# 8

# Land Ownership and Use in Kenya: Policy Prescriptions from an Inequality Perspective

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*Abstract*

*Inequality as a development concept refers to differences between individuals or groups both in terms of opportunities and outcomes. A substantial component of inequality may reflect differences in opportunities, with people favoured or disfavoured according to where they live, parental circumstances and gender, among others. There are varying degrees of inequality in land ownership, access and use in Kenya. Thus the principal objective of this study was to investigate the real inequality perspective of land ownership and use in Kenya. The study recommends that the current constitution, legal and administrative arrangements, as well as the administrative procedures, be urgently reviewed to provide for equitable access to land, transparent and accountable land management and administration, and environmentally sustainable land use. The study concludes by saying that the country needs to resolve whether land is a social commodity to which every Kenyan is entitled as a basic need or whether it is an economic good whose allocation and access should be primarily guided by market mechanisms.*

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# Introduction

## Conceptual basis of analysis of inequality

Inequality as a development concept refers to differences between individuals, both in terms of opportunities and outcomes. It concerns variations in standards of living across a whole population. It manifests itself in outcomes such as wealth, education, employment, and so on.

Some of the outcomes may be accounted for by normal functioning of the market economy, but a substantial component of inequality may reflect differences in opportunities, with people favoured or disfavoured according to where they live, parental circumstances and gender, among others. Indeed, causes of inequality can lead to abundance to some people and poverty to others.

An understanding of causes of inequality, as well as the linkages between the different factors, including the trade-offs, is crucial in formulating appropriate policy responses to equitable distribution of resources as well as economic growth. Most literature on equality has its origins in the philosophical principles of utilitarianism, libertarianism and distributive justice (Rawls, 1971; Sen, 1997; Dworkin, 2000; Kymlicka, 2002).

### *Principle of distributive justice*

The principle *of distributive justice* requires that human beings in any society should have the same initial expectations of *basic goods*, the bundle of material goods necessary to sustain decent life (Rawls, 1971). All social primary goods such as liberty and opportunity, income and wealth, and the basis of self-respect, are to be distributed equally. However, if inequalities are to be permitted, they should be to the benefit of the least well off in society. A system of distributive justice can therefore allow one person with better endowments and skills to have better outcomes than another if compensation for basic goods has already taken place. Thus, inequalities arising out of choices and ambition can be *just* and *fair*. However, Rawls (1971) does not address the inequalities brought about by natural circumstances or purely morally arbitrary chances such as low Intellectual Quotient (IQ) or physical disability.

According to Dworkin (2000), economic inequalities are acceptable only to the extent that they are based on individual initiative, rather than circumstances beyond one's control, such as heritage, physical handicap and environmental adversity. In his *quality of resources* principle, Dworkin (2000) makes a case for state intervention to correct inequalities arising out of circumstances such as physical disability or poor environment, but leaving individual inequalities from choice and the market competition intact.

More recently, Sen (1997) using the *capability approach* argues that compensation alone as espoused by the principle of distributive justice and quality of resources is not enough. The fundamental goal of economic development is individual freedom to enable human beings achieve their goals in life. Therefore, people's total capabilities, once enhanced, can grant people a fair go at life. The state and community should, therefore, provide basic goods, services and skills (literacy, education, health, self-respect, etc) to all citizens in order to level the playing field for people to strike out in their direction of choice.

The above three principles of *distributive justice, quality of resources and capability approach* are consistent in advocating institutionalized intervention to level the playing field, and beyond that there are no limits to inequality. This is essentially reminiscent of a capitalist welfare state in which the principle is not necessarily to remove all inequalities, but only those that disadvantage or incapacitate someone else. Inequalities by themselves are tolerable if they improve general welfare, but not where they create circumstances that cause misery to others.

### *Libertarianism and property rights*

The traditional form of libertarianism (right-libertarianism) holds that natural resources such as land, air and water are initially not owned by anyone and are simply up for grabs, such that whoever first discovers or first claims a natural resource owns that resource. According to Kirzner (1978), those who discover natural resources are *creating* the knowledge that those resources exist. It is the creative aspect of discovery that generates the unrestricted right to appropriate. Thus, it would not, for instance, matter how much land one owns provided it had not been appropriated from somebody.

Left-libertarianism, by contrast, holds that unappropriated natural resources belong to everyone in some egalitarian manner (Nozick, 1974). Appropriation is legitimate only if "enough and as good" is left for others. It is therefore argued that a person who discovers and claims a waterhole in the desert does not become the full owner of the waterhole if this disadvantages others. In welfare terms, no one should be made worse off in some sense by the appropriation. Steiner (1994), however, argues that agents' unappropriated natural resources may be appropriated as long as they pay for the competitive value (based on supply and demand) of the rights they claim.

Given the existence of multiple generations, the most plausible version of this approach arguably requires that rights over natural resources be *rented* (as opposed to purchased) at the competitive rent value so as to ensure that for *each* generation the total payment equals current competitive value. The fund so generated should be divided equally among all so that each person is entitled to an equal share of the value of natural resources. Otuska (1998) defends an alternative view that the funds should be allocated to promote effective equality of opportunity for a good life, and the funds so generated shoud, therefore, be given to those who have less valuable opportunities. Therefore, individuals may unilaterally appropriate natural resources to the extent that it is compatible with everyone having an equal opportunity for a good life. A person who appropriates more than such a share owes others compensation for their decreased opportunities for a good life. This can provide the basis for a kind of egalitarian redistribution.

Libertarianism is attractive because it provides significant protection against interference from others and because it is sensitive to what the past was like (e.g., what agreements were made and what rights' violations took place). However, unlike distributive justice, it gives too much protection from interference and not enough attention to making the future better by, for example, meeting people's basic needs, making people's lives better, or promoting equality. In terms of policy interventions, libertarianism also poses the following questions:

- Is it the specific act of acquisition that should make no one worse off, or is it the general practice of acquisition of natural resources that should make no one worse off?
- What is the appropriate baseline: Is it non-acquisition of private property of natural resources, or the most efficient form of property rights?

### Inequality and poverty

While inequality and poverty do not mean the same thing, the two are related. Wanton appropriation of resources by a section of society may leave others destitute. Changes in income distribution in favour of the poor can affect the level of poverty by leaving them with more resources. Inequality in land distribution in Kenya, for instance, has given rise to many people living as squatters under very poor conditions, while some families have large tracts of land, sometimes lying idle. It is evident in Kenya that some regions with high levels of inequality are also the regions of high level of poverty (Society for International Development, 2004). Inequality in education also has direct impact on household poverty, such that the better educated the head of household the better the standard of living of the household (Republic of Kenya, 2005a). Therefore, in the context of distributive justice, it can be generally argued that policies and growth patterns that improve distribution are potentially significant tools in the fight against poverty. However, inequality may also affect poverty indirectly through its impact on growth where, for instance, large inequalities trigger political demand for transfers and redistributive taxation. These, in turn, may distort incentives to work, savings and investment and eventually impedes growth.

The principal objective of this study is to investigate the inequality perspective of land ownership and use in Kenya. The study uses the principle *of distributive* *justice* as the paradigm or the theoretical/conceptual basis of analysis. This is underpinned by the following assumptions:

- Compensation for basic goods necessary to sustain a decent life.
- Institutionalized intervention to level the playing fields.
- Inequality arising out of individual initiatives is justified.

The study relies on secondary sources of data and available information. It examines the extent of inequality in land ownership and use in Kenya, how this has disadvantaged some sections of the society, created poverty, and given rise to skewed development. It examines past attempts at land reforms, their impact on equity, and recommends prospects for further policy interventions required to correct the inequality without impeding growth.

## Land Ownership and Use in Colonial Kenya

### Overview of land ownership in Africa

Land ownership and use in African countries has been influenced by European settlement that dictated patterns of economic development and types of crops produced, as shown by the histories of British colonialism in Zimbabwe and Kenya, the French in Burkina Faso and Senegal, the Belgians in Rwanda, the Italians in Somalia, and *apartheid* South Africa. These countries exhibit diverse tenure arrangements, rules governing access to land, utilization and transfer. Although all the governments have since attaining political independence declared some policy changes and enacted legislation affecting land rights, land transactions, size of holdings and imposed land taxes, the substance of the law and the extent to which laws are enforced differ widely. The extent to which these laws have affected inequality in land distribution also differs widely (Bruce and Migot-Adhola, 1994; Akinyi, 2006).

Kenya, Zimbabwe and South Africa are some of the countries that inherited the most skewed land distribution in Africa due to their past colonial heritage. At independence in 1980, Zimbabwe inherited a racially skewed agricultural sector where 6,000 white large-scale commercial farmers owned 15.5 million hectares, 8,500 indigenous African small-scale farmers owned 1.4 million hectares, and 700,000 peasants owned 16.4 million hectares (Utete, 2003). In 1996, the Government of Zimbabwe produced a new land policy with a clear overview of resettlement programme. A policy framework document was produced in 1998 to guide the acquisition and distribution of 5 million hectares based on agro-ecological zones. The Constitution was amended in March 2000 to pave way for Fast Track land reform programme, which absolved the Government of Zimbabwe from paying compensation for land, except improvements.

In South Africa, the land question remains the most intractable, as the continuing racial mal-distribution of land has perpetuated the unresolved needs and demands of the country's 19 million mostly poor, black and landless rural people. The roots of this inequality lie in the country's history of colonialism and *apartheid*. The segregation of Blacks from Whites started as early as 1658, culminating with the Native Land Act of 1913 that reserved only 10 percent of the land for blacks (Thwala, 2003). This Act, together with subsequent other related land laws, forcibly removed millions of Blacks from their homes and this continued into the 1980s. At the time of independence in 1994, the 31 million Blacks, or 76 percent of the population, were confined to 13 percent of the land while the Whites, constituting 13 percent of the population controlled the remaining 87 percent of the land. Despite the over 10 years of land reform, 85 percent of the country remains under White ownership.

## Colonial land policy

The land dispossession of the Black population in South Africa and Zimbabwe was driven by the need to reduce competition from White farmers and to create a pool of cheap labour to work on the farms and mines and, later industry. The pattern of land ownership and control also fundamentally structured the social mechanism of control over Black workers and the population surplus to the needs of the capitalist economy. The circumstances are to a large extent similar in the case of Kenya.

The problem of taking away land from indigenous Kenyans dates back to 1888 when the Imperial British East Africa Company (IBEAC) signed an agreement with the Sultan of Zanzibar in which 'all rights to land in his territory excepting private lands' were ceded to the Company. This affected the 10-miles coastal strip running from Tanzania to the Somali border. However, massive land dispossession came with the declaration of the present Kenya as a British East Africa Protectorate in 1895, and the construction of the Kenya-Uganda Railway from Mombasa to Lake Victoria, and the need to settle Europeans in the country. The whole scenario of land in Kenya during the colonial period from 1895 to the eve of independence in early 1960s is briefly examined under the following highlights:

*i) Land for the railway line:* From 1897, the Commissioner for the Protectorate, using the Land Acquisition Act of India (1894), appropriated all lands on the mainland situated within one-mile on either side of the Kenya-Uganda railway wherever finally constructed. Except in the Kikuyu country (present day Murang'a) where Francis Hall arranged for compensation, the land was treated as worthless and not compensated (Sorrenson, 1967).

*ii) Land for European settlement:* In order to encourage European settlement that would pay for the railway, the British Government, acting under the Foreign Jurisdiction Act of 1890, promulgated the East African Lands Order in Council in 1897 which, among other things, empowered the Commissioner (administrator) in charge of the protectorate to give land to White settlers on leases up to 99 years so long as that land was neither occupied nor cultivated by the natives. It also empowered the Crown to sell freeholds of Crown lands on the 10-mile coastal strip ceded to it by the IBEAC irrespective of whether native Africans were there or not. Thereafter, the following substantive legislations in 1902, 1908 and 1915 effectively made land in Kenya "crown land" and the Africans became "tenants at will" even on the land they occupied:

- In 1902, The Crown Lands Ordinance was enacted and provided that empty land or any land vacated by a native could be sold or rented to Europeans. It also stated that land had to be developed or else forfeited. Accordingly, 1904 saw massive land dispossession through the surveying and alienation of unoccupied land in the southern parts of Kikuyu land, and in the same year the first Maasai Agreement was executed between Lenana and the British Government, which forced the Maasai to vacate their lands in Suswa, Naivasha, Ol-Joro-Orok and Ol-Kalau areas to the southern Ngon'g and Laikipia reserves "to be used by the Government for purposes of European settlement".
- In 1905, the Nandi, who had resisted the British since 1895, were finally subdued and gave in to annexation of their land for European settlement under the 1902 Ordinance.
- For the coastal belt, a separate legislation, the Land Titles Ordinance, was passed in 1908 to allow those with claims to title to present them to a Land Registration Court, stipulating that all land for which no claim or claims for a certificate of ownership shall be deemed to be "Crown land". This enactment therefore operated in the Coastal belt while the 1902 Ordinance operated elsewhere in the country.
- In 1911, the Maasai were made to sign a second agreement, which led to their eviction from Laikipia to southern Ngon'g reserves, and incurring heavy losses in human life and livestock.
- In 1915, the Crown Land Ordinance repealed the 1902 Ordinance and declared all land as Crown land, including land occupied and reserved for Africans. Therefore, effectively after 1915, Africans were said to be mere "tenants at will" of the state, and therefore beneficiaries of a trust established by the state to administer the land they occupied (Okoth Ogendo, 1991).

The effect of the 1902, 1908 and 1915 ordinances was that by 1914, nearly 5 million acres (2 million hectares) of land had been taken away from Kenyan Africans. This increased to 7.2 million acres (2,880,000 hectares) by 1924 and by the time of independence in 1962, a total of 3 million hectares or half the agricultural land in Kenya had been taken away, particularly from the Kikuyu, Nandi and Maasai communities (Partner News, 2004; Okoth Ogendo, 1991).

*iii) Land for African reserves:* Like in South Africa, the colonial land segregation was effected through the Native Trust Bill passed in 1926 to reserve certain areas for exclusive use by Africans. Subsequently in 1932, the Carter Commission fixed the boundaries of the White Highlands and removed Africans from there. More African reserves were created to cater for the increasing African population. However, land reserved for Africans for use remained 'Crown Land', hence available for alienation at any time.

*iv) Displacement and adaptations in the native reserves:* Van Swanenberg (1972) reports that from about the middle of 1920s, many areas of Kenya began to experience to a greater or lesser extent population pressure against resources. The displacement of pastoral and agricultural communities was accompanied by many problems of human adaptations. These included severe famines and livestock diseases and plagues, as pastoral communities struggled to adapt to new ecological conditions, while land erosion became common. Among the predominantly agricultural peoples like the Kikuyu, commercial agricultural production combined with population increases led to acute land shortages, landlessness and discontent among the rural peasantry. These and other factors precipitated political consciousness in the 1950s and 1960s.

The idea of fixed ethnic boundaries by the Carter Commission became an essential attribute of land distribution, land relations and land inequality in African communities in Kenya. It disturbed the pattern of land use and availability by making it impossible to acquire permanent rights elsewhere. Any kind of production expansion had to be within each area of ethnic jurisdiction, and in areas where land shortages were most acute, it had to be at the expense of land quality and the interests of other members of the community. Matters were not made any better by an amendment to the Native Authority Ordinance of 1940, which gave the Provincial Commissioner power to order any native found cultivating land outside his reserve to return there (section 3, Ordinance No. 20, 1940). This accelerated increasing land fragmentation and sub-division into sub-economic parcels in areas of high land pressure.

The creation of the reserves also led to increasing out-migration by those without enough land to subsist on. Many of these migrants, coming from western and central Kenya, ended up as squatters on European farms, therefore, providing a ready pool of cheap labour.

It has also been observed by Okoth Ogendo (1991) that land disputes between clans and disputes about quantum of rights among families and family members began to be a common feature in the reserves. There was a very high preponderance of land cases as opposed to other civil cases in particularly in those areas where land shortage was acute.

*v) Individualization of tenure in African reserves:* There was no doubt that by 1940s, land scarcity in the reserves had become a critical economic and political issue with demands for the restoration of stolen lands. When the *Mau Mau* revolt exploded in 1952, it became clear that the land issue could no longer be ignored. Therefore, in 1954, R. J. M. Swynnerton published a report on land management reform for the reserves, particularly the *Mau Mau* districts of central Kenya so as to reduce the demand for redistribution of European-held land. The strategies proposed were individualization of tenure through land consolidation and registration, and improved agricultural production through extension services. This report was further supported in 1955 by the East African Royal Commission Report, which further recommended a multi-racial approach to agrarian policy that would demolish barriers to racial land ownership by allowing natives to grow cash crops. Subsequently, in 1956 Native Land Tenure Rules were promulgated to empower the Minister for African Affairs to put in place machinery for the adjudication and consolidation of those areas of native lands. The process once completed and titles issued could not be challenged, and thus barred those *Mau Mau* in detention from challenging those who got land in their absence. Many people, therefore, became dispossessed through this process.

In 1957, a Working Party on African Land tenure was appointed to make recommendations on how land tenure reform can be introduced to all areas of native lands. Its recommendations led to the enactment of two statutes, the Native Lands Registration Ordinance of 1959 and the Land Control (Native Lands) Ordinance of 1960 to control land transactions within the adjudicated areas. These two pieces of legislation are the forerunners of the Registered Land Act of 1963 and the Land Control Act of 1967 that operate in Kenya to the present day.

### *Effects of individualization of land tenure*

There is a widespread belief among development specialists that tenure security is an important condition for economic development (Barrows and Roth, 1990). Tenure security is believed to:

- Increase credit use through greater incentives for investment;
- Improve creditworthiness of projects and enhanced collateral value of land;
- Increase land transactions, facilitating transfers of land from less efficient to more efficient uses by increasing the certainty of contracts and lowering enforcement costs;
- Reduce the incidence of land disputes through clearer definition and enforcement of rights; and
- Raise productivity through increased agricultural investment.

However, whether security of tenure only comes through registration rather than customary systems is a mute debate (Okoth Ogendo, 1991; Bruce and Migot-Adholla, 1994). Similarly, secure tenure is necessary but not sufficient for agricultural development, and expected benefits would be strongest in situations of dynamic technology and well functioning markets. For instance, farmers may be unfamiliar with technological options, investments may be unprofitable, or investment returns may be risky. Poorly developed input distribution systems may fail to supply enough complementary inputs or may result in unaffordable input prices. Although credit access for some individuals with title may improve, credit supply in aggregate may remain inelastic. Poorly developed financial systems may result in exorbitant administrative charges and poor delivery of credit services to rural areas. People's preferences, whether they want to be on the farm or off-farm, will also affect the outcome of tenure reforms.

In the Kenyan case, although individualization of tenure was justified on economic grounds, its implementation had a decidedly political motive (Bruce and Migot-Adholla, 1994). Colonial policy makers thought that it would be the beginning of a process that would create a class of African rural elite, rooted in land and committed to private enterprise, which would also provide liberal political leadership. The tenure individualization did not increase the quantum of land but put emphasis on improvement of technology of production on the basis of existing patterns of land distribution that was already skewed. Many people, especially in central Kenya, were uprooted from familiar terrain through consolidation. The reform, therefore, aggravated landlessness as those accommodated through customary tenure had their rights extinguished through registration. It has also been observed that since only male heads of households were generally registered as parcel owners, the reform undermined the rights of women and children, and rendered them liable to landlessness should the owner decide to transfer the land.

### Effects of farm labour stabilization

As early as 1905, it had been recognized that farms needed a steady flow of labour. Therefore, a steady flow of labour was to be achieved through taxation, which compelled the Africans to go and look for work and also enter into definite agreements to become permanent farm residents who would be permanently useful to the farmer. This was effected through the enactment of the Resident Native (Squatters) Ordinance in 1918, requiring resident labourers to work for a minimum of 240 days in a year in Nairobi, Nakuru, Uasin Gishu and Trans Nzoia, and 270 days in Naivasha and Aberdares. They could keep cattle and cultivate designated parts of the farm, but not keep goats. This was the genesis of the squatter problems on the farms and forests in Kenya, which remains a critical land question to date.

The fact that the settler economy siphoned off many able-bodied people from the reserves meant that in addition to land alienation, the African economy was deprived of a most productive asset. The overall impact of this was that the rates of expansion in agricultural production and technological adaptation to changing man-land ratios in the native reserves remained extremely low.

On the positive, some of the squatters acquired farming skills and became beneficiaries of early independence land settlement programmes. However, this had a minimal effect on land redistribution.

## Multi-racial settlement plan

As independence approached, the European settlers occupied some 7,501,000 acres (3,000,400 hectares) of land held on leases and freehold tenure, which the Africans were demanding. To safeguard their possessions in the event of a power transfer, the colonial government initiated a settlement plan for the Africanization of the highlands as well as an elaborate scheme of constitutional and statutory guarantees of property rights.

Like in the case of Zimbabwe in 1979, the Lancaster House Constitution negotiations and agreement in 1960 entrenched in the Constitution of Kenya the “willing-seller willing-buyer” as the basis of land acquisition and re-distribution. To facilitate this principle, a Land Development and Settlement Board (LDSB) was established in 1960 to devise and administer resettlement schemes for all races through the stabilization of the prices of European-owned farmland and the offering of credit facilities to Africans who wished to purchase farming land in the Scheduled Areas. An Agricultural Settlement Fund was set up to assist in this process through a grant/loan agreement of £7.5 million from the United Kingdom government, the World Bank and the Colonial (later Commonwealth) Development Corporation.

The scheme proposed to settle about 1,800 families on holdings of approximately 50 hectares each, about 6,000 peasant farmers on holdings of 20 hectares, and 12,000 high-density smallholders on holdings of 5 hectares. Among those to be first settled was an organization calling itself the Land Freedom Army, which was formed in early 1960 with the aim of taking back land in the White Highlands by force. In response, the government quickly settled nearly 3,000 families in 21 days in the Kinangop area. However, not much happened beyond this gesture. This programme was handed over to the independent government as the Million Acre Scheme to be discussed later.

In retrospect, none of these schemes were designed to deal with the political pressures for the distribution of land to the landless, who such organizations as the Land Freedom Army symbolized. In effect, it seemed as though what was being done was to entrench the political leverage of the European settlers at a time when it was abundantly clear that European rule as such was over. It was no surprise, therefore, that nationalist politicians such as Jaramogi Oginga Odinga reiterated that any purchase or compensation arrangements were unacceptable on the grounds that the land had been “stolen from us by the Crown ... (and) the British must grant full independence under African leadership and hand over land previously alienated ...”(Okoth-Ogendo, 1991).

## Evaluation of post-Colonial Land Policy

As discussed previously, the entrenchment of colonial administration in Kenya since 1895 brought with it a number of changes, which included: massive alienation of land from Africans (3 million hectares or 50% of high potential land), creation of native reserves (exclusion) and individualization of tenure (death of customary tenure). Most of the literature in Kenya (Sorrenson, 1967; Van Swanenberg, 1972; Wasseman, 1976; Migot-Adholla, 1984; Okoth Ogendo, 1976, 1991) point to the fact that the impact of the colonial land policy led to inequality in land ownership and use, resentment by Africans, landlessness, squatting, land degradation and resultant poverty. Thus, there were high expectations following independence, as is often the case with other countries, that fundamental inequalities in land ownership and use would be speedily redressed. In practice, the disparities continued and in some cases probably widened.

The fact of continuity cannot be doubted. Indeed, independence saw a general re-entrenchment and persistence of colonial themes, policies and patterns of organization in all aspects of Kenya's economy, save only for inconsequential adjustments. During the early 1960s, Kenya had two substantive regimes in property law and five registration systems supported by administrative institutions, which have persisted to the present day. The net effect of this system of land administration was to perpetuate a dual system of economic relationships of an export enclave in the relatively high potential regions of the country and a subsistence periphery operated by a large number of peasantry in the marginalized areas. The duality was manifest in three ways:

(1) Two systems of land tenure based on principles of English property law applying to high potential areas, and a largely neglected regime of customary property law in the so called "marginal areas".

(2) A structure of land distribution characterized by large holdings of high potential land, and highly degraded and fragmented smallholdings in other regions.

(3) A policy environment designed to facilitate the development of the high potential areas and neglect of counterpart marginal areas.

### Land redistribution under the Million Acre Settlement Scheme

The Million Acre Settlement Scheme was inaugurated in mid-1962, and involved the transfer of over a million acres of land belonging to those settlers who wanted to leave or otherwise could not stay after independence. These were purchased for the resettlement of Africans on a variety of schemes consisting of small-to-medium-size holdings. After 1963, the land purchase functions of the Land Development and Setttlement Board (LDSB) were transferred to a Central Land Board composed largely of representatives from the central and regional governments, owners of land earmarked for purchase and a chairman and deputy chairman whose positions were entrenched in the Constitution. Its settlement functions, however, were transferred to another new organization known as the Settlement Fund Trustees consisting of central government ministers responsible for agriculture, lands and finance. The Trustees administered the Agricultural Settlement Fund in consultation with various government authorities.

The government promoted rapid and orderly transfer of ownership of European-owned farms to Africans and organized cooperatives on each scheme to market settlers' produce and provide extension services (Republic of Kenya, 1964). The schemes, which were completed by 1971, were of two types, namely:

(1) Low-density settlements for those with farming experience and some capital. This totaled 175,000 acres (70,000 hectares) at a cost of £3,426,000.

(2) High density schemes for the landless and unemployed over an area of 1,075,000 acres (430,000 hectares) at a cost of £9,658,000.

Having accepted the principle that the land must be paid for, demonstrable ability to repay the loan soon became an important factor in the selection of settlers. This became even more essential as the high costs of administering the schemes and their relatively low rates of performance, coupled with soaring default rates in loan repayment began to tell on government policy. The general result was that the majority of the people who were actually settled were not necessarily the absolutely landless people who had given the political impetus for those schemes. Rather, the beneficiaries were those who had accumulated some cash through farming, small business ventures, wage employment or sale of their existing holdings. Many people in Central Province, for example, simply disposed of their land or assigned it to relatives in order to qualify for the cheaper and comparatively larger settlement plots in the Rift Valley. The land loan represented about 90 percent of the subsidized purchase price of land to settlers in low-density schemes and 100 percent on high-density schemes.

This programme was an attempt to establish and entrench a landed African middle-class and as counter-insurgency against radical landless peasant movements (Wasserman, 1976). It enabled some people from central Kenya and the post-independent political elite to buy back land. Land buying companies were formed, comprising mainly the farming communities of central Kenya. One such company is reported to have "settled their kin on 51,539 acres of land in Laikipia, 21,050 acres in Njoro and Nakuru, 1,200 acres in Molo, more than 4,000 acres in Bahati area of Nakuru and 1,400 acres in Mau Narok, all parts of traditional Maasai territory" (Partner News, 2004). Thus, a few people got large tracts of land (20 hectares), others got small parcels (2 hectares) and still many who were indeed landless did not have access to this programme as evidenced by the unending squatter problem in the forests and other areas. Therefore, tension between big landowners (today mainly rich Kenyans) and the landless has continued to mar Kenya's picturesque landscape (Partner News, 2004).

However, although no other settlement programme of the same magnitude has been initiated to address the unequal distribution of land since the scheme was completed, in economic terms it was an extension of the boundaries of former native reserves. The combined effects of expansion of land under cultivation, provision of infrastructure and economic institutions, coupled with abolition of restrictions to produce and market high quality agricultural commodities stimulated an agriculture-led growth of the country's economy for more than a decade till the mid-1970s.

## Land policy in the sessional papers from 1965 to 2005

### Sessional Paper No. 10 of 1965

One reason there is such inequality in land ownership is because the first post-colonial government under the Kenyatta regime continued blithely with a development model the colonialists had used, making no attempt to change the previous distribution pattern that neglected non-high potential areas. The first national development policy, *Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya* ensured that the country's wealth would remain in the productive areas, which included the former White Highlands and those covered by early registration under the Swynnerton Plan. It asserted that:

> *to make the economy grow as fast as possible, development money should be invested where it will yield the largest increase in net output. This approach will clearly favour the development of areas having natural resources, good land and rainfall, transport and power facilities* (Republic of Kenya, 1965: 46).

Thus, instead of putting up industries in all parts of the country, for instance, everything was to be concentrated in the region, while other regions of the country were only to act as a source of labour. This was essentially a case of winner-takes it all capitalism disguised as African socialism.

According to section 134 of the Sessional Paper, if an area is deficient in resources, this can best be done by investing in education and health, and encouraging some of the people to move to areas richer in resources. With the adoption of *Harambee* philosophy, education and health facilities were to be provided by the people themselves. This worsened the disparities as those with resources built more of these facilities, as they did with agricultural infrastructure such as cattle dips, formation of agricultural cooperatives, etc. While these issues were not directly related to inequality in land distribution, they affected people's capability to chart out their direction.

### *Sessional Paper No. 1 of 1986*

The second major economic policy document in independent Kenya was *Sessional Paper No. 1 of 1986 on Economic Management for Renewed Growth,* which re-emphasized that agriculture remains the leading sector in stimulating growth and job creation. The Paper stated that the nation's farmers must continue to lead the country in economic development for the rest of the century and to a limited extent the production pattern "will be diversified in favour of crops such as tea, coffee and vegetables that produce much higher incomes and generate considerably more employment per hectare than other crops and livestock. Small shifts in land use can yield relatively large gains in income, employment and export revenue when these crops are involved" (Republic of Kenya, 1986:63). The Paper further observed that these three crops occupy only 5 percent of medium to high-potential agricultural land and produce 37 percent of the total agricultural value in comparison to other crops (maize, beans, sorghum, root crops) and milk that occupy 84 percent of this land, but produce only 43 percent of the agricultural value. Coffee, tea, vegetable and pyrethrum employ 1.4 to 2 persons per hectare compared to only 0.3 to 0.6 for the other products, and they also earn five to ten times the foreign exchange per hectare than can be saved by import substitution for food grains.

These observations led to the conclusion that rapid growth of rural incomes and gross domestic product would be served by greater output of coffee, tea and vegetables through both intensification and acreage expansion, while the acreage for other products is maintained. Thus, as had been the case previously, greater investment would be devoted to regions where the higher income-earning crops grow, which happen to be the former White Highlands.

In terms of land tenure, the policy paper observed that there had been no major review of land policy since independence. The government was therefore to appoint a commission in early 1986 "to review the land tenure laws and practices of the country and to recommend legislation that will bring the law into conformity with Kenya's development needs" (Republic of Kenya, 1986:90), but no such appointment took place until the Njonjo Commission (Republic of Kenya, 2002a) was appointed in 2000 and presented its report in 2002.

### *Poverty Reduction Strategy Paper 2001-2004*

A third major economic policy document in Kenya was the Poverty Reduction Strategy Paper (PRSP) 2001-2004, which was also used as basis or an input to the *Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007*. The Paper reported that many communities identified landlessness as a major underlying cause of poverty. The causes of poverty included high population growth, poor land tenure systems, poor utilization of land resources, customary laws of inheritance and land fragmentation. It concluded that inadequacy of land policies has adversely affected agricultural production. Consequently, the government during the PRSP period, expected to implement the recommendations of the Njonjo Commission Report of 2002 for better land management.

## Development plans since 1964

### *Land registration and transfer in the 1964-70 Development Plan*

The first national development plan for 1964-1970 embraced much of the continuity in the land management practice. It continued the land consolidation started in 1955 by the Swynnerton Plan. The government was "determined to accelerate the process and complete as much of the remaining area as possible, particularly all medium and high potential land within the next ten years" (Republic of Kenya, 1964:131).

The government recognized the importance of the former Scheduled Areas in the national economy. The plan observed that, while the comparative role of the former African areas in the nation's cash economy was rising rapidly, and would do so even more rapidly in the future, the former Scheduled Areas would continue as a source of more than half of marketed agricultural output. Attainment of Kenya's 1970 growth targets would be impossible unless output from the former Scheduled areas increased at a steady rate.

It was observed that over 1 million acres, or one-third of 3.4 million acres of mixed farming acreage, had been transferred to Africans. However, this transitional period in the mixed farming areas was costing the national economy significant amounts of output, foreign exchange and personal income as production had gone down substantially to less than 1961/62 levels. The government "therefore decided that the rate of land transfer in the mixed farming areas will be slowed down for a few years in order to permit consolidation of existing schemes and ensure steady progress in the mixed farming economy" (Republic of Kenya, 1964: 132).

The Plan emphasized that to fulfil its role in a modern economy land must be legally registered, thereby becoming a marketable and taxable asset as well as a suitable security. It emphasized that land consolidation and registration must be followed up with land improvement, agricultural credit and extension services as was the case in Central Province, which had additional advantages including ecology, the general level of education and energy, and the proximity to Nairobi as a market.

It was estimated that 2.75 million acres had been consolidated by June 1963, and that another 3 million acres would need to be completed at the rate of 150,000 acres per annum. At the Coast, conflicting land claims had to be adjudicated and completed within five years. While the registration process, as envisaged in this plan, slowed down to the extent that more than two-thirds of the country remained unregistered, the usefulness of this process, as initiated in the 1950s, has continued to elicit debate.

An evaluation of the impact of land registration in Kenya observed that “despite more than 30 years of registration, a land market, which was considered a key benefit of tenure conversion, has not yet clearly emerged in the former reserves. The situation, in turn, has nullified the credit and investment objectives of registration...It is therefore debatable whether land registration and administration as practised in Kenya today can still be justified on the grounds of their economic benefits” (Bruce and Migot-Adholla, 1994: 124).

*Government policy on irrigation and drainage in the 1989-94 period*

Irrigation plays a very significant role in Kenya’s agricultural development considering that 80 percent of the total land area is dry. At independence, the total area under irrigation was 3,340 hectares (8,350 acres) mainly in large-scale irrigation schemes. Thus, the 1989-1994 development plan observed that in the past, government policy on irrigation had tended to favour large-scale irrigation schemes, which were expensive to implement, such that by 1989 only 33,000 hectares of land had been irrigated (Republic of Kenya, 1989).The plan proposed to strike a balance between small-scale and large-scale irrigation projects, as well as balancing between commercial and subsistence crop production.

The low priority to irrigation in Kenya arises out of the observation by the *Sessional Paper No. 1 of 1986 on Economic Management for Growth,* which stated that “large-scale irrigation systems, especially those requiring pumped water, are costly undertakings all over the world and generally require subsidization... Large-scale pumped irrigation has not been a cost-effective way to provide jobs and incomes for rural families... But priority will be given to the consolidation and rehabilitation of existing schemes” (Republic of Kenya, 1986: 83). This resulted in policy bias against small-scale agriculture and stagnation in the rate of economic growth, and has contributed to perpetuation of inequality in access to productive land since no irrigable land gets expanded. This confirmed an earlier observation that during the colonial period, the “development of ASAL areas was given low priority, a situation that persisted during the first three post-independence development plan periods” (Republic of Kenya, 1989: 132).

Matters were not helped by the proposal in the development plan to give top priority to irrigation of strategic commodities such as coffee, rice and horticultural crops with already assured markets and high irrigation/yield potential, which in turn translates into high farm incomes and foreign exchange earnings. This was despite the existence of the 1979 policy paper on *The Arid and Semi-arid Lands of Kenya: A Framework for Implementation, Programme Planning and Evaluation,* which proposed projects that included dry land farming systems, pastoral systems development and small-scale development.

The bottom line is that Kenya’s irrigation and drainage potential are estimated at 540,000 and 800,000 hectares, respectively, and that only 52,000 hectares are estimated to be under irrigation, representing only 10 percent of potential irrigable land. A target of 2,500 and 2,000 hectares per year would need to be brought into irrigation and drainage, respectively, in order to tap this potential in land redistribution (Republic of Kenya, 1996).

*Land management in the 1994-96 development plan*

The 1994-1996 National Development Plan observed that in the previous development plans, land policy had been treated as a mere framework over which other development activities were undertaken. No specific implementation proposals were reflected in the plans and that an independent land commission has been proposed since 1970s but none has been set up (Republic of Kenya, 1994: 107). The Plan observed that, as a result, a number of manifestations of poor land policy and management could be observed, which call for establishment of such a commission to review land tenure laws and practices. The observations that closely relate to inequality in land use and management included the following:

- By December 1992, some 212,796 titles had been issued under the land adjudication and registration programme, of which 90 percent had been issued in medium to high potential areas. The low potential areas, therefore, would remain disenfranchized if the economic justification for undertaking the programme was respected.
- In the areas where adjudication had started, various categories of land disputes were pending before registration took place. By December 1992, there were 22,805 cases pending. The lengthy procedures of handling the cases had hindered development in these areas, and complex customary laws and practices further complicated the situation. Economic development in these areas was, therefore, hampered.
- In areas where registration was complete and titles issued, land boundary disputes were prevalent, and increasing at the rate of 900 per annum. The backlog of unsettled cases by December 1992 stood at 7,000 registered upcountry, while claims at the Coast under the Land Titles Act stood at 8,844.

The above observations point to the previous cautions associated with individualization of titles. While the number of disputes may appear small in relation to the more than 200,000 titles issued, this may not reduce the disputes. The extent to which it does will depend on the quality of the adjudication process and the broader context of respect of law.

### Commissions of inquiry into land problems

Observations in the successive sessional papers and development plans pointed out the inadequacies of land administration in Kenya, and generally recommended the need for a reappraisal. The KANU Government under Daniel arap Moi, therefore, appointed a commission of inquiry into existing land law and tenure systems (the 'Njonjo Commission') with a view to making recommendations to improve land administration and management. The report was published in November 2002, and among its main recommendations was the need to formulate a national land policy and establish a national land commission for better management and administration of land. The Moi Government was voted out of office in December 2002 and did not therefore act on the report.

The NARC Government under President Mwai Kibaki, which came to power in December 2002 to replace KANU, promised a number of reforms in various sectors, including the land sector. It has since then taken a number of initiatives including the following:

- A task force was formed in April 2003 and its findings presented in August 2003. The findings recognized the Internally Displaced Persons (IDPs) as among one of the fundamental issues to be addressed by the proposed Truth and Reconciliation Commission.
- The passing of a Parliamentary motion initiated by the Member of Parliament Koigi Wamwere on the importance of resettling IDPs in July 2003, which is yet to bear fruit.
- A Commission of Inquiry into Illegal/Irregular Allocation of Public Land (the Ndung'u Commission) was appointed in 2003 and submitted its report in 2004 (Republic of Kenya, 2004a). It looked specifically at the issue of illegally allocated land and made recommendations on how to deal with this phenomenon. It identified land that, after repossession, could be used to resettle the landless. These recommendations are largely unimplemented and remain at the core of the land question in Kenya.

No concrete action has been taken to implement any of the above reports, including the Ndung'u Commission report that elicited a lot of public debate. A more positive action is the initiative to formulate a National Land Policy for Kenya launched in February 2004 to address the land question holistically. The process of developing the national land policy has progressed considerably and is expected to translate into a more transparent, efficient and sustainable land management and administration for Kenya (Republic of Kenya, 2006).

## Distribution of Different Categories of Land

### Introduction

The Republic of Kenya has an area of roughly 582,646 square kilometers (58,264,600 hectares) comprising 98.11 percent land and 1.89 percent water surface (Table 8.1). Only 20 percent of the land surface can support rain-fed agriculture (medium to high potential). About 75 percent of the population lives in these areas with population densities as high as 2000 per square kilometer in some parts. Land holdings are small and are suffering continuous fragmentation into uneconomic sizes. The sub-division of land into smaller units encourages overuse and degradation and has led to low agricultural productivity and decline in investment in land, since it is difficult for small holdings to attract adequate financial resources. There are a few large farms owned by the political elite, and which are not being optimally utilized, often causing discontent among those with no or very little land.

The remaining land is arid and semi-arid and devoted to pastoralism and wildlife (Figure 8.1). The scarcity of water in these areas has a security concern as people and animals compete for access, and very often conflicts arise (Republic of Kenya, 2002a). The frequent conflicts over access to water and grazing lands around pastoral communities have affected utilization of land for food production in large areas, raising the spectre of widespread hunger and food insecurity.

Most of land in Kenya is still largely communal (65.4%) despite the fact that individualization of tenure started in the 1950s. County Councils hold this land in trust on behalf of the communities, but it is often mismanaged in total exclusion of the communities. Only 18.3 percent of the land, covering 108,403 square kilometres, has been adjudicated and registered and this is mainly in the medium to high potential areas.

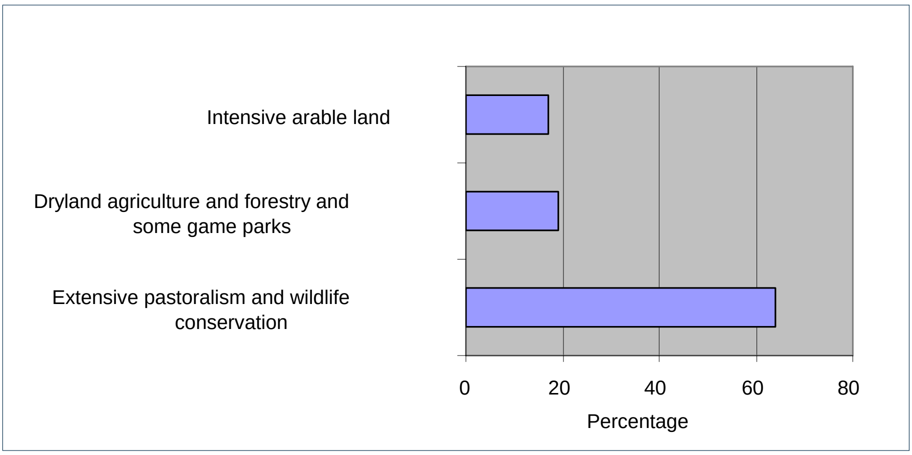
There are also gross disparities in land ownership with regard to gender and inter-generational discrimination in succession, transfer of land and the exclusion of women and the youth in land decision-making processes. With regard to inheritance rights, customary laws and traditions that are still widely applied exclude widows from inheritance and only rarely allow daughters to inherit (Benschop, 2002). Under Islamic law, which applies to the Muslim community, widows and daughters can inherit but their share is smaller than that of men. Under the statutory law, which applies to many areas in Kenya, widows only receive a life interest until they remarry or die. Moreover, nine areas in the country (Wajir, West Pokot, Turkana, Tana River, Garissa, Marsabit, Isiolo, Mandera, and Lamu) are excluded from the operations of the statutory law of inheritance. If a person dies intestate in these areas, customary law applies with regard to agricultural land and livestock. As in many of these areas, livestock and agricultural land may be the only property owned by a deceased person. This provision has the effect of excluding women from inheritance. In these areas, land is also still owned communally and, as such, it may be difficult to apportion land to individuals.

### Table 8.1: Land composition in Kenya

| | Area in sq. km. | % | % |
|---|---|---|---|
| A. Surface area | | | |
| Rural land | 517,467 | 87.28 | |
| National parks | 40,907 | 6.90 | |
| Forest and game reserves | 18,662 | 3.15 | |
| Urban land | 4,643 | 0.78 | |
| Sub-total land surface | 581,679 | 98.11 | |
| Water surface | 11,230 | 1.89 | |
| Total | 592,909 | 100.00 | |
| B. Ownership categories | | | |
| Public land | 76,953 | 12.99 | |
| Trust land | 396,323 | 66.84 | |
| Private land | 108,403 | 18.28 | |
| Total | 581,697 | 100.00 | |
| C. Land registration | | | |
| Status | Source | Area in sq. km | |
| Registered land | Private | 108,403 | 18.64 |
| Unalienated land | Public | 33,241 | 5.71 |
| Unregistered land | Trust | 380,484 | 65.41 |
| Parks and reserves | Public | 59,569 | 10.24 |
| Total | | 581,697 | 100.00 |

*Source: Republic of Kenya (2004b)*

### Figure 8.1: Current land usage in Kenya




*Source: Republic of Kenya (2004c)*

### Regional land distribution by agricultural potential

During the colonial period, land in Kenya was conveniently classified into four broad ecological zones (Republic of Kenya, 1964: 45-71):

(1) High potential land, characterized either by good soil conditions or more than 35 inches (857.5mm) of rainfall per year or both. This covered one-sixth (16.7%) of land area lying to the south-west of Kenya.

(2) Medium potential land, which receives 25-35 inches (735-857.5mm) of rainfall but otherwise similar to high potential.

(3) Low potential with 20-25 inches (588-735mm) and best suited to ranching and/or irrigation.

(4) Nomadic pastoral lands, with less than 20 inches (588mm) annual rainfall suitable for infrequent stock grazing and maintenance of wildlife. This covers 70 percent of Kenya's land area and 35 percent of this land has rainfall less than 10 inches (300mm) and is not capable of supporting any development without irrigation.

After independence, the four land use potential categories were re-categorized into three on the basis of annual rainfall as follows:

(1) High potential with rainfall above 857.5mm

(2) Medium with rainfall between 612.5 and 857.5mm

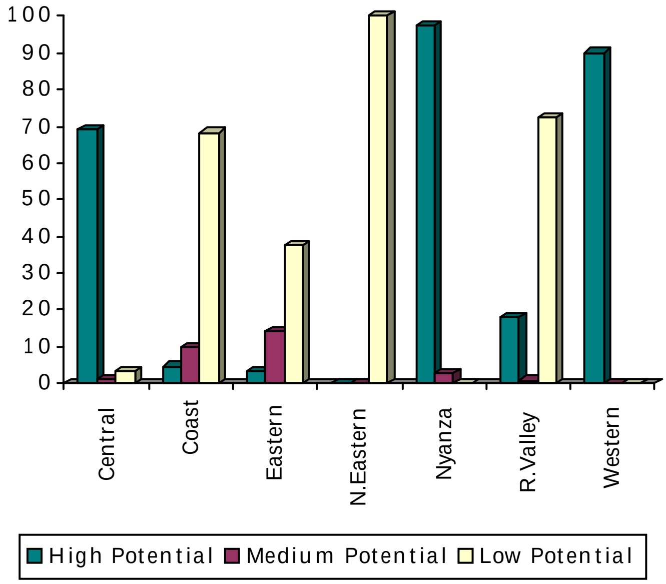
(3) Low potential for all land with less than 612.5mm

Figure 8.2 shows the regional distribution in agricultural land potential in which 90 percent of land in Nyanza and Western provinces has high potential, followed by Central Province with 69 percent. Only 17.9 percent of land in Rift Valley, 4.5 percent in Coast and 3.2 percent in Eastern provinces is of high potential land. The whole of North Eastern Province is classified as low potential land (Republic of Kenya, 2005b).

Within the various regions, Table 8.2 shows districts in which more than 75 percent of the land area is high potential, and those in which more than 70 percent of the land is low potential land. The figures marked "p" in brackets are derived from *Geographic Dimensions of Well-Being* in Kenya published by the Central Bureau of Statistics (Republic of Kenya, 2003b and 2005a) and refer to populations in the respective districts living below the poverty line.

Some of the districts with the highest land potential have also recorded high rates of poverty, notably Busia (67%), Siaya (64%), Kakamega (63%) and Kisii (62%). Some districts with low land potential have relatively lower poverty incidence– Nyandarua (34%), Laikipia (39%), Isiolo (52%), Marsabit (53%) and West Pokot (53%). Even Migori (48%), which is the least poor district in both Nyanza and

**Figure 8.2: Distribution of high potential land by province**




*Source: Republic of Kenya (2004)*

**Table 8.2: Distribution of high potential land by district**

| District | % high potential land area | District | % low potential land area |
|---|---|---|---|
| Busia | 100 (p:67) | Isiolo | 100 (p:52) |
| Kisii | 100 (p:62) | Garissa | 100 (p:65) |
| Migori | 97.4 (p:48) | Mandera | 100 (p:64) |
| Siaya | 93.79 (p:64) | Wajir | 100 (p:65) |
| Kakamega | 92.3 (p:63) | Turkana | 99.8 (p:62) |
| Uasin Gishu | 86.5 (p:43) | Marsabit | 95.3 (p:53) |
| Nandi | 85.4 (p:50) | T/ River | 87.7 (p:64) |
| T/Nzoia | 84.2 (p:48) | Kajiado | 84.0 (p:44) |
| Bungoma | 82.1 (p:57) | Laikipia | 79.0 (p:39) |
| Kiambu | 78.3(p22) | Samburu | 77.5 (p:46) |
| Murang'a | 78.3 (p:37) | W/ Pokot | 72.0 (p:53) |
| Kericho | 77.7 (p:49) | | |
| Nyandarua | 75.0 (p:34) | | |

*Source: Republic of Kenya (2003b, 2005a)*

Western provinces, is nearly one and half times as poor as every district in Central Province.

The categorization of land potential based on annual rainfall alone may not be sufficient without looking at its distribution and reliability. Additionally, soil conditions are a major determinant of the productive capacity of land. This may be illustrated with the case of Kakamega and Nyeri districts. A study by the Ministry of Agriculture in 1983 (quoted by Migot-Adhola, Place and Oluoch-Kosura, 1994) shows that in Kakamega District annual rainfall varies from 1,250mm to 2,000mm, with long rains falling from March to June and peaking in April/May. The short rains begin in July, peaking in September and end in October. Although there are pockets of fertile soil in the District, about 85 percent of the land area is covered with infertile soils as a result of leaching from high rainfall and intensive cultivation over a long time without appropriate measures to maintain soil fertility. The southern and central parts of the district have two cultivation seasons per year, with maize, beans and sorghum dominating the cropping pattern. In the northern part, where rainfall is relatively low, farmers grow only one crop per year.

Nyeri District in central Kenya has annual rainfall varying from 750mm to 1,750mm. The long rains begin in March and end in May, while the short rains begin in October and end in December. The infrastructure in the District is better developed than in other rural districts in Kenya. The major agricultural products are coffee, tea, maize, pyrethrum, dairy and vegetables. Cash-cropping is more common in Nyeri, where infrastructure and market opportunities are better developed. The farmer in Kakamega strives for “food first” production on the farm and only manages less than 10 bags of maize per hectare (Migot-Adholla, Place and Oluoch-Kosura, 1994).

Another factor influencing productivity of land is the availability of training by agricultural extension workers and infrastructure, which facilitates productivity of land. Nyeri farmers relied on coffee seeds from the crop authority and intensively used pesticides, while in Kakamega, only 60 percent of the farmers used certified seed. The net result is that Kakamega is twice as poor as Nyeri. The same analysis may be applied to other districts.

### Land carrying capacity for livestock

It would be expected that high potential land also has high carrying capacity for livestock, if the rainfall pattern is regular and reliable. However, among the 13 districts with highest proportions of high potential land, only two of them (Kericho and Uasin Gishu) have high carrying capacity of 1 acre (0.40ha) or less per livestock unit. Among the districts with low potential land, four out of eleven (Tana River, Isiolo, Kajiado and Laikipia) also have low carrying capacity of more than 15 acres (7.5ha) per livestock unit. From district development plan reports, districts such as Lugari, Uasin Gishu, Kericho, Embu and Kisii have high livestock carrying

**Table 8.3: Land carrying capacity per livestock unit**

| District | High carrying capacity in acres | District | Low carrying capacity in acres |
|---|---|---|---|
| Kericho | <1.0acre (p:49) | Meru | 10.0 acres (p:53) |
| Lugari | <1.0acre (p:61) | Baringo | 13.0acres (p:48) |
| Malindi | <1.0acre (p:65) | Kitui | 12.0acres (p:70) |
| Kisii Central | 1.0 acre (p:62) | Laikipia | 15.0acres (p:39) |
| Murang'a | 1.0acre (p:30) | Kajiado | 17.5acres (p:44) |
| U/Gishu | 1.0 acre (p:43) | Isiolo | 20.0acres (p:52) |
| Gucha | 1.0acre (p:61) | Trans Mara | 24.4acres (p:59) |
| Nyamira | 1.0acre (p:48) | T/River | 29.4 acres (p:64) |

*Source: Respective District Development Plans for the period 2002-2008*

capacity of 1.0 acre (0.40ha) per livestock unit. In contrast, the drier districts such Baringo, Laikipia, Tana River, Kajiado, Isiolo and Trans Mara have low livestock carrying capacity of more than 10.0 acres (4.0ha) per livestock unit.

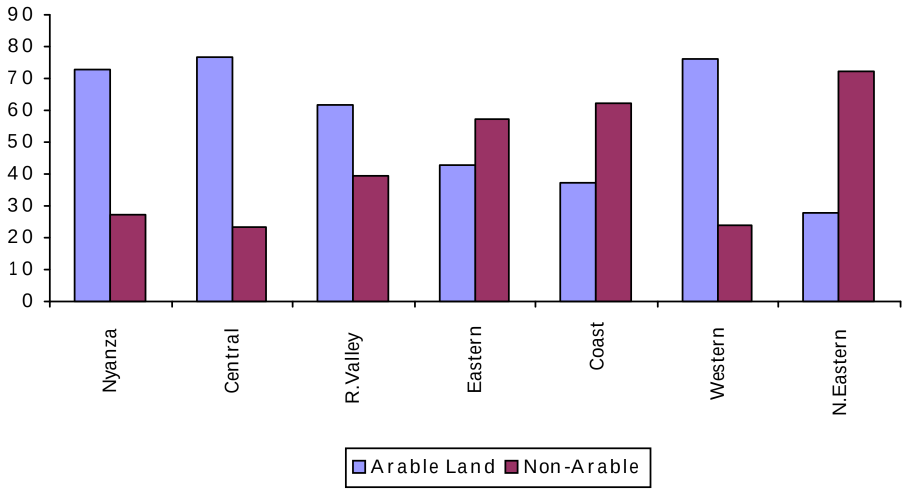
While rainfall is a major factor, the soils and the type of grass and other vegetation is important in determining carrying capacity. Some grasses such as thatching grass and lemon grass are of little value because they are unpalatable and are of low feed value. Other grasses such as wire grass are very tough and difficult for the animals to graze. Table 8.3 shows that some of the districts with high carrying capacity (Murang'a, Uasin Gishu, Nyamira and Kericho) are also districts with low poverty incidence, at below 50 percent. However, some of the districts (Laikipia, Kajiado and Baringo) with low carrying capacities and low potential, also have lower poverty incidence of less than 50 percent.

## Regional distribution of arable land

Arable land refers to land suitable for crop production. Figure 8.1 shows that, generally, very little land in Kenya is arable. Variations exist between regions (Figure 8.3) and within regions (districts) as shown in Table 8.4. More than 70 percent of land in Western, Nyanza and Central provinces is arable, compared to very low proportions in Coast and North Eastern provinces.

All districts in Western Province have more than 70 percent of their land as arable. Similarly, in Nyanza, apart from Kisumu (39%), Bondo (44.4%) and Suba (50%), all the other districts have more than 80 percent of their land as arable. In

**Figure 8.3: Distribution of arable land by province**




*Source: District Development Plans, 2002-2008*

**Table 8.4: Distribution of arable land by district**

| District | % of arable area | District | % of non-arable area |
|---|---|---|---|
| Nyando | 95.7 (p:61) | Isiolo | 99.7 (p:52) |
| Kuria | 95 (p:79) | Kwale | 98.5 (p:63) |
| Kiambu | 90 (p:22) | Moyale | 98 (p:71) |
| U/Gishu | 90 (p:43) | Mandera | 95.1 (p:64) |
| Lamu | 89 (p:53) | Kajiado | 92 (p:48) |
| Bomet | 85 (p:53) | Kilifi | 81 (p:61) |
| Kirinyaga | 84 (p:36) | Marsabit | 80 (p:53) |
| Siaya | 83.1 (p:64) | Baringo | 71 (p:48) |
| Mbeere | 81 (p:63) | Turkana | 68 (p:62) |
| Kericho | 80 (p:49) | | |

*Source: District Development Plans 2002-2008.*

Central Province, only Nyandarua has the lowest arable land (61%) while other districts have land in excess of 70 percent as arable.

However, there are also pockets of arable land in other provinces, which are mostly described as low potential. In Eastern Province, only three districts have arable land exceeding 60 percent, namely Embu (65.5%), Makueni (78.4%) and

Mbeere (81.0%). Lamu (80%) in Coast, and Bomet (85%) and Kericho (80%) in Rift Valley provinces are other pockets with very high proportions of arable land. At the other extreme, in Eastern and North Eastern provinces, districts with very low arable land include Isiolo and Moyale (less than 2%), Mandera (4.9%) and Ijara (8.8%). Kwale (1.5%), Tana River and Kilifi (19%) in Coast Province have the least proportions of arable land. In the Rift Valley, Kajiado (8%), Baringo (29%) and Turkana (32%) districts have the lowest proportions of arable land.

Table 8.4 shows that of the 10 top districts with more than 80 percent arable land, only four districts (Kiambu, Kirinyaga, Uasin Gishu and Kericho) have less than 50 percent poverty incidence, while the other six had poverty incidence higher than 50 percent. Nationally, of the 43 districts with poverty incidence above 50 percent, eight had more than 60 percent of land as arable and only five districts have arable land less than 20 percent.

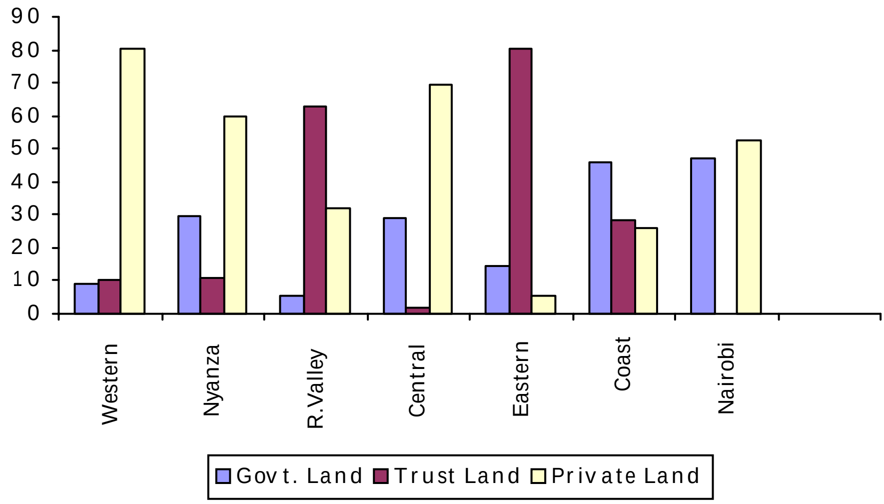
Having described the land distribution inequality arising out of chance in terms of rainfall, carrying capacity and arable capacities, it appears that each district has different combinations of the three attributes. Arable and carrying capacity require good soils and temperature in addition to rains. Some of these conditions can be modified through appropriate interventions such as additions of manure and fertilizer, as well as irrigation. These actions can minimize such inequalities.

## Regional distribution of land by security of tenure

Kenya inherited a dual system of land administration, one for a small number of European settlers who owned 75 percent of all high potential land, and another for subsistence periphery for a large number of African peasantry largely on marginal land with only 25 percent of high potential land. This system would have changed with all land falling under individualized statutory tenure system started in the 1950s. As shown in Table 8.1, however, only 18 percent of the land can be safely said to have secure titles through statutory registration under the terms of land tenure regime in Kenya. Most of the land still remains trust land with common hold tenure.

Figure 8.4 shows the regional distribution of land by province, while Table 5 shows the distribution by districts, with highest proportions of private and communal land, respectively. Under the Swynnerton Plan, land adjudication and registration programme was concerned with the conversion of the traditional African land tenure system to a system based on registration of freehold tenure. The process continued after independence, albeit slowly, so that by 1995 a total of 370,000 square kilometres (37,000,000 ha) out of 457,000 or 81 percent of the previous native reserves still remained as trust land under customary tenure (Republic of Kenya, 2004b). Most of these areas fall within the arid and semi-arid areas of North Eastern (97.1%), Eastern (77.5%) and Rift Valley (57.8%) provinces, but they also include some of the high potential areas of Coast (28.4%) and Nyanza (36.3%)

**Figure 8.4: Distribution of land tenure by province**




*Source: Republic of Kenya, 2004*

**Table 8.5: Distribution of land tenure by district**

| District | % of private land | District | % of trust land |
|---|---|---|---|
| Kisii | 94.0 (p:62) | Isiolo | 100 (p:52) |
| Busia | 88.4 (P:67) | Turkana | 96.3 (p:62) |
| Laikipia | 87.5 (p:39) | Marsabit | 94.5 (p;53) |
| Murang'a | 84.0 (p:37) | Baringo | 84.3 (p:48) |
| Kakamega | 83.6 (p:63) | Keiyo | 78.7 |
| U/Gishu | 80.9 (p:43) | Samburu | 77.8 (p:46) |
| T/Nzoia | 78.2 (p:48) | Meru | 72.2 |
| Kajiado | 75.7 (p:44) | W/Pokot | 70.3 (p:53) |
| Nyandarua | 75.4 (p:34) | Narok | 59.2 |
| Kiambu | 72.5 (p:22) | Kitui | 50.7 |

*Source: UNDP (2005), and also district reports*

Note: Number in parenthesis are poverty levels

provinces. All land in Central Province and Nairobi has been registered, while only 7.5 percent of Western Province is not registered.

If, as argued by the Swynnerton Plan, the Royal Commission and the 1964-67 National Development Plan that adjudication and individualization of tenure would lead to increased agricultural development, then these large areas have remained marginalized since independence. While common hold land right is not necessarily insecure, such land has been seen as outside the monetary economy and does not attract serious development considerations. Accordingly, this section of the country suffers neglect in terms of basic infrastructure, particularly roads, communications, power, water supplies, agricultural inputs, etc. Areas in the former White Highlands and those in former Mau Mau areas that had early beginnings in land registration have been better endowed with basic infrastructure and have practised intensive land utilization with improved productivity.

It is also worth noting that areas with high proportions of government land have relatively less land available for private use. Government land includes forests, national parks, water surfaces and most of the urban land in major towns. Overall, Coast Province is the only region with relatively high (24.1%) proportion of government land that has not been allocated, followed by North Eastern Province with 5.4 percent.

Studies in Africa have found no significant relationship between land titles and yields (Bruce and Migot-Adholla, 1994). Most smallholders, even after registration, do not carry out on their land the things that land registration empowers them to do, such as mortgaging their land for credit. Records from the Ministry of Lands also indicate that many titles remain uncollected from the land registry. Farmers loathe applying for credit because they lack confidence in their ability to repay the loans and fear losing their land through default. Also, lenders do not always attach much significance to land titles as they have difficulty foreclosing and reselling such land. Title status appears to be less important in the determination of farm productivity than are other factors such as market access.

Therefore, a privilege or liberty is valueless if its holder does not have the economic or physical strength to use it. In Kenya, generally, there is poor management of essential infrastructure that inhibits sustainable development in these areas, particularly roads, communications, power, water supplies, agricultural inputs, etc. This leads to low investment in land improvement and productivity.

While it has also been stated elsewhere that individualization of tenure leads to landlessness (Okoth Ogendo, 1991), the data in this report seems to suggest that landlessness is highest in districts with relatively high proportions of communal land such as Garissa (92.5%), Turkana (89.7%), Isiolo (87.7%), Wajir (81.7%) and Tana River (70.2%). Apart from Kiambu in Central Province, which has a high (48 %) of landlessness, districts with high registration rates such as Murang'a, Kisii, Busia and Kakamega have reported low landlessness despite high registration of the land.

While people in registered land areas can appreciate their entitlements even under extreme conditions of population pressure, those in non-registered areas cannot apportion land to individuals. As pointed out earlier, some of the districts are by law allowed to use customary rules of inheritance that bar women from inheriting land. It is in this light that responses to land ownership in these areas could provide perception of high degree of landlessness when population densities are as low as 20 persons per square kilometre.

### Land distribution by size

Table 8.6 provides a summary of land distribution by size in various provinces and shows that nationally, 28.9 percent of Kenyans are landless. Majority of them are from North Eastern (73.9%), Coast (49.4%) and Rift Valley (26.8%) provinces. Western, Eastern, Nyanza and Central provinces have low landless proportions of less than 15 percent. This is in contrast with expectations of high population densities per square kilometer in Western (406), Nyanza (350) and Central (282) provinces, against low densities of less than 30 persons per square kilometre in North Eastern (8), Eastern (30) and Coast (30) provinces. The Labour Force Survey shows high population density regions as experiencing significant out-migration in excess of 15 percent of the population born there, the leading being Western (21.5%), Central (18.8%) and Nyanza (15.1%) provinces. The least affected provinces were North Eastern (3.4%) and Coast (4.8%), (Republic of Kenya, 2003d).

Majority of households who own less than 1.0 hectares of land are found in Central Province (52.7%) followed by Western (45.0%), Eastern (35.0%), Nyanza (33.3%) and Rift Valley (30.1%) provinces. However, Eastern Province (19.9%) has the largest number of households with more than 3.0 hectares of land, followed by Rift Valley (15.9%) and Nyanza (12.7%) provinces. In Central Province, only 2.7 percent of households have more than 3.0 hectares of land.

**Table 8.6: Percentage household and land size (hectares) distribution by province**

| Province | Landless: 0.0 ha | 0.01-0.99 ha | 1.0-2.99 ha | 3.0-4.99 ha | 5.0+ ha |
|---|---|---|---|---|---|
| Kenya | 28.9 | 32.0 | 27.5 | 6.1 | 5.3 |
| Nairobi | 96.2 | 2.4 | 0.7 | 0.3 | 0.3 |
| Central | 12.6 | 52.7 | 17.3 | 1.8 | 0.9 |
| Coast | 49.4 | 17.6 | 22.5 | 7.6 | 2.8 |
| Eastern | 11.5 | 35.0 | 33.6 | 11.1 | 8.8 |
| N/Eastern | 73.9 | 9.9 | 11.7 | 2.3 | 2.0 |
| Nyanza | 10.6 | 33.3 | 43.5 | 5.7 | 7.0 |
| R.Valley | 26.8 | 30.1 | 27.1 | 7.8 | 8.1 |
| Western | 7.5 | 45.0 | 37.1 | 5.9 | 4.3 |
| Rural | 13.6 | 38.6 | 33.8 | 7.4 | 6.6 |
| Urban | 89.0 | 6.4 | 3.0 | 0.9 | 0.7 |

*Source: Republic of Kenya (2003d)*

Table 8.7 provides a comparison of districts with the highest number of homelessness, those with households owning less than 1.0 hectares of land and those with more than 3.0 hectares of land. Landlessness is highest in Garissa, Turkana, Wajir, Isiolo, Kajiado and Tana River (more than 70%) districts. These districts, apart from Isiolo (90), have population densities of less than 20 persons per square kilometre. High population districts such as Vihiga (975: 0%), Kisii (693: 4.6%), Kiambu (660: 48.9%), Embu (594:16.0%), Kisumu (549: 26.6%) and Butere (548: 29.7%) have relatively low cases of landlessness as shown in percentages. Therefore, causes of landlessness may not be related to high population densities, but possibly due to other factors such as mode of land distribution. It does appear that common-hold tenure makes people think they do not own land despite its abundance. It does, therefore, appear that many Kenyans aspire to private land ownership.

A number of districts, including Vihiga, Murang'a, Meru, Samburu, Kirinyaga, Nyeri, Kiambu and Keiyo/ Marakwet have more than 50 percent of the households owning less than 1.0 hectares of land. Only five districts overall have 25 percent of the households owning more than 3 hectares of land.

Land holdings in Kenya are generally small. However, among the 10 top districts where more than 19 percent of households had more than 3 hectares (7.5 acres) of land, only two (Uasin Gishu and Kericho) had poverty incidence of less than 50 percent. In contrast, all the districts in Central Province with more than 50 percent of households owning less than 1.0 hectares of land had low poverty incidence below 40 percent. Kiambu, which has a high proportion of landless and a majority population with less than 1.0 hectares, is the richest district in Kenya with poverty

**Table 8.7: Distribution of land size (hectares) owned by households by district**

| District | % who are landless | District | % owning 0.1-0.99ha | District | % owning>3ha |
|---|---|---|---|---|---|
| Mombasa | 98.5 | Vihiga | 80.1 | Makueni | 34.7 |
| Nairobi | 96.2 | Murang'a | 67.1 | Narok | 34.4 |
| Garissa | 92.5 | Meru | 65.5 | West Pokot | 28.7 |
| Turkana | 89.7 | Samburu | 61.3 | Uasin Gishu | 27.8 |
| Isiolo | 87.7 | Kirinyaga | 59.6 | Kericho | 26.8 |
| Wajir | 81.7 | Nyeri | 58.2 | Bomet | 24.9 |
| Kajiado | 72.8 | Kiambu | 56.4 | Lamu | 24.0 |
| Tana River | 70.2 | Keiyo | 55.3 | Homa Bay | 23.8 |
| Lamu | 53.1 | Embu | 48.0 | Machakos | 19.5 |
| Marsabit | 51.5 | Tharaka Nithi | 45.5 | Kwale | 19.1 |

*Source: Republic of Kenya (2003c) and District Development Plans 2002-2008* incidence of 22 percent. Besides being close to Nairobi, which provides the market for its agricultural products, the households also have more off-farm income opportunities, and agriculture accounts for only 17.4 percent of household income (Republic of Kenya, 1996).

## Home ownership

Home ownership is closely related to land ownership, except that homeowners need not depend on land for livelihood. According to the 1999 Population and Housing Census, 92.6 percent of Kenyans in the rural areas own their homes, while only 16 percent in the urban areas own their homes. Overall, 77 percent of Kenyans are homeowners, with the remaining 23 percent either renting or living as lodgers. However, 1.2 percent of homeowners in Kenya are squatters on illegal land, who form part of the landless and majority of whom are found in North Eastern (9.1%), Coast (2.4%) and Rift Valley (2.3%) provinces (Republic of Kenya, 2003a).

North Eastern, Western and Nyanza provinces have the highest numbers of homeowners, while Nairobi and Coast provinces have the lowest numbers of homeowners. The interpretation of “home” may need further clarification, as different communities may take it in different contexts. In some areas, it may refer to independent homestead, while in other places it may refer to a house built by the occupant whether in an independent homestead or communal homestead. In towns, it refers to ownership of residential accommodation whether in the form of a stand-alone house, maisonette or flat.

Table 8.8 shows the districts with high and low percentages of home owners. Districts with high rates of ownership of more than 90 percent include Uasin Gishu, Wajir, Mandera, Bomet, Gucha, Kitui, Vihiga, Mt. Elgon, Tharaka and Kuria. Districts with lower home owner occupancy of less than 60 percent include Nakuru, Thika and Kisumu, which have large urban populations, and Taita Taveta and Uasin Gishu, which have large squatter populations and farm workers. It is not clear why districts with high proportions (90%) of home ownership are relatively poorer than those with low home ownership.

Urban areas with higher population densities and expensive prices of land have higher proportions of renters, the majority of whom live in informal settlements. Large renting populations are found in Mavoko (91.2%), Kiambu (84.8%), Embu (82.9%), Nairobi (82.2%), Kericho (85.3%), Nakuru (85.1%) and Kitale (84.4%). Depending on the extent of housing shortage, many of the households live in unplanned settlements without requisite infrastructure and sanitary facilities, making them health hazards. They are also under constant threat of eviction by local authorities and land owners.

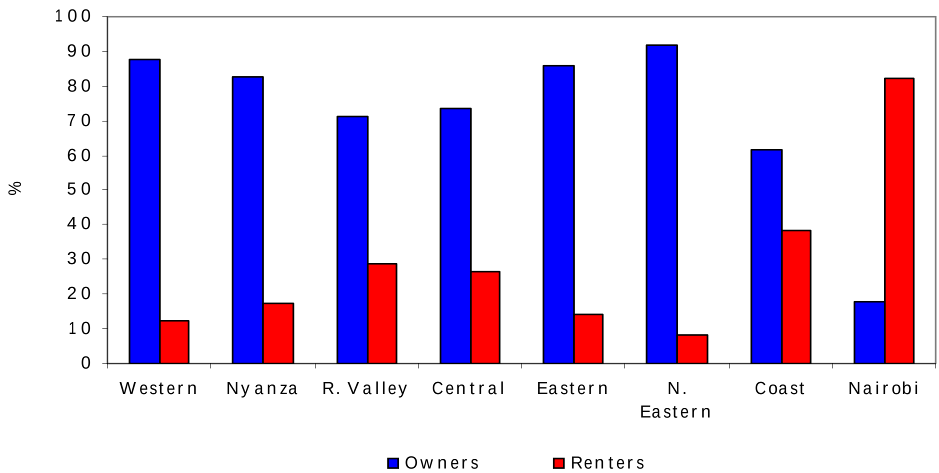
Kakamega (59.9%), Garissa (54.8%), Moyale (51.8%), Kilifi (50.1%), Wajir (30.7%) and Mandera (28.0%) are towns with relatively low renter population. These

**Table 8.8: Proportion of home ownership by district**

| District | High % of home owners | District | Low % of home owners |
|---|---|---|---|
| Wajir | 95.4 (p:65) | Nairobi | 17.9 (p:44) |
| Mandera | 94.5 (p:64) | Taita Taveta | 29.0 (p:58) |
| Bomet | 94.1 (p:53) | Nakuru | 50.1 (p:39) |
| Tharaka | 93.4 (p:63) | Thika | 55.6 (p:35) |
| Gucha | 92.5 (p:61) | Kisumu | 57.5 (p:63) |
| Kitui | 92.2 (p:70) | Uasin Gishu | 58.5 (p:43) |
| Vihiga | 91.7 (p:58) | Kirinyaga | 61.6 (p:36) |
| Mt. Elgon | 91.6 (p:53) | Kajiado | 62.9 (p:44) |
| Kuria | 90.4 (p:79) | Laikipia | 65.8 (p:39) |

*Source: Republic of Kenya (2002b), Population and Housing Census Report for 1999*

**Figure 8.5: Proportion of home ownership by province**




*Source: Republic of Kenya (2002b), Population and Housing Census Report for 1999* are usually towns with small built-up areas and large peri-urban areas. More households occupy own accommodation.

### Land and home ownership and gender

Kenya lacks a system of land tenure that provides for equitable and efficient distribution of land ownership for both men and women within cultural and legal systems. At its essence, the institution of property has to do with who is allowed to be where doing what. The obvious corollary to this assertion is that ownership of property provides the owner with control over people who might need access to that property for their livelihood or residence. Since there is inevitable intersection between property and power, the effect of gendered property rights has been to create and maintain a class of people (women), in a state of uncertainty, subservience to and dependence on another class of people (men). This does not allow women to participate in a collective experience of self-determination.

In traditional land holdings in most communities in Kenya, the woman did not own but controlled the use of land. Her security was not threatened because land could not be disposed off at will as it was communal. In the individualized tenure, however, the woman may not only be excluded from title to the land but may have no control over the produce or how the land is used. Since in many parts of Kenya the productive rural population is still disproportionately comprised of women, it is imperative that women see themselves as having a stake in maintaining and improving ecological conditions that will continue to sustain agricultural livelihoods. This is based on the premise that physical and financial investment in land improvement depends on secure tenure under which the farmer is confident of reaping the returns from the investment. Reference has already been made to the existing statutory legislation on inheritance, which to an extent discriminates against women.

Statistics on home ownership (not general land) show that nationally, females head 28 percent of households (Table 8.9). However, only 40 percent of female household heads are owners. Majority of females are, therefore, renters with sometimes very insecure terms of tenancy. Even in the City of Nairobi, where only about 24 percent of household heads are women, only 26 percent of them are homeowners.

While cultural practices prevent women in rural areas from accessing land, women in urban areas, where statutory tenure exists, have relatively lower incomes to afford high land prices and high building costs. They, therefore, end up being tenants and mainly in the informal settlements where they not only face frequent evictions due to insecurity of tenure, but also live under health-threatening poor sanitary conditions.

**Table 8.9: Distribution of households by gender (Provinces)**

| District | % owned | | % rented | | Total % | |
|---|---|---|---|---|---|---|
| | Male | Female | Male | Female | Male | Female |
| Kenya | 60 | 40 | 71.8 | 28.2 | 71.7 | 28.3 |
| Nairobi | 74 | 26 | 760 | 24.0 | 17.9 | 82.1 |
| Central | 60.6 | 39.4 | 67.3 | 32.7 | 73.6 | 26.4 |
| Coast | 65.3 | 4.7 | 76.1 | 23.9 | 61.6 | 38.4 |
| Eastern | 59.3 | 40.7 | 66.1 | 33.9 | 85.9 | 14.1 |
| N/Eastern | 69.1 | 30.9 | 68.7 | 31.3 | 91.8 | 8.2 |
| Nyanza | 53.9 | 46.1 | 68.7 | 31.3 | 82.7 | 17.3 |
| R/Valley | 60.6 | 39.4 | 71.4 | 28.6 | 71.4 | 28.6 |
| Western | 59.5 | 40.5 | 66.5 | 33.5 | 87.8 | 12.2 |

*Source: Republic of Kenya (2002) Population and Housing Census Report 1999*

## Relationship of Land ownership and Access to Inequality

Inequality means that individuals do not have equal opportunities to pursue a life of their choosing so as to be spared from extreme deprivation in outcomes. Inequality can be avoided through institutions and policies that promote a level playing field where all members of society have similar chances to become socially active, politically influential and economically productive. However, even with genuine equality of opportunities, one would always expect to observe some differences in outcomes owing to differences in preferences, talents, effort and luck (World Bank, 2006). The public role in the circumstances remains to seek to broaden the opportunities of those who face the most limited choices.

Land is a key asset to majority of Kenyans whose livelihood depends on it. Ownership of property provides the owner with control over people who might need access to that property for their livelihood or residence. It provides social status and security. There is, therefore, the inevitable intersection between property and power. Landless people are despised and regarded as destitute. Therefore, inequality in land ownership has far-reaching consequences for the distribution of well-being.

But what attributes of land would deny individual opportunities that would lead to extreme deprivation? They include size, quality of land, security of tenure, geographical location and supporting infrastructure for marketing and access to inputs.

## Type, size and use of land

Less than 20 percent of the land in Kenya is high potential and accommodates about 70 percent of the population. The result is landlessness and squatting both in rural and urban areas. This has also led to congestion, parceling of land to uneconomic units, and often to ethnic conflicts particularly in the pastoral areas. About 30 percent of Kenyans are landless, and the majority of the remainder own less than 1.0 hectare of land. If the land is too small, then owners are by no means full-time farmers and the attachment to land becomes more of security for old age rather than an income-generating asset. It becomes difficult to create a prosperous and contented peasantry.

A number of studies in Kenya (Leo, 1978; Haugerud, 1983; Carter, Wiebe and Blarel, 1994; Migot-Adholla, Place and Oluoch-Kosura, 1994) have demonstrated how certain aspects of land such as size, quality and tenure may lead to inequality. Carter, Wiebe and Blarel (1994) from a study of various farm sizes in Njoro area, Nakuru District, reported that land ownership remains concentrated. This was an area previously occupied by large European farms but which was subdivided under the Million Acre Settlement programme. The stratum of largest farms greater than 50 acres (20 hectares) in size comprises 1 percent of ownership units but controls approximately 40 percent of agricultural area. The rest of the farms are 5-10 acres (2-5ha). In addition, land controlled by the large farm sector is generally of better quality, characterized by flatter terrain and better served with feeder roads, water and electricity. The farms that were sub-divided into smaller units for the poorer settlers are more hilly, have poorer soils and are often poorly connected with roads and water supplies.

The study further observed that farms exhibited distinctive economic behaviour and productivity patterns. The primary uses for land in Njoro area are maize-bean inter-cropping, pastures to support dairy activities and wheat fields. All farms seem to put their first 4 to 5 acres into maize-bean production. Marginal acreage beyond that is allocated to pasture and fodder crops. Beyond about 15 acres, additional land is allocated to wheat cultivation, which is by far the most profitable when inputs and outputs are valued at market prices. The maize yields averaged 782kg per acre on farms of 3 to 5 acres, but more than twice that on farms larger than 20 acres. The farm size productivity relationship arises due to choice of techniques, which tend to improve radically as farm size increases. The small farms use massive family labour per acre in relatively un-remunerative food crops, while as the farm size increases, family labour stays constant in absolute terms but is spread over a larger area. The use of purchased inputs is small, but as farm size increases the use of purchased inputs rises dramatically and those inputs are increasingly applied to more remunerative activities.

Another study by Migot-Adholla, Place and Oluoch-Kosura (1994) carried out in Nyeri and Kakamega also reported that farm size is positively related to yields.

Larger farms may be able to enhance productivity by adopting capital-intensive techniques. For instance, farms above 1.53 hectares were found to hire tractors, whereas only 23.0 percent of those below 1.53 hectares hired tractors. Therefore, farm size may be a proxy for household wealth or easier access to factor markets. It is also likely that larger farms are able to leave land fallow for longer periods of time, resulting in more productive soils.

Unlike Njoro, the areas iin Nyeri and Kakamega were original reserves with relatively small farms of 0.5 to 4.0 hectares. Subsistence crops occupied most of the available land, particularly in Kakamega although, technically, farmers could specialize in high value cash crops such as coffee and tea. The farmers tended to strive for "food first" instead of other crops. Homesteads also took larger proportions of land with smaller acreages. Cash cropping appeared more common in Nyeri where infrastructure and market opportunities are better developed. Unimproved pasture and fodder crop production was significant in Nyeri where stall-feeding (zero grazing) was already widely practised.

## Security of tenure

More than two-thirds of land in Kenya does not have titles. As pointed out earlier, the policy though justified on economic terms, had a decidedly political motive to create a class of African rural elite, which would also provide liberal leadership. Kenya has had the most extensive land registration in sub-Saharan Africa.

The country's impressive agricultural growth in the two decades after independence was often attributed to this phenomenon. According to Sorrenson (1967), if land consolidation and registration have not paved the way for the expected agricultural revolution, they have brought some relatively minor benefits, namely:

- The provision of secure titles has helped the few who had adequate holdings to borrow money for development.
- There has been a considerable development of cash crops, particularly coffee and tea, and improved stock in the Kikuyu country.
- Dairying, based on the replacement of native cattle by improved breeds of exotic stock, has also been encouraged.
- Consolidation has facilitated more efficient management of farming operations on one piece of land rather than several often widely separated fragments, as it is easier to farm one piece.

However, more than five decades down the line, more than two-thirds of the country does not have registered titles. Would this imply that such regions have been denied opportunities for progress in land use?

Given the virtues of land registration espoused earlier, one would consider the vast parts of Kenya not yet registered as marginalized. Studies have, however, shown that it is not the title *per se* but the types of rights held by farmers that approximate security in their minds. All land, whether registered or unregistered, enjoys some use rights. Though land not registered may not be formally transferred (although use of non-title documents exist), registered land provides the right of transfer including selling, mortgaging and leasing. While this may be sometimes restricted by the family or community members, there is evidence that household wealth is related to the degree of transferability of land (Migot-Adholla, Place and Oluoch-Kosura, 1994). A higher level of household wealth (buildings, livestock, machinery, etc) is related to lower incidence of limited transfer. The study also reported that, to a certain extent, more individualized land rights were associated with greater land improvements. Lack of security in property rights mean that some farmers may exert too little effort where land does not belong to them or where lack of titles does not allow them to secure development finance.

Carter, Wiebe and Blarel (1994) also report that the application of fertilizer and chemical input levels are highest on titled farms. Therefore, the title increases investment in the maintenance of soil fertility, either through a security-induced demand effect or a credit-supply effect. However, this may also be affected by farm size and skill of the farmer, as title alone may be neither necessary nor sufficient to enhance the supply of credit. As shown in Njoro, the more endowed farmers gain more from titling than the poorer farmers. In order to increase equality through titling, consideration must be given to market access and related matters so as to improve conditions of title holders in the remaining large untitled land in Kenya.

Inequality on land ownership can weigh heavily on women, who are often denied property and inheritance rights as previously noted. Less than a quarter of women, who form majority of the population, own homes in Kenya with the result that majority are disadvantaged. The situation is perhaps worse in the areas where land is under customary tenure. These are matters of equality that the law of succession and related laws need to improve on.

## Access to basic infrastructure

Lack of access to affordable infrastructure services means living in isolation from markets and services and having intermittent or no supply of power and water for productive activities and daily existence. This often results in curtailment of economic activities. Many of the regions outside Nairobi and Central Province have complained of infrastructure as a hindrance to effective marketing of their agricultural produce. Infrastructure also includes extension services, credit facilities and marketing. The study on Kakamega and Nyeri found cash cropping more common in Nyeri, where infrastructure and market opportunities are better developed (Migot-Adholla, Place and Oluoch-Kosura, 1994).

### Geographic location

Geographical location determines the climatic condition and the soil types, which in turn affect the productivity of the land. Only 20 percent of Kenyan land is of medium to high potential, and can depend on rain-fed agriculture. Most of the land in arid and semi-arid areas is devoted to pastoralism and wildlife. The scarcity of water in these areas has a security concern as people and animals compete for access to it and conflicts often arise. The frequent conflicts over access to water and grazing lands around pastoral communities have affected utilization of land for food production in large areas, raising the spectre of widespread hunger and food insecurity.

Arable farming and land carrying capacity require good soils and less than extreme temperatures in addition to rains. Some of these conditions can be modified through appropriate interventions such as use of manure and fertilizer, as well as irrigation. These actions can minimize such inequalities between those in high potential and those in low potential areas. However, for various reasons as previously discussed, irrigation is given low priority in Kenya. Currently, Kenya’s irrigation and drainage potential is estimated at 540,000 and 800,000 hectares, respectively. However, only 52,000 hectares are estimated to be under irrigation, representing only 10 percent of potential irrigable land. Therefore, a vast majority of the low potential areas that could have benefitted from irrigation and thereby improve their food production and livestock carrying capacity have remained marginalized.

### Soil conditions

Soil conditions also determine the type of agricultural activity to be carried out. Other areas are better endowed with good soils amenable to a variety of crop production, and particularly high yielding crops. Other areas can only grow food crops for subsistence. This was the basis upon which the colonial settlers chose the White Highlands or Scheduled Areas.

## Relationship of Land Ownership, Access and use to Well-Being

The relationship between land ownership, access and use to well-being arises from the fact that about 80 percent of Kenya's land cannot be relied on for adequate harvests. Only 20 percent of the land is suitable for rain-fed agriculture. Nonetheless, agriculture supports over 80 percent of the population and employs the majority of the country's labour force. People wish to own land for economic and non-economic reasons, including food production, income generation, bequeathing to children as well as for speculation. Some land, such as the traditional shrines, is owned for cultural reasons. While other purposes may not be quantified, relationships on impact of land and employment, income, poverty, life expectancy, may be discerned.

This section proposes to determine what relationships, if any, exist between land attributes and inequality outcomes such as employment, income, poverty and life expectancy. The relationships are expressed using data provided in the tables in section 4.

## Employment and income

Reports of the various district plans show that 52.8 percent of the population is working in the agricultural sector. Table 8.10 provides the list of districts employing more than 70 percent and those employing less than 20 percent of their populations in agriculture, respectively. Land is, therefore, a source of employment through agriculture. The districts with low employment in agriculture are mainly those in arid regions where there is no rain-fed agriculture. It has also been pointed out above that land in high potential areas devoted to cash crops (coffee, tea, pyrethrum, vegetables) employ 1.4 to 2 persons per hectare in comparison to 0.3 for production of livestock. There are also cases of districts with large farms and ranches and with high rates of mechanization that employ relatively few people in relation to their populations, particularly in Uasin Gishu, Trans Nzoia, Nakuru and Laikipia.

### *Income generation*

In terms of income generation Table 8.11 provides a list of districts with more than 80 percent and those with less than 40 percent of their incomes from agriculture,

**Table 8.10: Contribution of agriculture to employment**

| Districts with high contribution | % working in agricultural sector | Districts with low contribution | % working in agricultural sector |
|---|---|---|---|
| Busia | 81 | Marsabit | 1.2 |
| Mwingi | 80 | Mombasa | 2.6 |
| Embu | 80 | Moyale | 3.8 |
| Kilifi | 80 | Kwale | 11.4 |
| Gucha | 80 | Wajir | 14.0 |
| Buret | 78 | Turkana | 15.0 |
| Migori | 77 | Baringo | 15.5 |
| Tana River | 77 | Bondo | 16.0 |
| Kakamega | 75 | Nakuru | 17.0 |
| Machakos | 70 | Ijara | 17.8 |

*Source: Republic of Kenya (2003c): Labour Force Survey Report 1998/9* respectively. Besides Mombasa, Kiambu and Malindi districts, which have large urban populations living off agriculture, the other districts with low-income contribution are mainly those in arid areas. Again, as pointed out previously, coffee, tea and vegetables produce 37 percent of the total agricultural value, and five to ten times the foreign exchange per hectare compared to food grains (Republic of Kenya, 1986: 63-65).

An examination of the data from the District Development Plans, *Statistical Abstract 2004* and *Labour Force Report 1998/9* shows a number of relationships between income and certain land ownership, access and use variables. For instance, there are positive relationships between high potential land, area of arable land, type of ownership and land size. Income increases with land size above 5.0 hectares for crop production, but reduces as carrying capacity of pastoral land increases in size (more area of land is required per livestock unit). However, contrary to general expectations income was found not to increase with landlessness and individual registration of land. A district like Kiambu, for instance, has more people reported as landless but they also have opportunities to engage in off-farm activities with higher levels of income in comparison to other districts with lower landlessness but no off-farm employment opportunities. Similarly, the notion that communal tenure reduces incentives to work productively on the land may not necessarily be true since not all districts with high proportion of individual land holdings have higher household incomes. The quality of the land and the available infrastructure are equally important triggers in land productivity. Thus, land redistribution for sustainable livelihoods must be accompanied with reasonable land sizes and appropriate infrastructure in order to improve household incomes.

There is a strong inverse relationship between average household income (Table 11) and the population working in agricultural sector (Table 8.10), which suggests

**Table 8.11: Contribution of agriculture to household income**

| Districts with high income contribution | % contribution to income | Districts with low income contribution | % contribution to income |
|---|---|---|---|
| Lugari | 90 | Mombasa | 1.0 |
| Tana River | 86 | Moyale | 5.7 |
| Meru Central | 85 | Isiolo | 9.6 |
| Buret | 85 | Mandera | 10.0 |
| Kwale | 81 | Turkana | 12.4 |
| Kilifi | 81 | Kiambu | 17.4 |
| Vihiga | 80 | Malindi | 20.3 |
| Mbeere | 80 | Busia | 35.4 |
| Kericho | 80 | Trans Mara | 38.0 |

*Source: Republic of Kenya (2003d): Labour Force Survey Report 1998/9* that the higher the population working in agricultural sector the lower the income contribution by agriculture to the household income of the district. As mentioned in the case of Kiambu District, a possible explanation is that incomes from agriculture are low in comparison to other sources. It is also possible that there is no full employment in agriculture given the preponderance of small farms of less than 5.0 hectares. This may need further investigation.

## Poverty

From the district reports, the average poverty incidence is 53.4 percent, which is a measure of the percentage of the population falling below the poverty line. According to Central Bureau of Statistics (Republic of Kenya, 2005a), this measure is determined and based on the expenditure required to purchase a food basket that allows national minimum requirements to be met, estimated at Ksh 1,239 and Ksh 2,648 for rural and urban households, respectively. It is associated with features such as lack of land, unemployment, inability to feed oneself, lack of housing, poor health and inability to educate children and pay medical bills (Republic of Kenya, 2001).

It has been reported that unequal distribution of land and land resources is the main contributor of poverty in the country (Republic of Kenya, 2001). Rural communities are dependent on land for production, but many have been rendered landless or squatters. Various communities, minority groups, women and regions feel aggrieved. Table 8.12 provides the list of districts with low incidence of less than 40 percent and those with high incidence above 60 percent.

Based on the data on incidence of poverty and data on land attributes, it is observed that poverty decreases with private land ownership and reduction in area per livestock unit. On the other hand, poverty increases with population working on the farm, and proportion of communal (trust) land. It requires further investigation why landlessness, land size and its potentiality do not reduce but increase poverty. As already stated, it is not land per se that improves incomes; there must be supporting infrastructure to make it productive and improve incomes.

This is illustrated by reports from the various districts that give a number of reasons for the level of poverty in those areas. In Central Province, poor agricultural marketing systems and poor physical infrastructure are cited as some of the causes of poverty in some of the districts. The problem lies not in the production of agricultural goods, but in the disposal of the surplus, particularly in districts with poorer infrastructure and further away from the large market in Nairobi. Kiambu District, for instance, has more road network than the whole of North Eastern Province and is in close proximity to Nairobi particularly in respect to production and sale of perishable goods (milk, vegetables and fruits).

**Table 8.12: Incidence of poverty by district**

| Districts withlow incidence of poverty | % poverty incidence | District with high incidence of poverty | % poverty incidence |
|---|---|---|---|
| Kiambu | 22 | Kilifi | 72 |
| Murang'a | 30 | Homa Bay | 71 |
| Nyeri | 30 | Moyale | 71 |
| Nyandarua | 34 | Kitui | 70 |
| Thika | 35 | Busia | 67 |
| Kirinyaga | 36 | Wajir | 65 |
| Mwingi | 36 | Malindi | 65 |
| Maragua | 37 | Garissa | 64 |
| Keiyo | 39 | Madera | 64 |
| Laikipia | 39 | Siaya | 64 |
| Nakuru | 39 | Tharaka | 63 |
| | | Mbeere | 63 |

*Source: UNDP (2005), Fourth Kenya Human Development Report*

In the other provinces, besides physical infrastructure and poor marketing, the other factors include inadequate and unreliable rainfall, which negatively affects the potential of land. In Nyanza and Western provinces there are cases of floods, collapse of cash crops (cotton, rice, tobacco and sunflower) and HIV/AIDS pandemic, while in the pastoral areas other factors include cattle rustling and previous land clashes.

While most of the districts have cited landlessness as a cause of poverty, it is instructive to look at Western Province, for instance, where the proportion of landlessness is only 7.5 percent and is the lowest in the country, followed by Nyanza Province with less than 11 percent. In contrast, Central Province has 12.6 percent landlessness but is twice wealthier than both provinces.

## Life expectancy

Average life expectancy in Kenya as provided in the *Fourth Kenya Human Development Report* (UNDP, 2005) and various district development plans is 56.9 years. Variations in the districts range from 45 years in Machakos to 68 years in Uasin Gishu. Even within regions, variations occur for instance between Kiambu (65 years) and Nyeri (46 years) or between Bungoma (60 years) and Teso (49 years).

**Table 8.13: Life expectancies for selected districts**

| Districtswith low life expectancy | No. of years | Districtswith high life expectancy | No. of years |
|---|---|---|---|
| Machakos | 45.0 | Uasin Ghishu | 67.7 |
| Nyeri | 46.0 | Kirinyaga | 65.9 |
| Nyamira | 47.5 | Kiambu | 65.0 |
| Gucha | 48.0 | Trans Mara | 63.0 |
| Kisumu | 49.0 | Bomet | 63.0 |
| Teso | 49.0 | Kajiado | 63.0 |
| Laikipia | 49.0 | Meru North | 62.8 |
| Migori | 50.0 | Mbeere | 62.5 |
| Lugari | 50.0 | Tana River | 61.5 |
| Turkana | 50.0 | Marsabit | 60.5 |
| Homa Bay | 50.0 | Bungoma | 60.0 |

*Source: UNDP (2005): Fourth Kenya Human Development Report*

It does not appear that life expectancy follows a strict pattern with poverty, since some poor districts in the arid areas have relatively high life expectancies relative to richer districts like Migori and Teso. This will have to do with more variables than those currently accounted for by measures of poverty.

Table 8.13 provides a list of districts reporting high and low life expectancies. Life expectancy was found to be positively related to land carrying capacity, landlessness, and land size, but negatively related to absolute poverty and population density, among other variables. There was no correlation with high potential or amount of arable land. These alone will not increase life expectancy just as they did not increase income nor reduce poverty.

## Inequality and poverty

The Kenya Government defines poverty as a measure of inadequacy or inability to meet basic needs and rights, and lack of access to productive assets as well as social infrastructure and markets (Republic of Kenya, 2001). It is associated with features such as lack of land, unemployment, inability to feed oneself, lack of housing, poor health and inability to educate children and pay medical bills. It is the circumstances leading to the varying degrees of inability that constitute inequality. In this context, inequality is closely related to poverty.

The study demonstrates in various sections how deprived some people are between regions and within regions. For instance, while comparisons between Kakamega and Nyeri are regional, the differences within Njoro farms are intra-regional.

If one of the outcomes of inequality is poverty then, as demonstrated by the *Geographic Dimensions of Well-being in Kenya* poverty maps (Republic of Kenya, 2003c), poverty also varies between and within regions. For instance, poverty within Nyanza Province varies from 44 percent in Rongo Constituency to 80 percent in Kuria Constituency. In the richer Central Province, the poverty varies from 16 percent in Kabete Constituency to 44 percent in Mwea Town Constituency.

Among the ten main causes of poverty in Kenya that were identified in the PRSP, nearly half of them had direct linkage with the land issue. Low productivity in crop farming and livestock farming, lack of access to land, rural unemployment, general insecurity couched in ethnic conflict, inadequate access to infrastructure and social services, gender imbalance and the high incidence of HIV AIDS were identified as direct causes of poverty (Republic of Kenya, 2001: 21).

Poor land tenure systems have been associated with poor access to land by a large proportion of the population that would wish to make use of land more productively to support their livelihoods. The case of squatters in Coast Province owning houses without land is a typical case. This is the scenario with slum lords in other cities such as Nairobi, who also live in constant risk of eviction. Lack of tenure security is more real in urban areas and has given rise to slum conditions in which people live under inhuman conditions arising from lack of planning and provision of requisite services. However, as demonstrated in the studies, security of tenure is not necessarily achieved through titling, provided that the residents have an assurance whether through written documents or not that they will not be indiscriminately evicted without due process of the law.

There are also varying degrees of inequality in land sizes and land potential. The land sizes vary those with no land at all to those owning thousands of hectares. These attributes would be expected to determine household incomes and therefore the levels of poverty and life expectancy. However, land sizes alone and land potential do not necessarily increase income in absence of other attributes such as access to the market, infrastructure and skill of the farmer. Thus, poverty was found to be negatively related to income and positively related to life expectancy. It is perhaps in this context that land ownership was found not to always have a perfect relationship with income. Thus, contrary to our expectations, landlessness is positively related to income, negatively related to poverty, and positively related to life expectancy. Yet, landlessness averages 30 percent and has been cited in most of the provinces as a major cause of poverty. It is perhaps in this context that land ownership was found not to always have a perfect relationship with income.

Regions with lowest cases of landlessness such as Nyanza and Western provinces also have high levels of poverty because ownership of land has not increased their incomes. Similarly, land area is only positively related to income when the distribution is above 5 hectares, perhaps because smaller portions do not make much economic sense using current production technologies. Similarly, land sizes below 5 hectares are positively related to poverty and negatively related to life expectancy as their production capacities do not make a positive contribution to the quality of life measured by income. One, therefore, needs to examine the instrumentality of land on people's livelihoods. This will require carrying out surveys in various regions to ascertain the differences and conditions that account for the same.

However, tenure in form of individual title is positively related to income, negatively related to poverty and positively related to life expectancy. Therefore, income and life expectancy increase as more people get titles and poverty decreases. This needs to be read against the findings in the above case studies for Nyeri, Kakamega and Nakuru, respectively. Rural communities are dependent on land for production, but many have been rendered landless or squatters. Various communities, minority groups, women and regions feel aggrieved. Indeed, land has been the source of conflict between Kenyans in several parts of the country, particularly in the Rift Valley and Coast provinces, not because of the ability to increase income beyond poverty line, but more so because of other non-economic reasons.

Commercial farming, large-scale ranches and small-scale agriculture in the former White Highlands have enjoyed the benefits of sustained land use planning and support by the state through extension services, market outlets and access to credit by financial institutions. This has not been the case for livestock development by pastoral communities and subsistence farmers in other regions, which have not been planned for as an economic activity in Kenya. As observed by Poverty Reduction Strategy Paper (Republic of Kenya, 2001) and confirmed by the poverty maps and the district plan reports, these areas currently draw a lot of public interest due to the challenges facing these communities and the vulnerability of these communities to poverty and food insecurity

## Factors Underlying the Inequality in Land Ownership and Access

The factors leading to inequality in land ownership and use in Kenya are associated with histories of concentrated land ownership, continuity with colonial land policies, abuse of political power and mismanagement. The historical inequalities have been inherited from the colonial land management system that alienated fertile lands from the natives. The continued policies have done little to correct imbalances. Greed by the political elite has not helped the situation either, more so in the context of increasing population.

### Continuity in agrarian and economic development paradigms

It has been observed earlier that the first post-colonial governments under Kenyatta and Moi regimes continued blithely with a development model the colonialists had used, making no attempt to change the previous land distribution pattern that neglected non-high potential areas. It had been recognized by the Swynnerton Plan in 1954 that:

> *In future if these recommendations are accepted, former government policy will be reversed to enable energetic or rich Africans to acquire more land and bad or poor farmers less, creating a landed and a landless class. This is a normal step in the evolution of a country* (Swynnerton, 1954:10).

Other than the One Million Acre Scheme, other programmes have been very minimal, despite much rhetoric about land redistribution. As mentioned previously, certain policy documents ensured that the country's wealth would remain in the productive areas as was the case in the colonial period, and the beneficiaries included those settled in these high potential areas. The resettlement of squatters and other landless people has been, to say the least, half-hearted. The extension of infrastructure and other agricultural extension services to the so-called marginal areas has been non-existent. Even budgetary allocation by the present government consciously or otherwise seems to fall in the same trap. For example, fewer grants are given for water development and road construction in the more deserving districts of North Eastern Province when compared to areas that are already better endowed with these facilities. The recently introduced Constituency Development Fund (CDF) is a positive way of distributing development funds. The CDF attempts to guarantee equitable distribution as a certain portion of allocations are done on the basis of a poverty index for each constituency. This should also be extended to each ministry budgetary vote meant for development. Such funds should be allocated on the basis of need so that more funds go to areas with relatively poor infrastructure to enable the poorest of the poor to catch up with the rest. This is in line with the capability approach espoused in the distributive justice principle

## The big man syndrome

While inequalities in land distribution exist between regions and between districts within regions, the greater picture that often draws greater attention is the disparity between the landless and those who own small parcels of land and the few Kenyans who own large tracts of land. During consolidation of land in Kikuyu land for instance, "the big man tended to gain most from consolidation". More often than not, he was a loyalist and a prominent supporter of consolidation as well as other officially sponsored projects (Sorrenson, 1967: 231).

The 'big man syndrome' has continued since the 1950s into the present. In an article titled, "Who Owns Kenya", it was reported that the increasing land crises in the country will be difficult to solve because the most powerful people in the country are also among its biggest land owners. A residual class of White settlers and a group of former and current power brokers in the three post-independence regimes, a few businessmen and farmers, many with either current or past political connections, own hundreds of thousands of acres of land (*Standard* Newspaper, Friday, 1 October, 2004). As observed by the paper, most of the holders of the huge parcels of land are concentrated within the 17-20 percent part of the country that is arable, such that more than a half of the arable land in the country is in the hands of only 20 percent of the 30 million Kenyans. That leaves up to 29 percent of the population absolutely landless while another 60 percent on average own less than 1.0 hectare of land.

Land has also been an important factor and asset for accumulation of wealth and power by Kenya's ruling classes and elite. It is alleged that most of Kenya's ruling elites or families have come to own huge tracts of land as a result of their occupation of different public and political offices in the country. While it is difficult to get access on real land owners in Kenya (say from records in the Land Registry) it is nonetheless instructive that political influence could have played a big role in creating inequality in land distribution through the accumulation of land resources by ruling elite.

### Abuse of political power/land grabbing

The 1915 Crown Lands Ordinance regulated the manner in which government land could be allocated to individuals or corporations for development. The method of disposal was mainly through public auction, unless the Governor directed otherwise. Leasing for agricultural purposes was not to exceed 5,000 acres (2,000ha), except under special circumstances when the Governor would allow up to 7,500 acres (3,000ha). Later in 1951, a circular was issued to change the allocation of land in townships from public auction to direct grants with the assistance of a local committee, while in municipalities the allocation would be by tender (the plots would be advertised).

The substance of provisions for allocation of government land under the Government Lands Act (1963), which superseded the Crown Lands Ordinance after independence, are similar, except that there were no limits to the acreage to be leased. Section 12 of the Act, for instance, provides that town plots, unless the President otherwise orders in any particular case or cases, are sold by public auction. However, with the passage of time the substantive and procedural safeguards in the allocation of land were blatantly disregarded. The above concern was raised in the Ndung'u Report (Republic of Kenya, 2005) that public land has been allocated:

> *In total disregard of the public interest and in circumstances that fly in the face of the law, the practice of illegal and irregular allocations intensified in the late 1980s and throughout the 1990s. Land was no longer allocated for development purposes but as political reward and for speculation purposes. This practice which is usually referred to as land grabbing became part and parcel of official grand corruption through which land meant for*

> *public purposes has been acquired by individuals and corporations"* (Republic of Kenya, 2004a:8).

Previously, the letter of allotment, whether through an auction, tender or direct grant was never transferable to a third party during the colonial period or in the early years of independence, since the letter did not create an interest to be traded until registration was completed. However, in 1994 the government allowed for "selling" of allotment letters to third parties on payment of consent fees equivalent to 2 percent of the selling price or capital value of the land, whichever was higher (Legal Notice No. 305 of 1994). This fuelled land grabbing on a grand scale. People would be allocated land at far below the market price and immediately make arrangements to sell the same for millions of shillings. Most of the illegal allocation of public land took place just before or soon after the multiparty general elections of 1992, 1997 and 2002 as political reward or patronage.

There are situations where, contrary to the provisions of the law, land has been allocated by officers and persons without authority to do so, particularly the provincial administration and politicians. Land was no longer viewed as belonging to Kenyan people, but as vacant space to be dished out to politically-correct people for personal enrichment. Land grabbing not only created inequalities in land ownership, but also interfered with protected lands with ecological integrity, cultural relevance or strategic location. Such lands include forests, wetlands, riparian reserves, the foreshore, historical sites and monuments.

The irregular and illegal allocation of lands in the urban areas has led to loss of private interests of many public utility lands, including public parking, public toilets, public playgrounds and road reserves. Equally, the phenomenon has increased the spread of informal settlements in most municipalities and towns as most slums and kiosks have sprung up on such lands. Kenyans in these informal settlements live in squalid conditions, which negate human decency.

State corporations have either illegally lost land or bought illegally acquired land, which adversely affected their operations and the economy as a whole and as a consequence disenfranchized citizens from obtaining services. Typical examples include the Agricultural Development Corporation, which lost eight farms in 1994, which were allocated to individuals as political reward or patronage, and the National Social Security Fund (NSSF), which spent Ksh 30 billion between 1990 and 1995 buying land from many illegal allocations as a way of quick disposal (Republic of Kenya, 2004a).

Land allocation within the 418 settlement schemes created since independence in Kenya is highly skewed. Land was not only allocated to persons who were entirely undeserving, but that some people got land acreages far beyond what is recommended for each scheme. For instance, there are cases where the majority of those allocated land in the area received between 2 and 5 acres, while others obtained land between 10 and 100 acres in the same scheme but without any explanations for this disparity (Republic of Kenya, 2005: 128). Even the study in Njoro showed existence of disparities in farm sizes ranging from 3-5 acres for the small farms and as much as 100 acres for the large farms.

A further finding revealed that a total of 299,077.5 hectares of forest land have been excised without technical considerations for the social, economic and ecological implications. Such land was allocated to individuals, schools, the Agricultural Society of Kenya and Nyayo Tea Zones for a variety of purposes. Following these observations, the Ndung'u Report (Republic of Kenya, 2005b) made a number of far-reaching recommendations, including repossession of such illegally acquired lands and resettlement of the landless on some of that land. These recommendations are yet to be acted on by the government.

### Tenure systems for pastoral and forest dwellers

Pastoral activities occupy 70 percent of Kenya's land mass area, and support 25 percent of the human population and 50 percent of all livestock (National Development Plans, 2001-2008). The colonial capitalism led to marginalization of pastoral and hunter-gatherer communities at the expense of agricultural expansion. While majority of Kenyan communities lost land to European settlement, the impact of land alienation was more immediate for pastoral communities and hunter-gatherers than agriculturalists. There are a number of legislative changes introduced by the colonial state, which negatively impacted on the livelihoods of pastoral communities and forest dwellers. These include the Cattle Diseases Ordinance of 1902 to prohibit pastoralists from free movement with their livestock, and the establishment of protected areas/national parks and forests.

From the colonial period, nomadic pastoralism has been perceived to be relatively inefficient, causing overstocking and degradation of rangelands. Emphasis has been laid on improving the pastoral production system by increasing productivity, de-stocking through increasing sales, decreasing land degradation, and improving the welfare of pastoralists through infrastructure support. These strategies can best be pursued in communal grazing lands rather than individual ownership. Conflicts between traditional practices and modern technology raise questions of ecosystem sustainability and equitable use of resources with regard to pastoral practices. The current land tenure system poses a number of challenges to pastoralism as a livelihood system, including land sub-division within the pastoral areas into uneconomic units; lack of good physical infrastructure in pastoral areas and general insecurity, andlarge heads of livestock without market outlet (e.g. during drought seasons).

The incorporation of pastoralists and hunter-gatherer communities into the colonial pastoralist system not only undermined their economies, but also led to their political marginalization, and deterioration in their productive system and livelihood. At the same time, the government programme of protecting forested areas has not taken into account the fact that some communities lived in these forests from time immemorial.

The historical injustices against pastoralists, hunters and gatherers thus included: displacement and dispossession by colonial and post-colonial government; inappropriate land tenure system for common pastoral lands; conflicts with other land use system (e.g. wildlife, forest development and agriculture); marginalization of pastoralism; and negative perception about pastoralism and pastoralists.

### Cultural gender bias

In Kenya, women account for just 5 percent of registered land holders nationally and yet they contribute over 80 percent of the agricultural labour force, 64 percent of subsistence farmers, and produce approximately 60 percent of farm-derived income. Culture and traditions continue to support male inheritance of family land while there is lack of review/formulation of gender sensitive family laws. Social cultural factors limit women from rights enshrined in the Succession Act, while land markets based on the principle of a 'willing buyer, willing seller' do not favour women who are often vulnerable to poverty and male dominations. Few have land registered in their names and lack of financial resources restricts them from entering the land market.

Legislation and policies in place in Kenya regarding land management have not been harmonized with international provisions. An example is the 'equality clause' in the *Constitution of Kenya*, which is restricted by article 82(4), making exemption with respect to adoption, marriage, divorce, and devolution of property at death. There is conflict between Constitutional provisions on gender equality vis-à-vis customary practices that discriminate women even when implementing the *Succession Act*. Men generally dominate land boards or tribunals.

The present land tenure systems tend to emphasize the extinguishing of customary land tenure system, which provided some protection to women's access and use of land and replace it with individual tenure systems and title deeds. Their rights under communal ownerships in ranches are not defined and this allows men to dispose off family land freely.

## Conclusion and Recommendations

### Conclusion

This study has demonstrated that there are varying degrees of inequality in land ownership, access and use in Kenya in terms of land tenure, land size and land potential. These attributes would be expected to determine household incomes and, therefore, the levels of poverty and life expectancy.

However, poverty encompasses more than just income, and includes basic needs, human rights and a sense of dignity and belonging. Therefore, poverty is negatively related to income. In this context, land ownership may not always have a perfect relationship with income. Thus, contrary to our expectations landlessness is positively related to income, negatively related to poverty and positively related to life expectancy. However, landlessness averages 30 percent and has been cited in most of the provinces as a major cause of poverty. Regions with lowest cases of landlessness such as Nyanza and Western provinces also have high levels of poverty because their ownership of land has not increased their incomes.

Similarly, land area is only positively related to income when the distribution is above 5 hectares, perhaps because smaller portions do not make much economic sense using current production technologies. Land sizes below 5 hectares are positively related to poverty and negatively related to life expectancy as their production capacities do not make a positive contribution to the quality of life measured by income. However, tenure security in form of individual tenure is positively related to income, negatively related to poverty and positively related to life expectancy. Therefore, income and life expectancy increase with security of tenure and poverty decreases with security of tenure.

## Recommendations

### *Policy reforms*

Land is critical to the economic, social and cultural development of Kenya. It is crucial to the attainment of economic growth, poverty reduction and gender equity. Land was a key reason for the struggle for independence and land issues remain politically sensitive and culturally complex. However, Kenya does not seem to have a clear national development philosophy, and seems to act on expediency of development partners from time to time. This makes policy formulation in any sector difficult, and consequently the development of a clearly defined or codified National Land Policy is lacking. Thus, important issues relating to land are currently inadequately addressed in substantive law, policies and procedures. Consequently it is necessary to undertake the following:

- Resolve whether land is an entitlement for every Kenyan as a basic need or whether access to land should be through the market mechanisms as an economic resource.
- Conduct an assessment/survey of all land in Kenya to obtain a clear and accurate mapping of existing land uses and determine land use potentials for each area. This will provide a basis for preparation of a national land use plan.
- Review planning standards and zoning regimes to remove any possible causes for inequitable access and distribution of land among different social clusters.

- Review current legal and institutional framework for land management to improve governance, based on principles of decentralization and devolution of power, responsibility and resources and to encompass public participation at appropriate community levels.
- Make an assessment of optimal land holding capacities in the densely populated rural areas and provide incentives and options to relocate excess population to other areas.
- Make an assessment of the current squatter problem and internally displaced landless, and develop a programme for resettlement of the same with specific attention being paid to conferring legal rights and how to prevent this problem from occurring in the future.

### *Legal reforms*

Kenya has several land related statutes in place. Most of these either overlap, are obsolete or are in conflict with each other while supporting different land regimes within the same areas. Kenya's property system does not provide for optimum control of land use. Security of tenure to land is not guaranteed for all Kenyans. There is therefore need to ensure that all systems of derivation of land rights confer adequate security. It will therefore be appropriate to:

- Consolidate all statutes relating to land rights creation and delivery into one Act of Parliament with the aim of ensuring clarity and reducing the bureaucratic red tape and administrative bottlenecks that hamper easy transfer of land rights and other associated land transactions in the conveyance process.
- Review the law related to land adjudication to make the process transparent and efficient and provide for setting aside of land for public utility.
- Integrate statutory and traditional dispute resolution mechanisms to avoid conflicts arising from misunderstanding and occasionally misrepresentation of community interests in law.
- Document and map existing customary land tenure systems, codify principles, and develop specific norms on how to deal with community variations.
- Repeal existing laws, regulations, any customs and practices that constitute discrimination against women in land including women's rights in trust/ communal land.
- Develop appropriate legal measures to ensure that men and women are entitled to equal rights in land, before marriage (in cases of inheritance), during marriage and during its dissolution and after the death of the spouse.

*Political reforms*

Massive inequality stems from deliberate government policies that can be traced to the colonial days. Kenya missed the mark as soon as the first government decided to inherit the structure of governance that was established by the colonialists. The colonial government concentrated in the areas settled by Whites and ignored the welfare of the areas reserved for Africans. The Kenyatta government continued with the policy of developing the high potential areas and neglecting the low potential areas. Essentially, this meant that most of Government resources would be concentrated in the former White highlands mostly located in Central Province and parts of the Rift Valley Province.

Consequently, it is imperative for the government and all stakeholders to ensure that:

- Land is regarded as a basic need for human settlement/shelter, and as an economic resource for other purposes.
- Land is vested in the people of Kenya. An independent body should be entrenched in the Constitution to hold land in trust for the people of Kenya so as to avoid the use of land for political patronage or rewards.
- Allocation and management of land and other natural resources is devolved to accountable and representative local structures.
- Exploitation of natural resources makes provision for equitable share of benefits with measures for the uplifting of communities living adjacent to the resource.
- A national policy is put in place to ensure that national resources are directed to areas that have greatest need for development.
- The Constitution is reviewed and the relevant laws enacted to facilitate taking over of idle land belonging to absentee landlords and land illegally acquired to form a public land bank.

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