rates (of between 18 and 25 per cent) dissuaded others who had titles from pledging (charging) them for loans. They feared that such high interest rates might lead to loss of land in cases where investments failed to generate enough money for loan repayment. Others said the banks no longer honoured titles: in addition to the title, they required evidence of savings plus an "extra-economic security" such as an "introductory note from and/or guarantee by an influential individual such as a lawyer, politician, or a successful and well known business person". Such conditions effectively closed borrowing avenues for the poor peasantry, particularly former squatters who, owing to forced evictions, the destruction of their crops, and restrictions on the growth of tree crops, had not made any savings. Only the wealthy and those connected to the influential had access to such loans. Those pledging their titles had large holdings or were established in businesses other than farming. They used the titles to support their other investments.

Table 4 also indicates the main trends in pledging and discharging titles in the period between 1989 and 1994 through the Land Registry in Kilifi. The 764 titles pledged in 1990 represented the highest figure recorded in the entire five year period despite the fact that a total of 6976 titles were issued during

the year. 1992 had the lowest number of pledges: 72 against 1,665 titles issued during the year. The number of those who had mortgaged their land for loans falls far below the number of titles issued during the period, despite what advocates of titling and the property rights school suggest would be the case with individualization. It also clearly demonstrates that loans acquired through titles were largely used for non-agricultural investments. This is particularly true of loans obtained both by small land holders as well as large holders.

On the other hand, respondents cited very few cases of actual loss of land and/or sequester of property for default on loan payment. Records of the Land Control Board also showed very few forfeiture cases. These few were restricted to land in the urban areas where the titles could have been mortgaged for much larger sums than a small farm holding could be pledged for. And even in the few cases of loss of land through forced auctions reportedly arising from failure to pay back loans, records of the Land Control Board show evidence of efforts by previous owners to repossess the land. Some refused to sign the necessary transfer papers after these auctions, insisting that the sale was improper as they had already made arrangements to repay the money. But since some of such sales had the force of law by virtue of having been done through authorized auctioneers, the Board made judgement in favour of those who had bought the land. In some of these cases, the Board advised previous owners to seek legal redress in the courts if they wished to repossess the land since the Board had no powers to reverse court orders.

The reform programme provided some individuals with opportunities to accumulate more land and also led to loss of land rights for others. Local economic and political elites, civil servants and members of the local land committee acquired additional land through the reform programme. Others lost their lands through the settlement of disputes with other claimants, relatives, or neighbours. On government land, some of the squatters who had rented from pioneer occupants lost their use rights to the latter. Also on government land, economic and political elites accumulated more land than the original occupants. Acquisitions of government land could occur through political favours, grabbing, and the eviction of squatters or buying from what land officers "had gathered and consolidated over a period of time". The fact that it was only the land officers and some members of the Provincial Administration who knew or were conversant with survey maps and the coverage of government land in the area both on paper and on the ground made this possible. They could reserve and/or allocate themselves and other officers and friends parcels of such land with ease. They also sold such land with ease to local business people or upcountry immigrants or registered it in the name of friends as they looked for buyers. On Trust Land, the knowledge of family heads on the size and coverage of the family or clan land prevented these officers from excising significant amounts of family or clan land as they

did with government land. But some informants did not rule out the possibility that this could have been done since "demarcation and adjudication was so complicated that not even the Committee knew about its technical aspects".

Notwithstanding the cheating by land officers, which in any case was not widespread, adjudication and registration generally formalised what individuals owned in the previous tenure arrangements. Those families that had large land holdings or who owned large *shambas* (farms) on government land or Trust Land had them registered under their names. Clans and families that had large holdings and fewer members got more land than those which did not. Individual members in the former inherited more land than those in the latter category. In one area of Malindi, for instance, records of the Survey Department, summarised in Table 8, showed what the ownership pattern looked like after the adjudication and registration of Trust Land.

Table 8. An Example of Holding Sizes after Land Adjudication in Malindi

Size in Acres	Number of Holders	% of Holders
1-1.9	176	59.26
2-2.9	111	37.37
3-3.9	6	2.02
4-4.9	2	0.67
5-5.9	1	0.33
6-6.9	-	-
7-7.9	-	-
8-8.9	1	0.33
Totals	297	99.98

Source: Department of Survey, Kilifi

Out of 297 people, 176 (59.26%) got between 1 and 1.9 hectares; 111 (37.37%) got between 2 and 2.9 hectares, and 6 (2.02%) got between 3 and 3.9 hectares. Only 2 families got about 4 acres and another two 5 and 8 acres respectively. This pattern could apply to high potential government land as well. Although it was difficult to trace some of these records, informants generally said that a majority of land holders in the high potential areas—excluding those receiving allocations of land from above—got between 1 and 3 acres. Again, this somehow corroborates the data of the Welfare Monitoring Unit presented earlier in Table 1. In the semi-arid interior, the size of holdings was said to be generally large and often above 5 acres.

Land purchase had also become another way of acquiring additional land. This was common with families and individuals that had off-farm incomes. Among a group of 34 informants purposively selected in both Malindi and Bahari, 8 had bought their holdings where they had settled or elsewhere; 9 had inherited land from their parents or got land through the sub-division of

clan land during the reform program; 5 had been settled on government land while 2 had rented from Arab and Swahili land owners. Another 5 were squatters on different types of land. Another 5 were sharing with relatives or had been given a plot for shelter. The sizes of their holdings also differed considerably. 10 had 0.8 hectares; 1 had 1.2; 3 had 1.6 hectares and 3 others had between 2.5 and 4 hectares and another two had 6 and 12.5 hectares. The rest could not estimate what they owned because they were either squatters or were sharing or had use restricted only to a homestead. This pattern is again typical of the general trend in the area.

Most acquisitions through purchase took place in the 1980s. Some of those who bought land were either engaged in small businesses or were employed. This pattern of skewed distribution of land ownership was also present everywhere in the district. The pattern becomes even more entrenched if examined in relation to "grants from above" and Arab and Swahili holdings.

Besides inequalities in ownership arising from the consolidation of the Arab and Swahili position in land and that fostered by political patronage, inheritance and subdivision of family and clan land were generating inequalities, though of a less controversial nature. The reform that evolved thus reproduced and gave the force of law to the differentiations that had arisen through internal mechanisms of land accumulation.

Notwithstanding some of these purchases, most informants pointed out that only very rarely did individuals sell agricultural land, especially in areas that had been registered. Those who did sell, did so under conditions of distress: to attend to some kind of emergency such as medical bills or school fees. Despite these observations, a scrutiny of the records of meetings of Land Control Boards shows that there has been an active land market for all types of land—non-titled freeholds, land on settlement schemes, large farms and commercial beach plots. Table 7 shows figures on land transfers and subdivisions both of which relate to land sales. A majority of the transfers and subdivisions were done to change ownership, although some others originated from parents who want to turn over the land to their children or other members of the family. Subdivisions were also made by land owners who wanted to sell portions of their land or to give land to children and relatives. The figures then show an active land market in 1989 and 1990 when dealings in titles and pledges were similarly high. Both transfers and subdivisions fell in 1991 but gradually picked up later.

Transactions in unregistered land were done through local chiefs whose assent was a condition for the recording of the change of ownership of land by the Department of Lands. The Land Control Board had little to do with these transactions. It was concerned more with registered land. In some cases, purchasers had bought the tree crops. Whether buying tree crops amounted to buying the land was a common source of dispute during land adjudication. Some sellers insisted they had not sold the land but rights to tree crops and,



therefore, wished to refund the money paid for the trees. Such sellers were often overruled.

The records also show that an active land market had emerged in areas where land had been adjudicated. In the settlement schemes, the land market has been active for a long time. Conditions for the Board's assent to sales here is full repayment of Settlement Fund Trustee (SFT) loans, evidence that the seller had another piece of land elsewhere, and lack of objection from family members and other interested parties. The latter meant that sellers—usually male members of the family—had to appear before the Board with family members—eldest children, brothers and wives (apparently few women engaged in land deals or were registered land owners). The objection or consent of family members is critical to the success or failure of any transaction. In 1987, an upcountry businessman applied to sell his 200 acres (81 hectares) in Mtwapa for Ksh. 2.5 m (USD 147,058) to pay his "debts". This application was objected to by the family of his late brother. The seller told the Board that he had reserved another piece of land for them upcountry. The wife of his late brother declined the offer arguing that she and the children had lived on the land, developed part of it and intended to remain where they were because they had lived on the coast for a long time; they did not want to go upcountry. The Board advised the businessman to sell only 180 acres and leave another 20 acres (registered under the name of the businessman) to his late brother's family. Both the family and the businessman agreed to this settlement and the sale transaction was allowed.

Those who sold their land in the resettlement schemes did so for several reasons. Some sold a portion to raise money to effectively develop the remaining part. Others had land elsewhere and wanted to raise money for businesses or to develop their other holding. There were still others who sold a portion to repay the loans from the SFT. Buyers usually included local business people, the salaried, and other settlers able to buy. The Board usually turned down cases of those who had no land elsewhere and those who had not redeemed their SFT loan. Also, those who had squatters or other occupants on their farms had their requests for sale turned down unless they had provided alternative land to the occupants. In a few cases, the Board also declined to give consent where members felt the price offered was below what the land could fetch on the open market. But the prices quoted in most of these transactions often did not reflect the real prices agreed upon by the sellers and buyers. Some conspired to quote low figures to avoid paying high stamp duties.

As observed earlier, the price varied from one area to another and depended, *inter alia*, on proximity to basic infrastructure such as roads and water; proximity to urban centres; quality of land; number of tree crops; absence of disputes; and generally, the needs of the seller. The prices in the settlement schemes have also appreciated considerably over the years. In Mtwapa, some land owners sold 12 acres in 1980 at Ksh. 40,000 (USD 5,300)

but by 1986, the price of the same parcel of land had doubled. Current prices were quoted at anything between Ksh. 100,000 to about Ksh 200,000 (USD 2,000 to 4,000 – difference in USD terms due to depreciation of the shilling).

Cheating and multiple sales were common in the market. Some sellers reneged on past agreements after getting better offers or after realising that they could get better offers before effecting the transfer of the land ownership to previous buyers. One informant in Ganda, Malindi, had bought land before the process of registration began only to find someone else claiming to have bought the same piece of land at an even lower price than he had paid. Owing to the inability of the seller to refund either of the buyers, the land officers, the committee and the local chief decided to equitably subdivide the land between the two. My informant got a larger portion because he had paid more money and the other buyer got a smaller portion. In another case quoted in the proceedings of the Board's meetings in 1980, a seller agreed to sell his Mtwapa 12 acre plot at Ksh. 40,000 (USD 5,300) and entered a legally binding agreement with a businesswoman. On the day they were supposed to be interviewed by the Board, the seller insisted he wanted Ksh. 60,000 (USD 8,000) failing which he would object to the sale. He then disappeared. The businesswoman informed the Board about what had transpired and produced a legal agreement duly signed by the seller in the presence of her lawyer. The Board requested her to go back and persuade the seller to appear before them. The seller could not be traced and the land was transferred to her.

There were instances where sellers received deposits as part payment before going to the Board for consent but reappeared with another buyer and consequently denied having received any part payments from the first buyers. Such cases were treated as ordinary land disputes for arbitration by the District Officers. Some of the land market disputes were complicated by the fact that some buyers had bought tree crops hoping that this would confer actual ownership of the soil as well. One farmer bought cashew nut trees on a plot in the Ngerenya settlement scheme in 1975 through a court auction. In 1978, the original owner of the cashew trees sold them to another farmer only for the latter to find another "owner" on site. The original owner whose trees were sold through the court auction insisted that he sold the trees again in order to refund the first buyer after having been advised to do so by the courts. However, he did not produce evidence to that effect. The Board ruled in favour of the person who bought the tree crops from the court auction and had the land transferred to him since the law regarding such disputes, especially in the settlement schemes, had been clarified to the Board by the Attorney General's office. The clarification underlined that in circumstances of "attachment of land and property in the settlement schemes, whoever buys the property becomes a new owner whether the land belongs to another person or not. The Board proceeded to point out that such a person becomes

the owner of the land as well and should be advised to apply to the Board for transfer of ownership".

Leases and pledges (mortgages) were quite common with owners of large holdings and owners of land proximate to the sea front and/or urban centres. The same conditions for sale applied here. Those with squatters on their land were often asked to give them time to look for alternative land or allocate land to them. To avoid delays and disputes over these transactions, many opted for the latter. In 1980, John Keen, a former Assistant Minister in the President's Office, requested the Board's approval to lease his 3,550 acres for 12 years to the Cassava Plantations Company. And since there were squatters on the farm, he agreed to give 1,000 acres for their settlement. Keen did not appear before the Board in person because of "his official engagements" but called the DC who relayed the details of his conversation with him to the Board. The request was allowed. This land is currently part of Kibarani settlement scheme started in 1992. The same Cassava Plantations Company had also leased another 3,000 acres of Trust Land from Kilifi County Council. Squatters on the land were compensated for their tree crops and moved out.

Those selling or pledging titles on beach plots had to seek the prior approval of the Board. Again prices here differed from one place to another and were determined by the same factors mentioned above. Foreign investors were the main buyers but only via companies established in partnership with a Kenyan counterpart. A few, especially those in the tourist industry, bought land and had it registered in the names of the Kenyan women to whom they had been "married". Informants around Kilifi said, however, that some hoteliers had lost their land and investments through such "arranged marriages" – women divorced in order to retain the property. The current trend now is to register companies with either the women or local businessmen – in which those others hold a nominal position in the company – before investing in land.

This discussion shows that the land market was active in areas with and without titles, although respondents insisted that only a few of them were willing to sell agricultural land and especially titled land. They insisted that small holders rarely sold their agricultural land and the few who did so did it out of conditions of distress; they sold portions of their land to raise funds for urgent needs such as school fees and medical bills. Thus, the relationship between the reform and the land market is not a straightforward one. This is an important observation given that the private rights school associates land reform or individualization with an active land market in which some people gain and others lose. The land market too seems to be strictly controlled by the Land Control Board. The land market is not autonomous of state control. These controls may not be welcomed by those who want to buy from the poor but are certainly welcomed by others with interests in the land being sold. The single most important effect of the reform on the land market is on the prices of land. Registered land was fetching more money than other types of

land because such land entailed fewer disputes, especially when all interests on the land had been clarified. Importantly, there is an impression of an increase in the number of parcels of land being traded but this cannot be attributed to the reform factor alone. The suitability of the area for the tourist industry, and speculative interests by the political elite are other factors responsible for the trend.

## Chapter 7

# Land Rights, Accumulation and Social Domination

### 7.1 Land and Community Politics

The issue of land ownership has been at the centre of local politics in Kilifi and the coast in general. On the eve of independence, land rights on the coast generated political conflicts similar to those experienced upcountry. Differences between the Arabs and the Swahili, on the one hand, and the Mijikenda groups, on the other, led to socio-political divisions along which several political parties formed. After independence, the resettlement schemes introduced in Kilifi caused sharp hostilities between the upcountry groups and the Mijikenda. Concerns on the part of the latter's political leaders, notably Ngala, about the intensity of the landlessness on the coast, resulted in the appointment of a government committee in the early 1970s to investigate and make recommendations on the Land Question. This was followed by another committee, this time a parliamentary one, with a similar mandate. Recommendations by both committees seem not to have received significant attention: relatively little land was ever given to the landless and the squatters. Government land was increasingly turned over to the economic and political elite for the purposes of tourism which the state elites seemed keen on promoting.

There are several reasons accounting for this trend. Firstly, after the death of Ronald Ngala in the early 1970s, there emerged no other influential and charismatic leader on the coast. Most of the local elites had relatively little influence on central state politics. The coastal Land Question, therefore, lacked someone at the centre of the state to articulate it with the same vigour and interest as Ngala had done. Significantly, the little interest that the Kenyatta regime showed in the coastal Land Question was aimed at placating Ngala's KADU-based concerns over land and fears about the domination of coastal groups by the upcountry ones (Kenyatta had successfully lessened KADU's interest in land elsewhere by addressing the needs of individual politicians).

Secondly, the Kenyatta regime had entered into an agreement with the Sultan of Zanzibar in which the government undertook to respect private property rights in land on the coast irrespective of how such rights had been acquired. This protected Arab and Swahili land claims obtained through the

1908 Land Titling Ordinance. It also meant that the state could neither settle squatters on Arab and Swahili land nor give ownership documents to those who had occupied these lands before the Ordinance.

At independence, liberals led by Kenyatta and Mboya also made economic growth the *raison d'être* for land redistribution. Allocation of public land became increasingly legitimated by reference to economic growth and, specifically, the need to bring land into effective use. This contributed to the exclusion of the landless and squatters from the "fruits of independence" and provided a cover for maintaining the loyalty of Kenyatta's cabal and/or establishing an infrastructure for tourism and auxiliary activities.

The objective of alienating government land for economic-related considerations obtained for a short period after Moi ascended to the presidency in 1978. It, however, ceased after his support base began to decline. Allocations of government land then became increasingly linked to short-term political considerations. Allocations were for the purpose of concentrating power and of securing loyalty from the elite rather than broader economic or political objectives. This had significant effects on community politics. It resulted in increased landlessness and the deepening of the squatter problem around the coast which, in addition to the problems arising from the reform of land tenure, had now become the single most important issue around which political support was mobilised by the coastal political elites.

Local and national level based elites, and in particular politicians both in the state party and opposition political parties, are the main actors involved in articulation of these issues. How they do it differs considerably. They raise issues such as allocations of their land to upcountry political elites and the failure of the government to resettle the landless. These are frequently raised in *harambee*<sup>47</sup>, political party public meetings and other public fora. But because of state restrictions on the organisation of opposition politics, the state party has tended to dominate such fora, thereby articulating these problems in a rather moderate way and, specifically, in a way that does not antagonise their relations with the state. Local leaders of the state party and others with political ambitions were generally said to have realized the political significance of disputes with regard to establishing political support. Informants said that the state party had in recent years become more vocal in raising these issues, but only in ways which pass the blame to the Provincial Administration. They were emphatic that the state party had realised the political importance of disputes both about land allocated "from above" in areas already settled by coastal people and about increased ownership of land

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<sup>47</sup>. Literally pulling together (of resources to support community-based initiatives). Harambee has now assumed a connotation of meetings organised by or with the support of politicians to raise funds for such ventures.

by "outsiders", since raising such issues would improve its legitimacy and provide political following.

It was in the light of this that some local elites incited the coastal people to evict migrants from settlement schemes and/or from land allocated to them by the government. In early 1994, for instance, all coastal Members of Parliament, including ministers, issued a press statement in which they blamed the local Provincial Administration for the spread of landlessness and the squatter problem on the coast. They attributed these problems to what they saw as a conspiracy of the entire line of senior Provincial Administration and Land Officers in the Coast Province in allocating land to migrants and "ignoring the plight of the local people". Mass evictions of "upcountry" people from Mtondia settlement scheme and the burning of business premises owned by upcountry people in Kilifi town followed thereafter. Of course, the politicians denied having a hand in what happened but respondents interviewed said the events resulted both from the politicians' public statements and KANU public meetings held a few weeks before in which some of the politicians asked local residents to guard themselves against domination by upcountry migrants who supported opposition parties.<sup>48</sup>

Opposition politicians and activists, in spite of their restricted environment, usually raise land issues with the local Provincial Administration whenever they have an opportunity to do so. Some of the main opposition activists defected back to the state party with a view to addressing these issues from "within". They have remained active in consultations with the Provincial Administration. Their defection to the state party caused further divisions between them and other leaders, especially the national leaders because this undermined the monopoly over KANU and its resources that the national elites had. The defectors were perceived as a threat by the national leaders because the latter had not been able to deliver on the Land Question as the local defectors had done.

Although articulation of land issues plays a critical role in political mobilization, those elected into office sometimes failed subsequently to continue to press for viable solutions to those issues. The central state elites and others in privileged political and economic positions often silence office holders with grants of land or other favours so that they will not pursue positions that are detrimental to their modes of accumulation. In this way, the role played by national political elites has prevented the consolidation of an active constituency of the landless and squatters. Besides leading the landless and squatters into casting the land problem as a problem brought about by upcountry immigrants, they buy off local leaders while also continually promising a resettlement solution which some of the landless and squatters fear would be jeopardised if they took a confrontational approach.

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<sup>48</sup>. *The Weekly Review*, 6 May 1994.

Nonetheless, while in the past, repression by the local Provincial Administration prevented the consolidation of a squatters' resistance movement, the deepening of the "Land Question complex" has been associated with some increasingly organised resistance by the squatters and the landless. Squatters' committees have become a significant avenue for articulating grievances and of linking the squatters to both national-level politicians and institutions of the state at the local level.

The elected leaders have not had any significant control of "accumulation from above" despite the fact that local government regulations and those of the District Development Committees (DDCs) require that allottees should get approval from the local Land Allocation Committees in which elected leaders participate. Arguably, elected leaders get sandwiched between "local pressures" for land redistribution and pressures from central state elites to maintain and sustain – on behalf of the latter – the status quo.

Despite repeatedly blaming landlessness on upcountry state elites, area residents nevertheless were still overwhelmingly rallied around KANU for two reasons. First, was the Ngala factor. The local population was inspired to support KANU on the argument that KANU was led by friends of Ngala and, specifically, people with whom Ngala formed KADU to advance the interests of the numerically minor communities. Second, was the sentiment against the Kikuyu and Luo. Local elites influenced popular thinking by pointing at the opposition as "comprising upcountry people or outsiders (Kikuyu) who have been exploiting the coast since the Kenyatta period".

Most local politicians fail to help in finding a solution to the Land Question or, in the course of time, become an obstacle to a viable solution. Often cited was the silence of local politicians with regard to the acquisition of plantation land and the subsequent transfer of the PC who helped resolve the dispute by allocating land to the squatters. Some of the interview respondents viewed the mute role of senior politicians in the district as a sign that they had consented to the renewal of the lease in disregard of people's expectations that the land would revert to them. The transfer of the PC was also said to have been influenced by some of these politicians who had become increasingly uneasy with the popularity that he had earned over time.

Social and political divisions among the various coastal groups have also contributed to the lack of a common and consistent position on the Land Question. Divisions among the heterogeneous Mijikenda groups, and especially among the Giriama, the Chonyi and the Kauma in Bahari, are reproduced in the organisation of area electoral politics. The Kauma, with the support of the Giriama, dominate in electoral politics. The Rabai are increasingly seen as political rivals to the Giriama: their rivalry dates back to the colonial period and to the conflict between KANU and KADU. During the period, the Giriama, through Ngala, supported KADU while the Rabai, through Chokwe (then a Speaker in the Senate), supported KANU. Their rivalry over the leadership of the Mijikenda spilled over into intra-ethnic



rivalries whose consequences continue to recur in the politics of the area even today. Some of the respondents, for instance, said that during elections, candidates from both sides seek to mobilise voters by reminding them of this past. They added that the Giriama have never forgotten nor forgiven the Rabai for Chokwe's opposition to Ngala who had already established himself as a national figure and the most influential politician from the Coast. Others added that Ngala's popularity has enabled several of his relatives and associates to continually win in the general elections.

Rarely do these different groups take a common position on land issues as each inhabits a distinct geographical location. The problems of one subgroup are rarely seen as universal problems; instead, they are treated as localised to that specific group. Political elites have contributed to the widening of this divide since it enables them to gain effective control over politics. In Malindi, the dominance of Arabs and Swahili in commerce has also translated into their dominance in area politics, the numerical strength of the Mijikenda notwithstanding. This has enabled them to consolidate their position with regard to control of land in the area, a position reinforcing the status quo in land ownership.

### **7.2 Concluding Remarks: Reformulating the "Land Question Complex"**

The reform of land tenure has been accompanied by different types of disputes, of which the main ones are those over the boundaries and actual ownership of holdings. Some of these disputes have brought the members of the Land Adjudication Committee into disrepute because of favours done for those who have the ability to pay. Arguably, the reform process is gradually eroding popular confidence in traditional institutions for dispute arbitration because the ability to bribe and influence has become an important element in arbitration processes "whether one has a legitimate claim or not". Furthermore, the reform process has intensified with corrupt modes of land acquisition. These have in turn resulted in elites accumulating more land at the expense of others.

The relation of land title to the land market is not a straightforward one since there were some sales taking place even outside of areas with title deeds. Similarly, titling appears not to have had much effect on credit as very few people use titles for loans. The fear of high interest rates and of subsequent loss of land on default prevents most title holders from using the title as collateral.

The reform programme is being implemented under severe budgetary constraints and the costs are gradually being transferred to the local communities. There is no doubt that with continued poor economic growth and reduced government spending, informal fund raising methods will become an important source of finance for some of the elements of the reform programme. Furthermore, those with the ability to pay for land-related

services will be the main beneficiaries and will probably accumulate more at the expense of those without the ability to contribute to the reform programme. This will undoubtedly erode popular support for the reform, a support that has already shrunk considerably due to the malpractices that accompany it.

Land is also given as grants to political elites not for the purposes of economic development and the nurturing of indigenous capital but principally for the purpose of maintaining patronage relations and of securing political loyalty. Most beneficiaries do not utilize the land but turn their grants over to private developers, a majority of whom are foreign hoteliers. The implications of these actions for the national economy are very clear. Firstly, at the national economic level, this mode of accumulation has washed away the bases of indigenous capitalism and replaced them with Asian and foreign corporate ones which, however, are connected to central state elites. Secondly, at the local level, these forms of accumulation have resulted in economic and social domination over the local people. Thirdly, economic structures created by these forms of accumulation are not responsive to local needs; they are associated with "private forms of repression" which are channelled through the local state structures—the Provincial Administration officers.

This state-led mode of social-economic domination and exclusion has bifurcated the society into a group of the landed and, therefore, economically and politically powerful, and another group of squatters or "subjects of the landlords" who, while "subjects", are not meek but increasingly determined to solve the Land Question according to their own interests. The local state structures continue to act as the main avenues through which this "subjection" and social domination are enforced.

The involvement of the state in regulating access to public land has increased rather than decreased and has contributed to the deepening of the Land Question rather than its resolution. The state's practice of individualizing public land according to political considerations has created more people without rights to land and has generated new types of disputes over ownership. The most important of these concerns the allocations of public land in prime, high potential areas, leading to the eviction of those already settled on the land in disregard of the improvements that occupants have made over long periods of occupation. Rarely are the occupants paid compensation for their commodities—tree crops in particular. Compensation, in turn, becomes a secondary dispute subordinated to the main one.

On the other hand, political patronage has its own "political expenses" and limitations: the success of "accumulation from above" requires not only political connections (or even higher political connections) but a "regime of compulsions" or administrative and legal force. Meanwhile, "resistance from below" is the single most important mechanism for limiting such forms of accumulation. But resistance from below has its own internal contradictions

and limitations. Socio-economic and political differentiation among the actors involved prevents the consolidation of popular opposition against patronage in the determination of access to land, and against opposition to oppression by the institutions of the state at the local level.

Finally, this study shows that what has come to be known as the Land Question cannot be reduced to a single issue and solution. It comprises not a single issue but a series of issues with each one having its own dimensions. Its complexity and dynamism cannot be comprehensively captured by casting it as a simple question of the relationship of agricultural productivity to titling or the individualization of land. This study demonstrates this complexity by discussing the interrelations between, *inter alia*, the privatization of land and politics; land, the state and political patronage in the local arena; and land and popular politics. Different aspects of each of these dimensions have also been highlighted. The discussion suggests that land tenure reform hinges not only on issues of land productivity but also on issues of social restructuring, polarisation and exclusion. Therefore, the "Land Question complex" must be understood as an issue woven around the entire constitutive social and economic relations of a social formation. For any attempt at resolving the political and economic crises around land rights to be meaningful it must, therefore, first begin with a thorough appreciation of this complex.

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