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Struggles of Access to land. The 'Squatter Question' in Coastal Kenya

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Abstract

In Kenya and the sub-Saharan Africa generally, there have been little systematic discussions on the post-colonial struggles over control and ownership of land. Studies ignore that the "land question" is not about production alone and consequently have failed to assess its wider consequences on the society. This raises the question, "what is the current socio-political dimension to the land question and what is the consequence of their interplay with other changes underway in the country?"

This Working Paper addresses this question by discussing popular struggles of access to land in the coastal region which studies seem to have ignored despite its distinct political history. The Working Paper is based on results of a survey conducted in Kilifi district, Coast provinces, between September 1995 and November 1996. The author thanks the Nordic African Institute, Uppsala, for financing the study on which this paper is based.

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1.0 Introduction

In sub-Saharan Africa, until recently, academic interest shown on the question of access to and struggles around land ownership or what is now known as the the land question centred around land tenure reforms and agriculture production. Discussions have continually ignored that the land question comprises several aspects and can not be reduced to the issue of agricultural development alone: the land question is also at the centre of social and political organisation of agrarian social formations. This apparently is responsible for the resurgence of the land question in the economic, political and social discourses and particularly in the constitution engineering processes in a majority of sub-Saharan African countries. Of concern is that economic reductionism in the conventional literature tended to underline that private property in land is a necessary condition for the development of capital accumulation in agrarian societies on the assumption that this would provide security for investment which would, in turn, boost agricultural production on which the continent s economy depends. This thinking reflects, not surprisingly, in the World Bank s sectoral work and Structural Adjustment Programmes: the Bank has been supporting titling efforts on the assumption that this will ensure secure land rights, activate markets and increase agricultural production (World Bank, 1989; Platteau, 1996).

Generally, there seems to be fewer studies at present on the political aspects of the land question compared to the colonial period where considerable attention was given to land-based peasant resistance movements in colonies where settler economy dominated. Studies have failed to give full attention to socio-political aspects of the land question in the post-colonial period yet the land question continues to inform organisation of local and national politics in these societies. Moreover, recent years have witnessed reactivation of ethnic sub-nationalism in the continent much of which is reinforced by quests for control of certain ethno-territorial claims which now tend to be the main challenge to the nation-state project in Africa.

The significance of the land question in African societies is bound to increase for the land question is embedded in a dynamic and a broad social political context (Basset and Crummey, 1993; Berry, 1993). It also has a bearing on patterns of social relations in the society. How land is held and specifically how access to land is regulated are dimensions of importance to the organisation of economics and politics of that particular social formation (Okoth Ogendo, 1976; Njeru, 1977; Glazier 1985, Mamdani, 1996). Any changes in the structure of land ownership undeniably has consequences on the socio-political aspects of that particular society and not on only its structure of agricultural development (Okoth-Ogendo, 1991; Berry, 1993, Mamdani, 1996). Where studies have attempted to redress this imbalance, the result has been a tendency towards moralization and/or idealization of customary land tenure regimes.

This Working Paper attempts to go beyond both the economic reductionism fashion and the moralized customary tenure regime by discussing the land question within a broader socio-political and economic context. The discussion builds around the questions what are the current socio-political dimensions to the land question and what is the consequence of their interplay with other changes underway in the continent? The discussion teases out socio-political relations that lie beneath property rights in land with a view to bring into fore other issues pertinent to the land question debate. The Working Paper discusses struggles of access to land in Coastal Kenya where the land question has a long and distinct political history from the upcountry one on which much has been written. The studie is based on findings of a survey conducted in Kilifi District, Coast Province, between September 1995 and November 1996.

A case study from Kenya - and the coastal region of the country for that matter - is particularly instructive because land reform programme in the country has been quite comprehensive and has been at the centre stage of the main political and economic events in the country. The land reform began during the colonial period as a result of a report prepared in 1954 by the then deputy Director of Agriculture, R. J. M. Swynnerton, on how *to Intensify the Development of*

African Agriculture in Kenya. The Swynnerton Plan aimed at displacing indigenous land tenure systems and imposing private property rights along the lines of English land law (Swynnerton, 1954).

Along the coast, and particularly along the ten mile coastal strip (Mwambao) which was under the suzerainty of the Sultan of Zanzibar, problems around control and ownership of land have roots in the pre-colonial situation. The land question here formulated after the Arabs and the Swahili settled in the area and consolidated slave trade after which they gained control of the land. The colonial state deepened the problem by introducing a legislation that enabled only the subjects of the Sultan (comprising mainly Arabs and the Swahili Muslims) to register land as private property (Ghai and McAuslan 1970:29; Charo 1977; Cooper, 1980). The post-colonial state worsened the problem by giving grants of land to politicians even in areas already occupied by the indigenous Mijikenda groups. This resulted in increasing landlessness and squatter problems.

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2.0 Politics and land rights in Kenya

Kenya's land question in general has roots in the colonial situation where events stemming from three distinct but interrelated processes shaped it (Sorenson, 1967; 1968; Okoth Ogendo, 1979; 1986; 1991). The first, from which others followed, was alienation and acquisition of land as a prelude to the establishment of a colonial state. The sequel to this was imposition of English property law and its acclamation of title and private property rights in the alienated areas. Land tenure reform in the Native Reserves under the Swynnerton Plan completed the question by both deepening and diversifying its structure. Each of these processes gave rise to unique but related sets of problems regarding access and control of land thereby laying the basis for a rather complex land question whose solution continues to plague the Kenyan polity. This had several consequences. Firstly, the processes caused mass displacement in alienated areas and especially among the Kikuyu of Central Kenya giving rise to a mass of people without land rights - the squatters. The squatter problem latter became the basis for the organisation of a peasant rebellion - the Mau Mau - against the colonial state; the rebellion organised to have *Uhuru* (independence) which they thought would result in the return of the stolen land. Secondly, alienation contributed to the ethnicisation of the land question: the squatters moved into the Rift Valley where they sold labour to the colonial settlers and their numbers therefore added to those of other displaced ethnic groups such as the Kalenjin and the Maasai. Consequently, ethnic tension over the control of land in the area deepened in tandem with the consolidation of the struggle for *Uhuru*. Some of these other groups feared that the squatters would accede to land rights in the former settler areas and deny them control of what they considered to be their tribal spheres. They consequently began to fence off the squatters from the region and in some cases violently evicted them.

In early 1960s and in addition to the reform of land tenure in the reserves, the government introduced a parallel programme for re-Africanisation in the White Highlands previously scheduled for European settlement. This aimed at altering the racial structure of land ownership to address the ethnic and political dimensions to the land question complex. The government established several settlement schemes for the landless and introduced a land purchase programme for the African middle class to accede to the scheduled areas (Leys 1976; Njonjo, 1978; Leo, 1984).

Both the reform of land tenure and the re-Africanisation programme had a profound effect on the nation-building project; they considerably shaped the politics of transition and have continued to shape local and wider politics. Notably, at the time of transition to independence,

the land question directly influenced the debate on constitutional and economic arrangements that the country were to assume and later became the basis upon which political parties formed (Bates 1989; Harbeson 1973). The parties formed to participate in the politics of transition constructed a distinct answer to the land question as a means of negotiating for independence with the colonial government after the defeat of the Mau Mau peasant rebellion. The two main parties were the Kenya African National Union (KANU) comprising an alliance of two numerically large groups - the Kikuyu and the Luo. KANU preferred a centralized state and unitary form of government and emphasised on the respect of private property rights. It also had on its board a radical nationalist faction which advocated for *Nyakua* (forcible seizure) of the expropriated land in line with the need to reward Mau Mau freedom fighters. The second party was the Kenya African Democratic Union (KADU) comprising an amalgamation of smaller groups - the Kalenjin, Maasai, Turkana, and the Samburu (KAMATUSA), the Somalia and the Mijikenda among others. KADU, because of the fear of domination by the Kikuyu and the Luo, preferred a federal system of government (*Majimbo*) with regional assemblies whose most significant duty would be administration of land matters. KADU saw this as a check on the land hungry Kikuyu squatters who were already settled in the white highlands to which KAMATUSA had historical territorial claims. The settlers also formed the New Kenya Party to protect and preserve their interests in land. Their party later allied with KADU to push for federalism and respect of land rights as advocated by KADU leaders.

2.1 Freezing the Land question

KANU won the elections in 1961 and 1963 and formed a government comprising especially of influential liberal politicians, led by Kenyatta and Tom Mboya, who then began to articulate the demand for a unitary form of government and respect of private land rights wherever established. KADU dissolved in 1964 in national interest and KANU accommodated its leaders including those who advocated preservation of ethno-territorial land claims. This froze the land question and in particular its ethnic dimension for that moment. This also eroded the influence of the radicals in KANU for they could no longer threaten to defect to the opposition. This gave way to class based politics of access to and control of the land and froze its ethnic dimensions altogether.

The liberals in KANU and in particular those who constituted the inner court for the first government (the Kenyatta administration) were keen not to disturb the legal framework on economic development laid down by the colonial state. They were convinced that consolidating property rights in land would lead to intensified agricultural productivity on which the economy depended. The conflict over land and the manner in which it was resolved thus had two important consequences: firstly a constitutional arrangement evolved that favoured sanctity and inviolability of private property rights and one that provided protection from deprivation of property without compensation. Secondly, it resulted in the adoption, without alterations, of the legal framework on which the colonial reform of land tenure depended. These outcomes, and protection of private property in particular, encouraged unlimited accumulation of land in the scheduled areas by the liberals in KANU and KADU for it allayed the fears that accompanied the radical's threats to confiscate land from the settlers.

2.2 Thawing of the land question

Accession of Daniel Arap Moi to Presidency after the death of Kenyatta in 1978 saw the thawing of the land question. Moi was one of the senior KADU leaders who vehemently advocated for federalism (*Majimbo*) to protect land and political rights of the smaller agro-pastoralist communities against the large ethnic groups. His presidency naturally saw a reconstitution of former KADU elites; their ideology on land soon got into the centre stage of politics and the state itself. It at the same time aroused high expectations among the KAMATUSA groups who subsequently appropriated it to fence off their areas against other. This saw the closure of frontiers in Rift Valley where land hungry groups used to migrate to

acquire land. Relatedly, in the process of constructing his independent bases of political support, Moi ordered rapid individualization of farms owned by land buying groups (cooperatives and companies and partnerships) and subsequent registration of titles for the individual shareholders.

Simultaneous with the closing of the frontiers, political patronage evolved as the single most medium of regulating access to public land. The government continued to give land as rewards to political clients with a view to establishing a stable political and economic class. From the early 1990s and with increasing pressures for political liberalization, appropriation of government land by political elites took even a faster pace as Moi struggled to retain loyalists, a clientele that was otherwise rapidly disintegrating.

Meanwhile and as pressure for political liberalisation deepened, the KADU group, hitherto constituting KANU leadership, began to appropriate the land question for a different but related political project. They began to use the thawing land question it as a political tool to fight those opposed to them, in the believe that Multi-partism implied the end of Moi leadership. This resulted in ethnic land clashes between members of former KADU groups and immigrant population in Rift Valley and much later on the Coast between the Mijikenda and upcountry Kikuyu and Luo immigrants. KANU won the 1992 elections but left behind a simmering land question, an issue that has continued to influence political developments in the country. The Rift Valley and areas around the Coast have witnessed the most violent and unprecedented ethnic conflicts in recent years. Although some of the conflicts are expressed in the form of party politics they have their logic in the thawing land question. The section examines the evolution of the land question on the coastal area and examines its implications for the local and wider politics.

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3.0 The coastal land question

As mentioned earlier, the land question on the coast formed in tandem with the consolidation of both the slave trade and the Sultan rule on the Coast. The entry of the British administration deepened it through two significant ways. Firstly, the rivalry between the British and Germans over the control of the East African coast resulted in the two awarding the Sultan sovereign rights over a strip of 10 miles along the coast - Mwambao. This allowed the Sultan's subjects to have private property in land but prevented the indigenous from doing so because they were not subjects of the sultan and/or were not Muslims (Republic of Kenya, 1978). Secondly, the British promulgated a legislation in 1908, the Land Titles Ordinance of 1908, to enable the colonial authorities determine the extent of private possessions before they could alienate land for the Crown and or give grants to individual settlers. This also aimed at enabling the British administration penetrate and control the interior. This Ordinance, and its version of land tenure on the coast, began by altering the distribution of land first among the Arabs and the Swahili. The Ordinance then closed avenues via which the indigenous Mijikenda and ex-slaves could have made any claim to land on the coastal belt. Instead the administration introduced Native Reserves and removed them from certain of the areas in order to give way to European settlement.

Evolution of the land question on the coast entered into a new phase with the negotiations for political independence in the wider colony. At the time of transition to independence, the British government entered into a pre-independence agreement with the Kenyatta administration and the Sultan regarding control of land in *Mwambao* (Salim, 1968: 224; Ghai and MacAuslan 1970: 187-188). Kenyatta conceded to the Sultan's demands for recognition of private land rights on the Coast and promised to adjudicate and register such rights where they were not adjudicated, notwithstanding the negated land rights of the indigenous groups. Both the

agreement and negotiations over independence concluded the process of creating the squatter phenomenon: they transformed the Mijikenda into squatters or tenants of the Arabs and the Swahili landowners.

The first government thenceforth favoured private property rights irrespective of how they had been acquired. The government also acknowledged the problem of landlessness on the coast and appointed two different Committees at different times between the late 1960s and the mid 1970s to study and advise on how the problem would be resolved. With regard to the squatters, the government favoured establishing various schemes on former Crown lands (now government land) or on land purchased from those who were willing to sell. It was hoped that these schemes would solve landlessness and safeguard the principle of private landownership both of which would in turn help circumvent possible invasion of private land by squatters. Much later in early 1970s, the government also began a programme of individualization - land tenure reform - arguing that the communal manner in which land was held was a canopy of landlessness on the coast and therefore unless land was individualized the government would neither know the magnitude of the problem nor would holders effectively utilize their holdings. None of these approaches effectively tackled the land problems on the coast: they instead engendered different forms of reforms and by that complicated the land question as argued below.

3.1 Politics of resettlement efforts

Economic and political rationale guided the establishment of settlement schemes on the Coast. The government saw in the schemes opportunities for peasants to participate in agricultural production and by that increase production in the sector. Post-independence pressure from radical politicians underpinned the political rationale. This led to the government establishing settlement schemes for the landless to prevent violent political conflicts between the coastal landless, on the one hand, and the upcountry settlers and the Arab-Swahili landlords on the other.

These resettlement schemes were not specifically established for the landless in the coast region; upcountry groups got land here in spite of landlessness among the coastal people and in spite of the fact that the land question here considerably differed from the upcountry one. Increasing number of outsiders and malpractice in the allocation of plots gradually engendered hostilities between the indigenous groups and the new beneficiaries with the local people often accusing the local Provincial Administration of tantalizing squatters with promises of more land. These promises were rarely fulfilled.

Secondly and related to this also was the problem of political patronage in allocation of plots in the settlement schemes to elites (through grants from above). In the view of many, officers in the Provincial Administration and upcountry political elites were the second to Arab and Swahili landowners in acquiring private land rights and titles in the area: they not only grabbed land meant for the landless but also invited others to do the same. This expropriation resulted in less land for resettlement; it added to the mass of people without user rights. The schemes thus could not eliminate or even reduce the problem of landlessness.

These grants from above had another effect: they intensified disputes over control of land in the area and widened divisions between the local residents, on the one hand, and new land owners the state at the local level - officers in the Ministry of Lands and those in the Provincial Administration - on the other. Several disputes and conflicts involving local politicians and the indigenous people on the one side and the government and upcountry political elites on the other began immediately after the schemes started. In Magarini Settlement Scheme Complex started in 1978, for instance, local politicians often complained of biases by settlement officers in allocation of the plots and of evictions of coastal beneficiaries and their replacement with

upcountry ones. In 1984 controversy over these allocations indeed reached the floor of the parliament where questions and answers were more revealing: senior government officials listed their constituents and friends and recommended them to be given plots by the settlement officers. To avoid embarrassment and possible political backlash, the government emphasised that all land in Kenya was national land on which anyone could be settled irrespective of ethnic identity and that Magarini was not a scheme only for the coastal people (the Weekly Review, May 4, 1984). Since then allocation of land on the scheme continued to be at the centre stage of area politics with local politicians mobilising support around promises of ensuring that the government gives priority to the local people.

Problems of access to land in the settlement schemes have a longer history as the following case study shows. Some have roots in the grants from above given by the colonial administration but have all the same continued to inform organisation of local politics. In Kijipwa area of Kilifi district, a settler farmer obtained land during the colonial period to start an experiment with sisal farming after whose success he obtained more land for a plantation. The displaced people moved to neighbouring locations but were evicted again in the late 1960s when the plantation acquired more land including the one on which some had settled. This time, however, they resisted eviction and fought away the local Provincial Administration and the owners of the plantation. They nonetheless won several concessions among which was the authority to occupy the area as the government looked for land to settle them but on condition that they lived in peace. They continued to occupy the land and even subdivided it among themselves on conviction that they were the rightful owners of the land and that the government would give them secure tenure rights.

Meanwhile, pressure built on local politicians, particularly the then senior and influential cabinet Minister, Ronald Ngala, to petition the government for allocation and for titles to the land occupied by squatters in the coastal region. Ngala got Kenyatta's assurance that a settlement scheme would be established for the squatters and the landless in Kilifi among other areas. Several schemes were established but these were inadequate given the high number of landless people on the coast (estimated in mid 1970s at about one quarter of the population). Moreover the state was increasingly alienating land and turning it over to elites connected to central state politicians. Area residents who had knowledge about these events complained that land for the scheme was set aside in a rocky place and far away from where they had settled. Much later in 1982, another scheme was established in the area that had been occupied especially by those who refused to move out after the first wave of eviction.

The whole exercise of resettlement was left in the hands of government officers - the chiefs and the officers in the Department of Settlement - who answered to yet another settlement Committee headed by the DC. These officers subsequently abused the allocation procedures: those families that had poor relations with the chiefs or their associates had their names omitted from the list of occupants while friends of the officers had both the household heads and eldest sons listed separately as occupants to increase their chances of getting more than one plot. Other officers also listed names of their relatives and friends who were not residents in the area.

In the actual distribution that followed, fewer people than those initially planned for got plots. Some families acquired more than one plot while others got none at all. This was more disappointing for those who had occupied the area from mid-1960s. They lost not only the holdings but also tree crops and other investments undertaken during the long period of occupancy. Others were unfortunate in other respects - they were allocated land away, from where they had settled and grown tree crops, to virgin areas where they had to start settlement life anew.

Other problems followed. Initially both the demarcation officers in the Ministry of Lands and the local Provincial Administration had announced that the scheme was designed for hundreds of

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

This was just a smokescreen for elites had obtained grants from above which effectively reduced the size of the area meant for the scheme. Several government officials and politically connected individuals who included cabinet Ministers, permanent secretaries (some from the coast), senior officers in the Ministry of Lands and Settlement, a judge, a prominent leader of a national choir group and a District Officer (DO), among others, acquired large portions of the land here. Some of these were given land on which squatters lived and cultivated and therefore land on which their livelihood depended. Additionally, the plantation had already acquired the other better part.

Those who lost their land rights took their complaints to the Provincial Administration but no one could interfere with the grants. Most complainants were often turned away and told to keep peace, for the Nyayo government will solve the plight of the homeless (Nyayo literally means footsteps; it is used to refer to Moi because of his often repeated promise to follow Kenyatta's footsteps) Others were listened to by the DC but were told that the land now belongs to the allottees because they had titles to it. Aware that they probably would have got land were it not for the huge tracts that had been allocated from above, those who missed the plots refused to give way to the new owners. They hoped that their persistent appeals to the Provincial Administration and local leaders would bear fruits. But some of the land had already changed hands without their knowledge: some of the allottees had already turned over the land to private developers (a majority foreign hoteliers operating in partnership with influential economic elites) who then began to expel the occupants. The bases for another struggle had begun in earnest.

Some of the new owners, impatient with the occupants, brought in bulldozers and flattened the area without a warning to occupants. These evictions did not spread fast, however. Occupants decided to resist being evicted arguing that they had more rights to the land than the allottees and that they should have been given priority in the allocations by virtue of having been the first occupants. From then on, they began to violently confront the new land owners and kept them at bay. This kept potential buyers away as well.

With the assistance of the new owner, some of the squatters eventually got land far away from the area or went to squat elsewhere. Other allottees were unable to get alternative land for occupants through the Provincial Administration and therefore decided to use the courts charging that the squatters were professional squatters who had sold their land with a view to politicising the land question on the coast. But rarely did the courts enforce requests for eviction. In several cases the new owners were ordered to give occupants time to look for alternative land.

The resettlement efforts thus were not an adequate solution to the land question. They deepened rather than solved it. Economic interests of politically influential elites also deepened the land question. Grants from above resulted in concentrating the best land in the hands of the economic and political elites who nonetheless failed to utilize them but turned them over to foreign hoteliers. Their interests were certainly in direct conflict with the survival needs of the peasantry. Perhaps these conflicts over access to land would not have been so intense had the elites managed to provide alternative land to the squatters. The cases also demonstrate the limitations of accumulation from above and political patronage in general. Those affected are able to resist it; to make the machinery for accomplishing political patronage unreliable and ineffective and to generally put such forms of accumulation on hold. Accumulation from above also has its own costs: taking advantage of it incurs costs that not even the politically influential can circumvent. Idle and unutilized land and violent conflicts are evidence of such costs and of

limitations to success of patronage in regulating access to land.

3.2 Struggles over public but private land

Victims of the first and the second wave of eviction that accompanied the expansion of the plantation expected to get back the land upon expiry of the lease. In about 1992 the lease on one block expired but it did not revert back to those who had been evicted. It allegedly reverted back to government ownership. No sooner had this happened than the lease was renewed and part subleased to a cement company. The plantation retained the other part. The company constructed a brick perimeter fence around the disputed land in an effort to fence off the squatters. Both events put a lid on the rising expectations for resettlement. To regain the land, some of the area residents approached two local Members of Parliament while others directed their appeals to the District Commissioner (DC) and the Provincial Commissioner (PC). All these appeals were said to have been unsuccessful. The politicians simply said the matter would be resolved by the Provincial Administration while the latter asked the squatters to keep peace as the government inquired into the matter.

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

A political differentiation between the district's national- and local-level elites was clearly evident in relation to the issue of patronage. Their national positions and how they related to the land question brought them riches and connected them to the powerful. This tended to deter them from involvement in actual struggles over land; they often blamed and sought solutions through the administrative context, while side-stepping the issue of land grabbing by national level political and influential economic elites.

There were also local level elites who commanded considerable local support because of consistently articulating local land issues. In their rank were several local state party officials - including a councillor, members of the opposition political parties, a local cleric, a school teacher, and a local women's group leader. Their approach was distinct from that by national level elected officials in several ways. This group mobilised resistance against land grabbing and articulated the problem against both the administrative and political contexts. The local level elites acted as a link between the mass of the squatters and the elected officials and the Provincial Administration. They were *de facto* leaders of the opposition to irregular allocations and had constituted a squatters Committee. This Committee articulated popular concerns on squatting and kept abreast with all aspects of the land question.

From late 1995, it was this group of local level elites that mobilised the squatters into occupying the section of the plantation whose lease had expired with a view to redistributing the land among the squatters. By early 1996 they had devised a plan for redistribution: they listed names of rightful occupants and made several attempts to discuss the subleased land with the DC and the PC but none of these was willing to meet them until they got to know about the plans to subdivide the land.

In February 1996, the PC conceded to a meeting in which enumerated the problems they

wanted a solution to. They emphasised that their land continues to be grabbed by deceitful outsiders while a lot more was expropriated for plantation farming. They stressed that squatting had become a chronic wound stuck on us from the days of our forefathers. They wondered how come a stranger (*foreigners* and/or upcountry elites) owns our property while we are made slaves in our ancestral land? The PC only promised to soon look into the problems and assured them that the Presidential directives on the resettlement of squatters and adjudication of rights on the land they occupied would be effected. Afraid that the promise would turn into an empty one like the previous ones, the squatters organised to invade the farm and subdivide it.

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

The redistribution project began by uprooting the sisal, subdividing the holdings and allocating to those listed and participating in the project. As the exercise went on, the plantation owners called for the intervention of the DC who came in the company of police. The DC did not manage to stop the redistribution partly because of the hostility of the squatters and partly because of continuing consultations between the PC and the local level elites. The PC held a meeting and in response to their complaints, announced the setting aside of more land for the resettlement of squatters but this was seen as inadequate for the high number of landless registered by the squatters committee.

The struggle did not come to an end with the setting aside of the land: the plantation owners insisted that they would not transfer any more land unless they got title to another block whose lease had expired and had been reconverted into government land. Whether they really succeeded in having the allocations revoked is debatable but cannot be ruled out, given that the plantation owners had over the years sharpened their political skills to deal with political and administrative contexts of the land question in the area.

The discussion raises several observations. Firstly, patronage deepened rather than solved the squatter problem because grants from above reduced the size of land meant for resettlement. There was more concentration of land in the political and economic elites and consequent dispossession of the squatters. Patronage as a means of accessing land rights became so institutionalised that even some of the squatters depended on it to secure their rights. Secondly, counter-patronage strategies or popular modes of acquiring land rights evolved when patronage failed or where patronage hierarchies were weak and unable to deliver to popular demands. It is precisely because patronage failed to yield that squatters invaded the sisal plantation and redistributed land amongst themselves. Both the landless and squatters also could not effectively utilize the holdings they squatted on because of the ever-present threat of eviction, a threat they considered an chronic wound in their daily struggles. On the other hand, those allocated land from above were speculating and not using it: they planned to put up hotels or to sell to hoteliers. Few used it for agriculture as the squatters did. These allocations therefore need be seen as having had aroused conflict over access as well as conflict over land use. Finally, the discussion shows that patronage has its own costs for the elites too. It generated disputes between them as it did between themselves and squatters and therefore it is not an open-ended mode of acquiring rights or building political constituencies.

3.3 Struggles over access Arab and Swahili land

After the registration of land holdings under the 1908 Ordinance, Mijikenda families and families of ex-slaves continued to occupy land without the knowledge of other claimants. Some had permission of the land owners who permitted their use of land and husbandry of

commercial trees. Others occupied what they believed was public land that had gone to waste. Generally, those who settled on Arab and Swahili land continued to do so until the eve of independence when, at the height of political conflicts between Mijikenda politicians and the Arabs, the latter came to the land to issue eviction notices or to ask for nominal rents. It is then that the Mijikenda and ex-slave families say that they realised the land belonged to someone else. In Kijwe Tanga, Malindi, one old informant said that the general trend around the area was to cultivate any waste land, particularly land where none prevented them to do so. This they did until early in the 1960s when Arab land owners came from the towns where they had retired to do commerce, and insisted the land was theirs: they allowed them to continue to cultivate the land on condition that they did not grow tree crops, which Arab and Swahili landowners feared would be used to support ownership claims by the occupants. Being restricted to the cultivation of food crops did not satisfy family needs of the occupants and therefore some moved into other areas where they could grow cash crops to supplement family farm incomes. They moved to areas they thought were public lands only to learn later that they were also owned by different Arab and Swahili landowners. Others obeyed the order to cultivate food crops and stayed on the land. In the meantime, there are those who have continued to squat on land whose owners they have never seen but have been told are Arabs who may have settled in Zanzibar and may have family members coming to register the land. Such land owners are very few, however.

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

With increased land values, most land owners began to sell and to terminate use rights of occupants. Mass expulsions followed these changes as new owners wanted the land cleared of any squatters before transfers could be completed. This resulted in adding to the mass of people without land rights as a majority of those evicted had no alternative land to move to. One informant, disappointed by the turn of events particularly in the 1990s, indeed stated that Arab and Swahili land owners who were "now streaming into the area with eviction notices should have come earlier when there was abundant government land: they are coming when government land has been exhausted and when we have done a lot of investments on the land they claim to be theirs." But occupants were also concerned about what would become of their tree crops which were the main source of incomes for most families. Rarely were the new owners or the old ones willing to compensate them.

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

3.4 The politics of Land Tenure Reform in coastal Kenya

The land reform program in coastal Kenya began in the period between the late 1960s and early 1970s. Studies here have demonstrated how the reform led to some people losing or gaining more rights to land. Others have attempted to assess the impact of the reform on the society in general (see Mkangi, 1975; Fleuret 1988; Ciekawy, 1988). How the reform program has affected community and wider politics has nonetheless received scant attention. Although the reform began that early not much of the land has been adjudicated or registered: few people have titledeeds. Reasons for this include among other things disputes among the local people over the different stages of the reform and in particular the demarcation stage which delineates people's rights before they are registered. Another problem has been lack of adequate resources on the part of the government to support the reform. When such resources are available they are expended in demarcating land along the coastal line where influential political elites have an interest in beach plots for the rapidly growing tourist industry. Notwithstanding this, political impulses have considerably speeded the exercise since mid-1980s. This is particularly true particularly with regard to demarcation of squatters' rights in government land. In Kilifi district, between early mid-1980 and 1995, 40 blocks of government land in different places and covering an area of over 12, 920 hectares were adjudicated to over 14 040 squatters already settled there. In total only about 20 per cent of the land has been registered since early 1970s. Presidential directives considerably influenced the pace of the demarcation and adjudication of land here. Government officers often got into action whenever the president issued directives to speed the exercise but the steam would dissipate until another directive was issued.

Where land registration was going on, most disputes centred around boundaries and ownership of land. Some of the disputes were occasioned by disagreements between and among family members. Still others resulted from some people reneging on previous agreements on the rights allowed while others resulted from instances where parents died without clarifying to their children the kind of rights they had had, especially given that the indigenous tenure allowed coexistence of tree and land rights in the same holding. Disputes were common in instances where pioneer occupants acquired land to cultivate or to grow tree crops but lent out some sections or fragments to other families or even allowed borrowers to cultivate food crops under their trees on the understanding that the borrowers acknowledged having nothing more than user rights.

Arbitrators in some of these disputes were village elders who were assumed to have had the knowledge of which family used to own what and where. They heard these disputes in the presence of both the local chief and the adjudication officers. If they were unable to resolve it then they advised the disputants to take their dispute to the local land Adjudication Committee who would hear it and advise the adjudication officer on how to proceed with the registration of disputed rights. If again dissatisfied, the disputants would proceed to the Land Arbitration Board, a body comprising between six and twenty five residents from within the district and appointed by the Provincial Commissioner. Most of the members of the Board were retired government officers, elders, and other prominent people who are likely to avoid bribes. This Board heard cases from all over the district but met quite irregularly. Cases brought to the Board took slightly longer than those heard by the local land Adjudication Committee. Once the adjudication register was published those still dissatisfied with the Arbitration Board could make an appeal to the Minister of Lands. But cases brought to both the Arbitration Board and Minister took unusually long time to determine and involved costs that ordinary disputants were not able to bear.

All cases of dissatisfaction were referred from the lower legal authority to a higher one. Some were resolved by informal negotiations outside of the arbitration the authorities while other disputants preferred to appeal to higher levels of Provincial Administration. This was generally practised by those who lost cases at the level of the Adjudication Committee. Moreover,

whether to go to the local Provincial Administration or any other authorities depended on various considerations. Some chose to go to the chiefs or DOs if their rivals had already gone to the Committee. For others the choice was influenced by the costs involved in filing a case. Attempts were always made by each arbitrating bodies to ensure that all disputants were present when the case was being heard. Both the DOs and the adjudication officers (for the Committee) often consulted to decide on who would hear any case brought to their attention because some were civil cases that had issues of land subordinated to them.

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

Most informants felt that the reform program has progressed at a very slow pace. They identified several factors responsible for this. A majority observed that the reform was held up by delays in solving disputes over demarcation of boundaries and over records of existing rights. The rich, officers in the Provincial Administration and Lands Office and corruption in general were also identified as impediments. Those who cited corruption specifically accused the Committee and the adjudication officers of settling disputes in favour of those who had bribed them. The rich, the influential and local elites in general, were perceived as instrumental in the registration because they had *uwezo*' (monetary means) to influence the Committee and the adjudication officers to do them favours, irrespective of whether they had legitimate rights and claims or not. This had the effect of intensifying disputes over both boundaries and the records of existing rights between such people and others who had legitimate claims but no *uwezo* to sway the Committee or the land officers to their side.

Although some of the respondents saw the adjudication staff as being vulnerable to elite manipulation, the local elites resented the staff in the Departments of Lands and Settlement, Survey, and the Physical Planning because they all come from upcountry and therefore have little regard for the pace of the programme. These officers, on the other hand, gave other reasons for the slow pace of the reform programme. They claimed that the Department lacked both funds and enough personnel. They specifically cited transport difficulties, lack of field allowances, lack of equipment, and shortage of aerial and base maps as handicaps to their work. Pressing assignments were done either with vehicles borrowed from other departments, but again their use depended on the availability of funds for fuel which when not obtained led to ignoring the assignments altogether. These constraints led to funds for many activities such as re-demarcating boundaries or subdividing holdings being solicited from those who came for such services. Those who were able to pay for the transport got their problems attended to while those who were unable to pay had to wait for the Department to get funds from the parent ministry which also depended on availability of funds from the Treasury.

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

The reform program thus was being implemented under severe constraints. The financial burden was slowly being transferred to the community and particularly to those who sought land-related services. The restrictions on government spending on the land reforms mean that the local communities would have to shoulder the increasing costs of the reform. Meanwhile there already had developed an informal rent seeking mechanism that benefited land officers and wealthy residents. Generally control of land had clearly become a political resource for both low and high politics in addition to providing economic resources for mediating patronage based politics. One may conclude therefore that while both administrative fiat and political whims influenced the pace or the progress of the reform they also largely contributed to the deepening of the land question and to intensification of disputes in the area.

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4.0 Conclusion: politics of land rights and social domination

4.1 Land and community politics

The issue of land ownership has been at the centre stage of local politics in Kenya for a long while. With regard to the coast, land rights generated political conflicts similar to those experienced upcountry. In the run up to *uhuru* in 1963, differences between the Arabs and the Swahili and the Mijikenda groups led to socio-political divisions along which several political parties formed. After independence, the resettlement schemes caused sharp hostilities between the upcountry groups and the indigenous coastal ethnic groups. Concerns by the latter's political leaders, resulted in the appointment of a government Committee to investigate and make recommendations on the land question. Recommendations received little attention. Government land was increasingly turned over to economic and political elite for purposes of tourism which the state elites seemed keen on promoting.

This obtained for a short period after Moi ascended to the Presidency in 1978 but became reinforced after his social bases of support began to decline. Grants from above linked to short-term political considerations. Allocations were for the purpose of concentrating power and of securing loyalty from the elite rather than according to broader economic or political objectives. This resulted in increased landlessness and deepening of the squatter problem around the coast. These problems, in addition to the problems arising from the reform of land tenure, became the single most important resource for mobilising political support.

Although articulation of land issues plays a critical role in political mobilization, those elected into office failed to continue to press for viable solutions to it. The central state elites and others in privileged political and economic positions silenced them with grants of land or other favours so that they could not pursue positions that were detrimental to their modes of accumulation. In this way, the national political elites' role prevented a consolidation of an active constituency of landless.

Social and political divisions among the various coastal groups also contributed to the lack of a common and consistent position on the land question. Divisions between the heterogeneous Mijikenda groups and especially between the Giriama, the Chonyi and the Kauma in Kilifi are reproduced in the organisation of area electoral politics. But rarely did these different groups take a common position on land issues as each inhabited a distinct geographical location. Problems of one subgroup were rarely seen as universal problems but as localised to that specific group. Political elites contributed to the widening of this divide since it enabled them to have an effective control over politics and the economy.

4.2 Reformulating the Land Question Complex

The reform of land tenure has been accompanied by different types of disputes, of which the main ones are those over boundaries and actual ownership of holdings. Transformation of land into an important patronage resource also has had adverse effects on the previous modes of accessing and controlling land. Most beneficiaries did not utilize the land but turned their grants from above over to private developers. The implications of these for the national economy are very clear. Firstly, at the national economic level, this mode of accumulation has washed away the bases of indigenous capitalism and replaced them with Asian and foreign ones but with connection to central state elites. Secondly, at the local level, these forms of accumulation have resulted in economic and social domination over the local people. Thirdly, economic structures created by these forms of accumulation are not responsive to local needs; they are associated with private forms of repression which are channelled through the local state structures - the Provincial Administration officers.

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

The involvement of the state in regulating access to public land has increased rather than decreased and has contributed to the deepening of the land question rather than solved it. The state's practice of individualizing public land according to political considerations has created more people without rights to land and has generated new types of disputes over ownership. The most important of these concerns allocations of public land for such allocations- done on prime high potential areas- result in mass evictions of those already settled on the land in disregard of the improvements that occupants have made over long periods of occupation.

On the other hand, political patronage has its own expenses and limitations: the success of accumulation from above requires not only political connections (or even higher political connections) but a regime of compulsions and/or administrative and legal force. Meanwhile, resistance from below is the single most important mechanism of limiting such forms of accumulation. But resistance from below has its own internal contradictions and limitations. Social-economic and political differentiation among the actors involved prevents consolidation of popular opposition against patronage in and opposition against oppression both by institutions of the state at the local level and private economic elites.

What has come to be known as the land question can not be reduced to a single issue and solution. Its complexity and dynamism cannot be comprehensively captured by casting it as a simple question of relations of agricultural productivity to titling. The discussion suggests that land tenure reform hinges on not only issues of land productivity but also on issues of social restructuring, polarisation and exclusion. Therefore the land question complex must be understood as one constitutive of the social and economic relations of a social formation. For any attempt at resolving the political and economic crises around land rights to be meaningful, it must first appreciate this complexity.

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References

Basset J.T. & Donald E. Crummey, eds. 1993. *Land in African agrarian system*. Madison: Univ. of Wisconsin Press.

- Bates, R. 1989. *Beyond the miracle of the market: The political economy of agrarian development in Kenya*. Cambridge: Cambridge University Press.
- Berry, S. 1993. *No condition is permanent: the social dynamics of agrarian change in sub-Saharan Africa*. Madison: University of Wisconsin Press.
- Charo, J.B. 1977. The impact of land adjudication under the titles act cap. 282 in Kilifi District. [LLB Dissertation]. Nairobi: University of Nairobi.
- Ciekawy, D. 1988. Land reform in Kenya's southern Kilifi District, 1955-87. *East African Research and Development* vol. 18: 164-180.
- Cooper, F. 1980. *From slaves to squatters: Plantation labour and agriculture in Zanzibar and Coastal Kenya, 1890-1925*. New York: Yale University Press.
- Ghai, V.P. & J.W.B. McAuslan. 1970. *Public law and political change in Kenya*. Nairobi: Oxford University Press.
- Glazier, J. 1985. *Land use and uses of tradition among the Mbere of Kenya*. Lanham: University Press of America.
- Harbeson, J.W. 1973. *Nation building in Kenya: The role of land reform*. Evanston: North-Western European Press.
- Leo, C. 1985. *Land and class in Kenya*. Harare: Nehands.
- Leys, C. 1975. *Underdevelopment in Kenya: The political economy of neo-colonialism 1964-1971*. London: Heinmann.
- Mamdani, M. 1996. *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press.
- Mkangi, G.C. 1975. Land tenure, population growth, and economic differentiation: The ribetribes of Kenya. In *The paradox of poverty*, eds. T.S. Epstein & D. Jackson. New Delhi: Macmillan.
- Njeru, E.H.N. 1978. Land adjudication and its implications for the social organization of the Mbere. *Research Paper No. 73*. Madison: University of Wisconsin-Madison, Land Tenure Centre.
- Njonjo, A. 1978. The Africanisation of the white highlands: A study in agrarian class struggles in Kenya, 1950-1974. [Ph.D. Dissertation]. Princeton: Princeton University.
- Okoth-Ogendo, H.W.O. 1976. African land tenure reform. In *Agricultural development in Kenya*, ed. J. Heyer. Nairobi: Oxford University Press.
- Okoth-Ogendo, W.H.O. 1979. Imposition of property law in Kenya. In *The imposition of law*, eds. B. Harrell-Bond & S. Burman. New York: Academic Press.
- Okoth-Ogendo, W.H.O. 1986. The perils of land reform: The case of Kenya. In *Land policy and agriculture in eastern and southern Africa*, eds. J. Arntzen, L. Ngcngc & S. Turner. Tokyo.
- Okoth-Ogendo, W.H.O. 1991. *Tenants of the crown*. Nairobi: ACTS Press.

Platteau, J.P. 1996. The evolutionary theory of land rights as applied to sub-Saharan Africa: a critical assessment. *Development and Change* vol. 27: 29-86.

Republic of Kenya. 1978. *Report of parliamentary select committee on landlessness along the coast*. Nairobi: Government Printers.

Salim, A.I. 1968. The movement for Mwambao or coastal autonomy in Kenya, 1956-63. In *Hadith 2: proceedings of the 1968 conference of the historical association on Kenya*, ed. B.A. Ogot. Nairobi: East African Publishing House.

Sorrenson, M.P.G. 1967. *Land reform in the Kikuyu country: a case in government policy*. Nairobi: Oxford University Press.

Sorrenson M.P.K. 1968. *Origin of European settlement in Kenya*. Nairobi: Oxford University Press.

Swynnerton, J.M. 1954. *A plan to intensify the development of African agriculture in Kenya, colony and protectorate of Kenya*. Nairobi: Government Printers.

Weekly Review. 1984, 4 May. Nairobi: The Weekly Review.

World Bank. 1989. *Sub-Saharan Africa: From crisis to sustainable growth*. Washington, DC: The World Bank.
