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FREEDOM FIGHTERS AND LAND - With
Special Reference To Central Province

DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR LL.B. DEGREE
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BY

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(b)

TO those who sacrificed their lives during the struggle for independence so that the children of the future shall be free. Justice and fairness will one day justify their course.

C O N T E N T S:ABBREVIATIONS

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ABBREVIATIONS

- EALR - East Africal Law Reports
- IDS - Institute of Development Studies
- JAL - Journal of African Law
- KLR - "For ~~Kenya~~ **Kenya Law Reports** the most essential value, because the most concrete, is first and foremost ~~most~~ **Zanzibar Law Reports** which will bring them bread and, above all, dignity"
- ZLR -

Frantz Fanon, The Wretched of The Earth.

INTRODUCTION

There is renewed and growing intellectual and political interest for the place of the ex-freedom fighters in Kenya history, and more importantly in Kenyan society today. Our attempt here is the study of the ex-freedom fighter and land. As far as land is concerned we wish to restrict ourselves to the issue of agricultural land.

Much literature on land law has undoubtedly been produced by, inter alia, African land lawyers. Such works have tended to concentrate in the fields of land consolidation, land tenure, land control and generally on the topic of land reform. On the other hand is the historian who has concentrated his efforts in the study of areas of study. To him the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread and, above all, dignity" **Frantz Fanon, The Wretched of The Earth.**

Today the land issue is even more explosive than it ever was. Politicians speak of it with a caution otherwise they risk a conflict with the powers that be. It would appear that the establishment is not willing the issue of land be exposed with a view to change the status quo. Right from the days of colonialism the land issue has always been the major area of dissatisfaction among the people of Kenya - before independence it was the Africans that complained, and as a fact, resulted into an armed conflict with the colonial administration - after independence its the populace and the landless that are complaining. Their dissatisfaction is against the wealthy landed African class that seemingly stepped into the shoes of the former White settlers.

Our attempt in this paper is to analyse the relationship of freedom fighters and land. Where do the two meet?

INTRODUCTION

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Much literature on land law has undoubtedly been produced by, inter alia, African land lawyers. Such works have tended to concentrate in the fields of land consolidation, land tenure, land control and generally on the topic of land reform. On the other hand is the historian who has concentrated his efforts in the study of African nationalism among other areas of study. To him the major interest in the whole affair concerning land is that Kenya was colonized by Britain and almost all cultivatable land was 'stolen' from the Africans. At this stage he introduces a group of gallant men who are willing to sacrifice their lives in the name of freedom and land - they are the nationalists.

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Our attempt in this paper is to analyse the relationship of freedom fighters and land. Where do the two meet?

It is for this reason that we have looked into the problem right from the days of colonial domination. To get a clear picture of the place of the ex-freedom fighter in Kenya today one must look at the colonial institutions that gave birth to the freedom fighter. That is why the second chapter of this paper seems to go into some details in investigating how the freedom fighters came about. Without this understanding one would undoubtedly engage in a piece-meal research into the problem. Moreover this reveals the hardships and sufferings that were encountered by freedom fighters. The use for this is to make the student of land reform in Kenya today see the injustices that the independent Kenya government has inherited in matters concerning land. All the ideals once held by brave men in the forest pertaining to land have gone through the drainage channels and the radical land reforms they envisaged is now history.

Towards the end of this paper it will be realised that we study the relationship of freedom fighters and land against the general background of landlessness in Kenya. The reason is that we feel that the disenchantment that exists amongst ex-freedom fighters for failure to attain a radical land reform after independence cannot be solved all by itself. It is integrated into the land problem today and should always be seen as so. Therefore any attempt to solve the land problem in Kenya should also be seen as an attempt to remove the disenchantment of the ex-freedom fighters. This is made true by the fact that the freedom fighters did not engage in the armed struggle for their personal selfish interests but were patriotic men and women who were concerned for the welfare of African Kenyans.

The paper has special reference to Central Province of Kenya. However, this is only a

secondary point where we endeavour to analyze national issues concerning land. We shall refer to Central Province more specifically in two major issues. Firstly, the Mau Mau freedom fighters hailed, to a large extent, from Central Province. So we have no alternative but to confine ourselves to this region when we discuss the same. Secondly we shall refer to Central Province for data and specific examples although in some cases the point in issue is really national.

In addition to our own ideas which we have injected into the paper we have adopted the following methodology to collect data. Firstly, we have taken the ideas of authoritative sources. Such information from interviews with people who were actually involved in the armed struggle; authoritative text books - particularly by ex-freedom fighters and other nationalists and also the views of certain politicians. Such authoritative sources give the paper its originality. Information also has been got from decided cases and press reports. The cases reflect the courts mood in interpreting the law. This is particularly clear during the colonial period when colonial manoeuvres and manipulations to govern and dominate Kenya are quite clear. The courts were an instrument in this endeavour.

The paper is composed of three chapters and a conclusion which includes our recommendations. The first chapter will address itself on how Kenya was colonized. It is here that we analyze the reasons for the colonization by Britain and what legal mechanisms were used. On the issue of taking lands from the Africans we shall explore the various tactics that were deployed - including the legal ones.

The second chapter will concern itself on who the freedom fighter is and his role in the attainment of independence.

CHAPTER 1

If we have to successfully show whether the ex-freedom fighter is happy or not today as concerns land then it will be necessary to go into some detail about the struggle. ~~We go into some detail about the struggle.~~ We explored the legal tactics used by the colonialists to confiscate lands belonging to Mau Mau activists for punitive reasons, land consolidation and the impropriety of those colonial institutions.

The third chapter concentrates on the period after independence. What actually went wrong? In this chapter we have tended to show that the problem of the freedom fighters as relates to land is similar to that of any poor and landless peasant. Since that problem is that universal we have tended to look at the problem nationally perhaps rather overshadowing the ex-freedom fighters. That is why Kenyans land policy is critically looked into and many views considered. We have analyzed the success, or lack of it, of the various land transfer programmes that took place after independence but had started prior ^{to} independence. Mention of the ex-freedom fighters in relation to land today closes the chapter. The conclusion includes our recommendations.

(undercapitalized). So in 1895 it surrendered its rights and signed an administration agreement whereby its lands under the 1888 concession were transferred to the British government. In other words, from the point of view of colonialism, on 11th June, 1895 the British government declared what is known as a Protectorate.

The primary aims of British colonialism however, were far different than those of IBERAC. Essentially colonialism was concerned with the exploitation of the natural and human resources of the colony for the benefit of the 'mother' country.

CHAPTER 1

ADVENT OF COLONIALISM IN KENYA AND ITS LEGAL IMPLICATIONS.

A serious study of colonialism brings one to an unfolding story stretching from the 14th Century. However, it was the Berlin Conference of 1885 that had a major impact. The industrial revolution created a demand for markets and raw materials. The European powers wanted to boost their prestige by having some territories and people under them. It is true to say that in their coming to Africa they had an advantage in having administered other foreign territories. For example Britain had gained skills and legal theories and concepts that were to be found useful in her African territories from her earlier or past experiences in India, Australia, New Zealand, Canada, part of West Indies and Jamaica among others.

The Imperial East Africa Company (IBEAC) was the stepping stone used by Britain to gain dominance over East Africa. In legal terms this meant that whereas the company had derived its powers from the agreements with the Sultan, most important the company derived its powers first and foremost from the British government, and then from agreements with the Sultan and other local rulers.

The IBEAC did not prosper in East Africa. It has been said that it was 'poorly conceived, badly managed and grossly undercapitalized'. So in 1895 it surrendered its charter and signed an administration agreement whereby its rights under the 1888 concession were transferred to the British government. In other words, from the point of view of colonial law, on 15th June, 1895 the British government declared what is now Kenya a Protectorate.

The primary aims of British colonialism however, were much wider than those of IBEAC. Essentially colonialism was concerned with the exploitation of the natural and human resources of the colony for the benefit of the 'mother' country.

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Early colonialists like Lugard and Ainsworth had no doubts that East Africa was rich in these resources. The Coastal belt was suitable for the much sought - after cotton, rubber and coconut produce; the adjacent lowlands was abundant in sisal fibre; and the highlands suitable for just about anything.

The other issue was that when the East Africa Order in Council 1897 was passed it had a limitation in that it did not have total jurisdiction over local persons. Therefore to overcome this shortcoming and to give the Commissioner more power the East Africa Order in Council 1902 was passed. It empowered the commissioner to make ordinances for the peace, order and good government of all persons in the Protectorate and established a High Court with full criminal and civil jurisdiction over all persons and matters of the Protectorate.

At this point we pause to observe that the first rights accorded to Africans were violated with jurisdiction to all persons and all matters in the Protectorate. The High Court refused Africans their customary law rights to the extent that it refused to recognize polygamous marriages among other matters. This was so, perhaps, because of the background of the judges - they were British trained and therefore loathed many African customary institutions. Secondly there was the racial arrogance and paternalism held by the colonialists in general. That is why the legal limits of power that could be exercised by the colonialists over the colonised depended on three aspects. Firstly the specific goals of imperialism had to be fulfilled; secondly compromises were allowed if and only if they made the specific goals possible and thirdly anything that appeared to the ruling class to be positive in the 'Civilizing mission'. That is why we observe that the High Court was used as a tool to further the colonialists interests. The Africans were not to have an equal footing with the Europeans in its eyes. It is therefore little wonder that it held that it did not have jurisdiction to decide matters arising from Islamic marriage law in the case of Gulam Fatuma v Gulam Mohamed. Professors Ghai & McAuslan express this general idea of legal limits quite well;

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"Law was second only to weapons of war in the establishment of colonial rules and for the early settlers and officials there was little between the two; they were both useful implements to coerce the Africans. Acceptance of this role of the law was not universal amongst colonial officials, but it was the dominant view"¹

The case of Ole Njogo & others v A.G. of E.A. Protectorate² illustrates two points. Firstly how the High court and the E. African court of Appeal were instrumental in installing colonialism by deciding matters between Whites and Africans in favour of the former and secondly in showing that Britain acquired full powers over the local people, which power it used to oppress them. The facts were that the Laibon on behalf of the Masai signed an agreement in 1904 to the effect that the Masai would vacate their original lands for European settlement. The agreement had a condition that it "shall be enduring so long as the Masai as a race exist, and that Europeans or other settlers shall not be allowed to take up land in the settlements"³

In 1911 the agreement was abrogated and the Masai forced by the colonial administration to move further. The plaintiff on behalf of some of the Masai brought an action for breach of the 1904 agreement. They argued that the agreement was a civil contract which was still subsisting and the 1911 one was made by those Masai not representing the whole Masai as a tribe. Damages were also claimed in total for the wrongful confiscation of some cattle.

The contention of the colonial administration which was successful both at first instance and in the Court of Appeal for E. Africa was that the courts had no jurisdiction, since the agreements of 1904 and 1911 were treaties not contracts, and the alleged confiscation was an Act of State and neither were they cognisable in a municipal court.

As far as the treaty was concerned the EACA first decided that as the Protectorate was a foreign country, it followed that the Masai were foreigners in relation to the protecting power.

It was held that the Masai retained some element of sovereignty and treaties could therefore be made with them, even though they would not be governed by international law but "by some rules analogous to international law, and would have similar force and effect to that held by a treaty and must be regarded by Municipal courts in a similar manner"⁴

From this decision we see an outright attempt by the court system in evading a genuine problem of the Masai. We would like to ask what those rules analogous to international law are. Laws are either municipal or international and therefore if the Masai were sovereign then the sum total of that statement meant that the colonial administration constituted a machinery of administration similar to a federal one. All tribes being sovereign but still subject to some rules of the colonial government. This works like a federation. However, it is quit clear that this was never the case, the colonial government made all policies and directly ruled the local people. Secondly the courts were avoiding declaring the 1911 agreement void although they knew very well that the agreement was a contract under municipal law and nothing near international law. When two sovereign governments make a contract it becomes a bilateral treaty which is governed by international law. However even if ~~that~~ it is assumed that it was such a contract then there still would be a third problem. If the Masai were sovereign then they would not be subject to the jurisdiction of the High court.

On the issue of sovereignty of the Masai Ghai and McAuslan in Public law and Political Change in Kenya⁵ feel that this is not capable of being taken seriously particularly when one looks at the dicta in the case from Zanzibar Charlesworth Pilling & Co -v- Government of H.H. The Sultan of Zanzibar.⁶ It was held doubtful whether the Sultan would claim exemption from the jurisdiction of the courts.

This decision which was just one of a line of wrongly decided cases, to suit the ~~the~~ purposes of the colonialists, exposes an inherent contradiction in the whole system of justice as applied by the courts.

On the one hand they were preaching the doctrine of the rule of law and on the other they were using the same rule of law to advance their own selfish ends aimed at suppressing any opposition from the colonized and also to ensure that the colonialists got the best of everything. Professors Ghai and McAuslan could not have said this in a better way than that;

"It is also unrealistic and not a little hypocritical to suggest that one of the main benefits of British colonialism was the introduction of the Rule of Law into Africa, for if that concept means anything, it means that the law should help the weak and control the strong, and not vice versa. From the African point of view the English law introduced into East Africa was one of the main weapons used for colonial domination, and in several important fields remained so for most of the colonial period, only changing when Africans began to gain political power. The role of the received law then from the beginning of the colonial period in Kenya was to be a tool at the disposal of the dominant political and economic groups"⁷

We would therefore submit that these early Empire builders played on the ignorance and sincere hospitable nature of the local people. A fact that is very annoying to the modern student of colonialization. The view of the populace regarding the advent of the early colonialists is well put by Jomo Kenyatta in his book Facing Mount Kenya

"The belief that the Europeans were not going to live permanently in Africa was strengthened by the fact that none of them seemed to stay very long in one place"⁸

Kenyatta continues by making a very interesting observation on what actually happened

"And the Europeans having their feet firm on the soil, began to claim the absolute right to rule the country and to have the ownership of the lands under the title of 'Crown Lands' where the original owners now like as 'tenants at will of the crown'⁹

Jomo Kenyatta's account of what actually happened is supported by records which show that as early as 1902 and in response to agitation from the handful of European settlers in Nairobi, the Commissioner, Sir Charles Elliot, decided that agricultural settlement in the Highlands should be confined to Europeans and that Asians, apart from being able to settle in the Highland townships should be confined to the lower country, in the lake Basin and the coast.

Sorenson in his book Land Reform in the Kikuyu Country says that this was the origin of the attempt to create the 'White Highlands' and to establish in the Protectorate a 'White Man's Country' on the model of the colonies in South and Central Africa¹⁰

It is necessary to understand the African perception of 'Ownership' of agricultural land if one is to fully appreciate the impact of colonialism. It would therefore suffice to examine what land tenure and 'ownership' rights existed among these communities. This can be illustrated by what happened among the Kikuyus. The claim of having cleared the original forest was the basic principle of absolute ownership of the land by a particular Family or Clan. In other words the members of that Family or clan acquired the right to own the land they occupied after clearing.

Another method of acquisition which became more prevalent in later years was one analogous to purchase of land. Thus, again to borrow a leaf from the Kikuyu community particularly took place when some of the people in Central Province realised that the Ndorobo people were willing to sell their land. Thus a new form came into being, of owning land by acquiring the first rights of hunting or clearing the original forest. It is the extended family more precisely called the 'Mbari' (many people of a common ancestral father) or even bigger a 'Muhiriga' (clan) that purchased the land from the Ndorobo.

The two methods of land acquisition have been given clarity by Jomo Kenyatta in Facing Mount Kenya and the words of the Report on the Kikuyu Land Tenure issued in 1929. In paragraph 24 of that Report the following statement was made

"It is most interesting to consider why it is that the tribal theory is in most respects intact in Nyeri and Fort Hall, while in Kiambu it has been modified greatly in favour of the individual owner-cultivator and the sectional head"

This difference is explained by Jomo Kenyatta in his book as being found in the fact that the Ndorobo did not live in the two districts and hence there had been little such transactions ^{in Kiambu district land transactions} between the Gikuyu and Ndorobo in a recent occurrence which is supported by testimony of living elders. In the case of Wainaga v Murito¹¹ there was a reference made to the sale of land by the Ndorobo to some Kikuyu person. This case is also important for some other reasons as will be seen later. Sorrenson in his book Land Reform in Kikuyu Country supports this idea of purchase of land by the Kikuyu from ~~some~~ other people. He says that the Kikuyu pioneers obtained their original pieces of land by a process of occupation and first clearing or by purchase from the autochthonous holders. We are in total agreement with the views given by Jomo Kenyatta and Sorrenson. Their views are not only supported by the testimony of living elders but are also in consonance with the customary land tenure that existed. For example land that was owned by the clan was in fact subdivided for the use by individual families. It should be understood that such individual families had not right to alienate such lands. This was the role responsibility of the elders of the clan who held the lands in trust for the members of that clan.

It is with this background information that we should view the ~~seizure~~^{seizure} of lands from the Native rightful owners by the Whites and the subsequent imposition of a land tenure system which was a novelty to the African communities. A form of tenure that was really selfish for it rotated on the concept of individual land 'ownership' which extinguished any other peoples' right to that particular parcel. It was climaxed and evidenced by the granting of tittle deeds. Terms like freehold tittle, leasehold, absolute proprietorship etc became characteristic of such foreign, and surely borrowed, land tenure systems.

The attempt to control any transactions between the Whites, and Africans in the early days of colonial settlement was founded in the belief that Africans lacked such capacity.

They were like 'excited infants' - to borrow the words of Lugard. The government consequently assumed control of the alienation of land to immigrants under the authority of the East Africa (Lands) Order - in - Council, 1902. This legislation was drafted on the assumption that Africans had no title to waste or unoccupied and uncultivated land; and that, accordingly, the crown could assume a title to such land and alienate it to immigrants. The colonial administration could not foresee a time that the Africans would be allowed rights to self-determination. They felt they were here to stay otherwise they they would not have given land leases for 999 years as provided in the Crown Lands Ordinance, 1915.

Legal protection of the Reserves was given by the 1915 Ordinance. It provided for the proclamation, as reserves, any crown land 'required for the use and support of the members of the native tribes of the Protectorate'. The restriction of the indigenous peoples to 'Reserves' was not made law until 1926. Until then, African rights under Kenya's colonial law were defined by occupation, cultivation and grazing, so that only when land was left unused did it become crown land. Therefore from 1915 onwards the people of Kenya were confirmed tenants at will of the English Crown as described in the case of Wainana v Murito.¹² It may be observed at this juncture that Africans were not tenants at all - they were the original owners of the land and, at least for all theoretical purposes, it is impossible to be a tenant in your land. They were the rightful owners of the land and it was the White men who should have been tenants - at will of the Africans.

The Wainana v Murito¹³ case involved a dispute between the two parties. Each claiming 'ownership' of a piece of land situated in Kiambu. The court had occasion to rule on the natives status of ownership of the land they occupied vis - a - vis the crown. It was held that the effect of the Crown Lands Ordinance 1915 and the two orders - council which converted the Protectorate into a colony was to take away all native rights in the land, vest all land in the crown, and leave Africans as tenants at will of the crown in the land they actually occupied.

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colonialists, perhaps, the armed struggle would never have been necessitated. Multiracialism and mutual understanding would have avoided the calamities, loss of time and funds in the bitter liberation war that ensued. This is the main pre-occupation of the next chapter.

CHAPTER 2

STRUGGLE FOR INDEPENDENCE: THE ROLE OF FREEDOM FIGHTER

The struggle for Kenya's independence took many forms. There were those people in the struggle that were committed to constitutional methods of negotiating at the conference table. This became an effective method only after the colonialists started taking African grievances seriously. Probably one would say that this gained importance only in the late 50's. There were others who engaged in armed struggle as a means of expressing their opposition to colonial rule and the demand of the 'stolen lands'. While other people were satisfied with the colonial rule - they firmly believed that independence would be granted to them when they were ready for it i.e., when the colonialists, out of their good-will relinquished the administration of the country to Africans. This gradual change had been promised many times by the colonialists.¹ Such people who were mostly loyalists benefited enormously from the colonial government and had everything to lose if an African government came into power.²

The other group was made up of passive supporters of the freedom fighters. They only prayed that one day the freedom fighters would succeed. It is the passive supporters together with the active supporters that gave the armed struggle the spirit it needed to continue in its endeavour. There is still a lot of controversy surrounding the issue of freedom fighters in Kenya. The question remains to what extent the freedom fighters in the name of Mau Mau contributed to the attainment of independence. We do not wish to engage in this controversy but as a matter of fact certain views should be pointed out. Haberson³ says that:-

"Mau Mau however, was primarily an African civil war - a hypothesis supported by casualty figures. Africans rather than Europeans were the main protagonists. This civil war was fought between those Africans who had gained and those who had not gained during the years of European settlement and colonial administration."

We should like to point out, without going further, that we do

not accept this submission. It is made up of half-truths that lack any backing. Haberson does not quote any authority to support himself and even if he did we would be opposed to his school of thought for the following reasons.

Firstly, any apparent clashes between fellow Africans was only incidental to the central aims of the struggle. Such clashes were inevitable if MauMau was to rally the support of the populace. Loyalists, who anyway were an effective instrument used by the colonial administration against the freedom fighters, had to be eliminated where intimidation was not enough.

Secondly, like in all guerilla warfare 'sell outs' must be eliminated if the struggle is to continue. Thirdly, any such unfortunate but necessary clashes were always regretted by the Mau Mau. Fourthly, such a civil war, as Haberson wants us to believe, would never have achieved the two major objectives for the struggle i.e grant of freedom and the return of 'stolen lands'. Even if Mau Mau fought their propertied fellow Africans for the sake of jealousies as Haberson intends to mean, then it would have been both pointless and meaningless to involve whites in the first place. Harry Thuku's Young Kikuyu Association, the first organized resistance to oppression of the African and which campaigned for the return of 'stolen lands' was aimed against the whites.

Fifthly the fact that casualty figures were high on the African side does not mean that Africans killed each other in pursuit of personal reasons. The position was that Mau Mau and their corroborators were killed indiscriminately by the administration - by both white police officers and loyalist home guards.

Sixthly, the Mau Mau operations should not be understood only in the negative aspects but also the positive ones. The whole picture should be painted in black and white so as to portray a fair image. This will perhaps be possible by the end of the chapter. Our view on Haberson's submission is supported by other points of view.

Sorrenson⁴ writes:-

"There is no need to deny the Kikuyu 'freedom fighters' their sense of patriotism; but it would be equally unwise to assume that all who took part in the rebellion against government did so far purely altruistic reasons". Just as Sorrenson says above we are not saying all freedom fighters were genuinely after independence and 'stolen lands'. We feel that this was the backbone to the armed struggle.

Mohammed Mathu in his book The Urban Guerilla 5 writes:-

"Looking back at Mau Mau today, I still consider it to have been just and courageous struggle for freedom. Though mistakes were made, and some people entered the revolt for narrow or selfish interests, the people as a whole fought and suffered bravely and I am proud of them. Our fight against British colonialism, by throwing fear into the hearts of imperialists and settlers, quickened the pace of political development and independence, in Kenya".

This is the view of one of those involved in the struggle. This view and feeling is subscribed to by the majority of peasants who were involved in Mau Mau and who we had an opportunity to interview.⁵⁸ In fact the minority of them feel that a further point should be that Mau Mau not only accelerated the attainment of independence but actually brought it. They felt that the movement was purely patriotic and any apparently purposeless killings of fellow Africans was incidental and sometimes necessary to keep the movement together. Perhaps we should not generally accept this former view in entirety as it might have an undertone ^{of} chauvinist interpretations of Mau Mau. This can be used as a tool to further personal interests. Another satisfactory description of the Mau Mau movement is made by Wachanga - the former secretary general of Mau Mau. He writes 6:-

"The Mau Mau revolt was tribal. Although the colonialists were unable to completely snuff out the terrorists, they were able to confine the revolt to the Kikuyu tribe. Thus they prevented its expansion to other tribes and its development into a national revolt".

He adds, " It is my belief that the revolt shook Kenya loose from Great Britain earlier than would otherwise ^{have} been the case. One might even make a case that the Mau Mau revolt, coupled with events in Burma and Malta, may have helped to bring about the end of the British Empire itself, that it was the cumulative weights of these extreme testaments to the right of national self determination that set the empire's sun".

Wachanga on top of putting Mau Mau in the place he feels it deserves i.e accelerated the attainment of independence he makes another point with which we agree. That the movement was primarily confined to the Kikuyu tribe and although some people from other ethnic communities were involved, this was only to a small degree. They, however, should

not be overshadowed by the majority. Their place should always be respected although one of a small minority. Jaramogi Odinga has contributed to this debate. He writes⁸ that Mau Mau was an organization that demanded 'Uhuru' and the 'stolen lands'. As an answer to the question 'why are you fighting' by the colonialists he answers:-

"We are fighting for all land stolen from us by the crown through its order-in-council 1915, according to which Africans have been evicted from the Kenya HighlandsThe British Government must grant Kenya full independence under African leadership, and hand over land previously alienated for distribution to the landless. We will fight until we achieve freedom or until the last of our warriors has shed his last drop of blood".

Odinga feels such an answer given by the freedom fighter represented the whole mood of the struggle - nothing was to be given up until victory was attained or in the alternative all resistance inform of warriors was wiped out. Bildad Kaggia, another reknown nationalist writes ¹⁰

"Mau Mau was an organisation formed by KAU militants who had lost faith in constitutional methods of fighting for independence it was clear (to us) that the government would never give in in Kenya without a struggle"

It is therefore totally inaccurate to belittle Mau Mau as a nationalist armed struggle and its people in the history of the struggle for independence as Haberson does.¹¹ This should be borne in mind as we continue to explore the place of the Mau Mau freedom fighters in the return of the 'stolen lands'. The history of the formation of Mau Mau as a resistance organization dates to the Harry Thuku days. At least any serious study of Mau Mau should be traced to this time.

Before Harry Thuku organized the Young Kikuyu Association in 1921 there had been individual protests by people who had suffered from colonial oppression. Mbiyu Koinange later to be promoted to a chief wrote the first letter of complaint in 1914. He was appealing to the governor to return the land taken from his family. ¹² It is noted that such appeals at this time were ignored and sometimes the maker s punished. Thuku's political aim was

to rally the Kenya populace in a bid to overthrow the dictatorship of the colonialists by means of mass protests, demonstrations, petitions and other non-violent means. It ultimately led to violent clashes with the colonial security forces. After these violent demonstrations Thuku's Association was outlawed and the leaders detained. They were exiled without trial. We would like to observe that this was the first time detention without trial was adopted as a control measure to be followed in thousands of later cases to silence opposition.

The Kikuyu Central Association (KCA) was the more aggressive of Kikuyu political formations in demanding for the return of 'stolen lands' and the representation of Africans in the national government. The activities of this organization continued to the early fifties. It was organized by relatively unknown men e.g. Joseph Kan'gethe, Jesse Kariuki, James Beutah and a few others who possessed some skills of mass organization.

At this time we see a period of widening political consciousness among Kenyans. KCA had some contacts with other organizations like The Ukamba Members Association (UMA) and the Taita Hills Association (THA) all of which were fighting a common enemy - colonialism. Due to falling political opposition KCA was suppressed in 1940 as 'Communist Subversive' because of its militant agitation against things like the distribution of land; the Kipande system, the Hut Tax and poll tax; exploitation of African working class; ban of many suspected traditions considered 'savage' by colonialists.

Like its predecessor its leadership was detained and the organization driven underground. At this time we see the stubbornness of the colonial administration. It could not stomach any organized opposition. However this could not have disbanded the organization since it continued to organize mobilization of Africans. It also continued, while underground to raise the people's awareness of their legal rights that were being oppressed by the colonialists. It was finally incorporated with Kenya African Union (KAU) under Jomo Kenyatta's leadership around 1946. KAU was driven to ever increasing militancy by the failure of the colonial administration to generate the necessary reform of African economic and social conditions or to provide the required increase in political representation for the African people. Mau Mau was the product of this growing African, but primarily Kikuyu, alienation from the

existing regime.

From this, two points clearly emerge. Firstly it is quite clear that Mau Mau did not just emerge as an opposition movement. It was the result of spontaneous development of the other organisations, Organisations that had from time to time been outlawed by the colonial administration and their leaders detained. It is with this in mind that we feel that Rosberg and Nottingham in Myth of Mau Mau ¹³ do not give an accurate account of the origin of Mau Mau. They submit that Mau Mau was the creation of misunderstandings between the administration and the Kikuyu who had been settled at Olenguruore to ease congestion of excess African labour in the white highlands. We would probably agree with them if they said that this misunderstanding in the earliest settlement scheme partially, and only to a small extent, contributed to the origin of Mau Mau. We have made it quite clear above that Africans had started to express their dissatisfaction to the colonial administration quite early. Since the grievances intensified and the populace continually became aware of the legal rights, opposition grew. Organized opposition which created the basis of Mau Mau started with Thuku's organization.

The second point one may want to observe is that people behind the opposition movements were determined to carry it forward despite the odds that met with their endeavours. Detention of leaders did not deter others from continuing with the activities while underground. Probably this strong will to oppose the white administration came from the general insecurity that hang on the Africans. Such frustrations lead to desperation. And in desperation one will do anything to overcome the problem. Perhaps Tom Mbotela gives the best summary of how the African felt at this time.

"At present the African lives in fear of bloody wars, and of the police and of the intimidation of the European settlers and the government officials. He lives in fear that his land has been left after the robbery of the white man may be taken at the point of a gun; he is insecure while he resides on his land that is not recognized by the British as legally his; he is insecure in European employment as he can be discharged at any time; he is insecure in that each employment he has, has no social word, he lives at the present in fear and insecurity" ¹⁴.

From 1952 when the Emergency was declared we see a situation where the settlers and whites in general are put on the defensive. They feel that they must protect their interests and at the same time up-root African Nationalism. It is both ironical and paradoxical that even with such an aim of silencing African nationalism they were not and had never been prepared to negotiate with Africans. D.P. Songh in A case study of Nationalism¹⁵ says that Kenyatta and Mbiyu Koinange made unsuccessful attempt 'to ensure a peaceful transition to African self-government by opening a fresh dialogue'¹⁶ with the British Colonialists in London and settler interests in Kenya. Also Mbiyu and Ochieng Aneko were sent to London to explain KAU's policy to the colonial office. The colonial office ignored them and refused to see them. The colonial secretary abusively dismissed them as 'irresponsible black monkeys'.

After these failures to persuade the colonialists to grant the Africans their rights or leave room for negotiations made the African militants and other patriots openly advocate a violent uprising against the British. Kaggia explains:-

"The collection of guns was accelerated and our intelligence network strengthened. The Mau Mau Central Committee (which had now been established) authorized more and more aggressive methods and activities"¹⁷.

The militants consolidated their hold among the working class in Nairobi and the squatters of the Rift Valley. In fact most of the recruiting in the Rift Valley was done by squatters leaving in European farms. To a great extent the militants had the support of the great majority of peasant masses in Central Kenya - whose grievances over land expropriation was intensified by the growing land shortage in the reserve, the increasing unequal distribution of land and the refusal of government to award more land or to secure Kikuyu rights to existing land.

We therefore observe that it appears, the basic aim of Mau Mau was not to create a movement of a particular class or nationality, but a movement which united the ranks of the workers, peasants, members of the petty bourgeois and other patriotic elements who were determined to fight colonialism and imperialism for national independence and the return of illegally seized lands.

With the declaration of the Emergency by the government with the support of the white settlers in Kenya an attack was launched on

Mau Mau. By this time the colonial administration was both impatient and desperate to fight the spirit of ^{insurgency} emergency. The administration resulted into basically undiluted methods contrary to Natural Justice. People were given capital punishment for not very serious crimes like being found in possession of ammunition. In fact in 1954 the rate of hangings had reached a peak of 50 per month. 18

Detentions on mere suspicion that one has committed, or is to commit, a crime were the order of the day. The colonialists justified this on the basis that the courts could not try such a large number of suspects. It therefore embarked on a screening exercise. The bitter part was that it was for the people to establish their innocence when confronted by government agents. Unco-operative people and those not liked by the screeners were detained. 19

Collective punishments were established to deal with both active and passive Mau Mau supporters. Such punishments were inflicted on everyone. As an illustration there are many living marks found in the former villages in Nyeri. Trenches of immense depth and width were dug - firstly as a punishment to the local people for supporting Mau Mau and secondly to segregate Mau Mau militants from the people living in the villages 20.

Also as a form of collective punishment the administration confiscated a lot of property. In the published returns of 1953 over 100 bicycles, just under 100 donkeys, over 6,000 cattle, and 22,000 sheep were confiscated. By 1956 the numbers had already doubled. 21

What had an ^{even} ~~area~~ bigger impact and drastic effects was the confiscation of land. The Forfeiture of Lands Ordinance was given royal assent in 1954. This act had been strongly opposed by the nominated African members but contrastingly supported by the European members who thought it had not gone far enough. 22 This was characteristic of the two standards that existed at this time. The whites were interested only in furthering their own interests by continuing to dominate while the Africans were determined to overthrow the dominant whites and take political power. An amendment was made in 1955 so that such forfeiture of lands could be made less complicated and to affect the 'rank and file of the terrorists' 23. Following this act on 11th July 1955 Native

Land Rights Confiscation Orders were issued against 73 persons from Kiambu District, 99 from Fort Hall; 113 from Nyeri; 39 from Embu. A week later confiscation orders were made against a further 333 people from Kiambu; 769 from Fort Hall (Muran'ga); 1,587 from Nyeri and 408 from Embu. Later 11 from Kiambu; 73 from Nyeri and 5 from Embu. 238

From our interview with local people involved directly as victims and others who saw what happened, we learnt that there was some land confiscated informally by the orders coming from the District Officers and some chiefs in their attempt to cut any support for freedom fighters. We got three cases where such confiscated land was taken by a chief. We were told there ^{were} other cases of a similar nature. Given that there were such informal land confiscations that were not made under the Native Land Confiscation Orders, then the figures available do not reflect the ^{true} position. We observe that the figures represent only what was confiscated and recorded from official sources.

The issue of land confiscation is to be studied together with the 1956 Native Land Tenure Rules which were passed as a first step in putting land reform on a legal basis. The rules formed the legal basis for the process of land consolidation. The rules firstly applied to central province where consolidation was used both as a land reform process - by establishing economic parcels and as a punitive measure for Mau Mau militants. During the process of land consolidation any lands that had been confiscated were given to the loyalists as rewards for the assistance. It is therefore little wonder that Sovenson reveals that prior to independence the Luo regarded land consolidation as a punishment inflicted on the Kikuyu community for their rebellion 24.

In 1957 following the desire to have a proper land order there was passed the African Courts (Suspension of Land Suits) ordinance No. of 1957. This ordinance was supposed to back up the 1956 Tenure rules. It suspended all suits in African lands and a committee was appointed to draw up new law which was, if necessary to depart from the principle of the earlier law 25. The committee incorporated their recommendations into two draft bills which eventually became the Native Lands Registration and (No. 27 of 1959) and the Land Control (Native Lands) and (No. 28 of 1959).

The registration ordinance was applied to any area of the African lands wherever it appeared expedient to the Minister that ascertainment, consolidation and registration of rights and titles to land should take place in that area. In 1963 the provisions in this act that related to registration were enacted as the Registered Land Act, cap 300 while the other provisions of the 1959 ordinance remained as the Land Adjudication Act, 1968.

On the same side with the colonialists were the loyalists. Those were people who were direct beneficiaries of the colonial administration. For our purposes we would like to look at the loyalists in two groups. The upper class loyalists included Africans who had openly professed their strong support to the colonial administration. It included Africans in high positions of authority like senior chiefs, chiefs and their assistants. The lower class loyalists were so in the eyes of the colonial administration just because they did not support the armed struggle (however, some of the seeming loyalists in this category were collaborators of Mau Mau). Amongst this class were home guards, informers (the black ones), screeners, black policemen and the like.

Generally it was the rule that loyalists were wealthy or sub-wealthy people in the understanding of those days. It has already been pointed out that in the latter years of the 50's the government was set to reward them for this loyalty. Land consolidation became an essential element in the government campaign to create a stable middle class of politically conservative Kikuyu who would become a force against the future militant nationalism²⁵. A District Commission at Fort Hall wrote that it was:-

"Important to seize the opportunity of rewarding loyalists by giving them larger and better holdings if we are to help them on our side" he continued

"and to reward them for their outstanding work, at the same time showing the rest that Mau Mau does not pay, we cannot do better than to help them with their land"²⁷.

It is also noted that the government took advantage of the Emergency to coerce people into villages; this provided a good opportunity for land consolidation. The earliest land consolidation was done in Nyeri in 1955. This met with opposition (although weak since

most of the militants were either in detention or in the forest) and is also a fact that ~~that~~ land consolidation greatly benefited the loyalists, as already indicated. One might also want to note that it was also those loyalists who were on the adjudication committees that determined what fragments went where.

However, let it not be assumed that it was all the loyalists who benefited from the prevailing circumstances. Surely the ones that enriched themselves greatly or who accumulated large pieces of consolidated land were the upper class loyalists. To a certain extent, also the middle class loyalists. Among the lower class loyalists only some directly benefitted materially. It would therefore not be an understatement if we submitted that most of the lower class loyalists are today peasants and workers of the lowest class in the community. Therefore, without condoning the role they played to enhance and perpetuate colonial administration, it would be wrong to condemn them wholesale - together with the middle and upper class loyalists.

Dedan Kimathi was the man behind the armed struggle. He so well organized his men in the forest and outside that for three years they had made considerable success in reducing the whitemans position. They had proven themselves a force against colonialism. It would appear that his leadership of the Mau Mau, demonstrated by skilful cordination ~~of~~ activities, gave the movement its life - blood since the Mau Mau as an organized team did not have to live for long after the capture of Dedan Kimathi in 1957. After this time it had started to disintegrate gradually due to the massive inroads made into it by the colonialists. Despite the apparent weakening of the Mau Mau by the colonialists towards the late 50's we may confidently submit that they speeded up the constitutional developments. Some whites had been so ^{scared} ~~fearred~~ by the atrocities done by the Mau Mau that they had started to soften up. Others had started to see the reality and hence became liberals. They Advocated for more rights to the Africans.

By mid - 1960 the European community was divided into two fairly ~~fairly~~ distinct groupings. The biggest being the conservatives who did not accommodate any changes in the political framework. They had thir major support from important right wing groups in

England. Most of this group survived after independence as settlers. The liberals were members of the new Kenya group. The main support was from commercial backing and close connections in government. The conflicts of the two groups emerged in the first Lancaster Constitutional Conference in 1960.

At Lancaster House the African delegates had appeared, at least verbally, united on a hard line policy on land hinting towards radical reforms in the Highlands. Nationalists like Dr. Kiano and Tom Mboya opposed any bill of rights designed to protect the white Highlands. They argued that any such bill must not be used to perpetuate land injustices.

By this time KANU and KADU had emerged. Their main differences were on land matters and the general administration of the country. KANU was insisting on a hard line land policy while KADU was softer in terms. Later on when a coalition was contemplated between the two parties the issue of land was rather difficult to solve. When the committee (which was administering the merger) on August 23 adopted the following approach:-

"The committee agreed that land titles including tribal rights and private property rights shall be respected and safeguarded in the interests of the people of Kenya; and that fair compensation shall be paid for any land acquired by any future government for public purposes e.g. schools, hospitals, etc" 28

It is quite clear that this was the origin of S. 75 of the constitution of Kenya that sanctifies private property. This was the first mistake that the negotiations at Lancaster House Conference made. They were so eager to get political independence that they lost many other things in the process. It might not be an overstatement if one said that they got independence at the expense of their land rights. They conceded on the issue that Africans held so dear. The colonial office was determined to give independence on terms that benefitted the whites. It did not give independence with honesty and good faith. Haberson puts it:-

"The colonial office prepared for independence by ministering to the fears of European settlers rather than by helping African leaders to mount social and economic programmes in line with their own nation-building conception" 29.

He is saying that the colonial office in the negotiations had only the interests of the whites in mind and none for the Africans. To

them justice had been done if the European community was not set to lose anything in a new independent Kenya. For example the land transfer programme was calculated to serve the settler and white interests in two ways; firstly the Africans were not to receive land free. This meant that the Africans wishing to take land in the white Highlands would have to pay for it. This amounted to compensating settlers whose lands were taken over. Oginga Odinga and Bildad Kaggia strongly objected to such compensation. They argued that it was unfair to compensate the whites taking into consideration that they had all that time exploited the land and cheap African labour with impunity and in any case the lands had originally been 'stolen' from the Africans.

Secondly, it was agreed that extensive resettlement schemes take place prior to independence. This was calculated so as to give white settlers time to learn and adjust to the new African government. Although the settlement schemes will be dealt with in the next chapter it should be mentioned in passing that they worked only to a small degree since they were calculated to serve European interests. Haberson ³⁰ stresses the 'sensitivity' and 'preoccupation' of the colonial office and British government to European political demands and fears and includes that the 'financing, timing and structuring of land resettlement' was designed to serve 'European interests'.

In conclusion we may observe that the colonialists knew that the African was strongly attached to his soil right at the time of his settlement in Kenya. In 1929 there was a debate, just as an illustration, on colonial policy in Kenya in the British House of Commons in which one of the members of parliament, Mr. Charles Buxton said -

"On the question of land, I could only point out that anxiety about losing their land is the most disturbing of all the disturbing influences in the minds of the natives of Kenya" ³¹.

We also observe that the Freedom Fighters played a very large part in the decolonization of Kenya though it became a revolt and not a revolution. It did not result in the complete overthrow of the political system. Also, its localised nature prevented it from becoming a national revolt. It was therefore largely tribal. In fact although the colonialists were unable to completely wipe it out they managed to confine it to the Kikuyu. On top of that it was

a spontaneous affair not having any central master plan. This is contrary to what some government apologists claimed. The disjointed nature of the events of the period 1947-1952 support such an interpretation.

The freedom fighters were largely patriotic men and women who gave themselves out for their country. They hoped to regain the 'stolen lands' from the colonists and eventually to attain political freedom. They were not terrorists or murderers and if their armed struggle looked like 'a civil war' then this was only incidental. During the struggle many lives were lost. The colonialists put it at 11,000 Africans killed but many whites on Mau Mau say that this is a very remote figure. Conservative estimates put it that at least 150,000 Kenyans were killed, 250,000 were maimed for life and 400,000 were left homeless.

Also many of the heroes had their lands confiscated by the government while they were in the forests. Some of the land was taken by the upper class loyalists and the rest distributed to the general body of loyalists. This confiscation was given a legal backing and further facilitated by the land consolidation.

In addition most of the local people in the reserves of central province and in towns, particularly Nairobi, were tortured, detained and punished as a measure to intimidate ~~them~~ and make them renounce the freedom fighters. Most of them did not.³² ~~NO~~

All those sufferings were withstood by the victims in the name of Freedom and Land. The question now to be investigated is whether the ideals of the Freedom Fighters, and others who suffered, have been met. This will be examined in the next chapter. Karigo Muchai a former Mau Mau cadre gives an illustration of the high expectations that were nursed by Freedom Fighters at the coming of independence.

"I do not know what the future has in store for me. I can only hope that with Kenya's independence my suffering of the past ten years will somehow be rewarded. I want only a decent job or a piece of land to cultivate so that I can provide for my family and see to it that my children go to school and have an opportunity for a better, richer life than my own. These are the things we (Kenyans) fought and died for. I only pray

that that after independence our children will not be forced to fight again" 33

The question ^{is} ~~is~~ whether this happened at the daw/ning of independence.

WHAT DID INDEPENDENCE BRING?

"Independence was granted on the basis of the continuation of the system, and not its destruction"

AHMED MOHIDDIN

Development

In the 1966-70 Kenya Government ^{Development} Plan the independent government policies were set out. As far as the land Policy was concerned the development plan just embodied what had been started in 1960 I.e. the establishment of settlement schemes of High Density, Low Density and Co-operative farms in addition to the normal land transfers from White to Africans in the former white Highlans. High Density schemes were aimed at relieving population pressure in over crowded African land units by accomodating the greatest possible number of small holders within a given settlement area.²

On the issues of land transfer programmes in the scheduled Areas paragraph 62 of the plan provided that the same would be carried on, on a willing buyer, willing seller basis basing on the 1959 market prices as agreed by the Kenya Government and the Bristish Government.

The land resettlement schemes that were inherited by the independent gorvernment can be briefly summarised as follows.

(a) Assisted owner schemes. These were for experienced farmers with substancial capital who bought the farm direct from the seller. The Scheme was to settle 1,000 farmers who were expected to reach an income of £250 per annum. Most of the people who fell under this class were the 'Nationalists' and wealthy businessmen. The land was a minimum of 100 acres and included w was the farm house and other structures. These farms generated high incomes.

(b) A small holder low density settlement schemes (LDS) for farmers with some funds. This scheme was to accomodate 6,000 experienced small holders, who should reach an income target of F100 per annum. Average acreage was 40 per person.

(c) A small holder High Density schemes (HDS) to settle 26,000 families with limited capital and agricultural knowledge. Their income target was set at £25-40. A total of 970,000 acres were set aside for this purpose. Unlike the other two categories where most of the land was bought on a willing buyer - willing seller relationship most of the HDS land was allocated by the government.

Most of the money advanced as loans to buy the land came from the British government. On the HDS the farmer received 100% in form of a loan while on the LDS he had to provide 10% of the purchasing price from his own funds. The loan was to be paid at 6.5% interest and over 30 years. It was ~~secured~~^{Secured} against the land. The Commonwealth Development fund and the Kenya Government also produced funds.

Up to this time the land available for resettlement was already insufficient to satisfy African demands. It is for this reason that as soon as property rights (present day section 75 of the constitution) were agreed to in the Lancaster House Conference the British government introduced the Million Acre Scheme, a new high Density scheme to settle an additional 35,000 African families. Its aim was to settle Africans on 2,000 acres of land every year for a period of 5 years - hence the name Million Acre scheme. This scheme was completed in the period ending 1973 and costed K£30 million. Unfortunately the target of one million acres was not reached because of the problems that beset settlement schemes. Only half that acreage i.e. 500,000 were involved and the scheme was also known as the Marambee Settlement Scheme at this time.³ This high Density Scheme was meant to resettle the landless and unemployed so as to get an income, after loan repayment of K£25-70.

The independent governments policy of uncontrolled purchasing of land in the Highlands had its critics. Among them was Kaggia. Such people argued that such uncontrolled purchases of large farms by wealthy Africans would exclude those who were genuinely poor to buy and would also lead to a 'Kulek class' of large scale African farmers simply replacing the departing white settlers. Kaggia's group instead proposed that land should be nationalised or farmed on the basis of state owned co-operatives. Kaggia seems to have been a single voice in the Wilderness. His fellow politicians could not risk losing the large farms they had acquired through nationalisation. That is why a motion introduced in Parliament in March, 1965 to limit individual land purchases was defeated by the majority of the House and rejected by the Government.⁴

The government realising the sensitivity of the issue promised in the sessional paper number 10 of 1965, a working party to consider the need and practicability of establishing ceilings on individual ownership of property, and to advise on the machinery for making these effective. Should a ceiling be decided on, it should apply to all agricultural land and not just to the form^{or} White Highlands.⁵ In subsequent years the question quietly fizzled out and moreover no committee was ever established.

In the next Development plan of 1970-74 the government policy on land did not change. The policy of willing buyer willing seller was continued. However, the sub-divisional resettlement and transfer of intact large ^{farm} sales was to be slowed down because of the scarcity of available agricultural development funds.⁶ During the period the policy was strongly criticised. Leading among them was J.M. Kariuki who campaigned for Land ceiling and control of land purchase. Until his assassination on March 2, 1975, he had continued this campaign against the government wishes. In 1972, he called for measures to end the policy that allowed a few privileged people to own thousand of acres of land. While there were people without any. He accused highly placed people in the b government of having plenty of land and still continuing to buy more. J.M.'s subscription to the idea of a land ceiling as a partial solution to landlessness fell on deaf ears. It required a very powerful and selfless politician to tow J.M.'s line for the risk was quite great. J.M. himself knew it and repeatedly said it. So during a period of almost a decade there was very little talk about land ceilings, nationalisation or any other form of controlled purchase of land from the large estate owners. At this time even Africans who had bought more large ^{sale} farms than they needed were selling them out at very high prices.

A renewed talk of a possible positive government land policy came with the accession of President Moi into power. On 16th September, 1978, the president made a pronouncement which seemed, according to the Weekly Review⁷ to be pulling the rug from under the governments previous promise of rejecting the idea of a ceiling on land. He was saying that those who have enough of land should let the ones without have an opportunity to own some. He seemed to be "

"Subscribing to the idea of a ceiling for given the inelastic stock of land in the country and the ever increasing number of people who want to own land, an equitable system of allocating land in Kenya must begin by ignoring any further demands for plots from people owning plots of land" reported the weekly Review.⁸

These words having come from the head of State cannot be taken lightly. He was echoing what had been said before by others who lacked government support. The only disappointing thing is that it has taken two years since the President made that pronouncement but no action has been taken by the government in that direction. In the 1979-83 Development plan⁹ the government has pledged to discourage ownership of large holdings of land suitable for small scale farming. Also absentee landlords and land held for speculative purposes have been affected. Moreover, the establishment of a National land commission to consider all policy issues related to land-with a view to making recommendations that would be studied by the government.¹⁰

Despite all this the government has not taken those steps although more than two years of the development plan have expired. More cloud was formed over the issue by the killing of a motion tabled in Parliament by Koigi Wa Wamwere. By defeating it the government showed that it was not ready to change its land policy yet. The motion read,

"Given that landlessness is going to grow to uncontrollable proportion if the policy of willing-buyer willing-seller is permitted to continue giving more and more land to individuals who are well-to-do this House urges the government that in the sale of any more land, preference be first given to landless groups that have joined together to buy land, rather than to the able rich individuals that have land already, as a matter of public policy to ensure and enhance social justice to the needy"¹¹

MPS who spoke on the motion felt that if adopted and approved it would give the government a much needed safety valve to stabilize the country's political system further. But, after all this, and on behalf of the government, Justus Tipis, rejected the motion in giving no reasons. It was a really bad day for the under-privileged in the Kenya society.

In the following week another question was asked in parliament which appeared to be a follow up of Koigi-Wa-Wamwere's defeated motion. Mr. Kasanga Mulwa sought to know the government's policy on squatters who had been living on large scale farms owned by foreigners for many years. Mulwa also wanted to know whether the government would consider buying such farms for settling the landless instead of leaving them at the mercy of the owners of the farms.¹²

In answer to this question the government was cornered into admitting that it had no defined policy for solving the sensitive squatter problem. In saying this an Assistant Minister in the office of the President, Mr. Muguru had a hard time from back benchers.

During the same week while contributing to the debate of the sessional Paper No. 4 of 1980, Mr. Shikuku (an Assistant Minister for Livestock Development) called for the establishment of a ceiling on land ownership to make available some land to settle squatters. He said

"The time has now come for the government to have a definite land policy"¹³

In conclusion and in our observation we can little make a better submission than that made by the weekly Review.¹⁴

"Judging from the statements made by MPS concerning the sensitive land issue there is little doubt that the matter is going to be a thorn in the governments flesh in Parliament for quite some time."

That being the picture in the Highlands, what happened in the central At this juncture one wishes to pause and evaluate how the independent Provinces? Even here, some wealthy men purchased land that belonged in

White settlers. Large estates still exist in Kiambu district, particularly

... areas. In many cases... are to be found in the Highlands area. This means that landlessness has continued to exist. At independence many people thought that those estates in these areas would be divided into the landless to ease the conditions of land shortages. It is still the government's land policies have helped solve the landlessmen problems. Firstly, only five per cent of the Highlands was taken over by small scale farmer, but most of the coffee, tea and sisal estates and the cattle ranches remained intact. What had changed was the nationalities of the owners. Wealthy, indigenous Kenyans, including several men well known in Public life, bought farms from Europeans. The land Bank which advanced loans in the 1930's to Europeans now rent money to the New farmers. Our observation is supported by data in the table below:-

TOTAL NUMBER OF LAND HOLDINGS IN THE WHITE HIGHLANDS

YEAR	1954	1960	1967	1970
NUMBER OF HOLDINGS IN TOTAL	3154	3609	2745	3175

SOURCES: Statistical Abstracts 1955-1970

From this table we would want to make only a few observations. Firstly the land ownership pattern in the former white Highlands never changed. This then proves true our observation that what happened was that Africans entered into the shoes of the Whites at independence. In addition, some white farmers still hang on to their holdings because of the lack of a government policy to eject them out so that the lands can be taken over by indigenous Africans. As already mentioned resettlement schemes touched not more than 5% of the Highlands.

Secondly, though this might not be revealed in the table it was the areas of highest productivity in the former Highlands which were not affected by resettlement schemes. The core of large scale mixed farming, the basis of the conflicts over the distribution of economic resources has been retained.

That being the picture in the Highlands, what happened in the central Province? Even here, some wealthy men purchased land that belonged to White settlers. Large estates still exist in Kiambu district, particularly

Limuru area. In Nyeri large estates are to be found in the Mueiga area. This means that landlessness has continued to escalate. At independence many people thought that those estates in these areas would be distributed to the landless to ease the problems of land shortage. It is still a shame to note that there are still such large farms in central province where landlessness is about the highest in the Republic. For example in one coffee co-operative society in Murang'a, 14% of the total members of the Society collected 64% of the pay out in 1970/71. The realisation of this and the fact that only 25% of the farmers in Murang'a were members of a coffee co-operative at all indicates two things. First, that there are some people in Central Province (like other parts of the Republic) who are extremely wealthy due to accumulation of land and the cultivation of cash crops therein. Secondly, there are often people in Central Province - who constitute the majority - who are very poor - they do not have land and therefore, will remain poor because they cannot cultivate cash crops. ¹⁵ on the ground today. The reason for this is that many peasant farmers could not

Due to this gigantic problem of landlessness in Central Province the main aims of land consolidation has been defeated. Land was to be registered into what they called economic units of 7.5 acres as a minimum.

In those farms it was envisaged that cash crops would grow in addition to subsistence crops just to keep the farmer self-sufficient in food and a little money from the cash crop. Today, land has been subdivided to such an extent that the former picture during consolidation no longer

pertains. In practice 86% of all holdings registered in Central Province were less than 7.5 acres. ¹⁶ This was done to meet the realities of survival

in this area. In Kambu District 20% of all land holdings registered in central province were less than 7.5 acres. This was done to meet the realities of survival in this area. In Kiambu District 20% of all

land holdings in 1970 were under one acre in size, 35% were under ~~one~~ ^{two} acres in size, 77% were under 6 acres. ¹⁷ In Nyeri, in an average sub-location

that was researched and which appears to be representative of the others 30-40% of adult males were landless in the years immediately after independence. Average land holding was 4.4 acres and only 20% of the owners of land had more than 6 acres.¹⁸ The question then is if this was the situation after independence what about now when the population of this area has more than doubled. The results are shocking.

Secondly, government policy failed to reduce landlessness significantly because of three other reasons. In the first place the settlement schemes involved too few people compared to the number of people who were landless, and still are, in the heavily populated areas of Kenya. By 1970 only 45,000 African families had been resettled in various schemes with the biggest being the high Density Scheme - Million Acre Schemes. On top of this 1,200 prosperous Kenyans purchased an approximate 460,000¹⁹ hectares. By any standards this is a small number. We also hasten to add that these figures could be held not as a true reflection of ownership patterns of the schemes as it is, ^{on the ground today.} The reason for this is that many peasant farmers could not meet the financial obligations attached to the plots and therefore, they ended up selling them to wealthy people. The result was that wealthy people ended up by owning more than enough plots in the schemes.

We also feel that it was mere hypocrisy, and a deliberate attempt to prevent African influx into the former Highlands, to set up some settlement schemes in the areas where landlessness was most acute. For example, 153,000 acres were set aside in Central Province for resettlement purposes. One notes that Central Province should have been the last place for such a venture.

Another problem of resettlement schemes was their membership. One would like to think of those people that were selected to take up lands there. What criteria was used? Is it only the genuinely landless

and unemployed that got parcels there or even wealthy and already landed people. Many people have expressed concern that the people who got parcels were generally not all landless. Some people had large parcels elsewhere. This is very disheartening since it destroys the essence of such schemes i.e. to cater for the problem of landlessness with a view to meet African land grievances. For example: at one time J.M. Kariuki a strong critic of such unfairness told his fellow Parliamentarians,

"The other point I would like to put is in connection with five-acre plots at Olkalou Salient [a settlement scheme] you find some people who are District Commissioners owning plots there and yet they have been given other plots elsewhere. What a greedy situation." 20

He would like to summarise this bit on landlessness by taking some words from Volker Vinnai, which are representative of popular public feeling.

However, the establishment of an African propertied class which includes a segment of absentee landlords closely tied to the administration, [He says that most of the leading politicians in Kenya are also large landowners. Access to the land records prove the large landholdings of the former President or members of the Cabinet. He says, and rightly so, that to an outsider this would be virtually impossible], is a source of political instability. For the landless African there is only a small difference between the white Settlers, and the African farmers owning large plots of Land."

The type of resentment Vinnai is thinking of was expressed by the renewed debate on the question of a land ceiling which an individual can own. Even the official report of the select Committee on unemployment of December 1970 advocates such a ceiling.²³ The recommendations are also presented in the International Labour Organisation Report which pleaded for certain changes.²⁴

So far nothing has been heard about the former freedom fighters in independent Kenya. Their problem should be seen against the broad background that has already been set out above. Particularly, in this context, as integrated into the general land problem in Kenya. However, since the paper concerns itself on their study, let it suffice to give them (freedom fighters) some mention.

At independence most of the freedom fighters had emerged from the forest from where they had been fighting the war for freedom. Infact, most of them came out around 1960 - 1962. This, therefore, meant that they were left out by the resettlement programmes of this time for two reasons. Firstly, the settlement schemes that were implemented before

independence were done so by the colonial government. The colonial government still had a grudge against the freedom fighters and, therefore, couldn't allow them to engage themselves in the schemes. The colonial administration had never been sympathetic to freedom fighters even when independence was imminent. Secondly, most the freedom fighters were still in the forest and therefore, couldn't apply for those schemes. ~~In any case those that had returned home expected the independent government to give them consideration not just as landless people but as freedom fighters were still in the forest and therefore, couldn't apply for those schemes.~~ In any case those that had returned home expected the independent government to give them consideration not just as landless people but as freedom fighters. They surely expected a slice of the Uhuru Cake.

After independence the position of the freedom fighters did not change much. Only a few of them were absorbed in the resettlement schemes of this time. Most of them were not and therefore, continued to be landless. One might want to ask; Why this state of affairs? The reasons are simple.

Firstly, it is quite clear by now that when ^{in the forest the freedom fighters nursed} some ideals which in fact gave them the spirit to continue with the bloody war. One of those ideals was the expectation that the white man would no longer be in control and that all his institutions would go. They expected an African government that would give its priority to African requirements, a government which would be just to everybody; an end to years of colonial bondage. When they returned from the forest and started living a normal life after independence, they saw settlement schemes as a very simple solution to the land problem. They had expected a complete end to landlessness by total replacement of the Whites in the Highlands by Africans. Their expectations were so high that it would not be an over-estimation to call them revolutionary. That is why many of them were disillusioned, and most of them ~~were still and~~ still are, by the issue of land transfer. They did not want to involve themselves in the settlement schemes because to them a lasting land solution was still in the pipeline. The settlement schemes were just a temporary solution preceding a revolutionization of land ownership.

There were those other ex-freedom fighters whose lands had been confiscated for their Mau Mau militancy. This was supposed to punish the ones already in the forest and further to discourage would be joiners. The only hope that they had (those whose lands were confiscated) was that the independent African government would ensure that their confiscated lands would be returned, failing this that they would be well compensated with other plots or in other terms that they would agree with the African government. To such people mere settlement in a resettlement

In fact who were loyalists or sons of loyalists and, therefore, opposed scheme would little compensate their confiscated land. Their hope lay in a radical land reform. We should hasten to correct any impression that the ex-freedom fighters were claiming more, and big, privileges than the populace just because they were involved in the liberation war. In fact they had said many times that they fought for independence to give Africans equal rights with everyone else. They did not think that their victory should just be rewarded by selfishly giving them the very best. To them what was most important was the respect of their ideals which had made them give their lives for the people of Kenya. Recognition and appreciation of their role was quite satisfactory. However, it would be naive to completely rule out any selfish elements in a few of them. They were surely some who expected reward along those lines but the majority seemed to advocate for total equality and improvement of the living conditions of the African once liberated from colonial bondage. It is those ex-freedom fighters who took up the struggle with noble aims that are particularly bitter by the failure of a complete overhaul of land ownership. Those that gave up their lives for this course and had their small parcels confiscated by the colonial government and later dished out to loyalists during the process of land consolidation. One of them told us:

"I have nothing to say because there is no way I can express myself. You can only ask me a few questions because I am still very bitter. I went to the forest in 1954 and saw many of my brothers killed by the the enemy. I should also tell you that I really expected much after independence. This did not happen because I have never been compensated for my land that was confiscated by the colonial government."²⁵

Secondly, ex-freedom fighters were not involved in settlement schemes after independence because they had very little say in the independent Africa government. The people who took up leadership were those that had been involved in the constitutional negotiations at Lancaster House Conference and others who generally never participated in the forest war. As a result this group was not very agreeable with forest fighters who insisted on a complete overhaul of land ownership. To them property rights had to be respected as guaranteed in what they called an independence constitution. As a result the two groups tended to have little and hidden jealousies against each other. Because of these differences between the two groups, the one that seized power i.e. those that were involved in the running of the independent government over-shone the forest heroes; and the few ex-freedom fighters that were absorbed in the government constituted a very small minority²⁶ pitied against other politicians, some

in fact who were loyalists or sons of loyalists and, therefore, opposed in toto to ex-freedom fighters. We also note that there was no way that ex-freedom fighters. We also note that there was no way that ex-freedom fighters could protest as an united group because the organization that they had had in the forest was no more. It had been destroyed by their involvement in normal life and hence little contact between themselves unlike what used to happen in the forests. Also, the chain of command that they had in the forest had been destroyed. People like Field Marshal Kimathi were no more. Similarly, with many other Generals who had either been killed, disappeared or been absorbed into the government.²⁷

We can therefore, submit that resettlement schemes both before and after independence or any other land transfers did not solve the problem of ex-freedom fighters in connection with land. It was a big disappointment to ex-freedom fighters. According to them land matters were pushed ahead on political grounds with rapidity that reminded them of consolidation in Central Province. Those two exercises i.e., consolidation and resettlement schemes conveniently left out the ex-freedom fighters in the cold. At least the majority ^{and particularly those that actually took part in the Mau Mau War against Colonialism} and imperialism were left out - they are still out up to today. Nevertheless, let us mention one time the government referred to them -- though it conveniently and deliberately ignored them later. This appeared to be the only significant mention although unsuccessful.

This was at independence when the Prime Minister, Jomo Kenyatta, directed that special arrangements be made for forest fighters who were involved in Mau Mau and servicemen (presumably including loyalists) to be given European farms as a priority in the Rift Valley. Together with them the Prime Minister included labourers that had worked for those farms for a period exceeding four years. However, the pressure of landlessness and the partial autonomy given the regions under the Majimbo constitution were enough to block the implementation of this noble directive.²⁸

Land consolidation does not appear to many people, particularly the poorer people, to have been in their immediate interests and while the government might seem to see a direct relationship between such crops and consolidation, it is quite probable that many people might find themselves without any land whatsoever.

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CONCLUSION / RECOMMENDATIONS

The issue of land is the most explosive issue in Kenya today. It is land which galvanised Africans into an unyielding and eventually successful struggle against British colonialism in the country and it is land which has in recent times provided grounds for grumbling from a large section of the Kenya Public about the inequitable distribution of wealth in post-colonial Kenya. It is for this reason that we feel that the government, so far, has not shown enough interest in matters pertaining to land. We feel that this issue should be discussed and recommendations implemented without delay.

Turning on what land reforms that have been implemented we should want to conclude that the basic political significance of these land reforms has been that their timing, structure, and objectives have been decisively influenced by European settlers, the colonial administration and international lending agencies. This is why we confidently assert that they never resolved, to any notable degree, the land problems in Kenya. Black settlers replaced the White settlers in the Highlands and no substantial changes ever occurred. The land reforms should have been tailored to fit the expectations of African nationalism as political advance itself. The Africans have argued that Europeans gained their land without their consent and without payment of suitable compensation.

Land consolidation does not appear to many people, particularly the poorer people, to have been in their immediate interests and while the government might seem to see a direct relationship between cash crops and consolidation, it is quite probable that many people might find themselves without any land whatsoever. This is the expectation of the freedom fighters.

It would, however, be ill-advised for any disruption of the existing consolidated parcels in areas like Central Province. We have in mind the small parcels of up to a minimum of 10 hectares. The reason is that people have learnt to live in the prevailing conditions since the late 50's when consolidation was done. It would be hypocrisy to think of land reform in such densely populated places where landlessness is astronomically high. Reform is only practically possible in areas where large estates of land exist, particularly in the former White Highlands.

On landlessness we may conclude by saying that there is developing a hierarchy of peasant farmers with a few rich men forming the core of the rural capitalist class. The land reform of the 1950's which have been carried through into independence have not even begun to solve the land shortage problem for the great majority of poor peasants.

On the relationship of freedom fighters and land we pointed out in the introduction that the matter cannot be studied in the air. It has to be studied together with the general landlessness in Kenya today. That is why when we give our recommendations we shall not endeavour to completely separate the ex-freedom fighters, though a provision for them is made, from the bulk of landless Kenyans. The problem is so interwoven that it would be impossible to separate them without making blunders.

The main reason for this approach is the fact that the freedom fighters did not engage in the armed struggle for their personal selfish interests but were patriotic men and women who were concerned for the welfare of African Kenyans. A solution to the issue of land ownership patterns would undoubtedly meet the expectations of the freedom fighters.

People who gave up their lives for the ideals of land and Uhuru. Their disenchantment today is quite great because of the failure to attain a radical land reform after independence despite their great sacrifices. H. Wachanga, the former Mau Mau Secretary General enlists the hopelessness of the situation seen from the perspective of ex-freedom fighters.

"Today one can see thousand - acre farms owned by absentee African landlords while the majority of the ex-freedom fighters do not have enough land to grow coffee for school fees and taxes. Though they sacrificed, fought and died for land, their hunger is not satisfied"

He continues

"Unfortunately, to a few of the political leaders, freedom meant the right to exploit the Wananchi and to fill the vacuum left by the departing colonialists with their own capital ventures. Those few politicians are also the absentee landlords who have used the land vacated by the European settlers as the cornerstone of their capital accumulation"¹

Today the government has admitted that it does not have a completely defined land policy. It appears that uncontrolled purchase by a willing buyer from a willing seller is still open. There is little concern that has been shown in recent years to cater for the landless. Such concern is very necessary both to maintain our stability and peace. A friend of mine jokingly narrated to me "We are five brothers in my home and my father has 2.5 acres of land in Nyeri. That means if we divide it up it will be 0.5 of an acre. This is enough for the construction of a house. Supposing I get an equal number of sons - and supposing my sons each get three sons.

nationalisation of land as has been suggested in some quarters.

At this juncture it will be hard to stand a Kenya where a man has 1,000 acres and another without a space enough for the site of his grave".

Although this might appear as a joke - tell us - isn't it impossible to stop chaos at such a time? Any serious concern will have to come from Kenyan leaders, who unfortunately in the eyes of the landless are wealthy people with sufficient 'ownership' interests in the former White Highlands. They will therefore take long to agree to relinquish their interests in those potentially fertile lands. A land reform that we are advocating can only be achieved by drastic changes which can be brought about only by selfless leaders who are patriotic and have the concern of the Kenya nation at heart. The recent lively debates in the Kenya Parliament on issues of land are rather encouraging.

RECOMMENDATIONS

In giving our recommendations we note that other unimplemented recommendations have already been given on land issues. We single out the International Labour Organisation Report that appears to have been very practicable.

In solving the land problem in Kenya we believe that a pragmatic approach should be adopted. We have said that it would be naive to say that there is time that every adult male will own land in Kenya. However, this does not mean that the problem of landlessness and absolute poverty cannot be elevated at least for the majority of people in that class. Kenya is a poor country but with large resources in terms of land. Land which is totally unequally distributed. Some people have amassed great wealth and the majority are very poor. It is for this reason that we believe that the superstructure as it is, is not conducive for widespread nationalisation of land as has been suggested in some quarters.

... a smooth implementation without political chaos. We would recommend, at first, a maximum ceiling of 200 hectares per adult male...

Because of this realisation we think nationalisation, at least for now, is rather theoretical. We adopt the following five recommendations.

1. The government should purchase large plantations of coffee, sisal, tea, sugar cane, wheat etc. We have in mind plantations extending up to thousands of acres. To make this possible the government should form a parastatal body or bodies to run the plantations. Success by other parastatal bodies in private business shows that even these farm running parastatals stand similar chances of success. The reason for this is that this would ensure that the huge profits being pocketed by individuals become public funds which would go into nation building. Such farms would be purchased by the government through the normal procedure and also through seizure of badly managed farms - by the power conferred by the Agriculture Act. To give legal effect to this a law should be passed in line with S.75 of the Constitution (which sanctifies private property). Such a law should also establish a minimum price of Ksh. 500/= per an acre.
2. Ceilings on land ownership. This should be an imperative move to curtail individuals from owning large tracts of land while thousands of people are landless. Also it will ensure increased output because the input per unit will be more than it is now - thereby enhancing output per that unit. It will also provided more employment in addition to easing other problems that go together with land injustices.

We realise that this would be a difficult issue to implement. That is why we advocate a gradual reduction of the ceiling limitation. This would have the advantage of assessing the practicability of the venture and also to ensure a smooth implementation without political chaos. We would recommend, at first, a maximum ceiling of 200 hectares per unit to be owned by one individual.

This should be implemented and studied for five years. After this period of 5 years single holdings should be limited to a maximum of 50 hectares per individual.

(There is no particular way we arrive at those figures but we find them reasonable in the circumstances)

Before any reduction of the ceiling limitation below 50 hectares a period to be legislated upon (not less than 5 years or in excess of 10) should be allowed.

This is to ensure smooth implementation. Tough laws against defaulters should be enacted. It should be made a crime for any single individual, (unless a co-operative society or a company of a specified number of shareholders [to be specified by the law] to own more than one unit of such a holding anywhere in Kenya.

Sentences for defaulters should be custodial and any fine options should be calculated from profits reaped from the illegal holding. To minimize any possibility of corruption or incompetence such cases should be outside the jurisdiction of magistrates but only the High court and the Court of Appeal.

3. In the purchase of land the government should always give priority to co-operative societies. Such co-operative societies should be advanced to purchase 50% of the total value of the land by the government. The purchase price should be controlled to stop any exploitation by the sellers. Members of the society should be allowed to vote as to whether they want to run the farm as a single mechanized unit whereby they get dividends or if they wish to sub-divide it for individual occupation.

4. The government should purchase land from willing sellers and seize badly managed farms. This land should be sub-divided into 10 hectare plots and given to the landless with only small payments from them.

Where absolute poverty exists such payments should not be asked for. The major issue would be for the government to address itself to the genuinely poor and landless. Those people that are landless but rich should be ignored in recruiting members for such settlement schemes for they can get their livelihood through other means. Richness can be construed reasonably.

5. It would be incomplete if we completely ignored the aspect of freedom fighters - the main issue of this paper. As already said if the above recommendations are implemented then ex-freedom fighters will feel that their struggle for independence was justified and worthwhile.

However, we suggest that ex-freedom fighters that are still landless and poor and those whose lands were confiscated during the Emergency should be rewarded for their patriotism; by being given priority in any settlement in government purchased lands as envisaged by recommendation (4) above.

Alternatively, or in addition to that, the government should encourage and assist groups of ex-freedom fighters to form co-operative societies to purchase land. We have in mind Co-operative societies like NDEFFO which has successively bought itself land in the former Highlands. This is the only way that ex-freedom fighters can feel that their sufferings during the struggle for independence for Kenya have been appreciated by the Kenya people today. So far recognition is given to the ex-freedom fighters only in the form of Kenyatta Day - which, anyway, is named after only one nationalist. Not even a monument to our dead heroes or even a street in Nairobi to be named after the Mau Mau movement?

We believe with all sincerity that those our recommendations are practical and capable of implementation in capitalist Kenya today.

However, this will only be possible if our leaders have the Welfare of Kenyans and the children of tomorrow at heart. The President has repeatedly said that the government is fully committed, to the welfare of Kenya peoples and the children of tomorrow. Therefore, though waiting to see, we still feel that there is still hope for a better tommorrow.

1919 pp. 91-92

1297 21 73 at 78 (High Court of Kenya)

1911 20 12 at 34

1911 20 12 at 34 (Kenya Gazette, Nairobi)

1910 p. 17

1910 20 12 at 34 (Kenya Gazette, Nairobi, 1910 p. 17 - 19)

(1923) 9(1) 127

ibid

ibid

The colonial administration started imposing their territorial systems in the reserves in 1930 when the first territorial system was introduced in Nyeri district. The aim was to divide the land into fragments to be given to individuals as their own. The final order could be issued after a title to reserve a freehold title holder.

FOOTNOTES CHAPTER 1

- 0 7 EALR 30
- 1 Ghai & McAuslan, Public Law and Political Change In Kenya, Nairobi p. 506 -507
- 2 (1914) 5 EALR 70
- 3 Ibid p. 92
- 4 Ibid pp. 91-92
- 5 Supra
- 6 1897 ZLR 73 at 78 (High Court of Bombay)
- 7 Ghai & McAuslan p. 34
- 8 Jomo Kenyatta, Facing Mount Kenya, Nairobi p. 45
- 9 Ibid p. 47
- 10. Sorrenson, Land Reform in kikuyu Country, OUP Nairobi, 1968 p 251 - 252
- 11 (1923) 9(2) KLR 102
- 12 Ibid
- 13 Ibid
- 14 The colonial administration started imposing their tenurial systems in the reserves in 1956 when the first organized consolidation programme was started in Nyeri District. The aim was to consolidate all fragments belonging to an individual so that the rightful owner could be issued with a title to become a freehold title holder.

FOOTNOTES - CHAPTER 2

- 1 The colonial administration illustrated this by the appointment of Africans to the Legislative Council. Eliud Mathu, the first such nominee was appointed in 1944.
- 2 Most of them had accumulated a lot of wealth and also due to the support of the colonial administration they were not liked by the majority of the people. Particularly those that took an active part in perpetuating colonial rule. It would be more precise to submit that most loyalists were ineffect fighting the Freedom Fighters.
- 3 Nation Building in Kenya Nairobi, 1970 P. 23
- 4 Land Reform in Kikuyu Country OUP, Nairobi 1968 P. 109
- 5 The Urban Guerilla; Richmond, Canada P. 17
58. We interviewed many people but let it suffice to give only a few names - Isaac Kibe, Joseph Maina, Karani and Mwangi wa Kiarie.
- 6 The Swords of Kirinyaga p. (XVII)
- 7 Ibid p. XVIII
- 8 Oginga Odinga, Not Yet Uhuru, p. 116, 119
- 9 Ibid p. 119 - 120
- 10 Bildad Kaggia, Roots of Freedom 1921 - 1963, Nairobi p. 113
- 11 Nation Building in Kenya p. 3
12. A copy of this letter is to be found in D.O Kiambu confidential correspondence, 1910 - 19, enclosure in Northcole to Hobley, 6/4/1914.
- 13 p. 248 - 58
- 14 Kenya controversy, Fabian colonial Bureau, Controversy series No. 4 (London Victor Gollanez, 1947) p. 11
- 15 Africa Quarterly, vol. 8, No. 1 (April - June) 1968.
- 16 p. 15
- 17 Roots of Freedom 1921 - 1963 p. 15
- 18 East African Standard, 18/12/1953
- 19 For a discussion of detention camps and the attitudes of Kikuyu

detainees see J.M. Kariuki (Mau Mau Detainee (1963)

20 Some people interviewed on this aspect were overcome by emotion when they remembered the beatings they received while digging the trenches, how their children and the sick went without food and worst of all how some people died or got crippled during the exercise.

21 These figures are based on the returns published in 'proclamations, rules and regulations' for each year.

22 Legislative Council Debates, vol. LVIII Co. 1050-1086, 1094 December 1953.

23 E N Goffin Jones. Legislative Council Debates, vol. LXV, C 1976, 16/6/55

24 Sorrenson, Land Reform ^{in the} Kikuyu's Country OUP, Nairobi, 1968, p. 251-252

24 These figures are based on the confiscation orders published in 'Proclamations, Rules and Regulations' 1955 and 1956.

25 Working party on African Land Tenure in Kenya (Report 1958) Brannoy, 11, J.A.A. 208 - 24

26 Haberson Supra p. 33

27 Reported by Haberson in Nations Building in Kenya p. 33

28 Memorandum for Talks under the Chairmanship of H.E. the Governor of Kenya. n.d. Blundell Papers.

29 Land reforms and Politics in Kenya 1954 - 70. The Journal of Modern Africa studies, 9, 2 (1971) pp. 231 - 251.

30 Op. Cit

31 House of Commons Debates vol. 233 (1929 - 1930) p. 596

32 See J M Kariuki 'The Mau Mau Detainee'

33 See The Haberson P. 85

FOOTNOTES CHAPTER THREE

1. Reported by Messerman - Politics of Decolonization, London, 1976. Page 135
2. 1966-70 Kenya Development Plan, para. 61
3. 1974-78 Development Plan; para. 10-108
4. Gertzel. The Politics of Independent Kenya, Nairobi.; 1970 pg. 46
5. Op. Cit. pp 132-137
6. 1970-74 Kenya Development Plan, para. 8.28
7. Weekly Review, September 22:1978
8. Op Cit
9. Paragraph 2:119
10. Paragraph 2:124
11. Weekly Review; May 30:1980. pg. 15
12. Weekly Review; June 6:1980. pg. 14
13. Op. Cit. pg. 15
14. Op. Cit.
15. G. Blamb 'Peasant Capitalists and Agricultural Development in Kenya, USAC 1972
16. Sorenson 'A Plan to Intensify the Development of African Agriculture in Kenya', Gut Printer 1954 (It provides a background to consolidation. Also see 'Land Reform in the Kikuyu Country.'
17. E. Lees 'Politics in Kenya the Development of Peasant Society', Nairobi 1970
18. Supra
19. Details of the former White Highlands can be found in the Government annual 'Statistical Abstracts'
20. Hansard 3rd March, 1974.
21. Volker Vinnai, 'The Africanisation of the White Highlands' paper written while in the Institute of Development studies. October: 1973
22. Op Cit. Pg. 32
23. Report of the Select Committee on Unemployment Nairobi, Dec.: 1970 pg. 1
24. International Labour Organisation Report, Geneva, 1972 (Report on employment, Incomes and Equality)
25. This seems to be the common feeling of many of the disenchanted ex-freedom fighters. This interview was conducted with a former Mau Mau activist in the forest - Mr. Julius Mathenge who (at the time of interview) worked as a labourer in a Nyeri farm.

Contd.

CONCLUSION / RECOMMENDATIONS

1. H.K. Wachange 'The Swords of Kiriwani'

26. Any mention of freedom fighters in political circles was left to only a few politicians. Notably, Waruru Kenja, MP for Nyeri has been in the fore front in advocating for justice to be done to the former freedom fighters. He was himself a Mau Mau activist. He was later to be saved by the Queens prerogative of mercy after being captured. He has also concerned himself with the issue of landlessness as opposed to large estates owners and on the plight of the under-privileged in the Capitalist Kenya.

1. Where groups of Africans bought farms

27. For example: General China (waruhio Itote) was absorbed in the government - he is now the Deputy Director to the National Youth Service. General Mathenge disappeared and nobody has ever seen him since. Some people think that he marched to Ethiopia with his Mau Mau soldiers.

28. Reported by Haberson Pg. 251 to demarcate, register and brought such individual plots then they should be within the scope of planning.

2. The government should act as a willing buyer of an large farm that is being offered for sale in the high potential areas, with a view to dividing it into settlement plots. An alternative to such sub divisions might be the new Co-operative settlement schemes which have been recently introduced and under which farms will be purchased by the government and run as large mechanized units.

3. The government could take more action to ensure that land is not under utilized or poorly farmed. That it should seize any farms that are poorly managed.

CONCLUSION / RECOMMENDATIONS

1. H.K. Wachanga 'The Swords of Kirinyaga'
Nairobi. p.(iv)
2. After challenging the reasons that are normally given against sub-division of large scale plots the report goes ahead to give the following recommendations.
 1. Where groups of Africans bought farms from the Whites and continued to run it as individual plots then they should be encouraged. Where members wish to run such individual plots then they should be encouraged to demarcate, register and brought within the scope of planning.
 2. The government should act as a willing buyer of an large farm that is being offered for sale in the high potential areas, with a view to dividing it into settlement plots. An alternative to such sub divisions might be the new Co-operative settlement schemes which have been recently introduced and under which farms will be purchased by the government and run as large mechanized units.
 3. The government could take more action to ensure that land is not under utilized or poorly farmed. That it should seize any farms that are poorly managed.

-51-

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2. Ghai & Mc Auslan, Public Law and Political Change in Kenya, Nairobi.
3. John Haberson, Nation Building in Kenya, Nairobi, 1970
4. International Labour Organisation, Report on Employment Incomes & Equality, Geneva, 1972
5. Bildad Kaggia, Roots of Freedom, Nairobi, 1963
7. Jomo Kenyatta, Facing Mount Kenya,
8. C. Lees, Politics in Kenya the Development of Peasant Society Nairobi, IDS, 1970.
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