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In Kenya

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The starting-point of critical elaboration is the consciousness of what one really is, and is 'knowing thyself' as a product of the historical process to date which has deposited in you an infinity of traces, without leaving an inventory. (Antonio Gramsci, 1971:324)

How then is one to find this inventory? While I agree with Gramsci, how is one to undertake this task of self knowledge in relation to critical elaboration considering the possibilities and variations? Where is one to start? As a part of self knowing while in the field I kept a journal that was to record personal impressions and feelings that were not the actual, or rather, the specific reasons for my research. I remember coming to certain epiphanies while in the field about myself and my construction as an individual, especially
in regard to class and to a less extent race and how these worked in Kenya. As I did my
doctorate and as I live I am constantly trying to know myself and to find my place.

During fieldwork this was more than ever, for I was in situations that I had not
previously been in. I was studying in a society I did not know a lot about and living in a
house of people I had just met. My country, but not my home. Familiar but not the same.
More than any other time I was confronted with the realities of my life, class, race,
upbringing and position in Kenya from a different perspective. After four months, I was
burdened with this perspective in viewing all that I had once known and could no longer
know. For as Garcia Lorca said one who has seen can not forget. To look from this
vantage point was to see things that upset my understandings of my surroundings. How
would I position myself in this new environment that was just a refraction of the old? In
this manner I came to recognize myself as belonging to a class that had a specific outlook
and knowledge and way of thinking that I had not been conscious of before. Yes, I was
conscious of material privilege but other difference I had always seen in terms of race,
etnicity, gender and rural/urban split that characterizes so much of Kenyan thinking.

Because I felt I was familiar with the coastal culture in general I was taken a back at
how alienated and surprised I was at some things that people said or did. I had always
thought it easy to move between and among cultures, because of having a non-fixed
identity with any particular culture while having claims to some. In Tiwi I found that this
illusion no longer held for me and I did not want to hide behind it anymore. It was here
that I came to realize how things I held important were due to class as well as ethnicity,
urbanity, race and political position. The difference in perspective included reasons for
divorce, concepts of women's rights and mobility, ways of seeing politics. I felt more
conscious of being middle class, and that such a class had a culture, as opposed to just an
economic category than ever before.

From standing in a position of material privilege although not security, class
became quieted and race screamed to be a defining character. What does it really mean to be
marginalized by race? How I laugh at people's assured position of their ethnicity. And of their surprise when an outside world does not want to recognize them as they see themselves. And their confidence in community - don't they know it is a luxury not a given? Yet the situation is much more complex than that, for the separation of class and race are not as clear cut as would appear.

Always on the outside of community, always but not quite belonging. I constructed my identity in alliance to my country, because in the notions of a nation there is space for me. So I fought for this space, as it was continuously denied. I appealed to the logic of a nation and citizenship because the logic of ethnicity did not apply to those of mixed descent. I claimed, but could not be, my father's ethnicity, which is also my ethnicity, Samia. But was denied this even at times by relatives. How many times have I had people who on introduction treat me as if I did not exist only to return to great me again once they find out who my father is? The city of my birth, childhood and adolescence, Nairobi has acted as a refuge to me, for there, nation and citizenship had meaning. Yet, I realize that there is a tension between the idea of national belonging and what we consider to be 'home' in Kenya.

Trying to sort out complications with obtaining an ID at the municipal headquarters in Nairobi, an assistant to the District Officer is talking to my father on the phone. "Has it rained at home?" she asks. He replies "it hasn't rained here lately" to which she laughs and says "I know, has it rained at home?" Being no relative of ours what is this 'home' that she is speaking of? Although my father was pretending not to understand her meaning, how many times have we used the word 'home' in the same context? How can I explain its meaning? 'Home' as we use it in our family has two meanings; one the place where my immediate family lives, our house but especially the people. And the other, meaning the place where my father's family came from and our extended relatives live. Yet, in the second case it is not just the place, it is the people, the community, a point of identification. Nor is it just the people themselves, for if all those I knew were to move away, it would
remain home. Neither I, nor my parents were born or have lived there. 'Home' to me was not a place I had visited since I was four years old and would not return to until I was twenty two, and even then never reaching part of the area I call home. Home was western Kenya, eastern Uganda, it was lake Victoria and Mt. Elgon, Western Province, Busia, Mambale, Samia, Funyula, it was my grandparents house and compound, it was my great-grandmother. It was undivided, self contained, irreducible and although far away demanded an allegiance unparalleled even by my country. Even today it remains this way when we say "we are going home".

To have all these traces with no inventory, just indications of origin. Long a traveler between and among the borders of race, national borders have for me a certain (but limited) fixidity and fluidity but ethnicity was to me always the most rigid. I think that the hardest part of writing my thesis has been the effort required to bring my home to Stanford. It is the difficulty of recognizing that these places are connected and related. I have always kept these worlds as far apart as possible. Having left Kenya only once that I could remember, before I went to university for the first time, I dealt with the difference of existence and living by keeping my two worlds basically separate. Now I have to bring all my friends and life here with me to university and I feel displaced.

To return to the question of positioning myself in relation to my fieldwork, to the "infinity of traces" and to look for the inventory, I have not even begun. Where is gender, which is so important in my conceptualizing of myself, and positioning myself in relation to others? Religion? Age? But to start somewhere, to reflect is to begin to create, to position and undergo constant transformation. It is to help us have a clearer understanding of our place and placement. As Stuart Hall states;

Far from being grounded in a mere 'recovery' of the past, which is waiting to be found, and which, when found, will secure our sense of ourselves into eternity, identities are the names we give to the different ways we are positioned by and position ourselves within, the narratives of the past. (1990:225)
"Mtu apigbwa dzumbe, akavia konhoni, mieno apigbwa konhoni, vievi?" 
(If a person is forced from their father's land they go to their mother's but if they are forced from their mother's land where can they go?)

Abstract

This paper will focus on the importance of inheritance of land among the Digo who live on the southern coast of Kenya. The Muslim Digo, one of nine peoples who make up the Mijikenda, express social continuity through concepts of matrilineal kinship and the continuation over time of matri-clans. Affirming and contesting kin relations through access to land, inheritance has been crucial in Digo society as an expression of this continuity. However, conversion to Islam, colonialism, and the independent state have affected this access to land, as well as power and authority in other aspects of Digo society, disrupting notions of kinship, law and identity with gendered implications. Inheritance of land remains especially important in rural Kenya, today because of an inability for most rural people to economically compete in land markets. Through the process of negotiations, settlements and practice of inheritance the Digo set out to challenge not only the authority of the colonial government, religious structures and the independent state, but what it means and has meant, within Digo society, to be Digo and Muslim. Thus, inheritance provides a site for symbolic as well as material struggles over land. As such, conflicts in inheritance can be read as attempts to co-opt legal structures in fights within and without a community over defining community and belonging.

Prologue

Kasim

Sitting in an air conditioned room in the hot hazy days of December, where the sun is reaching the height of the assault of the hot season after the short rains, is a real pleasure. I often went to Betty and Nira's office to escape the heat of Mombasa and to pass the time with these good friends. Confused about the difference of meaning between two Chidigo words, "fuko" and "mbari" both often translated as "clan", I was asking Betty for help. Her office mate Kasim, a middle-aged Digo man, was trying to help me out. He began to

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1Digo saying told to me by H. B. Nyama in November 1993.
explain about the importance of the clan on the mother's side, the *fuko*. Kasim said that *fuko* and *mbare* were the same but the *fuko*, the clan on the mother's side was stronger. He explained that his grandmother had inherited land from her uncle, that is her mother's brother, although her uncle had had five sons. She then left her land to her daughter's daughters although she herself had two sons as well as one daughter. Thus, the land passed through the women of the family only. However, his grandmother's husband also had land from which he gave plots to all his children, male and female and his two wives while he was alive. He retained a plot as his own, which he declared would go to all his family / descendants to use communally after his death. Thus, the male children did not complain and their sons (the grandmother's agnatic grandsons) like Kasim have no right over her land. The grandmother’s land remains in the *fuko*. Kasim, being one of these grandsons did not seem to mind.2
Of course not all land distribution in Kwale District is this simple and uncontested. Only the night before we had been sitting behind locked doors frightened by the sound of gunfire, of the violence that had erupted in Tiwi and Likoni over land and politics. Hundreds of people were displaced and forced to leave the area or camp out in the Catholic church in Likoni, and a few people were killed. The fear during the day, is tangible, yet it is hard to remain indoors under the burning metal roof in the heat but my host is worried. In the early evening Gary Morgan, an American missionary in Tiwi, came by with his friend Abdulla who is from Matuga, but works as a school teacher in Hola. Abdulla explained to me the circumstances of a land dispute case that involved his family.

Abdulla

The case started in 1983 when Abdulla's father tried to plant trees on a portion of his deceased father's land. Abdulla's grandfather, the original land owner, had died prior to land adjudication and registration of title in 1974-75. He left behind three wives. One with nine children, one with two children and one with one child - the father of Abdulla. At the time of land adjudication, the land was registered in five names which is the maximum number of names allowed to be registered on one piece of land in Kenya. These names were three children out of the nine siblings, one out of the pair of siblings and Abdulla's father.

Abdulla's father tried to plant trees on his land, but the nine siblings refused to allow him to do so. He ignored them and began to plant. The siblings complained to the sub-chief. The sub-chief sided with the nine siblings and ordered Abdulla's father to uproot his trees. Again he refused and went to the chief to ask assistance. The chief sided with Abdulla's father in favor of a division of the land by "house", that is, land is divided.

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3 In this paper adjudication or registration refer to the process of adjudication and registration that turned native reserves into private or communal (trust) property just before and after independence. The process allowed the freehold of property by individuals and has been government policy since independence.
between the families of each wife, rather than between all the children. Thus, he was advocating a three-way division of the property rather than a twelve-way division. At this point, the nine siblings invoked Islamic law by arguing that the land should be divided by children, although they did not want the specific divisions of fractions of land that Islamic law prescribes. The father was invoking Digo customary law by arguing for division by house. The dispute was not settled there and went first to the District Officer and then to the courts.

Division of Abdulla’s Grandfather’s Family by house

At the court level the dispute left the hands and discussion of the elders, and was instead argued by lawyers. As the court at that time had no mandate to enforce or uphold either Islamic law or customary law, the lawyers argued for the division of land by the five registered names. The court, however, ruled for a three-way division by house. A surveyor then divided the land into four and the father had to take it to court again, where the surveyor was threatened with contempt of court, if he did not divide it by three. The land dispute caused terrible family strife. The families involved stopped talking to each other and even threatened people with bows and arrows and pangas. The case was finally

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4 No distinction is made between order of wives or children as an elder child does not inherit more than another child. Throughout the area property seemed to be evenly distributed among those who qualified to inherit.

5 After the 1981 Succession Act and before the 1991 amendment to the Act.

6 Machete or long knife used to cut grass or wood.
concluded in 1985 with the ruling that the land was to be divided into three parts representing the three houses involved.\footnote{December 1993 Abdulla.}

The prologue contrasts two examples of Digo land transfers in Kwale district. One, Kasim's case, is an uncontested transfer of land while the other, Abdulla's case, the inheritance is disputed by the family. Using the example of his grandmother's land Kasim attests to the importance of clan land through an explanation of the difference between \textit{fuko} and \textit{mbari}. He emphasizes that the \textit{fuko}, the mother's side of the family, is more important to the Digo. Abdulla, on the other hand, discusses his family's dispute as a fight over the use of Islamic or customary law and the role of the courts in the final decision about the inheritance of the land.
Introduction

The most striking aspect of Digo property disputes is that they are not disputes about boundaries, chiefdoms, subjects, relocation or settlements. Rather, they are disputes between families, family members, brother and sisters, uncles and aunts, children and nieces and nephews over *inheritance*. Apparently localized and specific, inheritance has come to be the defining feature in Digo land relations and has repercussions in the region and nation.

Issues concerning the division and distribution of land have remained particularly problematic in Kwale District, with certain historical events making them critical at specific times. The two relations to land illustrated previously in Kasim’s family’s forms of distribution (pg. 8), and Abdulla’s family dispute (pg. 10), show some of the breadth of agreement and disagreement the inheritance of land produces in Digo society today. They also show the possibilities and constraints of the state’s ability to deal with problems of land as they arise in practice on a day-to-day basis. Contestations over land in Kwale District revolve around issues of *inclusion* and *exclusion* from a family, group, clan, community, nation, or religion, of *authority* within these groups and outside of them, and of *different positioning* in social relations of land by gender, ethnicity, class and social status. As a considerable part of social memory, inheritance has been at the crux of Digo land disputes for over one hundred years.

This paper looks at the contestation and construction of social identities, such as clan, gender, religious, ethnic and national identities, in the inheritance of land among the matrilineal Digo on the southern coast of Kenya. The Digo are one of nine peoples who make up the Mijikenda, the name itself meaning "the nine kaya". In the late 1940s, when forming the cooperative political organization the Mijikenda Union, they chose to be called
Mijikenda. The *kayas* were fortified forest hilltop villages established by different Mijikenda peoples along the low plateau running north-south some twelve miles inland of the Kenya coastline. Since the fifteenth and sixteenth century, the Digo lived in the plains and hinterland ridges of Kenya coast, south of Mombasa where they build first *Kaya Kwale* in the hinterland and later *Kaya Kinondo* at the coast (Spear 1978:59).

Dispersing to the coastal plains in the seventeenth century the Digo established other sub-*kaya* along the coast at Ukunda, Tiwi and Pongwe. Here they conducted a flourishing trade with the Swahili settlements near them, establishing especially close connections with the Vumba (Swahili group) at Vanga which they maintained into the colonial period (Spear, 1978).  

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8The other eight Mijikenda peoples are the Giriama, Kauma, Ribe, Kambe, Jibana, Rabai, Chonyi and Duruma. The Duruma also mainly live in Kwale District while most others live north of Mombasa. Brantley notes that "the Giriama's own term, *Makayachenda*, the nine *makaya*, was changed by them to *Midzichenda* but the Swahili term Mijikenda is best known and has now been accepted by the Mijikenda themselves" (1981:6). *Miji* in Swahili means town, city, or village while *chenda* is the old Bantu word of nine replaced in Swahili by the Arabic *tisa*.

9This is now a very controversial time of arrival as Spear has been contested on many grounds for his methods of dating but also because of the more recent, since the 1930s appearance of the Shungwaya origins myth.
In the early nineteenth century the Vumba-Digo caravans began to pioneer long-distance trade into the interior along the regional routes first established by the Digo. After mid-century they pushed beyond Chagga to Samburu and Lake Victoria bringing back ivory and slaves. In spite of previously controlling most of the trade between the coast and the interior by the middle of the nineteenth century the Digo lost their hold on trade to the Swahili and Arabs associated with the growing empire of Zanzibar.

Inheritance remains crucial in Digo society as a site for struggles over land and identity both materially and symbolically. Due to restrictions on settlement, the economic marginality of Kwale district, the poverty of the rural areas in comparison to urban ones, and resulting lack of substantial monetary income, inheritance remains the only way of obtaining land for the majority of the population. For those who do not, and cannot, fully participate in a capitalist land market yet rely on land for survival, inheritance is fundamental. Inseparable from kinship patterns and social relations to land, inheritance also provides a space where the struggle over meanings, and authority to define meanings, is enacted. Disputes and settlements of inheritance are a process of contesting and creating social relations through history, reflecting power and positioning in society.

I look at the gendered aspects of land ownership, distribution and social practice among the Digo within a framework of domination and resistance. In doing so, I keep in mind Gramsci's concepts of hegemony as described by Raymond Williams: "an inclusive social and cultural formation which indeed to be effective has to extend to and include, indeed to form and be formed from, this whole area of lived experience" (1977:111) to foreground ideas of resistance and opposition. I draw on fieldwork conducted in Kwale district in the summer and fall of 1993. My research comprised both of archival work with

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10I use the word 'gendered' to refer to a relationship, or property of a practice that is in itself, or in its construction, gender specific or referring to a gender. It is different from referring to gender consequences where the results affect genders differently, or gender influences where gender relations have an influence on the nature of a relationship. It is rather, that the relationship itself is formed using the categories of gender e.g. I might refer to sex roles in labor as 'the gendered aspects of the division of labor'.
government and court documents and a series of extended interviews with Digo people and
others living in Kwale district.

In this paper I want to go beyond looking at conflicts in inheritance and land use
practice as simply an analysis of society's negotiation of varying land laws (customary,
Muslim or statutory law) operating simultaneously in Kenya. Instead I argue that conflicts
in inheritance and practice must be read as fights within and without a community over
defining that community. In my analysis of Digo inheritance I want to use this concept not
just to look at disputed land, but to extend it to the employment of politics of meaning to
undisputed claims to land and land use practices as well. To do this, this paper is divided
into five sections.

The first is a review of literature concerning land relations, inheritance and
customary law in Kwale district, Kenya and Africa, as well as a discussion of power and
identity relating to land. The remaining four sections address how and why inheritance of
land is and has been so important to the Digo, materially and symbolically. In doing this,
they draw out three other themes: changing kin relations, the impact of state power on
inheritance and gender relations through law and finally the establishment of social
identities and change through practice.

The second section looks at the material and symbolic importance of inheritance in
an attempt to locate the Digo land disputes geographically, politically and historically.
Thus, it provides background to land relations and social change in Kwale District. I focus
on rural poverty and land whose ownership is specified by kinship. The third section
discusses the Digo negotiation of colonial and religious authority and the changing meaning
of land and inheritance.

The fourth section looks more closely at gendered aspects of the disputes over land
and meaning in Tiwi area of Kwale district, though a discussion of state power. In this
section I look at the construction of discourses around customary law and at oppositional
practices as they address hegemonic discourses, both those that operate from within and those that try to occupy an alternative space outside of hegemonic structures.

The fifth section engages practice as a defining activity by looking at Digo forms of ownership and negotiation of land. My primary focus here is on debt and the titling of land. Throughout the three latter sections I try to illustrate the imbrication of gender, ethnicity and religion in defining discourse and practice.

Through this paper I set out to question the validity of a series of prior interpretations of social behavior with regard to land, and the pattern of land use and disputes. Thus, I challenge conventional wisdom as well as prior studies regarding law, kinship, gender, religion and the state. Analyzing the role of law I question prior conceptualization of the relationship between customary law and statutory law, and the emphasis on law as the instigator of social change. Looking at kinship I question the way lineages and individuals are constructed in studies of matrilineal and patrilineal societies, the focus away from inheritance towards more 'political' issues in African land disputes, the way prior studies have talked about Digo kinship and transfer of property, and the problems of translation. I specifically address gender, to challenge the marginalization of women and gender relations to land, and the creation of an all encompassing 'African customary law' in conventional wisdom as well as prior studies. In analyzing religion and state relations, I question previous studies' positioning of Islam, gender, debt and inheritance, and their conceptualization of the interaction between nation, custom and religion.

**Summary of Introduction**

The most striking aspect of Digo property disputes is that they are over inheritance which has come to be the defining feature in Digo land relations and has repercussions in the region and nation. The matrilineal Digo, who live in the southern Kenya coast, are part
of the Mijikenda, and have a history of close commercial contact with the Swahili. Land
disputes are a major part of Digo history as well. Kasim's and Abdulla's cases illustrate
some of the issues surrounding land distribution in Digo society today.

This paper questions the continuing centrality of inheritance in disputes about Digo
land in the last century. Thus, it raises questions regarding the social and political
importance of inheritance. Materially, inheritance is an important way to obtain land for
rural populations because of rural poverty and the social insecurity of landlessness in
Kenya. Symbolically, inheritance is a way of solidifying or disputing the meanings of
social identities and the authority to define meanings, reflecting positions of power in
society.

This paper looks at the contestation and construction of social identities, such as
clan, gender, religious, ethnic and national identities, in the inheritance of land among the
Digo. It looks at the gendered aspects of land transactions and use within a context of
domination and resistance. In doing this I draw on fieldwork, archival work and
interviews. I want to go beyond analysis of society's negotiation of varying land laws by
placing them in context of community definition. Thus, I look at undisputed claims to land
as well as disputed claims. The paper is divided into five sections: a literature review; a
look at the material and symbolic importance of inheritance in an attempt to locate Digo land
disputes; a discussion of the Digo challenge to colonial and religious authority and
meaning; a discussion of negotiating power through inheritance laws with an emphasis on
gender and the state; and finally an analysis of identity formation through resistive
practices. In this paper I want to illustrate the complex ways gender, ethnicity, and religion
overlay each other in determining people's actions and reasons for acting. I also question
and challenge conventional wisdom as well as prior studies regarding law, kinship, gender,
religion and the state.
Section I: Literature Review

Land and power in Kenya

Land relations continue to provide fundamental sources of power in Kenya. In recent years land relations have been increasingly politicized and as a result there has been extensive interest in land issues (Okoth-Ogendo 1991, 1987, Leo 1984, Shipton 1989, Glazier 1985, Mackenzie 1990, Fleuret 1988). Although concerned with changing systems of land tenure during colonialism and independence in Kenya, the literature has tended to focus on areas that had high concentrations of European settlement or that are considered agriculturally highly productive. Hence, scholars and politicians have mainly paid attention to the highlands east and west of the Rift Valley. For the most part this literature looks at issues of land reform, Native reserves, and resettlement providing critiques of statutory law and colonial notions of land law and policy. In general, discussions of land relations in Kenya have paid little attention to the coastal areas.

However, when dealing with the coastal strip few historical, anthropological or sociological analyses can escape the problematic of land. Whether discussing religion (Sperling, 1988), education (Wamahiu, 1988), economic development (Gillette, 1978) or doing a socio-cultural analysis (Gerlach 1960, Kayamba 1947, Gray 1972, Bergman 1988, Gomm 1972) among the Digo of the southern Kenya coast, the subject of land relations and especially inheritance of land must be taken into account. This has required an engagement with the legal systems of the colonial and post colonial states and their effects on customary laws, as well as an exploration of social relations as expressed through land.
Customary law

Today, the position of customary law within the legal system is being brought into question by social scientists studying Africa. Some of the post-colonial theorists like Bhabha (1985, 1992), Mudimbe (1988) Escobar (1992), Trouillot (1991) and Nandy (1983) provide an interesting framework in which to view customary law. These analyses have used the position of the "indigenous" as a space where modernity can be critiqued. "Indigenous", for these scholars is a constructed space of authenticity strategically evoked by Africans for the purpose of resistance or construction of identity. Their analyses become significant when we consider customary law as a form of indigenous knowledge. As such, customary law plays a role greater than the regulation of behavior as law but acts as a point of creation, negotiation and politics. Due to the competing, interwoven and multiple sets of laws that operate in Kenya, this use and significance of customary law is particularly important in power relations today.

Recent civil law cases in Kenya have turned on the use of statutory and customary law. Literature questioning the current role customary law plays in the courts arose as a result of these cases. The literature has been concerned with differing ways of ordering and understanding the world in arguments over the use of customary or statutory laws. For example, Okoth-Ogendo (1989), and Cohen (1992) among others all deal with the socio-political, cultural and power debates and considerations of one such highly publicized and publicly contested case - the burial of S. M. Otieno, a prominent Kenyan lawyer. S. M. Otieno's case, although not the first such case, captivated the national imagination and set a trend for similar cases to come to court. Because of its importance to Kenyans, I refer to this case throughout the paper as a comparison or an emphasis to my analysis of Digo land disputes.

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12 The first well known burial case was for Mr. Mburu the first Provincial Commissioner of Nairobi, with his widows fought over where he should be buried
Expanding on notions of the inventions of tradition in Africa (Ranger 1983) and elsewhere in the world, several authors provide an historical analysis of customary law in Africa (Chanock 1991, Moore 1991, Hay 1982, Wright 1982 and Mann 1982). Moore, Hay, Wright and Mann deal specifically with issues of women and customary law. Chanock, Moore and Hay investigate issues of property while Mann looks at the possible disparities between law and practice. Crucial to all of these analyses is a conceptualization of customary law as an invention of the colonial period, one that was influenced in its creation by both African and European concepts, strategies and actions. Customary law comes to be thought of, in part, as the result of selected inquiries by colonial administrators into the customs of the local population and the equally selected renditions of custom by the local population to the colonial administration. These authors have argued that with codification, customary law is no longer the fluid, flexible, and negotiable idiom of dispute but rather a rigid, fixed "instrument of authoritarian rule" (Berry 1992). I argue that in doing so these authors have placed the courts and the colonial administration in a privileged position of formulating law and determining actual practice. Thus, in the last portion of this paper I analyze the role of practice in determining social change or continuity.

Ambivalence

This notion of customary law has come under some criticism in recent discussions of property disputes in Africa (Berry 1992, Shipton 1992, Goheen 1992). These critics (in addition to Hart (1991), Prakash (1992), Atran (1989), Dirks (1992), Watts (1992), Pred (1992) and Mackenzie (1990)), emphasize law as process and the connection of social relations with property. They point out the contradictions within the colonial administration though analysis of their policies and strategies. They also stress the ambivalence in the use of various laws and means to negotiate social identity and property among local population: in Asia and Africa. Although rarely talking of issues as grounded as land, post-colonial

**Gender**

In Africa, age and gender form lines along which power and authority is allocated and often contested. Feminist literature has long called for a reconsideration of structures and relations of power within communities and the home (Ortner 1974, Rosaldo 1974, Sack 1979, Leacock 1978, Abu-Lughod 1990, Comaroff 1987, and Callaway 1981). Moreover, feminists have specifically targeted kinship and political-economic structures as the areas that need to be readdressed. Matrilineal societies have been of special interest to this focus on kinship. Many matrilineal societies in eastern Africa, and in some cases west Africa, have made an apparent shift towards patrilineality. This shift has been portrayed as an effect of modern economic development through absorption into the capitalist market system, in turn linked to colonialism (Gough 1961). Literature has also posited that this leads to the emergence of the individual family as the key kinship group, allowing women some access to property not previously available. However, this literature does not take into account the gender relations of power over time and has been brought into question for the Akan of Ghana by Okali (1983) and for the Toka of Zambia by Holy (1986). Nor does it discuss the efforts of societies with strong lineage (matrilineal or patrilineal) to preserve
the lineage in attempts at social continuity. An analysis of change in matrilineal inheritance would necessitate a new framework that can incorporate these areas of concern in relation to property and law. Foregrounding kinship and power, I want to expand on the definition of politics to include family relations and gender inequalities in discussions of clan, ethnic, religious or national relations to land.

**Social relations**

Berry's, Shipton's and Goheen's 1992 discussion in *Africa* (62) of land, law and social relations provide a useful framework in which to talk about property and law in post-colonial Africa. I would like to look at their discussions of property disputes and property law in Africa and place them in conversation with Hart's (1991) work in Malaysia and Bowen's (1988) work in Sumatra extending these notions about land beyond Africa. Berry (1992), Shipton (1992), and Goheen (1992) work in areas of agrarian change and in a special issue of *Africa* (62) discuss disputes and negotiations over rural land in Africa. They are not just concerned with the land, but with the very meanings and use of land in social relations. Notwithstanding their lack of engagement of gender, these authors share Hart's concern for "a return to the central insight of feminist theory - namely the need to extend the definition of politics" (1991:95). Hart points to a broader view of politics in her analysis of peasant resistance:

instead of referring simply to electoral politics and/or actions focused specifically on the state, politics has increasingly come to be used in a broader sense to refer to the processes by which struggles over resources and labor are simultaneously struggles over socially-constructed meanings, definitions and identities. (1991:95)

Analyzing African land disputes along these lines Shipton and Goheen argue that land is used to gain control over other people and to define personal and social identities. By recognizing the political and cultural as well as the economic use of land, they push the
analysis of land to include the symbolic and the material. Shipton (1992) and Goheen (1992) state:

Contemporary discussions of land-holding in Africa seek to integrate three perspectives, among others: the political, the economic, and the cultural. At the simplest this triangulation means bearing three kinds of human ambitions in mind - power, wealth, and meaning - and looking for the linkages between them. The articles presented here show people using land for many purposes: not just to produce the material conditions of survival and enrichment, but also to gain control over others, and to define personal and social identities. (1992:307)

Questions of power are not only about land but the people related to the land and control of the symbols of authority over these people. In their introduction, Shipton and Goheen stress that "translation and enumeration problems, as all the articles in this issue of the journal demonstrate, are questions of power" (1992:314, emphasis added). These authors investigate power related to the translation of meanings and symbols. As questions of power are extended to become questions of authority, the focus of land relations is shifted away from land to people and social relations. Emphasizing the importance of social relations in land holdings in a dispute in Cameroon, Goheen argues that "the dispute is not about the farming of the land as much as it is about control over the symbols of authority over the people farming on the land" (1992:399 emphasis added). Berry extends this by stating; "farmers' ability to gain or retain access to land for purposes of cultivation depended as much on their relationships with other people as on the specific terms under which they claimed land rights" (1992:347).

Questions of power

In my fieldwork I found that questions about the definition of the past, of authority and of identities depended on power and positioning in society. Shipton and Goheen challenge us, when we regard land and law in Africa, to ask "which rights are made secure for whom" (1992:316). I would add "and by whom", for as Ella Shohat states:
the question, in other words, is not whether there is such a thing as an originary homogeneous past, and if there is whether it would be possible to return to it, or even whether the past is unjustifiably idealized. Rather, the question is who is mobilizing what in the articulation of the past, deploying what identities, identification and representations and in the name of what political vision and goals? (1992: 110)

While Berry, Shipton and Goheen's articles in *Africa* (62) provide a useful framework for looking at land relations they neglect several important issues. In particular, they ignore issues that deal with notions of identity, gender, debt and the positions of law in society stemming from inheritance practices and land use. Inheritance disputes show that, although at times flexible, ethnicity and religion are not as easy to change as they would appear. Can we really talk about the endless possibilities in overlaying systems of nation, custom and religion or must we specifically engage their interaction? Furthermore, in engaging the overlapping systems of belonging, how does authority change between local communities and nation?

It is my contention that the localized practices of debt, inheritance and gender relations refract discourses of wider ethnic group, religion and nation. Thus, the construction of identity and social relations takes place as much through the practice of certain activities as in the contestation of perceived rules. Berry, Shipton and Goheen like many before them (Chanock (1991) Moore (1991), Hay (1982), Wright (1982) and Mann(1982)) have emphasized the law as a determining factor in change so that changes and struggles of law reflect struggles elsewhere. Is law, and especially "customary law" over-privileged as the place of definition? Do people go to court? How is law engaged outside of the formal structures of legal systems? Can we not over privilege conflict as formative and the seemingly uncontested as stagnant?

Studies of land in Africa are usually aligned with agrarian studies or colonial settlement, and have tended to relegate women to the sidelines of the discussion. Their

\[\text{As opposed to reflect which returns the same to the viewer, refract bends and changes the original as it passes through giving back something quite different stemming from the original.}\]
focus on cash crop areas and their conceptualization of Africa has caused them to view inheritance as a problem stemming from over-population and land pressures, neither of which has been fully or adequately investigated with reference to Kenya. Addressing the problem of these assumptions necessitates moving beyond the more conventional studies of African "land" to an examination of land relations and disputes that is informed by both post-colonial and subaltern concerns, and by feminists and political economists. As a Kenyan citizen I am also implicated in this discussion of identity (both ethnic and national). One of the particular challenges I face in this project is finding an appropriate mode of (re)presentation that allows those I interviewed to speak through and out of this text.

Summary of Literature Review

Land relations have been extensively studied in Kenya with an emphasis on the highlands and agriculturally highly productive areas. There has been little discussion of land at the Kenya coast within these studies. However, those studying the coastal strip south of Mombasa have not been able to escape the important position of land in historical, religious and socio-cultural analysis of the Digo.

The role, function and construction of customary law is being questioned regarding Africa. The work of post-colonial theorists may be used to view customary law as indigenous knowledge providing a critique of modernity and functioning as a point of creation of an alternative. Customary law has been of renewed national importance in Kenya since the S. M. Otieno case, which captivated the imagination of the whole nation. Because of its importance to Kenyans, I refer to this case throughout the paper as a comparison or an emphasis to my analysis of Digo land disputes.

Scholars in Kenya are looking at the role of customary law in different communities' ordering and understanding of the world. Analysis of customary law in Africa from a historical perspective has expanded notions of the invented nature of
tradition. Customary law, in these analyses, is thought of as an invention of the colonial period informed by both African and European concepts, strategies and actions. I argue in this paper that these analyses place too much emphasis on the courts and the colonial administration for the formation of law and determination of social change.

Critiquing the fixity of customary law, authors discussing African property disputes, have emphasized the connection of social relations with property and law as process. Conceptualizing identity becomes important in this context. Along with post-colonial critics, these authors stress the role of ambivalence in the use of various laws and negotiation of social identity and property. I want to bring into the discussion of land, some of the questions about translation, cultural production, situated identities, resistance and representation that they pose.

Matrilineal social systems in Africa have been portrayed as eroded by capitalist market system linked to colonialism. I argue that these portrayals remove matrilineality from the wider social contexts by ignoring gender relations of power over time and lineage attempts at social continuity. Feminist literature, with its emphasis on the relations of power within communities, and its specific targeting of kinship and political-economic structures as areas that need to be re-addressed, add an important dimension to the analysis of Digo inheritance. Feminist authors critique the gendered discourses of nationalism in analyses of state power. Foregrounding kinship and power, I want to expand on the definition of politics to include family relations and gender inequalities in discussions of clan, ethnic, religious or national relations to land.

Berry's, Shipton's and Goheen's 1992 discussion in Africa (62) of land, law and social relations provide a useful framework in which to talk about property and law in post-colonial Africa. Hart and Bowen's work in South East Asia support the importance of Berry's, Shipton's and Goheen's concern for the meanings and use of land in social relations broadening their implications beyond Africa. These discussions of the process of material and symbolic struggles over resources try to extend the definition of politics.
beyond actions focused specifically on the state. Shipton and Goheen argue that land is used to gain control over other people and to define personal and social identities. Questions of power are not only about land but the people related to the land and control over the symbols of authority over these people. Thus, I ask how relations of land are secured and for whom and by whom.

Digo land relations of inheritance throw doubt on the way in which these articles deal with issues of gender, debt, identity and the positions of law in society. Thus, power and positioning in relation to authority must be considered when talking about the flexibility of identity and the overlaying systems of nation, custom and religion. I believe localized practices contain and change wider ethnic, religious and national concerns and ideologies. Thus, the construction of identity and social relations takes place as much through the practice of certain activities as in the contestation of perceived rules. Is law over privileged as the place of definition of social change?

A focus on cash crop areas as well as a biased conceptualization of Africa and the third world has caused studies of land in Africa to view over-population and land pressures as the cause of inheritance disputes. Paradoxically, this assumption has meant that studies of land in Kenya have not adequately investigated over-population or land pressures. Addressing the problems of gender relations, assumptions of over-population, land pressure and economically or politically marginal areas necessitates moving beyond conventional studies about of African land. As a Kenyan citizen I am implicated in this discussion of identity.
Section II: Material and Symbolic: Locating Digo inheritance of land

Map III: The Kenya Coast and Zanzibar
Coastal Plains and Hinterland

The cool tops of the Shimba hills around Kwale town look out over the narrow eight mile coastal strip for a good thirty kilometers south of Mombasa. From these cloud-forested hills where the air is cool and heavy with mist, one can see all the way to the ocean, over Shimba hills settlements, the coconut and cashew plantations of the flat land and the white-washed beach hotels. On a clear day you can see both Mombasa in the north and Chale island jutting out at the end of the Diani peninsula, with the whole bay of Galu-Kinondo stretching out behind it to the south. As you travel south from here the coastal plain widens to meet the border with Tanzania - a flat plain on coral rock. Looking west from Shimba hills, the dry, leeward side gives way to the hot stretches of the Taru desert and out across the vast plains to Tsavo. The windward slopes of the hills have recently been settled by Europeans hoping to grow citrus fruits and get away from the congestion of Mombasa town.

Between the base of the hills and the sea are dispersed settlements so typical of coastal Kenya. Coconuts, mangoes and cashew trees dot this flat landscape of sandy soils. No fences divide the compounds with houses made of either coral and mud with thatched roofs, cool in this hot, humid environment, or concrete and stone houses with corrugated iron roofs that last much longer but burn under the sweltering sun. Vegetable gardens and clumps of indigenous coastal forest or patches of grassland fields stand out between the planted trees. Sand and coral roads intertwine between the sea and the main road running south from Mombasa to Lunga Lunga on the border with Tanzania. One tarmac road runs from the main road to the sea, serving the beach hotels at Diani. Electricity runs along the main road and the sea at the hotels, but just a few meters away from the road few people have access to electricity.  

*Electricity is hard to get because the area is zoned urban and does not fall under rural electrification programs. One has to pay for the transformer and structure to be hooked up to an existing line, thus,*
Tiwi, where I did my research, is situated in this area, a few meters from the main road and reaching towards the sea. Like most of Kwale district, few people in Tiwi are dependent solely on agriculture for a livelihood. They "rely basically on non-farm income," be it the tourist industry, government employment, fishing or quarrying. Many people work in Mombasa, only forty-five minutes away by public transportation, or in other centers like Ukunda or Kwale town. Outside of regular employment, jobs requiring specialization such as the cutting of coconuts from the tree or distilling and selling of coconut oil are common. While men's work is more varied and available than women's, especially in towns like Mombasa, occupations in the coastal lowlands are highly differentiated and urban oriented.

Women in Tiwi work in many occupations ranging from government jobs such as nursing, social work, administration, and adult literacy teaching, to jobs in the hotel industry. Others work as maids and nannies. Some women sell lesos either from their house or door to door, while still others are seamstresses. Compared with other parts of Kenya people on the coast eat a large amount of food prepared outside their homes.

Because of the high demand from tourism and towns, fresh fish is difficult to find just four kilometer from the sea. At the market there are teenage girls selling prepared fish in the evenings and breads - kaimasi, chapati, vitumbua, mkate and muhamri in the mornings, as well as snacks like viasi and samosas throughout the day. Other vendors at the market are men, including those selling fresh fish. A lot of women also depend on either husbands or boyfriends for the upkeep of children and the house.

Although people may not rely on agricultural sources of income, the planting of vegetable crops and use of milk cattle, as well as the ownership of coconut trees greatly subsidizes any alternative forms of income they may have. Coconut trees are especially making it very expensive to obtain. People use kerosene lamps and candles instead, but most activities are carried out during daylight hours.


16Twin one yard cloth wraps worn over clothes in coastal East Africa. The fashion changes every fortnight with the change of designs and sayings.
important because of their varied uses in coastal society. Fronds provide thatch for houses and income from the sale of thatch; the milk is used in all cooking; and the husks and shell of the nut are excellent sources of hot burning fuel for cooking. Vegetable and fruit gardens, on the other hand, boost the nutritional intake of women and children beyond what is bought at the store. In this semi-urban, semi-rural society land is relied upon for agriculture and accommodation and various forms of energy and nutrition as well as employment and thus, considered vital.

**The material necessity of land**

The past is not waiting for us back there to recoup our identities against. It is always retold, rediscovered, reinvented. It has to be narrativized. We go to our own pasts through history, through memory, through desire, not as a literal fact (Hall 1991:58)

Inheritance is important to the Digo for a number of reasons. The most immediate of these is that for most people in the district, and in the country as a whole, inheritance has become the only way of obtaining land. Over 70% of Kenya's population is rural and rely on land for their livelihood. Farming can be profitable if you have entitlements, but rural wages, especially agricultural wages are far below those in urban areas. Compared to wages in Kwale district, land prices are exorbitant but compared to rural incomes they are particularly prohibitive. In an area marginalized from the mainstream Kenyan economy, where cash crops like cashew nuts are priced so low it is not worth picking them from the trees and there are few opportunities for high income jobs due to lack of education, who can afford to buy land?

Often studies in Africa lose sight of this particular aspect of rural poverty and fall into the developmentalist trap of attributing the urgency of inheritance in land disputes to over population and population pressure on the land. The increasing inflation in the commodification of land has made inheritance essential for the rural poor for whom money
is difficult to obtain. Referring to the increased monetary value of land, Shipton and Goheen state that the "increased competition for land also makes inheritance more important as a way of acquiring a holding" (1992:312).

I would argue that it is not the spatial competition for land, but the economic inability to compete in marginal areas that produces a reliance on inheritance. In an area like Kwale district where the average land holding is 7.3 acres and the mean cropping acreage is only 3.6, population pressure doesn't provide a very useful way of looking at land problems. (Ministry of Planning and National Development and UNICEF, 1990) Although some of the district is barely arable this does not account for all the unused land. At the same time, however, 22.5% of Kwale households are landless, accounting for 12,600 people with no land (Ministry of Planning and National Development and UNICEF, 1990). The condition of landlessness continues to be a big social problem in Kwale district and the coast in general, in spite of the main sources of income for the district being non-agricultural.

I feel that scholars who have focused on more 'political' disputes such as kingdom disputes and disputes involving large landowners or colonial boundaries, have missed the way in which the private and public merge, and larger narratives of nation, ethnic group and religion are struggled over in the seemingly private context of inheritance. Regarding coastal Kenya for instance, Justin Willis' section in Mombasa, the Swahili and the Making of the Mijikenda (1993) addressing Mijikenda land disputes in the early twentieth century, does not mention Digo inheritance disputes. However, it discusses in detail Giriama boundary disputes with the colonial government. Digo inheritance disputes, taking place at the same time, were just as related to colonialism as the Giriama dispute with the British, and were also a challenge to colonial authority.

Colonial and post colonial land policies have affected the acquisition of land for those who do not and can not fully participate in a capitalist land market. At Independence Crown Lands (those lands supposedly not owned or unoccupied that reverted to the Queen
of England, who had the power of control and disposition)\textsuperscript{17} were converted into
government lands under the justification of African socialism. This removed the possibility
of having secure rights in land obtained through clearing, thus continuing to restrict the
acquisition of land except through the generational transmission of property. In some parts
of Kenya marriage provides an alternative access to property, especially for women. The
high rate of divorce at the coast and the subsequent frequent movement of women increases
their vulnerability and material insecurity. Perhaps for these reasons, Digo people consider
it a necessity to give land to a divorced women, which is usually provided by her natal family.

Besides the conversion of Crown land to government lands, the independent state
also continued colonial agricultural policy through land adjudication and registration. In this
paper, 'adjudication' or 'registration' refer to the process of adjudication and registration
that turned native reserves into private or communal (trust) property just before and after
independence. The process allowed the freehold of property by individuals and has been
government policy since independence. The original concern behind the process of
adjudication and registration was agrarian reform enabling increased productivity. The
rationale for registration was that private title to land would; secure tenure, increase
productivity through credit raised through mortgaging, decrease land disputes and
regularize inheritance.

The adjudication and consolidation of Native reserves was introduced by a set of
rules known as the Native Land Tenure Rules in 1956 followed by the Native Lands
Registration Ordinance of 1959. The first affect was in the highlands east and west of the

\textsuperscript{17}Crown lands were established through the Foreign Jurisdiction Act 1890 was interpreted to give Her
Majesty the "power of control and disposition of 'waste and unoccupied land in protectorates where there
was no settled form of government and where land had not been appropriated either to the local sovereign [of
which only the Sultan of Zanzibar was recognized in Kenya's case] or to individuals" (Okoth-Ogendo
1991:11). This interpretation stemmed from an argument that defined Africans as owning land only in terms
of occupational rights so that unoccupied land reverted to the territorial sovereignty. The Crown land
Ordinance of 1902 asserted "that the Crown and not the local people had original title to some land" (Okoth-
Ogendo, 1991 :12). It was a precursor to the setting up of native reserves and the establishment of
indigenous peoples as, to use Okoth-Ogendo's phrasing, tenants of the Crown in their own land.
Rift Valley. At independence, the Registered Land Act (Cap 300) of 1963 which provided a single code of property law for the whole country, and Land Control Act of 1967 continued what had been set out in the colonial era into the present. Okoth-Ogendo emphasizes that "registration put African land holding firmly on the principles of European property law" (1991:76). In most of Kwale district, including Tiwi adjudication and registration took place in 1974 and 1975. Customary law no longer applies once land has been registered. This was reinforced by the Succession Act of 1981 which further removed government sanctions on claims to customary law in matters of succession and inheritance.

The symbolic necessity of land

In spite of demographic changes over time inheritance has remained the crux of Digo land disputes for over 100 years. The importance of inheritance then, cannot be solely attributed to population pressures. For the average person, transactions in land are obtained mainly through inheritance or gifts from relatives. These transactions, however, are simultaneously actions that publicly establish and define kinship relations, alliances, social ties and obligations. Thus, inheritance is an expression of solidarity and a medium of cooperation. Among the Digo, inheritance has remained important both, materially - through the removal of alternatives for obtaining land - and symbolically through its position as a "key symbol of social order" (Bowen 1988:287) corresponding to a central idea of social continuity.

Unlike other Mijikenda peoples, the Digo who are mainly Muslim, express social continuity through concepts of matrilineal kinship and the continuation over time of matri-

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18 The combined Digo and Duruma population in 1939 and 1947 were 63,822 and 103,992 respectively (Native Affairs Reports quoted in Wamahiu 1988:57) In 1989 this population at 316,240 people made up 80% of the 380,000 people of Kwale district (1989 Kenya population census, 1-35).

clans. The Digo have a single set of named matri-clans known as *fuko* (Prins 1952, Gerlach 1960, Spear 1978, Wamahi 1988). In the past, Digo social structure was such that "descent, inheritance and authority all passed through the female line, so that a man took his clan, his property and his office from his mother's brother" (Spear, 1978:57).

Although maternal ties are the most important kinship ties, Digo people consider paternal ties to be important as well. The Digo differentiate between the mother's clan, the *fuko*, and the father's extended family, the *mbari*. The Swahili word *ukoo*, meaning clan, is used by the Digo in reference to the *fuko*. However, *ukoo* could mean either *fuko* or *mbari*. Although men belong to the *fuko* they are dead ends, so women are considered important for continuity of the *fuko*. The Digo say that if you have daughters you have made the *fuko* rich.20

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20December 1993, H. B. Nyama.
The kinship distinction between fuko and mbari are important in distinguishing membership and social continuity and is often described in terms of inheritance of land. It comes to a fore when the ownership of clan lands is disputed. Fuko and mbari were described to me by a couple in Mombasa:

Mbari is whose family one belongs to and goes back probably no further than grandfathers. It is a shorter unit than fuko which ranges all the way back to all ancestors and the founder of the fuko. However, mbari is also mainly patrilineal and your grandfather's family, while fuko is all your mother's mothers back to the beginning. 21

The Digo recognize and have recognized different types of land holdings: dzumbe (father's land) and konho (mother's land) which tend to be self acquired property, mashamba ya mafuko (clan farms, matrilineal)22 and mashamba ya mbari (clan farms, patrilineal) which are inherited property. Although sons belong to the fuko of their mother their children do not, and have no rights to clan land (mashamba ya mafuko). In order for clan land to remain in the fuko it must either remain in the hands of women or pass maternally from mother's brother to sister's children. Kasim's grandmother's land first passed maternally from mother's brother to sister's child, and then remained in the hands of the women of the fuko.

Most scholarly work has considered Digo inheritance to be matrilineal, and has thus, contended that land in the past went from mother's brother to sister's son only (Spear 1978, Cotran 1969). Oral sources, adjudication records and earlier work indicate that male centered analyses of Digo land transmission are incomplete, and inadequately show the range and extent of Digo land holdings (Kayamba 1947, Patel 1965, Prins 1952, Wamahiu 1988, H. B. Nyama 1993, A. Vyombo 1993). Rather, these sources show that one gained interests in land in Kwale by use or clearance, and through social relationships connected to land through time, such as debt (rahani), kinship or patronage. Nor was land exclusively

21 December 1993 B. Kalela and H. Kalela.
22 Sometimes referred to as mashamba ya ukoo.
individually or communally owned. In the past children of both sexes inherited from their mother, grandmother, maternal uncles (*mjomba*), or their *fuko* or matri-clan, but, not usually from their father.

In the past, the corporate quality of the *ukoo* [matrilineal descent groups] was also closely linked to rights over land. Ownership was vested in the *ukoo* itself and members were given usufructory rights which were passed on to matrilineal heirs with approval of *ukoo* elders. (1978: 155)
People I interviewed still talk of belonging to the ukoo. Even though today clan elders do not have the authority of the past, people's references to clan land concern human relations of inclusion and exclusion to the clan. Arguments are framed in terms of clan membership, distinguishing between mbari and fuko. Gillette goes on to add that:

Although individuals had strong claims to particular parcels of land, when they died elders of matrilineal descent groups (ukoo) exercised considerable control over the allocation of their land and had exclusive rights over its allocation if there were no heirs. Previously, matrilineal inheritance was the dominant pattern, with land going from mother's brother to sisters' sons or from mothers to daughters, which kept control of land within the same ukoo generation after generation. (1978:124)

Wamahiu, who did research in Matuga a short distance from Tiwi, notes various categories of kin who could inherit property, including brothers and sisters, mothers, maternal aunts and uncles, and children of the deceased. She also states that "a man could pass on his property to his sister's daughters' children"(1988:94). In efforts to keep to the logic of matrilineal rules most authors lose the negotiation of these rules evident in Digo society. In fact, rules were negotiated to allow, for instance, sons and concubines to inherit. However, over time the land from these transfers usually returned to the fuko in subsequent generations. Wamahiu does mention the patrilineal inheritance of land by children of concubines, but as an exception. She states that "concubines, acquired through the system of kore or blood money, were considered lost to their own matrilineage, and all rights therein" (1988:95). Thus, they took the matrilineage of their partners and their children, thus inherited patrilineally. This pattern of inheritance is also discussed by Spear (1978) for marriages to slaves and non-Digo women. These marriages, along with Muslim marriages, became patterned evasions of the matrilineal system for men.

However, neither these authors nor others that discuss Digo inheritance (Bergman 1988, Sperling 1988, Gillette 1978, Spear 1978, Cotran 1969) fully engage the gendered relations to land. How does the matrilineal nature of clan membership affect access to land and the holding of land by women? Already varied and complex, and determined by social
relations, Digo land holdings were to be the center of struggles for autonomy and identity in the changing political and economic circumstances of the nineteenth and twentieth century.

Heeding Sally Falk Moore’s caution against projecting into another time the current centrality of land, I want to engage questions about the importance of inheritance as a defining moment in conflict over land among the Digo. How has inheritance become, today and for most of this century, the fulcrum about which arguments over land turn? What is the political and social importance of inheritance? Discussing three Muslim societies in Sumatra, Bowen states that "the central ideas of social continuity in each of these societies - village community, alliance relation, material continuity - have shaped their reactions to socioeconomic change and to judicial reinterpretations of property transmission" (1988:287). I argue that social continuity in Digo society is expressed through concepts of matrilineal kinship and the continuation over time of the fuko. Thus, I contend that aside from the material importance, inheritance of property becomes the chosen expression of this social continuity when ownership of fuko land becomes contested.

Today, the inheritance of fuko land comes into conflict with those claiming inheritance by either Islamic law or statutory law, but especially with the registration of land. As an elderly man from Tiwi explained:

There is a farm of 23.5 acres owned in Tiwi which Mama Mbozde's mjomba [maternal uncle] inherited from his mjomba. In the third generation one uncle went and registered the land at adjudication in his name so that when he dies his children will take over the land. However, the land is considered property of the fuko to which his children are not members. This land has already been to court once in 1956 where the son of one of the grandfathers (who owned the land) went to claim that he should inherit the land from his father. However, he was unsuccessful for the court ruled by customary law saying that the land had descended matrilineally for ages and so the son had no right to inherit it. Today it goes on.23

23 November 1993 H. B. Nyama
The land in this case is described in terms of inclusion and exclusion to the clan. The ownership of the land reaffirms or contests the membership to the clan. This land is identified with matrilineal inheritance and described through the inheritance of maternal uncles. Similar to other societies with strong lineage systems, like the patrilineal Maragoli of Western Kenya, in negotiating social changes the Digo have made separate provisions for separate patterns of inheritance involving self acquired land and clan land. The former could be inherited patrilineally and individually and sold if desired.

Rather than securing land holdings, registration further caused dissension in society and fueled disputes. Although the piece of land had been contested once before, the registration of title in 1974-75 established a form of fixity to ownership of mashamba ya mafuko. Abdulla's case shows the limits amount of arguments allowed in the court once land is registered. In his critique of Zionist land policies in Israel, Atran analyses problems that became evident when "peasants were suddenly forced to live with the results of their last redistribution as if caught in an arbitrary moment of 'musical chairs'" (1989:727).

Registration of fuko land had a similar effect of making permanent the last redistribution of land within the clan. Kaya elders and fishermen at the Port of Chale I spoke to felt that the registration of mashamba ya mafuko was robbery, as it allowed access to non-clan members.

In the past fuko land could be inherited by sons and it became known as mashamba ya mbari. However, this form of inheritance was not a continuous inheritance but rather lasted about three generations. The land would go from grandfather to father and then to son but not further. The grandfather would have gotten the land from the fuko originally. The great grand child is said to be very far from the fuko of the grand father so the land

24 In the past fuko land could be inherited by sons and it became known as mashamba ya mbari. However, this form of inheritance was not a continuous inheritance but rather lasted about three generations. The land would go from grandfather to father and then to son but rarely further. The great grand child is said to be very far from the fuko of the grand father so the land can not go to him. Instead it returns to the fuko. On returning to the fuko it goes to the nearest relative of the deceased's sister (December 1993, H. B. Nyama).
does not go to him. Instead it returns to the *fuko*. On returning to the *fuko* it goes to the nearest relative of the grandfather's sister.25

This may be contrasted with the transfer of property among the patrilineal Gusii of western Kenya, where women cannot retain membership in their natal lineages and families. Unlike the Digo, unmarried Gusii women have no support network legitimized by kinship ideology. As marriage becomes the key symbol of social order for the Gusii, with the occurrence of single mothers and informal unions, Hakansson argues that a "new category of impoverished persons develops, lacking in effective kinship relationships" (1994:532).

Currently the claims to land by clan is less easy to uphold, especially in court. When the land is registered it ceases to be clan land in the gaze of the government. This was considered problematic by Digo people since it was not private property to begin with, but rather clan property. Privatization of clan land causes conflict because it questions and challenges the whole Digo kinship structure and the basis of social relations. Through conflict, discourse and historical process the Digo constructed inheritance as a symbol of "Digoness" and tradition. As a symbol of Digoness it became a source of struggle for autonomy and self definition.

**Summary Locating Digo inheritance of land**

Kwale district runs from Mombasa to the border with Tanzania and includes the coastline, the coastal plains, Shimba hills and the dry Taru desert. In Tiwi where I did my research, few people rely solely on agriculture for a livelihood, but are employed in a variety of jobs from adult literacy to the hotel industry. Planting of crops, ownership of coconut trees and use of milk cattle subsidize any alternative forms of income. For the purpose of accommodation, energy, and nutrition, land is considered vital.

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25December 1993, H. B. Nyama
Kenya's rural populations rely on land for a livelihood. Because of rural poverty, inheritance is materially very important. Studies that loose sight of this, see disputes of inheritance as arising from land pressure due to over population. I argue that it is not spatial competitions for land but the economic inability to compete in land markets that makes inheritance the most important means of land transfer in rural societies. Although the mean cropping acreage for Kwale district is less than half the mean land holding acreage, landlessness is still a problem. At independence, the Registered Land Act of 1963 which provided a single code of property law for the whole country, and Land Control Act of 1967 continued a land policy that had been set out in the colonial era into the present.

Unlike other Mijikenda peoples, the Digo who are mainly Muslim, express social continuity through concepts of matrilineal kinship and the continuation over time of the fuko or matri-clans. Although maternal ties are the most important kinship ties, Digo people consider paternal ties to be important as well. The Digo differentiate between the mother's clan, the fuko, and the father's extended family, the mbari. Although men belong to the fuko they are dead ends, so women are considered important for continuity of the fuko. The kinship distinction between fuko and mbari are important in distinguishing membership and social continuity and is often described in terms of inheritance of land.

Most scholarly work considered the transfer of land in Digo inheritance systems to be from mother's brother to sister's son. This concentration on male actors is incomplete and inadequate to show the range and extent of Digo land holdings. Thus, few authors fully engage the gendered relations to land while discussing the matrilineal system of inheritance. Rules of inheritance in practice were negotiable and flexible in Digo society. Children inherited from male and female maternal relations as well as their matri-clans, but not usually from their father. In the past a person gained interests in land by use, clearance or through social relationships connected to land through time.

Today people's concern about clan land is concern about inclusion and exclusion to the clan. Although in the past fuko land could be inherited by sons it was not a permanent
removal from the *fuko* but returned to the clan after three generations. Today, the threat of permanent removal of *fuko* land to someone outside the clan through land registration, Islamic or statutory law is considered problematic or seen as robbery. Privatization of clan land challenges Digo kinship structure and basis of social relations.

I want to engage questions about the importance of inheritance as a defining moment in conflict over land among the Digo. The importance of inheritance is not solely attributed to demographic changes. Transactions in land solidify and define kinship relations, alliance, social ties and obligations. For the Digo, inheritance has remained important as the key symbol of social order. Thus, I contend that aside from the material importance, inheritance of property becomes the chosen expression of this social continuity when ownership of *fuko* land is contested.
Section III: Disputing Colonial and Religious Authority and Meaning

Zamani - the past

During my research I found that certain periods of history stick out in people's minds as salient. Historical relations to land can be traced through administrative structures and laws, (i.e. the "colonial" past), however, in this paper I will try to balance this chronology with one that is more driven by Digo concerns. Most people I spoke with in Kwale referred to "zamani" or a past. Zamani did not refer to a specific time, but rather a perceived time before change. This could be discussed as before "religion" (Islam) or before the British, or some time during the colonial period before independence. Both Islam and colonialism are remembered as having tremendous effects on land relations and are seen as the main instigators of change. During the colonial period, the demands of the colonial government around the First World War and the case of Ganyuma Vs. Mohamed are remembered as particularly important. After independence land adjudication and registration of land are talked of as having the most far reaching influence on Digo society.

The dispersal of the Digo from kayas to sub-kaya and then to individual homesteads in the coastal plains changed the importance of the kaya. They became less central to Digo society, although still functioning as the highest court and the ceremonial and religious area. Moreover, since the forest is the fortification of the kaya, the destruction of the coastal forest by the British during colonialism led the Digo to abandon Kaya Kwale (Spear 1978). Sperling states that in the early nineteenth century;

the southern Kenya coast was gradually incorporated into the East African commercial empire of the Busaidi Arabs at Zanzibar. At the same time the East African economy was expanding under more intense international pressures and external economic forces created an unprecedented demand for ivory, gum copal, and grain on the Kenya coast (1988:44).
The dispersal of people to the coastal plains and the increased trade opportunities created by the new economic power of Zanzibar, allowed for individual accumulation of wealth and power often gained through associations (Spear 1978, Brantley 1981). Colonialism later destroyed the power of this economy reliant on Zanzibar. The building of the railway and shift of trade to the highlands marginalized the area economically. Nevertheless, many of the social relations, contacts and institutions formed at this time still remain functional.

The significant reliance on economic activities external to farming is rather recent. For many years agriculture was the mainstay of Digo economy (Sperling, 1988), yet land was relatively unimportant in itself. During kaya residence before the fifteenth century, the allocation of land for living space was important but the land itself had little value. Even when people no longer lived in the kaya, farm land was used, lay fallow and was used again by different people. Farming in the Kinondo area of Kwale district is remembered by one woman in this way:

The land was everyone's and trees were planted with no particular pattern or method, however people knew their individual trees. Annual crops were planted in specific areas. The field was like two hands with fingers spread wide and the fingers were the specific area each person had to plant. This area was planted each year until the land was considered to have lost its fertility. Then the community moved to virgin land or land that had the fertility restored from lying fallow. They would then have newly portioned rows joined to one another.

On moving to new land they would have the same neighbors as previously. On return to the original piece of land, you can have new neighbors and till land that was, in the past, some else's. Who owned the land previously was irrelevant. The decision to move to new land was a collective decision by men. No one person could decide. Men were also responsible for the allocation of plots. To move the men first went to divine and establish if there was a good omen. Then they would go to the kaya and give sacrifices to the Spirits, inform them of the decision and pray to God for good omens in the shambas. They would ask for the blessings of the Spirits and God. The men would go and make demarcation lines and then go to the sea and sit back. The farming work was done by women.26

Kinondo has very shallow soil layers and land quickly becomes infertile. Tiwi, on the other hand, has deep soils, and cultivation was done beneath the trees. What was important

261 October 1993, Chale Women's Group.
in both places were the actual trees and not the land on which they were planted. While ownership of specific trees was remembered, who last planted fallow land was not. With other changing social and political relations land has gained in importance in comparison to trees. Through time, not only did ownership become retainable after a fallow period and clearance become a marker of tenure, but land acquired value in itself for the purpose of exchange.

Islam, Colonialism and the Discourses of Change

In 1895 the signing of the agreement between the Sultanate of Zanzibar and the British made the ten mile wide coastal strip of Kenya a British Protectorate. It remained a protectorate until independence, with separate legal status from the rest of the colony, but was administered by the colonial government. In 1963 the coastal strip became part of Kenya under agreements that assured "the safeguarding of Muslim law and religion and the rights of minorities" as well as "the continuation of freehold titles to land and the freehold system" (Central Office of Information, 1963:32). The coastal strip south of Mombasa to the border with Tanzania did not actually include the land ten miles in from the sea. Rather it only included isolated pockets of property that belonged to subjects of the Sultanate because the Sultanate was not powerful enough to adequately control this area. Administratively, for the Protectorate, it was still considered ten miles inland from the sea and included the area that was to become the Digo reserve.

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27 This agreement took place at the Kenya Independence Conference in London, 1963. In an exchange of letters on 5th October between the Prime Ministers of Kenya and Zanzibar agreed that "when Kenya became independent the Coastal Strip would cease to be part of the Sultan's dominions and would become part of Kenya. The letter placed on record undertakings by the Kenya Government in respect of religious freedom in the Coastal Strip and the preservation of Muslim courts and law. The Kenya government also undertook that where practicable administrative officers in predominantly Muslim areas should themselves be Muslim and, again where reasonably practicable, Muslim children would continue to be taught Arabic and grants-in-aid to established Muslim primary schools would be continued. In addition, assurances were given about the continuation of freehold titles to land and of the freehold system." (Central Office of Information 1963:33).
Access to land in the British Protectorate was tied to ethnic identity, and informed policies of Crown Lands, native reserves and agrarian reform. Crown Lands were established through the Foreign Jurisdiction Act of 1890, and the Crown Lands Ordinance of 1902 which gave the Queen power of control and disposition of unoccupied land not claimed by a sovereign or an individual (Okoth-Ogendo 1991). Through the establishment of Crown Lands, the protectorate authorities "had in fact extended the notion of political jurisdiction to include claims to ownership of the original title to the land" (Okoth-Ogendo, 1991:11). The Crown Lands Ordinance limited land with secure tenure by removing the possibility of acquiring land through clearance. This affected colonial and African concepts of land security as "what seems to have crept into the law during the colonial period as land shortage made itself felt was that land was deemed to be permanently abandoned the moment the holder settled elsewhere" (Moore, 1991:123). Recognizing only individual claims from Muslim subjects of the Sultan of Zanzibar, the Ordinance was a precursor to setting up native reserves and establishing indigenous peoples as tenants of the Crown in their own land.

Rights to land in native reserves were determined through ethnic belonging and 'custom'. Amid building pressures for labor recruitment for the war effort, in 1914 indirect rule started in the ten mile coastal strip. Demarcated and planned in 1914, the Digo Reserve was established in late 1915. British concern for racial and ethnic segregation led to a false separation of 'native' and 'Muslim', especially for the Digo. Privileging Muslims in the coastal strip, the colonial government declared that "Muslims were allowed to acquire freehold tittle to land, but Mijikenda were not" (Sperling 1988:132). Natives and Muslims were subject to differing laws for "as 'natives' the Digo were subject to the local Native councils and the District court, but the Muslims of the coastal belt were under Mohamedan law and under the jurisdiction of the Liwali and Mudirs" (Sperling 1988:139). As Sperling points out, "the categories 'Muslim' and 'native' were not mutually exclusive, however, and did not correspond exactly to areas of residence and land use" (1988: 132). This
artificial distinction caused trouble for the colonial administration in matters of inheritance and the settlement of disputes, since it provided a space for negotiation and contestation of colonial authority.

In most of East Africa, Islam spread inland with the arrival of the Europeans at the time of expanded Indian Ocean trade and Zanzibar's economic power on the coast. Islam provided an alternative power to the colonial presence, and many people converted to it in resistance to European colonialism and evangelism. Equating education with Christianity, Muslim people in Kwale district refused to send their children to school during the colonial period (Wamahiu 1988). Most Digo children went to school only after independence and the establishment of secular schools.

At the same time, Muslim people were in an ambivalent position to colonial authority. While Muslims resisted colonialism, utilizing and reinforcing local power structures "when struggling to establish control during the early years of colonial rule, the British relied heavily on Muslim officials in the coastal region" (Sperling 1988:183). This reliance included granting Muslims privileges not available to 'natives'. Muslims continued to hold prominent position in colonial structures and were accorded their own legal structures, courts and land rights. These connections, as well as legal rulings in favor of Islamic law, were to bring changes that affected the growth of Islam among the Digo.

Although Islam had been in some areas of Kwale since mid-nineteenth century and in Swahili towns and islands along the coast for centuries, most Digo people converted only in the 1920's. Sperling argues that Islam was adopted wholeheartedly by the Digo and not by other Mijikenda because of residence patterns. Mijikenda converts had established a pattern of urban Islamization by migrating to Swahili towns, instead of remaining in the hinterland. However, "south of Mombasa, beginning in the 1890's, Digo Mijikenda converts remained resident in their home villages, while centering their social and religious life as Muslims in town" (Sperling 1988:2). The number of Digo Muslims gradually increased during the last two decades of the nineteenth century. Wamahiu argues
that the appeal of Islam in the early twentieth century was a reaction to European colonialism and evangelism (1988:142).

This conversion had a profound effect on Digo society. At first the differences between the converted Digos and those who did not convert were "mitigated by the fact that Muslims participated in Digo religious ceremonies and sacrifices at home, and observed the communal practices of Islam away from home" (Sperling 1988:103). However, with the building of mosques and Koranic schools in Kwale district, this flexibility was hard to maintain. Sperling contends that "relations between Muslim and non-Muslims became especially tense when Muslims began to press for the adoption of Islamic law in matters of inheritance" (1988:103).

Land played an important part in the conversion of Digo people to Islam in the 1920's, especially for women. Studies of Digo Islamization have been largely male-based, detailing residence patterns, colonialism, resistance, trade and labor as reasons for conversion. They have chronicled male conversion assuming that the reasons were the same for women. Of course these events affected women as well, but due to women's differential relation to them, they were not equally important or effective.

At first women resisted Islamic conversion. Digo men's conversion however, was to have substantial effect on women's religion (Wamahiu, 1988). "In general, men were converted before women, who are said to have been 'more attached to their culture'" (Sperling 1988:148). Wamahiu argues that women had more to lose materially, saying that "women's conversion came largely through marriage" and was due to issues of inheritance and status (1988:138). As men began to deploy Islamic law in matters of inheritance, many women are believed to have converted to secure rights to an inheritance, which would otherwise be passed to the nearest Muslim relative of the deceased (Sperling 1988, Willis 1993). In addition, their children's inheritance was in jeopardy because marriages with non-Muslims were not recognized by Islamic law and children of these marriages were seen as illegitimate and therefore unable to inherit. The land would then go to the
closest Muslim relative. This affected nieces and nephews as well as children. This differential conversion between men and women was problematic enough to cause the Chief Kadhi to recognize rights of inheritance for illegitimate children if they were Muslim (Sperling, 1988).

Discourses of Islam and colonialism were to affect relations between the genders. Participation in Muslim society brought about an increasing economic dependence of women on men, especially husbands. Relations between men and women changed within the family unit, giving women less autonomy *vis-a-vis* their husbands, and giving husbands increased responsibility for their wives and children. These changes in the family are detailed by the various forms of marriage that are recognized by Digo society. Although there are three types of marriage in Digo society, *harusi ya chidigo* (Digo wedding), *harusi ya ng'ombe* (Cattle wedding), and *harusi ya chidzomba* (Swahili or Muslim wedding), most women today are married in Muslim weddings. These wedding are considered to give women the highest status while guaranteeing the wife different rights, privileges, freedoms, and responsibilities (Gillette 1978).

With conversion to Islam, Digo society took on new notions of status similar to neighboring Islamic communities. Dominated culturally for centuries by Islam, urban areas of coastal Kenya have provided Swahili Islamic culture a status position of power and privilege. The new notions of status included dress, non-agricultural labor, leisure time and economic dependency for married women. The change to economic dependency on husbands is also a phenomenon of urbanization and conversion to Christianity in other parts of Kenya. These forms of status are reinforced by a social memory of times when slavery was common. Describing changes in dependency associated with status, Hart states that women labor gangs in Malaysia:

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28 For example, when slavery was common the luxury not to work in agriculture and having leisure time visibly distinguished slaves from their owners. The urban aspects to this status also reflect the use of slaves in plantation agriculture before the banning of slavery in 1907 as well as the urban setting of owners.
placed a considerable emphasis on their mutual compatibility (sesuai), as well as on their self-reliance vis-a-vis their husbands... These patterns stand in striking contrast to the way wealthier women, who had withdrawn from physical labor and who described themselves as 'housewives', invoked their husbands' responsibility for them (1991:107).

Showing similar class responses to Malaysia, status among Digo women involves having free time rather than money as such, but especially freedom from agricultural work. Wealth is also important as it is prestigious to be in fashion, which means having two new lesos (cloth wraps worn as an outside skirt and head scarf or veil) a month. Wealth also means eating well, and the time to prepare food, that is, to be able to eat rice and chapatis not maize meal at every meal. Importantly it also involves being able to fulfill social obligations such as weddings and funerals no matter the distance or time involved. Social commitments are varied and time consuming thus, prestige comes through flexible work conditions, not working or being dependent on husband or boyfriend.

**Authority as a tenant of the Crown**

Directly related to inheritance were changes surrounding male authority over and responsibility for children, between the mother's brother and the father. The father's position was greatly enhanced under Islam compared to his wife or her brother. In the past the mjomba 30 would take full care of his sister's children, including marriage and divorce expenditures, and they would inherit from him. He was also powerful in another sense:

If the mjomba had caused someone to die, even indirectly, he would have to pay compensation. This compensation or blood money was called kore and he paid it through his awa (plural) - his nieces and nephews. He would have to pay the compensation of one male and one female person to the family of the one dead person. If one sister did not have a male child then he could take from another sister.31

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29 November 1993, B. Kalela.
30 The maternal uncle or mother's brother
31 November 1993 H. B. Nyama
Thus, his jurisdiction over his sister's children was great and much disliked by some women who remember this time and speak of it with bitterness.

The *mjomba* also had the authority to give his *awa* (nieces and nephews) as indentured labor in times of famine.

In times of famine he would take one niece or nephew to another place where there was no famine to exchange for food. This food would go to his family. If the next year the harvest was good or he could pay off the debt of food the person could come back. If he could not pay the person remained. Thus, the children of *mjomba* could not complain at that time when inheritance came to the *awa* because the *awa* were the ones who were exchanged for food in times of need. It worked both ways. 32

Changing marriage practices and the importance of the father in Islam began to challenge the *mjomba's* authority. However, the maternal uncle has not totally lost his importance or his regard in the family, for even today if someone is fatherless the *mjomba* would pay the bridewealth for them. 33

Islam and colonialism did not influence inheritance only indirectly. The colonial state regarded matrilineal inheritance as backward and encouraged any move towards its eradication. However, in implementing indirect rule the state was bound to govern by customary law in the Native reserves, and so upheld matrilineal inheritance. The Koran, on the other hand, frames property in terms of private ownership. This emphasis on individuality and private ownership is still contested in land holdings in Kwale district through communal registration of property. The beginning of the first World War saw the end of sending nieces or nephews in exchange of food or any other compensation. During this war the Digo were required to provide soldiers to fight for Britain against neighboring Germany in Tanzania (Brantley, 1981). The British rejected nephews sent by their maternal uncles and demanded sons instead.34

32November 1993 H. B. Nyama
33 November 1993, Juma, Kaya Forestry Research Project, Ukunda
34October 1993, Kaya Elders and fishermen at the Port of Chale
These restrictions on the *mjomba's* power and ascription's on the father's power jointly by Islam and colonialism questioned men's rights and responsibilities towards their sisters' and their own children. The changing relationship between kin is reflected in changing patterns of inheritance, arguments over matrilineral and patrilineal inheritance, dependent on establishing belonging to specific communities. Thus, the colonial endeavor to control access to land, as well as power and authority in other aspects of Digo society, disrupted notions of kinship, law and identity with gendered implications.

**Ambivalence and Digo challenge to authority**

The ambivalence set up by the colonial system was attractive to many Digo, since the possibilities of being Muslim and not 'native' held many opportunities and avoided many restrictions. Bhabha describes that slippage between the Western sign and its colonial significance "opens up a space of interpretation and misappropriation that inscribes an ambivalence at the very origins of colonial authority" (Bhabha 1985:73). Playing on this ambivalence Digo people used legal structures to establish specific relations to land. These included the Digo land claims of 1914 (700 claims to private title) and negotiation of increased land for a Digo reserve.

Through the process of negotiations and settlements of inheritance the Digo set out to challenge not only the authority of the colonial government, but what it meant, within Digo society, to be Digo and Muslim. In 1914 the colonial government was faced with 700 Muslim Digo claims to land titles south of Mombasa. These were claims as Muslims to freehold property as guaranteed by treaty with the Sultanate of Zanzibar. Unwilling to reconcile the distinctions between 'Muslim' and 'native' the British asked for the withdrawal of the claims. The Digo negotiated through the Liwali (Islamic judge) for a demarcated reserve with increased lands beyond what they already occupied, and a
safeguard against sale or mortgage of land to non-Digo people, in exchange for the withdrawal of the claims.

Ambiguity and ambivalence characterized Digo Muslims' negotiation of a Digo reserve where customary inheritance would be paramount. The negotiators shifted between claims to land as Muslims and claims as Digo. Using their status as Muslims they negotiated with the help of the Liwali for communal property which was specified and bounded by ethnicity not religion. In this negotiation categories the colonial authority considered incommensurable were used to define community and belonging.

The disputes and negotiations that arose around the demarcation of a Digo reserve were only the most obvious of land claims and disputes in Kwale district. The deepening Muslim influence, the possibility of individual wealth accumulation and weakening social bonds, led to an increased individualism and demand for private property. Inheritance disputes between Islamic (patrilineal) and customary (matrilineal) laws of inheritance caused great acrimony and bitterness within Digo society reaching into the late 30's. During this time, Digo leaders requested that they be the ones to decide how and in what ways inheritance should change. Concerned with these disputes the ngambi (ritual elders) of Tiwi, Magojoni, Waa, Matuga and Ngombeni declared, in 1915, that "in all matters of law we wish to follow our own customs and not Mohamedan law" (Sperling 1988:138).

Abdulla's family fight over the use of Islamic or customary law is an illustration of how these disputes continue today. Muslim structures of authority, although providing an alternative to colonial ones, still challenged elder's authority locally. At times these elders would appeal to Islamic law or the colonial government for backing. These conflicts of authority between structures of dominance continue today and become visible in the process of inheritance, especially in disputes over fuko land.

Today S. M. Otieno's case, which is the most spectacular example of a succession dispute, demonstrates that who you are still determines which law you are subject to in matters of succession. The highly publicized and publicly contested burial case between the
wife of S. M. Otieno, a prominent Kenyan lawyer, and his clan, disputed where Otieno was to be buried and who had authority to bury him. S. M. Otieno, a Christian Luo was married to Wambui Otieno, a Christian Kikuyu, and lived in Nairobi where he practiced law. His case revolved around determining the meanings of being 'Luo', 'Christian' or 'modern' in order to decide whether the case should be judged by customary or statutory law. The case was a continuation of concern for customary law in Kenya that led to the three times defeat of the Marriage Bill in Parliament under the Kenyatta government. The Marriage Bill tried to introduce one comprehensive law for the whole country. However, it introduced ideas that ran counter to customary laws regarding marriage and was opposed not only by those in favor of customary law, but by Muslims as well.

The distinction between statutory and customary legal systems establishes claims to membership as a means of determining which law and authority must be taken account of and which can be sidelined. Gender specific claims to nation, religion and ethnicity surround all discussions of land. At present customary law stands in an ambivalent position to the state: on one hand the state wants to celebrate the "Africanness" of customary law while at the same time attempting to relegate it to an ideal past.

**Kaisi: What is in a Name**

The case of *Ganyuma Vs. Mohamed* is remembered as having made a substantial change in the direction these disputes took. This case was put into context for me when leaving an office in Mombasa I ran into Gabriel Ngala an old friend who I had not seen since we were in Bamburi six years ago. In fact, he was the person who introduced me to the hinterland of the coast through the green hills of Rabai - a lot is owed him. He was with a friend of his called Ali, a Digo man from Tiwi. Most importantly Ali is the grandson of the man whose court case is remembered as having the greatest impact on Digo matrilineal inheritance. The case, *Ganyuma Vs. Mohamed*, concluded in 1927 in the court of App
for Eastern Africa, was the most prominent case regarding Digo land disputes and it set precedence for all other cases during the colonial period.

*Ganyuma Vs. Mohamed* disputed "whether the estate of a deceased member of the Wa-Digo tribe, who was a Mahommedan, descends in accordance with Mahommedan law or in accordance with the customary law of the Wa-Digo tribe" (Law Reports of Kenya 1931:30). The land in reference was part of the Digo reserve within the coastal strip. The native tribunal had decided that the estate descended by "Digo custom", that is, matrilineally. In the first appeal at the Second Class District Court at Kwale, the appellant attempted to prove that "in the clan of the Wa-Digo tribe to which the deceased belonged the customary law of inheritance was patrilineal" (Law Reports of Kenya, 1931:30). This possibility was not recognized by the courts who "held that the inheritance was governed by tribal custom, that the estate descended matrilineally and accordingly upheld the decision of the native tribunal" (Law Reports of Kenya, 1931:30).

However, in the Supreme Court of Kenya the presiding judge decided that Koranic law applied and the estate should descend patrilineally. In these various court cases the appellant had first made his plea under Digo customary law. Yet, he was contesting what was perceived to be customary law and what it constituted to be Digo by claiming that his particular clan inherited patrilineally. When the plea was unsuccessful, the appellant claimed legitimation by Koranic law in the higher court to establish patrilineal descent. In both cases these were claims of identity and claims on what was the meaning of this belonging or identity itself. The appellant's claims of identity were first as a member of a Digo clan and later as a member of a "society of Muslims transcending the claims of village communities or traditional sources of authority" (Bowen 1988:279). However, his claims to being Muslim were not incommensurable with his claims as a member of a patrilineal Digo clan. The appellant was challenging what it meant to be Digo, what it meant to be Muslim and especially what it meant to be both.
Although a case involving family relations, *Ganyuma Vs. Mohamed* set a precedence for all Digo inheritance and resounded through out the rest of society. This case established that Islamic law takes precedence over customary law and property descends patrilineally for anyone who was Muslim. Previously having favored customary law, this case changed the relationship of the courts to inheritance of land in Kwale District. Yet this decision did not go uncontested as is noted by Marchant, the District commissioner in 1929:

> And the general opinion at present is that government has disallowed the tribal system of succession. This impression has been given support by further finding of the High Court on the same point ... The feeling of the people is that they should be allowed to evolve a system of patrilineal inheritance rather than that the old custom should be done away with by the 'stroke of a pen', as it were. (1929:3)

Sperling adds that "what he failed to mention was the acrimony and bitterness that the transition was generating among the Digo. All who lived through the years of inheritance disputes, from early 1920s into the 1930s, agree that the Digo experienced internal disunity, including family and clan dissension, such as they had not known since the beginnings of colonial times" (1988:143). Although this was the height of land disputes they continue up to today to the extent that if land is inherited without a dispute it is considered lucky.

Ali's father was born during the time of *Ganyuma Vs. Mohamed* case. Therefore, he is named Kaisi [said KAY- see, stemming from the word 'case'] after the circumstances of his birth. His name a constant reminder; the community remembers and recalls the case as a marked point of change. Mzee Kaisi is well known in Tiwi and the incident is remembered in various ways by different people. One elderly woman recalled Mzee Kaisi's family and activities surrounding his father. She said that:

35People are often named after important occurrences at the time of their birth such as famines, independence or the Gulf War.
Mzee Kaisi’s father was Ali Hadji. Mzee Kaisi’s grandfather was the *Mzee wa mji* or village elder. This position at that time [prior to the 1920s or probably the first World War, anyway before the colonial institution of chiefs] was hereditary by *fuko*. Mzee Kaisi’s grandfather was trying to use his position as *Mzee wa mji* to accumulate land from his brothers. During the first world war, Mzee Kaisi’s grandfather sheltered an Italian soldier and was found out by the British. He was taken away, tortured and killed. Thus, there are three cases in court that Mzee Kaisi could have been named after; the first was land grabbing case between Mzee Kaisi’s grandfather and his brothers, the second the grandfather’s sheltering of the European and his imprisonment and lastly the fight for his grandfather’s land, between Mzee Kaisi’s father and his father’s *mkoi* (maternal cousins). Mzee Kaisi’s father was challenging not only the nephew’s right to inheritance but also the nieces’.36

However, most people remember this specific case to be the reason for Mzee Kaisi’s name. An elderly man in Tiwi explains that:

Mohamed Bin Hadji was the first person out of Digo land to disagree and openly challenge the inheritance of *mjomba* (inheriting from a maternal uncle). He is the father of Mzee Kaisi. He took his father and uncles to the Liwali and complained that he should inherit from his father and not his cousins, because his father was Muslim. The Liwali agreed that the son should inherit and it went to the court in 1917-1918. It was finally decided that he should inherit in accordance with Islamic law. This is the case Mzee Kaisi is named after.37

The son of an important man with considerable power and a history of land accumulation in the family, Mzee Kaisi’s father was in a good position to challenge his cousins. His grandfather’s authority and status as *Mzee wa mji* had been inherited from his mother’s family, the very family that the son was to challenge over inheritance. What remains important to a deeper understanding of changes in Digo land inheritance and their consequences is that Mzee Kaisi’s father was challenging not only the nephews rights to inheritance but also the nieces.

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36 The Swahili terms *shangazi* and *mjomba* mean paternal aunt and maternal uncle respectively. However colloquially they are used to refer to people of a joking relations to these aunts and uncles, that is, to their nieces and nephews. October 1993, M. Mbiru and S. Mwandale
37 November 1993, H. B. Nyama
Periods of history stick in people's minds as salient regarding change. In Tiwi the
time periods of colonialism, before and after 'religion', the first world war, the case of
Ganyuma Vs Mohamed, and land adjudication and registration of title are particularly
salient. Inheritance of land is referred to through these historical events. In the nineteenth
century southern Kenya was incorporated into the commercial empire of Zanzibar.
However, significant reliance on non-agricultural incomes is rather recent. Over the years
land has gained in importance to trees, acquiring value in itself for the purpose of
exchange.

In 1895 the coastal strip became part of the Kenya Protectorate. Access to land in
the British Protectorate was tied to ethnic identity, and informed policies of Crown lands,
Native reserves and agrarian reform. The British made a clear distinction between 'native'
and 'Muslim' regarding the ownership of land, making Mijikenda and Muslims subject to
differing property laws. Islam spread inland from the coast of Kenya with the arrival of
Europeans. Islam was seen as resistive to colonialism and European evangelism. Muslim
people however, were in an ambivalent position to colonial authority as they were afforded
rights "natives" could not hold.

Most Digo people converted to Islam in the 1920s and land played an important
part. Digo men's conversion was to have substantial effect on women's religion as
women's conversion came largely through marriage and concern over inheritance.
Differing notions of status and dependency were associated with Islam. Changes in male
authority between the mother's brother (mjomba)and the father also affected inheritance.
The important figure in a family shifted from the mjomba to the father. The mjomba had
been able to indenture his nieces and nephews in times of famine or give them as
compensation or blood money. British rule reinforced Islamic changes by further eroding
the importance of the mjomba vis-a-vis the father.
The Digo used the ambivalence of being both native and Muslim to transform colonial and indigenous legal structures to establish specific relations to land. The ambivalent position of Digo people in colonial and Islamic authority caused conflicts of authority between structures of dominance that continue today and are visible in the process of inheritance. Thus, the final Digo reserve was a settlement for the removal of Muslim Digo claims to land titles south of Mombasa. The 1927 case of *Ganyuma vs. Mohamed* made substantial changes in the direction Digo land disputes took. The Supreme Court of Kenya decided that Koranic laws of inheritance should apply to Digo Muslims and that the estate should descend patrilineally. *Ganyuma vs. Mohamed* is remembered in Tiwi as instrumental in changing Digo customary law to accommodate Islamic rulings and reinforcing a trend towards patrilineal inheritance.
Besides issues of bridewealth, there has been insufficient inclusion of women in discussions of land relations in Africa. Where women are included they tend to be relegated to positions of subordinate land holders and subjugated populations with little or no investigation of what is the process by which women use, own and distribute land nor an investigation of how land relations are gendered (with the important exceptions of Luise White 1990, Fiona Mckenzie 1990 and Pala 1983 for Kenya). How is land that is used and owned by women obtained or transferred? Does it vary in type of use, or time of acquisition? Who inherits it, or the rights and interests in it? Are there men who have subordinate rights to land held by women? What are the authorities this land is subject to and are they different from those governing land owned by men? Most importantly, how is gender implicated in debates between individuals and collectivities? In short, how are social relations of land gender specific?

If we are to speak about inheritance of land as a simultaneous struggle over material resources and contestation of identity and social belonging we can not afford to ignore gender and gendered power relations. For Kwale and Tiwi how do issues of kinship and family affect the distribution of konho, or fuko land, or women's land in general? How have changes in marriage practices, status symbols and education changed relations of land and how have these affected men and women's access to and control of the means of production? What are some of the local specificities that we lose sight of in national arguments over land?
Kwale district has the highest percentage of land registered to women in the country. The distribution of land among Kasim's family demonstrate one of the ways women have access to land in Kwale, i.e. passed from grandmother to granddaughters. However, in many areas of the Kenya women were subordinate rights holders in land, and as Shipton points out, well over 90% of land titles in Western Kenya have been issued to men at registration of title (1992: 370). In Tiwi sub location of Kwale district 28% of the names land was registered to during adjudication in 1974-75 were women. This percentage has not changed significantly today in spite of some sale and sub-division of land in Tiwi. Both adjudication records and interviews indicate that most land inherited matrilineally had at one time belonged to a woman (Lands Office Kwale District). Ownership through matrilineal inheritance no longer constitutes a large proportion of the plots in Tiwi, as patrilineal inheritance is more often practiced today. Nevertheless, inheritance by customary law or Islamic law includes both sisters and brothers. How then are gender relations enacted and affected in land disputes in these areas?

As the example of Kasim's grandmother's land (pg. 8) indicates, there is land that is passed on to women alone. His grandmother passed her land to her daughter's daughter although she had sons. In this case the land could be land that belonged to the fuko, and it must remain within the fuko. She could have inherited land, as did Kasim's grandmother from her maternal uncle. Although this land is expected to descend matrilineally not all clan members have an interest in it. Rather, it is her membership to the clan that indicates her right to it. She may inherit in this way along with her brothers who later would transfer their land to her children, or as in Kasim's grandmother's case in spite of her brothers. However, fuko land is not the only land a woman may have use and control of as well as allocation rights. In the past here was another form of land holding that was specifically

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38 Personal communications with Okoth-Ogendo.
39 This is not the same as the percentage of plots of land registered to women since 35% of the plots of land in Tiwi sub-location of Kwale district are held in common. The statistics were complied from land adjudication records for Tiwi sub-location 1974-1975.
held by women over which they had extensive powers of disposal called konho. An elderly man from Tiwi describes these differences:

There were two types of land ownership in the past. If there were three brothers from the same mother who went out to cut and clear the forest and to make a *shamba* and to farm. These three brothers were from one fuko. Their inheritance would go to the awa (plural, *muwa* singular), that is, to their nieces and nephews on their sisters sides. This land would belong to the fuko. No children of those three brothers would inherit because they were not from that fuko.

The other type of land ownership was if a man as a person went alone to clear the forest to make a *shamba* (farm). He would clear the land and keep a portion for himself and also a small portion for each of his wives. So that he has a *shamba* of his own and each wife has a small piece of land that belongs to her. The husband's land was called dzumbe and the wife's land konho. Women had complete authority and freedom in regard to their konho. They could plant and harvest anything that they wanted and they made all the decisions regarding this land. If a cousin of hers came to visit she could feed them using konho. Dzumbe, on the other hand, the husband had all authority over. Everyone would plant it together but he would make all the decisions. Konho was inherited by the children of the wife. Dzumbe would go to the nieces and nephews of the husband. Wives did not inherit from their husbands.40

Either with *fuko* lands (*mashamba ya mafuko*) or konho a woman's property generally went to her children. Patrilineal inheritance did not affect the transfer of women's property to the extent that it affected men's property. What changed in the inheritance of women's property was an increased inheritance by sons. When following a matrilineal system women can and do leave land and property to female members of the fuko. If a woman only has sons this would mean that her children would not inherit. Thus, to talk about children inheriting as if it was a change from the past is to talk only about the father's land. Children and not nieces and nephews always inherited their mother's land, although sons were sometimes excluded and the land would go to their sister's children. The change then is how this land is distributed among the children or spouses in following Islamic or statutory law and who has successive rights in the following generations.

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40 November 1993 H. B. Nyama
Nationalism and the Creation of "African Customary Law" Ideology

Although the colonial state was instrumental in the past in enforcing changes in social relations through demands on labor and court decisions over land, the independent state takes that role today. The independent state has inherited the colonial agrarian policy along with the European property law. This included an extension of the logic of the Swynnerton Plan which argued:

that the issue of accessibility of land was essentially one of tenure and the technology of production. The former was to be dealt with by restructuring the system of property rights in the reserves in such a manner as to confirm 'security of tenure through an indefeasible title' and the latter through intensification of agricultural production in more areas. The plan argues, *inter alia*, that if these two strategies were adopted, Africans would be able to make sufficient returns on their small plots of land to abandon their demand for redistribution of European-held land!" (Okoth-Ogendo 1991:69)

The Swynnerton Plan was put into effect through first, the Native Land Tenure Rules of 1956 which set up the machinery for the adjudication and consolidation conferring legal title on individual holders and later, the Native Lands Registration Ordinance of 1959, which allowed every owner freehold title. Justified on the basis of African Socialism the Kenya government also renamed Crown Lands to government property after independence.

The set of assumptions that the government based its actions on are in line with neo-liberal economic theory, which assumes each person is a rational individual interested in profit maximization. Okoth-Ogendo points out that "the continuity of agrarian law was simply an aspect of the wider process of the continuity of the political economy of colonialism as a whole" (1991:164). The Registered Land Act of 1963, which provided a single code of property law for the whole country, reinforced by the Succession Act of 1981, removed government sanctions on claims to customary law in nationalist attempts to secure tenure and regularize succession.

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41 This was justified by the logic of an all encompassing African Customary law that was considered to be communal and therefore the land belonged to everyone. Thus, as the government was "of the people" this land becomes government land.
Similar to Islam and Colonialism, the state did not only affect Digo inheritance through law, but also through concepts of family and kin. All Kenyans over eighteen are required to have an identity card that registers their name, tribe, clan, place of origin as well as father's and mother's name. These cards are often later used to legitimate or decide claims to inheritance by confirming identity. Responding to government notions of family and next of kin, women in the area of Kinondo complained that identity cards force children to take their father's name, so that they are no longer entitled to build on their maternal grandfather's land.42 Women saw this as a factor affecting children's rights to maternal kin's property as these kin are not registered on the ID card. Family is also being questioned in Abdulla's land dispute since the division of the property among family members depends on the conceptualization of family itself.

In the nationally known burial case of S. M. Otieno next of kin was disputed. The wife, Wambui Otieno, and the clan, Umira Kager, disputed where Otieno was to be buried and who had authority to bury him. The clan representatives constructed Otieno as 'indigenous' and subject to customary law. While Wambui constructed him as 'modern' and subject to statutory law.43 This case challenged the position of both gender and customary law in Kenya. Okoth-Ogendo (1989), Okoth-Okombo (1989), Ocholla-Ayayo (1989), Ojwang (1989), Okech-Owiti (1989), Stamp (1991) and Cohen and Odhiambo (1992) analyze the socio-political, cultural and power debates and considerations of his burial. Although burial seems quite distant from social relations of land and social identity, one must ask why there was a case in the first place. The concerns of S. M. Otieno's clan that he should be buried upon clan land and their construction of him as an indigenous person belonging to Luo ethnicity and specifically the Umira Kager clan, thereby subject to customary law, speaks directly to the recent critiques and analyses of customary law and

42October 1993, Chale Women's Group.
43Although 'modern' and 'indigenous' are not separate entities or identities, the Kenyan court system has constructed them as such, by distinguishing between who is subject to customary or statutory laws.
In this case the court decided that the clan was the next of kin by letting the clan bury Otieno.

Although some scholars, like Stamp (1991), have been quick to criticize the government for interference and upholding the subordinance of women, they have tended to equate patriarchal domination with customary law and possibilities of emancipation with modernity. This customary law / modernity dichotomy is fallacious. In this way power, interests and domination are abstracted, obscured and diffused away from Western law and policy. Few scholars have critiqued the discourses and processes that have created customary law as patriarchal. Nor have they investigated how discourses of customary law are linked with notions of nation and patriarchy that are part and parcel with modernity. Furthermore they do not make any recognition of the other concerns that the deployment of customary law speaks to, like those of a collectivity, that is lost in the constructions of such a dichotomy. We should rather investigate the gendered intentions, consequences, and politics in the deployment, construction and manipulation of customary law while keeping in mind the concern women of Kinondo express at modernity and the nation-state's influence.

Voice of the Government

At times I think that a code of speech was written for government officials dealing with land in Kenya that starts "well you must understand that in African customary law women did not own property". Not only have I continuously come across a strong opposition to the idea that women owned land in the past but this opposition is always

44 Recent discussions (Okoth-Ogendo personal communication 1993) of the case suggest that part of the issue of where S. M. Otieno should be buried was a dispute about land. The dispute was not between Otieno's wife, Wambui, nor was it over land that S. M. owned, but rather it was over land that the clan was claiming as clan land in Nyalugunga - Otieno's burial area. For most of western Kenya graves also act as markers of tenure. Otieno, as a prominent member of his clan, if buried on this land would concretely signify that the land was clan land. The case, however, never mentioned this and revolved around concerns of tradition and modernity, national and ethnic, urban and rural, Christian and traditionalist in arguments between his wife and clan.
qualified, or rather, justified by claims to an all encompassing 'African customary law'. Since "current urgencies have also reshaped the way the past is remembered " (Moore, 1991:109) the justification of present practice through claims to African customary law becomes all the more salient and powerful today. I want to refer back to Ella Shohat's quote in my introduction which states that "the question, in other words, is not whether there is such a thing as an originary homogeneous past, and if there is whether it would be possible to return to it, or even whether the past is unjustifiably idealized" (1992:110). For in bringing up this critique I am not searching for the 'authentic' Digo inheritance pattern. However, in looking at power relations I am more interested in, as she goes on to ask; "who is mobilizing what in the articulation of the past, deploying what identities, identification and representations and in the name of what political vision and goals?" (1992:110).

Not only government officials, but Digo men have also used the justification of an all encompassing 'African customary law'. Yet, when referring to specific plots Digo men usually discussed land in terms of previous female owners, most often grandmothers. More interestingly, government administrators attributed the current existence of coastal women proprietors to Islam. This was not brought up by any Digo people I spoke with. Although none of the government administrators I spoke with were Digo, one man assured me, in spite of his office records to the contrary, that especially among the Digo, women did not own property. Another said that under African customary law women were the property of men. Both said that the situation may be different in Kwale where women own property, because people were Muslim. As I elaborate further on, this seems to be a common national theme and was brought out in discussions in October 1993, because of a bill President Arap Moi tabled in parliament that would "allow daughters to inherit their father's property" ("Women and Inheritance Debate" The Standard, 5 October 1993: 19).

45October 1993 S. B. Tsilala, Kaya elder of Kaya Waa.
46October 1993 I spoke with V. S. Khaoya, Land Adjudication Office, Mombasa and November 1993 C. Olinda of Kwale District land Adjudication Office, Kwale. Both have been in their present jobs three years.
These efforts by administrators to conflate all culture to nationalist conceptions of customary law, reinforce ideologies of certain local positions of power which are quick to attribute everything to Islam. In spite efforts to have a balanced analysis of effects of conversion to Islam, scholars like Willis have also come to similar liberatory assumptions of Islam (1993:71). Islamic influence is often portrayed as liberatory in relation to indigenous systems or regressive regarding Western systems. It is not just a matter of perceptions of Islam that inform this reasoning but also perceptions of African custom. The public trustee in the Attorney General's office, who was from the coast and Muslim, was less absolute in his statements. He expressed that the Succession Law Act of 1981 (cap 120) was brought about by a challenge to customary law coming from women because of problems of being disinherited due to marriage.47

For a long time in Kenya, customary laws, especially laws relating to inheritance, has been constructed to ignore, by-pass or oppress women in nationalist, traditionalist and ethnic essentialist discourses. This construction of customary law was most obvious in discussions and actions surrounding the S. M. Otieno case. In October 1993 an article was carried in the daily national newspaper, The Standard, that discussed reactions to the President's proposed new bill that would enable women to inherit from their fathers. The Standard's article makes visible some of the complex issues regarding customary law and inheritance at national and local levels. I analyze this newspaper article in detail to illustrate issues I heard discussed formally and informally while doing fieldwork in Kwale district as well as discussions in Nairobi and Mombasa.

Arguing that women have been subjugated by men because of "traditional strictures that bar them from such things like inherited property" Beth Mugo comments about the proposed bill in The Standard. She is quoted as saying that "women will be more empowered because their economic status as well as political position in society will be enhanced[by the new bill]" (5 October 1993: 19). Extending Mugo's point, the reporters

47 November 1993 M. Slim, Public Trustee, Attorney General's Office.
state that "it is only when the customary law is applied that women are barred from inheriting, and unless this law is amended or done away with altogether there will be this ambiguity [between which law to follow]" (Waithaka Waihenya, Raphael Kahaso, and Douglas Okwatch, 1993:19). As Beth Mugo expresses, many Kenyan women speak of statutory law as more liberating and granting of rights to women. Some recent scholarly works have tended speak similarly.48 There is little critique in these opinions of customary law and the artificial divide created between modern and traditional lives.

Other people interviewed for the article made a similar distinction between “custom” and “law.” Gitobu Imanyara, editor of Nairobi Law Monthly and a politician, is quoted as saying "customary law has been upheld in ignorance of the law" ("Women and Inheritance Debate "The Standard, 5 October 1993: 19). Making obvious the slippages of intention of the speaker, this artificial split between law and custom reifies customary law as the locus of patriarchy and modernity as emancipatory, while disguising the class, ethnic, gender and locational implications of the social construction of custom (or for that matter modernity). In no instance in the article did anyone challenge the assertion by men that in customary law women do not inherit. Nor did they engage the implications of changes in property regimes on individuals and collectivities.

The implications for individual and collectives are often obscured in scholarly work as well, because of a focus on gender which is conceptualized around an individual. A strong analysis of the diverse effects of Koranic law in relation to property and its interpretations in East African Coast, and its role in the establishment of capitalist classes and individuality would provide a better stance from which to talk about the gendered relations of land holding in Muslim communities in Kenya. At the same time, an analysis of the importance to local communities of customary law, its continuous change over time

the impact of, and impact on, other laws and its ambivalent position in courts would reposition gender relations in debates surrounding customary law.

National Identities and Local Struggles

Many non-Muslim men in Mombasa expressed disgust about the proposed bill to be tabled in Parliament soon giving women the right to claim their father's estates just like men. Muslims, however, have said the proposed bill will not apply to them since women are already entitled to inherit their fathers estates. ("Women and Inheritance Debate "The Standard, 5 October 1993: 19)

The above quote would suggest that while Muslims applauded the inheritance bill, they also asked to be exempt from it. The statement indicates a division between Muslim and non-Muslim people living at the coast. Consistent with the 1991 amendment to the Succession Act that stipulates that Muslims must inherit by Islamic law, the statement also reflects recent political movements to further Islamic autonomy. With increased political pressures and weakening of the ruling party KANU in 1991 the Law of Succession Act (1981) was amended by Presidential decree to exempt Muslims, who became under the jurisdiction of Islamic law alone.

Islamic law is often instrumental in redefining societies in countries with large Islamic populations and secular governments. Speaking of the Gayo society of Sumatra, Bowen discussed the influential Islamic leaders, schoolteachers, and government official’s role in redefining society. He states that:

49 Worldwide the 1990s experienced a form of Islamic unity, politicizing and nationalism. This was brought home to non-Muslim people in Kenya during the gulf war, where there was considerable unrest in cities on the coast. Because of increased Saudi, Kuwaiti, Omani, and Iranian influences by way of mosques Islamic schools and hospitals Muslims were somewhat divided in their support. For some years Muslim leaders had been asking for Islamic law in matters of succession. Calls for Islamic recognition and relative autonomy were particularly strong since multi-party elections of 1992 and the setting up of the illegal Islamic Party of Kenya (IPK) in 1991. IPK has stood as a voice for Muslims decrying poverty and political marginalization and asking for changes. The mobilization of coastal Muslims in Kenya is also connected the Swahili mobilization in Tanzania and Zanzibar. With the changes in the school system that enable university students to major in Islamic religious education, the mainly Arab (Saudi and Kuwaiti) funded Koranic schools have greatly expanded in numbers.

50Kenya African National Union
Their purpose is not economic, at least not directly so; it is political, to redefine the shape of Gayo society by reforming edet [body of ideas and practices] in line with the dictates of Islam. But their activities have had to fit within a second process of legal unification that was occurring at the same time, one that was based on the idea of the nation, not Islam. (1988:277)

Similarly, views expressed in *The Standard* were attempting to reform custom within the limits of the nation. In *The Standard* two women stress that Islam has already taken care of inheritance issues and therefore Muslims should be exempted from the new law. Ethnicity, religion and nation inseparable but apart with alternate hegemonic discourses supporting and conflicting each other in struggles for self-determination, autonomy and power. Is the disgust mentioned in the quote from *The Standard* about women owning property? Is it about women inheriting from fathers as opposed to, for instance, mother-in-laws or uncles or mothers? Is it a fight to establish authority over customary law? Is the Muslim reaction to claim authority outside of statutory or customary law? Is it a space to claim moral superiority? Is it about men's power outside of these government structures? Or is it about curbing women's power? Is it about autonomy of ethnic groups, religions or nations? Sulaiman Salim Mwadumbo, a middle-aged Digo man from Likoni comments:

> the proposal to make it a law for daughters to inherit their father's estate is a step in the right direction. He said Islam recognized this a long time ago and that is why daughters have rights to inherit their father's property. 'If daughters do not inherit any property from their father where do they go to when they are kicked out of their matrimonial homes when divorce takes place?'("Women and Inheritance Debate" *The Standard*, 5 October 1993: 19)

The article expresses a lot of concerns about various and different customs all conflated into one 'African Customary Law' losing sight of areas of specificity and potential for women's empowerment. Coming from of a society which is organized around matri-clans and regards the mother's side of the family as most important, and a religion that establishes and reinforces women's rights to personal property, Mwadumbo's
comments at first are not surprising. Yet why the stress on Islam if women's ownership of land its guaranteed by customary law anyway? Mwadumbo could be making claims to patrilineal descent as opposed to matrilineal descent legitimated by Islamic law, by arguing that children should inherit. This need not be an argument over gendered ownership but about family and heirs or collectivities and individuals.

As Hart points out for Malaysia, where in principle property was divided equally between sons and daughters, the increasing influence of men was expressed in increased referrals of disputes to the Land Office where Islamic rules were followed (1991:97). Patrilineal descent in itself doesn't cause fewer women to own land relative to men if owned individually and not collectively as in corporate lineages. However, the implementation of the Koranic uneven distribution of individual property between men and women does cause fewer women to own land. Thus, although not necessarily a gendered dispute of inheritance, it has gendered consequences and implications. Mwadumbo is also voicing a concern particular to the coast - that of divorce.51 In this, he is asserting the father's responsibility to provide land for the divorced woman as opposed to her maternal relatives. He is, however, at the same time arguing for the rights and necessity of women to own property. All this is framed in terms of women's rights to property and Islamic solidarity and autonomy. In extrapolation between nation and location struggles get animated within restricted discourses.

Translation - The problem of gendered and ungendered language

Disputes revolving around issues of land are disputes over the meaning of land, of community, of ownership, of rights and the authority to interpret these meanings. Thus, claims to the authority of defining, interpreting, translating and upholding meanings

51 There is a very high incidence of divorce and remarriage among the people of the western Indian Ocean including the Mijikenda, the Swahili and the Comorians. I met only a few women who had not been divorced at least once.
become a critical point in social relations and simultaneously relations concerning land. Goheen looks at change, and how calls on legitimations of past structures and relationships transform meaning, stressing that "the critical task here is to discover just how cultural meaning is reordered by the historical process" (1992:390).

Most scholars and administrators writing about Digo inheritance of the past have referred to it as 'mjomba' inheritance, or inheritance from mother's brother to sister's son. (Colonial District reports of the 1920's and 1930's, Gillette 1978, Gomm 1975, Gerlach 1960, Spear 1978, Sperling 1988, Bergman 1988). As indicated previously "mjomba" is a Swahili word that means the mother's brother or maternal uncle. The corresponding Chidigo word is aphu. Mjomba can have other meanings as well. As recognized by Parkin (1972) and Willis (1993) mjomba can also mean nephew since as the reference terms are between alternative generations they are interchangeable. Because Swahili is the lingua franca of the coast and it is spoken by most people of the area, it would appear that most of the research was conducted in Swahili.

However, this is where the problem of mistranslation begins, for neither in Chidigo nor in Swahili is there a word that means 'nephew' alone. There is only the non gendered muwa (awa in plural) in Chidigo and mpwa in Swahili, which mean niece or nephew. Translation of these to the gendered English or even to the gendered Swahili word mjomba, gives the impression of a gendered subject where one does not exist. In her study of women's education among the Digo, Wamahiu (1988) does not talk of inheritance in terms of sister's sons because her references are in Chidigo. Thus, describing category of kin who could inherit property she states that, "children of sister of deceased (muwa mlume [male] and muwa mchetu [female]) - this category of kin were the most common heirs" (1988:93). She distinctly indicates that both male and female awa inherit.
Colloquially, in the area I was staying in Tiwi, the term 'mjomba' was used, in Swahili, Chidigo or English to mean niece and nephew (always the two together) or maternal uncle or just uncle. As a polite friendly term of address when speaking to someone they don't know, people might refer to them as mjomba or shangazi (paternal aunt...
but is used to mean aunt). When I asked specifically about the gender attached to the use of *mjomba* in reference to a sister’s children, I was told that it meant both male and female *muwa*. Kayamba, a Kilindini man from northern Tanzania writing about Digo customs in the early twentieth century is the only person who distinguishes between land belonging to sisters and brothers saying:

Children of sisters inherit from their mothers and maternal uncles, aunts and cousins. Children of brothers inherit from their mothers, and maternal uncles, aunts and cousins; but not paternal fathers. Children of concubines inherit from their fathers and mothers (1928:23)

This detail of translation has led to an over emphasis on the discussion of male control of and authority over land in Digo society and has made it easier to ignore women’s property.52 This has been particularly obvious in scholarly work. Writing a history of the Mijikenda with special sections on the Digo, Spear (1978), for example, chooses to ignore women altogether, much to the detriment of his argument. Sperling (1988), although providing a substantial discussion on inheritance of land in analyzing Digo conversion to Islam, does not even engage the significance of women’s holdings in land. Gillette (1978), writing about agricultural development, only speaks of the transfer of male land holdings and as a consequence mainly talks of *mashamba ya mbari*. She talks of this land as *ukoo* (the Swahili word for clan) land but does not distinguish between the *ukoo* associated with the land and the *ukoo* associated with those using the land, in other words between *fuko* and *mbari* respectively. Her text has problems with the imprecise translation of *fuko* to *ukoo*.

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52 I was first alerted to this usage when being told about Mzee Kaisi’s fight with his *mjomba* and *shangazi* (meaning niece and nephew). Later this group was referred to as just *mjomba*. At other times people would point to a niece to explain who they meant when they used *mjomba*. A similar translation problem has led to a very misleading and inaccurate socio-cultural profile for Kwale district. In this case it is an omission arising from the assumption of similarities between Bantu languages. *Mbari* in most Bantu languages, for instance Kikuyu, means a primary family unit or patrilineal sub-clan. But for most Bantu people of Kenya the patrilineal nature is taken for granted. Thus, when researchers, mainly from the University system in Nairobi, came to do research for the Socio-Cultural Profile for Kwale District they asked about *mbari* and *mbari* land. The answer they got was considered to be the whole story. Thus, the Digo appear to be “as most African cultures” patrilineal. This report is what government development projects consult to be socially and culturally correct in policy making.
Translation has also been a turning point in claiming land from external authorities such as courts and government administration. Today the slippage in meaning created in translation is capitalized on in arguments against women's power, authority and access to the means of production through justifications to a recreated past. These slippages are crucial to struggles over the meaning of land, family and belonging and are played out on various stages and within various restrictive discourses.

Summary of Negotiating Power through Inheritance

There is little discussion in the literature about the transfer of women's property. I ask how have social changes affecting men and women changed access to land. What are some of the Digo land practices that have gender consequences? In most areas of Kenya a large majority of the land is owned and titled to men. However, Kwale district has the highest percentage of land registered to women. Both land records and interviews indicate that land inherited matrilineally had at one time belonged to a women. Presently, land can be passed to daughters and granddaughters, bypassing male offspring. Land may be inherited from the maternal uncle to daughter or son. Land may belong to the fuko where men are dead ends and women provide continuity. Women also owned personal property called konho. Patrilineal inheritance did not affect the transfer of women's property to the extent that it did men's property. However, the questions of successive rights in the following generations are affected by patrilineal inheritance and land registration.

The independent state has been instrumental in enforcing changes in social relations through demands on labor and court decisions over land. Justified by African Socialism the Kenya government renamed "Crown lands" government property. This removed the possibility of claiming ownership of cleared land under customary law. In demanding that all Kenyans must hold Identity cards which are formulated to present specific nationalist concepts of family and next of kin, the government hinders claims to maternal
grandparent's land. Disputes with the state about the meaning of next of kin has been brought to the fore by the S. M. Otieno case. The court decided that Otieno's clan was the next of kin by allowing them to bury him.

The Kenya government has been criticized by scholars for upholding the subordination of women through interference in Otieno's case. These scholars see African custom exemplified by Luo customary law as innately patriarchal and separate from modernity, symbolized by statutory law, which is considered emancipatory. Thus, few scholars have investigated the ideology of the nation state or modernity, as formative of gender relations in what is presently considered customary law. The separation of modernity and custom causes them to lose sight of the reasons and contexts for the deployment of customary law today.

Government officials and the state, position women as subordinate land holders in an all encompassing 'African customary law'. They are quick to attribute the ownership of land by women to Islam thus, reinforcing religious politics in coastal Kenya. A close analysis of the Standard article shows the dichotomy between national and regional politics and concerns and the implications for gender relations. This article also brings forth the attempts at social autonomy based on religion which is of foremost importance in recent Islamic political mobilizations.

Meaning and authority to define meanings are particularly important where conflicts of authority occur and are a critical issue in relations concerning land. Problems of translation and enumeration has led to an over emphasis in scholarly work on male relations to land, missing out women altogether, especially in the definitions of uncle and clan. This has meant that Digo property inheritance has been discussed in the framework of male social relations only.
Section V: Resistance through Practice

Gendered social relations are continually contested, both those connected directly and indirectly to land. Women have fought for land in court and outside court, against patrilineal inheritance, for shares of the husband's estates, for equal division of property between sons and daughters and by requesting subdivision of property so that they administer their share of their father's estate for themselves. These have been fights often involving the courts but in some cases in contest with the courts. Outside of the court's influence women may leave land and trees to daughters and granddaughters or female relatives in the fuko, by-passing men altogether. Leaving land to relatives while still alive avoids some of the disputes after death. Divorce which is extremely common for both men and women is also a weapon used in disputes over land use. However, it can result in huge shifts in economic wealth and standards of living for women and is especially devastating to landless women. With divorce, women often move great distances and make large adjustments in their standard of living.

*Leso ni dhahabu, hufaa katika tabu* (things of apparently little consequence can be of great importance in times of need)\(^{53}\)

Beautiful gold and brown *lesos* still hang in the doorways of the cloth shops on Biashara street in Mombasa, long after newer fashions have become prominent. The intricate pattern is particularly striking, and they have the above Swahili saying printed along the base that probably led to their popularity. Women's groups fund-raising to buy material (Gomm, 1975) and the *lesos* themselves may look relatively insignificant in a struggle for alternatives to hegemonic discourses but are more important than first meets the eye.

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\(^{53}\) Swahili saying.
Marginalized from mainstream economy by education and poverty, many Kenyan women join women's groups including savings associations and marketing cooperatives. One such women's savings association in Kwale district is designed to provide women with a substantial amount of money at a regular interval. Every woman contributes a fixed amount of money per week and the woman receiving the money is rotated weekly. Absent from the house, this money is saved against daily use and provides some monetary autonomy from husbands. Many women also give additional gifts at this time to friends, or people who need help. These gifts are usually in the form of lesos. Lesos provide another method of savings particular to women because they can be resold after use. They are worn daily and are also used for a variety of other things especially the carrying of infants. Translated literally, the above Swahili saying says "lesos are gold necessary in trouble." Just like gold they are converted into money in times of hardship.

Speaking of the importance of women's groups, in a study done by the United Nations Development Fund for Women in 1994, Kenyan women cited "the moral support they received from the groups as a major success factor" (Weekly Review July 22 1994:29). Similarly, Hart describes women's share groups in a Muslim community in Malaysia as "an important source of financial (as well as emotional) security" (1991:113). She goes on to add that women thus "developed not only horizontal relations of solidarity with one another, but also a critique of the ideology of male responsibility" (1991:113) in opposition to notions of status, based in Islam, which proclaim male responsibility.

Addressing women's access to credit and business in Kenya, the United Nations Development Fund for Women study observed that:

local women entrepreneurs largely depend on informal credit from non-governmental sources. Their access to bank loans is even more minimal (Weekly Review July 22 1994:28).
The study indicated that the major informal source of credit for women was women's groups as other sources such as banking often required title deeds as security and discriminated against women in other ways as well.

Similar to the situation with savings, Digo people have relied on alternatives to banking methods for securing credit. International financiers and development technicians have advocated that "small-scale farmers need seasonal credit to adopt new crops, inputs and techniques; and that their access to credit depends on their possessing individual land titles" (Shipton, 1992:357). Pledging land as security for loans has been the crux of this argument. Credit and the mortgaging of land becomes a particular problem as the high percentage of land registered in common (34%) makes this land illegible for mortgaging. There is also a great mistrust of mortgaging and a fear of the possibilities of alienation of land. Unwilling to mortgage land to secure credit, Digo people for the most part rely on a credit system referred to as rahani which was thus described to me:

Outside the system of banks credit is raised by mortgaging trees or land by verbal agreement. Until the debt is paid the creditor is able to use the trees or land and take the produce. If a creditor dies before the debt is paid his family inherits the debt, or rights to use of land and so on down the line. Thus, two groups of people can hold rights in land at the same time. This is the usual form of credit. 54

Although time of payment is rarely adhered to or enforced, the creditor has use of these trees and sometimes land for growing annual crops until the debt has been repaid.

I was informed of a bridewealth debt between in-laws in 1954 were the creditor received the use of coconut trees. The debt has just been paid off in 1993, yet, because the creditor lived far away he did not, in fact, use the trees. 55 Discussing the history of Mombasa and its surrounding areas, Willis addresses the social aspects that transfers of property express; "trees and standing crops could be, and were, sold both on the coast and in the hinterland: though it was more usual to mortgage them, as the establishment of

54 November 1993, A. Vyombo.
55 November 1993, H. B. Nyama
relationships between people was generally considered as important as control over property" (1993:120). Credit is often a matter of family relations and an important part of societal negotiations of obligations. Thus, to maintain these relations the wealthy are obliged to lend and borrowers are likewise obligated to their creditors. In the above example in spite of divorce, the in-laws' social relations and their outside relationship to the land continued unaffected.

Since Rahani obligations can be inherited, debt is not the sole responsibility of or relationship contained in, the creditor and debtor. However, the land on which these trees stand and the trees themselves can not be claimed by the lender in exchange for the debt. If the time period runs out, the debt is repaid when it can be repaid. This form of lending therefore does not involve the permanent alienation of property. The means of production change hands and creditor receives an additional repayment through the use of these trees or land for the time period of the debt.

Often borrowing and lending to family and friends, credit cements social relations and obligations. Analyzing views of debt and free labor in India Gyan Prakash cautions against fetishizing the objects of debt. He asks "why is it that a thing, money or grain, is considered to have power to bind people?" (1992:141). He argues that it was not the "power of money that bonded people but the fact that persons advancing and receiving money were of unequal ranks" (1992:142).

Rahani demonstrates the importance of social relations, their connection with land and economics, and the choice of Digo people to use this system over that of banking. As a social practice regarding land Rahani is part of the same negotiation of power and authority and family interdependency, as is women's saving systems. It is also a critique of the system of registration of land that foregrounds mortgaging of land as essential for increased productivity. Although operating outside the formal structures of banking, Rahani's long existence shows, along with indenturing children for food during famine in the past, the important part debt has always played in Digo life. Instead of being unwilling
to get into debt, people prefer to use Digo methods of credit that incorporate social relations or methods that do not result in the permanent loss of property.

Terre sans frontier

The rains were particularly good this year (1993) leaving the grass lush and tall and the forest deep green. We walk down the hundreds of paths and roads in the countryside that cut across compounds and turn by the side of houses, to attend a wedding or a funeral. I am stunned by the enormous view of grass patches and gardens, twisted cashews and gigantic Baobabs and houses and compounds softened by the hushed light of coconut plantations. At no time is my view nor my path interrupted by fences. In most of Kwale district very little land is fenced and it is, in fact, difficult to distinguish one person's property from that of the next. However, the Kenya government requires that once land is registered, the boundaries must be properly demarcated. The land adjudication office and the lands department considers proper demarcation of land to be fenced boundaries.56

Property that is not fenced even by hedges, is common throughout coastal Kenya in spite of the congestion of people. Yet, boundaries do not seem to be an issue of dispute. While I was in Tiwi I did not hear people complain of boundary disputes but, rather, disputes in the division of produce and the use of the land. In fact, tenure to land is recognized and established not by boundaries marked by fences, but through the ownership of trees. Claims to property in the adjudication cases in 1974 and 1975 were established through the ownership of existing coconut trees on the property and the resulting human relationships involved. The controversy over tree planting in the case of Abdulla’s father’s land (pg. 10) shows that the planting of trees remains the marker of the boundaries of ownership. Fencing practices demonstrate a differing conception of boundaries between

56 October 1993, V. S. Khaoya, Land Adjudication Office
government and local populations. When in Tiwi I asked in passing why don't people fence their property. I was asked in return;

why would anybody fence property? It is too exclusionary, too individual and since the neighbors are family why would I want to shut them out.57

Digo and other Mijikenda refusal to fence property and exclude neighbors can be seen as an effort to negotiate the historical process of changing land signification, within the framework of their culture. These acts struggle to keep some indigenous autonomy, to hold together kinship systems and social relations and to find a way of living by rules not governed by the logic of modernity and capitalism alone.

Social Identity and Defining Community

The 1966 Mission on Land Consolidation and Registration in Kenya observed that "in the Coast districts in particular, the view was expressed that the first need was registration of the land belonging to a clan" (1966). Nevertheless, in an effort to transform modes of production the mission did not recommend this policy because "registration of clan areas would conserve the customary controls over land which are often a barrier to sound farming practice and put an artificial stop on the process of individualization of rights in land, the emergence of which it is Government policy to encourage" (1966).

In many areas of Kenya within both patrilineal and matrilineal kinship structures, where clans and corporate lineages have remained important, considerable effort have been made to keep land holdings in the clan. Although land adjudication in Tiwi in 1974-75 resulted in the registration of land to private title, thirty-five percent of the land was registered by common share. This proportion has not decreased in recent years. Rather, most plots where the proprietor has passed away since adjudication, have been registered in

57 S. Mwandale
common to the heirs or are undergoing arbitration. The majority of the land held in common share is held by siblings of one family, or, in the case of inheritance since adjudication by the children (and often wives) of the deceased. This adherence to common property ownership has disrupted efforts to establish a private property regime as envisioned by adjudication policy. It also causes problems in the mortgaging of land. Common ownership remains one of the biggest challenges to the rational of land adjudication.

Yet, the social practice of communal ownership is not just oppositional to dominant state ideology. It also differs from Islamic inheritance as stipulated by the Kadhi in Kenya or in the Koran, which urges the division of property to a number of heirs. In Islamic inheritance, the property of either a man or a woman is divided between various relatives, husband, wife, children and parents and, in some cases, non-relatives. The amounts each receives is specified and the partition of property is requested. Some people expressed concern to me that too many people have rights to property under Islamic law. These persons were especially concerned about rights of spouses (either husband or wife) to land. Discussing a case disputed between sisters and brothers I was told that:

Islamic law greatly increases the number of people who then have a right to the land. For instance, if my aunt dies her land could go to her husband and the children. This is considered a problem as the land becomes smaller and smaller with so many people with so many rights to it. 58

The concern is expressed mainly in regard to non-clan members and over the movement of clan land outside the clan. Working within the limits of the system of registration and adjudication, communal registration manages to challenge two claims on change while supporting a form of continuity. It challenges individual title to private property as envisioned by the state and development communities. In addition, it challenges Islamic inheritance stipulations while it reinforces family ties and relations whether matrilineal or

58November 1993, A. Vyombo, Mombasa
patrilineal. Communal registration of land exposes the contradiction between the Registered Land Act and the government enforcing Islamic laws of succession. The inability to register land in common by anything other than equal share conflicts with Islamic stipulations for unequal shares between genders in inheritance. This contradiction has been used by the Digo to argue that brothers and sisters should (and often do) inherit equally from their parents.

Gender, Ethnicity and Titling of Property

The resistance to private ownership of land in Kwale is part of a continued contestation of land registration which has taken place since the beginning of adjudication in 1974/1975. Unlike their neighbors to the west, the Duruma, who voted to hold land as group ranches (basically a communal form of ownership, now being privatized), the Digo voted for private property and individual tenure (Gray, 1972) at the time of adjudication in Kwale district (1974/75). However, Digo women and men did not vote the same way on this issue. Adjudication records indicate that women were against the titling of private property and men were for it. The men supposedly out voted the women on this issue (Gray, 1972). Gray suggests that women were against private property because they believed it would cause trouble between the community and the police. The women were concerned with the change in authority from local indigenous authority to state authority backed by the coercive power of the police as disputes would not be solved in the community but by the courts. At this time women saw adjudication as a threat to community authority and social autonomy from the government. Not all areas of Kwale have undergone adjudication but even in adjudicated areas, some people have never gone to
collect their title deeds. Conflicts between the logic of registration and in practice land holdings should have predicted the indifference to collecting title deeds in the area.

The Kenya government has essentially continued colonial policy towards agrarian change by considering private registration of title to land essential to improving agricultural output. The first reason was that adjudication would provide a secure tenure by establishing title and thus, bringing an end to land disputes and enabling “progressive” use of the land. The second is that it will enable capital accumulation and development because the title can act as a mortgage in raising credit. Lastly, it will regularize inheritance. This is expressed in the 1994-96 Development plan as:

The Government’s strategies towards this need is to ensure that all land is planned, surveyed, adjudicated (where applicable) and registered with a view to issuing title deeds. This in turn provides security of tenure and encourages the people to invest in and develop their land. This leads to higher incomes, increased productivity, general rise in economic growth and improved standards of living (1994).

The government argued that the land adjudication concept paralleled farmer’s own “urges”.

As expressed by the Central Bank of Kenya:

the rationale behind the concept of land adjudication is the natural urge and wish of all farmers to own their land. Such ownership has proved vital spur to development. Once land is owned by an individual or group of individuals, a title deed is issued to the holder who can then use the document as a means of securing funds for development (Central Bank 1991).

Contrary to the goals of adjudication, the amount of land disputes in Kwale and most of Kenya, did not decrease after adjudication. In fact, registration provided another area for land disputes within the community. Security of tenure was not improved after adjudication either, for while the policy disregarded custom and history, people did not. The insecurity of tenure exemplified by the circumstances of Abdulla’s father’s dispute (pg. 10) indicate the tenuous relation of title deeds to increased productivity. Abdulla’s father’s

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November 1993. A. Vyombo was talking about his grandfather’s land in Pongwe. His grandfather had never gone to collect the title deed since adjudication in the 1970’s and nor had the family. Also land records indicated that quite a number of people still had not picked up their title.
land became less secure and less productive with registration as registration provided a third method of distribution and contestation.

Land adjudication policy relies on the government as the instigator of social change and on the participation of people in national structures and institutions. Adjudication policy was conceptualized around a notion of a radically individualized farmer, a space that the corporate matri-clan and lineages could barely fit. In Tiwi the process of registration was complained of as being poorly publicized, and misunderstood. This facilitated manipulation and robbery because of differential access to government by people of differing education, gender, ethnicity or power. Because of communal registration, not picking up title deeds, continuous land disputes and alternative credit systems, adjudication has largely failed to achieve its goals for the Digo people. The process of resistive practices and development failures have raised questions about the rational and logic of adjudication.

But was adjudication a failure, overall? As Ella Shohat points out, it depends on the "who" adjudication was set up to benefit. What relation do those who benefit have to government and nation? Raising a point common to British colonies, Scott Atran argues that registration of land was tied to the British efforts to create a free labor market. In Kenya the creation of free labor, for plantations and especially the two war efforts at the coast, included a "war on property" in the form of taxes, destruction of animals and houses, and the fight against trade in ivory and palm wine (Brantley 1981, Mambo 1987). As in other parts of the world, British land policies regarding tenure in Kenya were instigated under the interest of improved agriculture. Indigenous tenure systems were seen as a burden to development and agriculture. As a result, between 1910 and 1920 the colonial government "set out to establish the legal structure for capitalist development" (Cooper 1992:217).

Concerned with the colonial efforts to establish wage labor in East Africa, Cooper stresses that "behind this legalistic approach lay another assumption: that the fair operation of the market would result in the transfer of a considerable proportion of the land to the
most efficient producers, who were assumed to be white" (1992:217). Yet, as time passed, British settlers and companies were not the only people considered as the most efficient producers. Certain ethnicities were seen as "progressive" farmers (Gillette, 1978) and an effort was made to avail land to them. Stacy Pigg argues that national administrative perceptions of rural areas are class and ethnically bounded (1992:505). I would argue that perceptions of custom and law are equally bounded. The images of 'African customary law' that are presented are "ethnically unmarked but are by no means ethnically neutral" (Pigg 1992:505). In fact, the transfer of land between certain ethnic boundaries was seen as beneficial for it symbolized the opening up of a free market in land and the change in labor regimes. Continuing a conflation of the policies of labor, agriculture, development and modernization with land holdings, the East Africa Royal Commission recommended in its 1953-55 report that:

> the breaking down of exclusive tribal and clan boundaries cannot be left entirely to a process of evolution under economic pressure. Positive action must be taken by Governments to induce these exclusive communities to put land within their boundaries to full use themselves, or make it available for others. (Report of the Mission on Land Consolidation and Registration in Kenya, 1966:25)

Inquiring into the process of adjudication the Mission went on to observe that:

> Registration must sooner or later lead to greater mobility in the transfer of land among all the people of Kenya without restriction as to tribe. If proof of this is needed, it can be found in the Ngong area of Masailand where registration of land to individual Masai has resulted in immediate sale to Kikuyu farmers and consequent loss of the land to the Masai tribe, probably for ever. (1966)

Addressing the movement between collective registration of property and private property accumulation while more specifically implicating those in power, Atran states that in Israel, "for Zionists, legislation designed to convert masha'a into mafruz would allow them to buy into the village patrimony and eventually alienate it from the peasants" (1989:725). What I find useful in Atran's analysis of legislation is the process through which the land registration system made it possible to change community land to private property while also changing ethnic land holdings, from "within".
The biggest threat to the safety of operating outside a system and to the security of being indifferent to it, is a challenge from those for whom the system works, whether by class, ethnicity, gender or education, over the same land. There is no romantic third space of resistance but a process of continued opposition and pressure. The purchasing of coastal lands by people from other parts of the country and abroad who believe in and operate by national laws and market rules presents such a challenge. People able and willing to buy land in various parts of Kenya are generally more vested in a national concept of territory, and identity than a regional one. These movements of people are much more in line with the intended goals of adjudication to enable "progressive" farmers to obtain land.

Discussing resistance to dominant interpretation of the wage and bonus system in silk factories in China, Rofel points out that "other workers have accepted the new cultural representations of themselves as in need of raising their productivity but they do not always act on it in the way the state intended" (1992:90). Similarly the immigrant and local "progressive farmer" acquisition of land has not always resulted in increased agricultural output nor improved use of agricultural land. Title deeds are often deployed for other purposes than intended by adjudication. For instance, some title deeds were obtained by urban people from upcountry to secure bank loans for enterprises elsewhere. These people neither went to nor developed anything on the land they had bought at the coast. In relation to the goals of adjudication their absence decreases security of tenure and development of land, while increasing disputes. This was particularly evident in Kinondo where more than half of the titles are held by non-Digo people, but few non-Digo people live in the area. Heirs to land already sold are often unaware of a sale as they have never seen the new owner. They usually become aware of their landlessness when they in turn decide to sell the land and have to go to the land registry settle paperwork.

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60 November 1993, B. Kalela.
Summary of Resistance through practice

Social practice relating to land is as important as law in establishing social change and determining meanings and identity. Women and men have contested gendered social relations in Digo society as well as other forms of authority and domination, through practice. Women's groups have developed saving methods that are not part of the banking system. These include saving in the form of *lesos* that can be resold and are separate from family and spousal demands. As credit is difficult to secure from a bank without a mortgage and many people fear the permanent loss of land, Digo people rely on *rahani* as an alternative to banking for credit. *Rahani* is the mortgaging of trees rather than land and exchanges the use of trees for credit. It is inheritable and extends the relationship beyond the creditor and debtor cementing social ties. The practice of *rahani* also functions as a critique of the state's assumption that land registration and titling would increase productivity.

Trees act as markers of tenure and consequently fencing is not seen as necessary for establishing boundaries in Kwale district. Fencing is seen as too exclusionary by the Digo while it is seen as necessary by the state. The refusal to fence symbolizes the importance of kinship and social relations to Digo concepts of social continuity.

In spite of governmental efforts to register private title this concern for social continuity can be seen in the high percentage of land (35%) in Tiwi registered in common. Common registration causes problems in the mortgaging of land, remaining the biggest challenge to the rationale of land adjudication and registration. Communal ownership also differs from Koranic specifications for the division of property. People expressed concern over the access of non-clan member to clan land under Islamic law. At still another level communal registration exposes the contradictions of the government enforcing Islamic law of succession since there is no method to deal with the gendered distribution of property when registered in common.
Acceptance of the process of adjudication and the intended outcomes have differed between men and women. Women resisted private title while men were for it. The Kenya government's land policy has been a continuation of colonial policy towards agrarian change initiated at a time of labor shortage. Following a neo-liberal economic theory of profit maximization, private registration of title is seen as essential to improving agricultural output because it allows each individual farmer to reap the benefits of what he had sowed with security. Thus, private registration of title was and is considered to secure tenure, end land disputes, enable capital accumulation through the ability to raise credit on a mortgage, and, lastly, to regularize inheritance.

However, for the most part it has failed to achieve these goals for Digo people, relying as it does on the government as the instigator of social change and the participation of people in national economic structures and institutions. Has adjudication been a failure overall or has it benefited certain individuals and ethnic groups? British agrarian policy in Kenya was grounded in the assumption that market forces would transfer land to the most efficient producer, creating a free labor pool. I argue that perceptions of customs and laws are not ethnically neutral and the threat to alternative methods to national institutions comes mainly from those people who benefit from their position to these institutions. However, even those who benefit from registration do not always use the land as intended by the government, thereby decreasing security of tenure and increasing disputes.
Conclusion

Sweeping the sand of cashew tree leaves outside of Dada's house in the late afternoon I can see the children help their grandfather bring the two cows back from the field, while others help their mothers carry water from the tap back home. All the houses visible through the split and filtered light beneath coconut trees belong to relatives. Different generations, and different circumstances. Women married in distant places who divorced and returned. Sons now married with children living across from their father. Brothers and sisters, cousins and in-laws. Our neighbors are Luo people from Kisumu who work in the area and rent a house. In the early evening before dark when the heat of the day has cooled off, the water tap is the hubbub of activity and conversation. For many Digo people the right to build a house and live on relatives' land or clan land is important in an area with such a high percentage of landless people and a high mobility of women due to divorce.

Kasim's (pg. 8) and Abdulla's cases (pg. 10) at the beginning of the paper, both involve issues of belonging first and foremost at the level of the family which extends into wider groups as well. Kasim's case deals with distinctions between forms of clan membership. This is articulated in distinctions between *fuko* and *mbari*. In this case the claims to belonging are gendered as is the structure of the clan lines. Kasim's grandmother leaves land only to her female relatives in her line of decent. Yet, she did not obtain this land from a woman but from her maternal uncle. This in itself indicated that as a niece she could inherit property although sons existed. It also shows that she had some say over who in the *fuko* would receive her property or at least that she was not obliged to leave land to her sons but could have, had she wanted to.

The specific status *fuko* lands continue to have today, is illustrated by the lack of dispute over both a generational and gender omission in Kasim's family's transfer of
property. This case indicates the social relations that give definition and meaning to land. Negotiation of legal structures and authority are enacted within one family through both matrilineal and patrilineal inheritance determined during the land holders' life. Kasim's case reminds us that change and continuity of customary law is established as much through practice and agreement as it is through contestation and dispute.

Abdulla's father's case (pg. 10) is more directly related to group belonging and engages the wider national culture more obviously. Unlike, Kasim's relatives, no land was distributed during Abdulla's grandfather's life time. This case is a dispute about a division of the land in accordance with general aspects of Islamic or customary law. Differently from the 1920's it is taken for granted today that a Digo person is Muslim, although not all are. The struggle then is about what this means, to be Muslim and Digo. For a long time the Digo have been struggling to have claims to both identities recognized. Most important they want to be the ones to decide the changes, by internal dispute and contestation maybe, but not by external determination.

This case brings forth the many ambiguities of legal structure and the contradictions of government administration. Firstly, not all people with interests in the land could register the land in their name. There were thirteen siblings but only five could legally register their names. Secondly, different parts of the local administration supported differing sides in the argument. The terms of debate were influenced by the level of government authority being engaged. Lastly, the court did not necessarily follow its mandate regarding customary law. After the Law of Succession Act (1981) customary law was not supposed to apply to succession cases. This shows the continuing concern of Judges in Kenya for customary practices.

In this paper I have attempted to politicize the gender specific nature and gender consequences of strategies of identity that are contested and solidified with inheritance and land practices. I have tried to complicate the issues of inheritance, identity, ownership and practice by looking at their imbrication with each other and the wider national political and
social situation at specific periods in history. In doing so I have hoped to give an idea of what is at stake for different groups of people involved and differently located in relation to inheritance. I think that it is necessary to think of the various Digo land practices and discourses of identity as a process such that: "we have the notion of identity as contradictory, as composed of more than one discourse, as composed always across the silences of the other, as written in and through ambivalence and desire" (Hall, 1991:49). This allows us to move away from a binary opposition of resistance and domination to a broader conceptualization of domination that is multifaceted and complex. It is particularly important not to see the community as an unproblematic entity subject to external forces but to discuss "how changing and multiple identities - debates over inclusion, exclusion, rights, and citizenship - are precisely at stake in the restructuring of community life" (Watts, 1992:15).

In an attempt to engage the interaction of overlaying systems of nation, custom and religion this paper has tried to do two things. Firstly, I have attempted to critique the way we, in academia look at, place and use law, but especially customary law in discussions of change. Customary law and law in general within the courts has been privileged in scholarship as a determinant of practice (Moore 1991, Shipton 1992, Goheen 1992, Berry 1992, Chanock 1991). I feel that this has resulted in an over-emphasis on courts and issues brought up in courts in the analysis of social change and especially changes in law. We need to ask whether court is a central locus of social change? If the majority of land disputes do not get to court, the construction of customary law inside the court may only partially reflect the struggle involved outside. Further investigation of land relations, social identity and the construction of customary law should analyze inheritance practices along with disputes, moot court, land boards and other local practices that appear subordinated to a national discourse. Many of the land and inheritance practices that challenge or circumvent state and religious authority are instigated and performed outside of courts. For
instance the landholder may mortgage trees, give away land, trees, and houses to family or
leave land specifically to daughters while still alive.

In these acts people appeal to local community for support, and to construct and
reconstruct identity and continuity. Claims to legitimation and the settlement of disputes are
often done outside of state regulation and sometimes state knowledge. However, Berry
emphasizes the connection between, and reinforcing natures of, alternative structures and
state structures "the linking through 'customary law' of land access to community
membership also meant that individual farmer's efforts to negotiate access to land for
purposes of cash cropping could influence issues of social identity and administrative
structure" (1992:342). Claims to these differing structures of power and authority are
manifest in disputes of meaning and belonging to a social entity. Perhaps because so many
land relations in practice fall outside of the jurisdiction and ability of the court system as
well as the national economic structures, Digo people prefer not to take disputes and cases
to court, either government courts or Islamic ones. Aversion to outside involvement was
expressed in terms of knowledge about Digo customs and practices, as one man stated "we
know our culture best".61

This appeal to extra-governmental structures of authority show the possibilities and
constraints of the state's ability to deal with problems of land as they arise in practice on a
day-to-day basis. It also makes more transparent nationalist and religist attempts at control
and domination through the co-optation of alternative strategies. At the same time the views
expressed in the Standard article show the ambivalence of local communities in attempting
to reform custom within the limits of the nation and religion. However, as Hart (1991)
points out social standing, identity and religion are mutually linked and gendered. The
analysis of this newspaper article makes obvious the gender specific nature of the debates
by placing them in their present context. I feel it is important not to loose sight of the
construction of social as well as individual identities. Thus, the contextualization of

61H. B. Nyama
statutory, Islamic and customary law is important. Issues of translation and representation become particularly salient.

As I expressed earlier, Islamic influence is often portrayed, in popular media and scholarship, as liberatory in relation to indigenous cultures or regressive regarding Western social systems. I would argue that it is not just a matter of perceptions of Islam that inform this reasoning but also perceptions of African custom. Having assumed indigenous law is innately patriarchal and oppressive of women, no critique or analysis is made of the change in women's relations to land with Islamic ideas of private property. Thus, the gendered aspect of individual and lineage/clan fights over land are talked about in terms of women's and men's fight over individual land holdings. Discussing the bilateral inheritance of property among the Karo Batak of Sumatra Bowen talks of this tendency to simplify. He states that:

because the exclusion of daughters coincided with the claims of the lineage, the court was able to attack the idea of gender-specific inheritance rights without mentioning the relevance of decent group affiliation to inheritance claims, thereby shifting the grounds of debate from the claims of social units to the claims of individuals (1988:278).

The debate is similarly shifted when emphasizing Islamic individual notions of women’s ownership over clan ownership that is passed through the women’s line. Yet, at the same time we must keep in mind that although not necessarily a gendered dispute, inheritance disputes and practices have gender consequences and implications. We should rather interrogate the gendered intentions, consequences and politics in the deployment, construction and manipulation of law, in and outside courts, whether customary, statutory or Islamic.

This interaction with continuity and community brings me to the second thing this paper attempts to do. It places the practice and dispute of inheritance of land as the

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62 Luise White (1990) is an exception and an example of a useful interrogation of gender and class relations connected with the Islamic ownership of property.
simultaneous contestation of the symbolic and the material. I have looked at disputes of inheritance as well as agreements, debt and saving, status and dependency and translation to show the lived experiences of negotiations of power and authority. Oral histories of particular plots of land and credit and saving practices illuminate the material importance of land for rural populations in Kwale District. In addition these histories and practices critique some assumptions about the relations of land to society and the state. For instance the insecurity of tenure exemplified by the circumstances of Abdulla’s father’s land dispute indicates the tenuous relation of title deeds to increased security and productivity. Similarly although a social practice rahani acts as a critique of the system of registration of land that foregrounds mortgaging of land as essential for increased productivity. The reality of rural wages and incomes and the cost of land reinforces the material importance of inheritance as the vehicle of transfer of wealth from one generation to the next. This paper has looked at practice as productive of social relations to show that land relations among the Digo go beyond the extractive and exchange values of land.

Social practices of land holdings do not occur in isolation from wider arguments about land and identity at the regional and national level. The slippages and uncertain signification of discourses of authority, whether it is ambivalence in production, translation or enforcement are capitalized upon by those desiring to create or live by alternative narratives. Thus, I have looked at the consequences and production of social transformation. For instance, status associated with male financial responsibility remains conflictual in Kwale as female autonomy and responsibility are traded with social mobility. This reminds us that “gender is central to understanding the process through which class identity is produced and undermined” (Hart 1991:117). Thus, we must not look for a pure stance of resistance, for as Rofel cautions it assumes that "social actors bring essentialized a priori identities into social relationships" (1992:97). Instead I find Bhabha’s concept of resistance through ambivalence more useful:
Resistance is not necessarily an oppositional act of political intention, nor is it the simple negation or exclusion of the 'content' of an other culture, as a difference once perceived. It is the effect of an ambivalence produced within the rules of recognition of dominating discourses as they articulate the signs of cultural difference and reimplicate them within the deferential relations of colonial power-hierarchy, normalization, marginalization and so forth. (1985:153)

This allows us to better understand the multiple and conflicting stands the Digo people have regarding land and especially the use of government laws and structures. Though the colonial and post-colonial period the changing levels of authority the Digo recognized and were subjugated to and their interaction with each other, gave an ambivalence to power which was capitalized upon, to question the authority of these power structures themselves. Contestations over land in Kwale District revolve around issues of inclusion and exclusion from family, group, community, nation, or religion, of authority within these groups and outside of them and of different positioning in social relations of land by gender, ethnicity, class and social status.

Thus, we must look to this complex distribution of power relations to find meaning in a dispute about land in Kwale district. As Gupta and Ferguson state, "by always foregrounding the spatial distribution of hierarchical power relations, we can better understand the process whereby a space achieves a distinctive identity as a place" (1992:8). In this paper I contend that aside from its material importance to those who cannot or do not participate in a capitalist land market, among the Digo inheritance of property becomes the chosen site for expression of social continuity as ownership of fuko lands becomes contested. The disputes over fuko land, the use of rahani, the fight with the Islamic division of property, the practice of land being inherited among women of the fuko and the long problem of land in the district all address this issue of social continuity. The case of Kasim's grandmother's land indicates that ideas of kinship inform the legal frameworks, and concepts of continuity that surround many claims to property. Conflicts in inheritance are not simply society's negotiation of varying land laws operating simultaneously in Kenya, "for if one begins with the premise that spaces have always been hierarchically
interconnected, instead of naturally disconnected, then cultural and social change becomes not as a matter of cultural contact and articulation but one of rethinking difference through connection" (Gupta and Ferguson, 1992:8). It is my argument that conflicts in inheritance and practice must be read as fights within and without a community over defining community and belonging. Only by paying attention to these multiple shifts in practice and meaning, is it possible to understand that rather than being guided by laws, the Digo have in fact co-opted legal structures into their process of defining continuity and change.

Conclusion in Summary

Social belonging in Digo society is determined through gender as the distinctions between fuko and mbari as Kasim’s case illustrate. The lack of dispute surrounding this transfer of property attests to the continuing importance of fuko land and the possibility of more than one form of land transfer within a family. Kasim’s case reminds us that change and continuity of customary law is established as much through practice and agreement as it is through contestation and dispute. Abdulla’s case engages the wider national culture in issues of belonging. It questions what it means to be Digo, Muslim and Kenyan. The case illustrated the inadequate legal provisions regarding land ownership and transfer in Kenya.

In this paper I have brought forth the gender consequences of deployment of certain identities as they relate to inheritance and land practices. I have tried to reflect the complexity of inheritance, identity, ownership and practice by looking at their connections with each other as well as the wider national, political and social situation at specific periods in history. This paper critiques the way we look at, place and use law, but especially customary law in discussion of social change recognizing that many practices that challenge state or religious authority take place outside of courts.

I argue that perceptions of Islam and African Custom have influenced the way Islamic law and customary law are talked about in scholarly work. There is little analysis
of how these laws affect and influence each other as well as the practice of people. This affects the way gender is talked about regarding these two laws. Disputes between individuals and collectivities are often seen by scholars as disputes between men and women over individual land holdings. However, although the dispute may not be concerned with gender, the resulting settlement is not gender neutral.

The practice and dispute of inheritance of land is a simultaneous contestation of the symbolic and the material. Oral histories of particular plots of land and credit and saving practices illuminate material importance of land. At the same time they demonstrate and are talked about in the context of social relations connected to the land. Social practices such as rahani act as a critique of the state's land policies and laws. These social practices are involved with the wider regional and national arguments about land and identity. Thus, inheritance disputes revolve around issues of inclusion and exclusion in groups, of authority and of the different positioning in social relations of land.

Digo social continuity is expressed through inheritance transactions especially those regarding fuko land. This indicates the importance of kinship in informing legal process. Conflicts in inheritance are fights within and without a community over defining community and belonging.
S. M Otieno Case - a brief summary

The S. M. Otieno's burial case, although not the first such case, captivated the national imagination and set a trend for similar cases to come to court. S. M. Otieno's wife, Wambui Otieno, and his clan, Umira Kager, disputed where Otieno was to be buried and who had authority to bury him. S. M. Otieno, a Christian Luo was married to Wambui Otieno, a Christian Kikuyu, and lived in Nairobi where he practiced law. His case revolved around determining the meanings of being 'Luo', 'Christian' or 'modern' in order to decide whether the case should be judged by customary or statutory law. His body lay waiting for burial for three months while the dispute took on national, ethnic and gender implications. The clan representatives constructed Otieno as 'indigenous' and subject to customary law. While Wambui constructed him as 'modern' and subject to statutory law. This case challenged the position of gender, family and customary law in Kenya. Finally, the court ruled that the clan should bury him, deciding that Otieno's clan was the next of kin and that by being Luo, in spite of his lifestyle, he was subject to customary law.

The case reflected a continuation of the concern for customary law in Kenya that led to the three times defeat of the Marriage Bill in Parliament under the Kenyatta government. The Marriage Bill tried to introduce one comprehensive law for the whole country. However, it introduced ideas that ran counter to customary laws regarding marriage and was opposed not only by those in favor of customary law, but by Muslims as well. S. M. Otieno's case opened a space in court for arguments demanding customary law. In 1994 Wangila's (the first Kenyan to win a gold medal in boxing at the Olympic games) burial case almost rivaled Otieno's case in complexity. It involved two forms of customary law, Islamic law and statutory law and more than two competing sides including his wife, his clan, his mother, his step father's clan, and Islamic religious leaders. The court decided in favor of Islamic law.
## Chronology of Events

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>1400-1500</td>
<td>Digo lived in the coastal plains and build Kaya Kwale and Kaya Kinondo.</td>
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<tr>
<td>1800-1850</td>
<td>Height of ivory and slave trade</td>
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<td>1848</td>
<td>First Digo Conversions to Islam</td>
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<tr>
<td>1860s</td>
<td>Digo lost hold on trade to Swahili and Arabs associated with Zanzibar</td>
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<tr>
<td>1882</td>
<td>Transfer of Property Act of India</td>
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<tr>
<td>1890</td>
<td>Foreign Jurisdiction Act, precursor to the Crown Lands Ordinance</td>
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<tr>
<td>1895</td>
<td>The coastal strip became part of the Kenya Protectorate.</td>
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<td>1901</td>
<td>Completion of the railway from Mombasa to Uganda</td>
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<td>1902</td>
<td>Crown Lands Ordinance, transferred unoccupied land to the Crown</td>
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<tr>
<td>1907</td>
<td>Slavery made illegal</td>
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<td>1908</td>
<td>Land Title Ordinance</td>
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<tr>
<td>1910</td>
<td>Native Hut and Poll Tax Ordinance</td>
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<tr>
<td>1912</td>
<td>First Mosque built at Tiwi</td>
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<tr>
<td>1914-1915</td>
<td>The setting up of the Digo Reserve</td>
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<tr>
<td>1920's</td>
<td>Main conversion of Digo to Islam</td>
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<td>1920's-30's</td>
<td>Height of Digo land disputes during the colonial era.</td>
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<td>1927</td>
<td>Final decision of <em>Ganyuma Vs. Mohamed</em>, deciding that Islamic law applied</td>
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<td>1938</td>
<td>Radical title to native lands not vested in the Crown but the Trust Board</td>
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<td>1940</td>
<td>Land scarcity in the reserves becomes a critical economic and political issue</td>
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<td>1940's</td>
<td>Establishment of the Mijikenda Union</td>
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<tr>
<td>1945</td>
<td>Resettle of landless people in Shimba hills</td>
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<tr>
<td>1952-1963</td>
<td>Mau Mau revolt</td>
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<tr>
<td>1954</td>
<td>Swynnerton Plan</td>
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<td>1956</td>
<td>Native Land Tenure Rules</td>
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<td>1959</td>
<td>Native Lands Registration Ordinance</td>
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<td>1959</td>
<td>Land Control (Native Lands) Ordinance</td>
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<tr>
<td>1960</td>
<td>Amendment to the Agricultural Ordinance and the Land Development and Settlement Board to devise and administer resettlement schemes for all races</td>
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<td>1962-1971</td>
<td>Million Acre Scheme, for resettlement of landless people.</td>
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<td>1963</td>
<td>Kenyan Independence from the British</td>
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<td>1963</td>
<td>Registered Lands Act, conveying absolute title</td>
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<td>1967</td>
<td>Land Control Act No 34</td>
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<tr>
<td>1970-1993</td>
<td>Resettlement schemes for landless people</td>
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<tr>
<td>1974-1975</td>
<td>Land Adjudication and Registration in Kwale District</td>
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<tr>
<td>1981</td>
<td>Succession Act, removed claims to land by customary law and established children and spouses as heirs.</td>
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<td>1983</td>
<td>Abdulla's case is settled</td>
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<tr>
<td>1986</td>
<td>Burial case of S. M. Otieno</td>
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<tr>
<td>1991</td>
<td>Amendment of Succession Act to allow Islamic law to apply to all Muslim</td>
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<tr>
<td>1992</td>
<td>First Multi-party elections since Independence</td>
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<tr>
<td>1993</td>
<td>President Moi posits new inheritance bill to parliament</td>
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The Digo kinship system is similar to that described for the Giriama by David Parkin:

Siblings, parallel cousins and cross cousins may all be referred to by the same term. Second, there is bifurcate merging in the immediately ascending generation, such that a father and father's brother are called by the same name, but not the mother's brother; and that a mother and mother's sister are called by the same name but not the father's sister. ... Terms of address between alternative generations are reciprocated by members of the same sex or are reciprocally equivalent between members of different sex. (1991:236)

The reciprocity of terms between mother's brother and sister's children leads to problems in translation between gendered and ungendered language.
Chale Women's Group
Mwatime Mwinyi
Adija Alfan
Fatuma Abdalla
Mzee Abdalla Muyenze

Port of Chale
Mzee Abdalla Ali Muyenze
Mwalimu Mohamed Mwarandani
Omari Mohamed Mwanchangu
Juma Kasim Mwamaneno
Mohamed Mwalimu Mwanandani
Salimu Bakari Mwadzaya
Mwalimu Halifani Mwahanduni
Juma Omari Kubambanya
Nasoro Kasim Mwakweli
Zuberi Abdalla Mwabewa
Saidi Matano Mwahambwe
Abdalla Mwinyikai Kunenwa
Bakari Abdalla Mwabewa
Ali Mohemed Mwarandani
Zuberi Saidi Dzikono
Hamadi Mwakirenje Kirenje

Waa
Swale Bakari Tsilala
Ali Hamisi Kugula
Mwanahamisi Mwagombema
Mwana Mwahalishu
Halima Swalehe Mwaronga
Mwanajuma Mwanahisi

Lands office
V.S. Khaoya
C. Olinda

Attorney General's Office
Mohamad Slim

Tiwi
Mama Mbotize Mbiru
Salama Ramtu Mwandale
Betty Kalela
Hamisi Kalela
Hamisi Bakari Nyama
Abdul Vyombo
Abdulla
Kasim Rasso


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