

THE SOCIO-ECONOMIC AND POLITICAL DIMENSIONS IN THE
MANAGEMENT OF LAND IN KENYA

by

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(Abridged Version)

1. A PHYSICAL INTRODUCTION TO KENYA

The Republic of Kenya covers an area of 564,162 km² and can be divided roughly into four climatic zones:

1. The Coastal Plain: This is a strip of about 40 miles wide along the Indian Ocean which seldom rises beyond 300 m above sea level. The strip runs from Tanzania through Kenya to the Somalia border.
2. The Semi-arid Low Plateau: This extends inland from the Coastal Plain. Except for the Wundanyi area where the Taita Hills rise to about 1,500 m, much of this region lies at an altitude of between 300 - 1,000 m above sea level.
3. The Highland Region: This lies on either side of the Rift Valley. This highland region has an altitude of between 1,300 - 2,000 m and commands some of the areas of highest agricultural potential in the country.
4. The Arid Low Plateau: This lies in the northern and the north-eastern parts of the country. It forms the driest region and has the lowest agricultural potential.

In summary, out of the total land area in Kenya, only 20% is made up of medium and high potential land, with annual rainfall averaging 850 mm or more. The rest of the country is classified as arid and semi-arid land.

2. DEMOGRAPHIC OVERVIEW

By 1979, the country's population stood at 15.3 million. Of this population, Kenyan Africans constituted about 98.5 per cent leaving only 1.5 per cent to non-Africans - the Europeans, Asians and Arabs. To date, the country's population is 21.4 millions with an annual growth rate of 4.1 per cent. Over the years, the percentage of non-African population has been decreasing steadily as depicted by the fact that they constituted 2.9 per cent in 1948 but only 1.5 per cent in 1979.

With a land area of 564,162 km², the country has an average density of 29 persons per square kilometre. However, 7 out of the 41 districts had a population density of over 200 persons per square kilometre by 1979.

3. PRE-AMBLE TO COLONIAL ONSET

Less than a century ago, Kenya consisted of more or less autonomous semi-isolated ethnic societies. A subsistence economy supported a stable or slowly growing population. This situation held even for the early part of the colonial era up to around 1930s. By 1930, colonialism had introduced a new economic system based on capitalism. This destabilized the prior modes of production. The self-sufficient subsistence economy was forced to adapt to the wider market economy. Meanwhile, the colonizing forces rigorously implemented a policy of appropriation and alienation of the most fertile lands formerly held by the Africans.

This culminated in a bitter struggle between the indigenous Africans and the colonial government. The struggle was directed primarily at the restoration of political and civil liberties that had been taken away by the imperial power and the repossession of the land which had been appropriated by the colonial establishment (Republic of Kenya 1989:1; Sorrenson 1967).

It should be noted that even before 1963, when Kenya attained its independence, the government made several attempts to formulate a land policy that would bring about stability - for it was quite clear that the central issue in the various tribal revolts was land.

4. THE EVOLUTION OF LAND TENURE SYSTEM IN KENYA

4.1 *The Pre-Colonial Land Tenure*

It is now generally agreed among contemporary scholars that African peoples had an elaborate land tenure system before the intrusion of colonialism and the process of Westernization, which was later to have a devastating effect on indigenous land tenure institutions. Kimani and Kuria (1977) for example, present evidence of the existence of a customary land tenure system in Kenya which emphasized communal ownership of land.

In spite of the fact that the African continent is characterized by multi-ethnicity, there is some consensus that African land tenure systems were characteristically communally oriented. It was in agreement with this tendency that Nyerere argued that:

"..... to us in Africa land was always recognized as belonging to the community" (Nyerere 1968:7).

Other scholars subscribing to this view (Njeru 1978:2; Hertz 1974:14 and Manore 1984:9) seem to agree that land was a communal property under clan ownership and leadership, and that every member of the community had the right of use while at the same time there were clear restrictions against alienation and misuse.

Indigenous African land tenure systems also served positive functions in the community, forming an integral part of the social structure. These customary land tenure systems enshrined the group's security and identity. They were seen to be adjusted to the physical and biological environments under which they evolved and in equilibrium with the ecological conditions (West, 1982).

Despite the explicit collective nature of the customary land tenure systems in Africa, Manore (1984) argues that it was always possible to identify individual possessory interests in a particular piece of land either in respect to cultivation, livestock grazing or hunting rights. Manore described the customary land tenure system in Africa as a form of communal ownership coupled with personal participation in the society (Ibid:11).

Cultivation rights, for example, were generally allocated and controlled at the family level, while grazing rights were controlled at a much wider societal level. The system had its own in built mechanisms of control against alienation and landlessness. If one had land that exceeded the needs of the family, for example, other members of the community with none or with less land could ask for use of unused land. Denial of access to and use of such land was traditionally unacceptable (Friis-Hansen 1987).

As with all other human social relationships, however, conflicts and disputes were not completely absent in the indigenous African land tenure systems. When such disputes and conflicts arose, they were resolved by clan elders who were well versed in customary land tenure. The traditional land tenure systems were therefore comprehensive and encompassed all essential aspects.

4.2 *The Farming Systems in Pre-Colonial Kenya*

The indigenous African farming systems usually embodied more than one field system or micro-environment which were located at

varying distances from each other and from the homestead. In each of such fields, there were variations in the types of commodities produced, the number of individuals involved, and the timing and intensity of the activities. This applied to both crop farming and livestock rearing.

There existed various farming systems which to a great extent were determined by the physiographic and socio-ecological environments. In Kenya, for instance, farming systems corresponded to the five physiographic regions. Due to the restrictions imposed by the conditions in these regions, crop farming was limited to the coastal region, the lowlands of the Lake Region and the Kenya Highlands. On the other hand, indigenous livestock rearing was widespread in the northern plains and the Nyika Plateau. The Nyika Plateau, a semi-arid region, could also support a modicum of crop farming (especially among the Kamba) based on drought resistant crops combined with cattle rearing.

In the Northern Plains the climatic conditions are harsh. This region could support only a low density of nomadic pastoralists. Livelihood was based on animal products derived from cattle, camels, donkeys, sheep and goats. Herds and flocks were kept at different places to minimize the risk of death especially during times of disaster which were quite frequent.

In the highland region, mixed farming was practised in fertile, well-watered areas cleared from the forest. This took the form of bush fallowing or shifting cultivation to allow soil fertility to recover. The climatic conditions permitted the production of two crops per year. Crops produced included sorghum, various types of millet, beans, pigeon peas, sweet potatoes, bananas, arrow roots and yams. These people also kept some animals, primarily for cultural reasons.

In summary, there existed two basic systems of farming in Kenya during the pre-colonial days namely: livestock rearing and mixed farming. The two types operated at subsistence level as they were geared to meet the basic needs of the family, the basic social unit that was also economically self-reliant especially in food production and consumption.

4.3 *The Onset of Colonialism - Its Impact on Land Tenure Systems in Kenya.*

In 1902 the famous railway line from Mombasa to Kisumu was completed with the purpose of opening the "White Highlands" for settlement. At the same time, Asian settlement was encouraged

in other productive regions of the country. The settlement of the foreigners, especially in the highlands, created the first land problem especially for the Kikuyu - whose land the Europeans took.

By 1910, the land problem had generated sufficient friction between the indigenous Africans and the foreigners to warrant an inquiry into the problem. This was followed by a series of commissions culminating in the Carter Commission of 1933 which finally defined the boundaries of the "White Highlands". The alienation of the "White Highlands" meant that arable land became a scarce resource in Kenya. Africans were severely disadvantaged as huge tracts of productive land were alienated from actual or potential occupation and use.

African ownership rights to land were denied on the grounds that customary tenure did not constitute ownership as per the British definition of the concept (Breen 1976:20). As Okoth-Ogendo explains, the British saw African land rights to be in the nature of usufruct only - meaning that the rights and interests lasted only as long as the land was in use (Okoth-Ogendo 1975:44). This was used to justify the European occupation of some of the physically unoccupied land which was considered as being held by the then sovereign colonial power which was free to grant it.

There is enough evidence to show that many Africans were alienated from their land, even the land they were occupying and cultivating. As documented by Breen (1976:21), a supreme court justice dismissed a case in 1921 involving Kikuyu claims to a piece of land in Kiambu (in the Kenya Highlands) on the grounds that under the existing law all African occupied land was the property of the British Crown and that the African "tenants were at the will of the Crown".

However, land pressure was mounting due to a rapidly growing African population. This led to more agitation especially during the decades following the Second World War. The British started to think in terms of an African mode of land tenure based on a capitalist theory of law, land ownership and development. By the end of World War II, the situation in some parts of the country was deplorable and the need for measures to increase land productivity and provide security of tenure became even more pressing. This culminated in the Ingham Committee of 1949, which aimed at devising a better title to land in the native land areas.

Its recommendations were never implemented. In 1953, the Mau Mau rebellion again led the colonial government to consider private land holding as a political expediency. This move culminated in the famous Swynnerton Plan of 1954. The plan, among other things, was expected to diffuse the Mau Mau uprising by creating a stable class of relatively wealthy farmers (Okoth-Ogendo 1975:89). By the end of the emergency, an immense amount of work had been done in the form of adjudication, consolidation and registration in Central Province, which provided registered ownership and security of title to land for the Africans concerned. By 1958, a Working Party was appointed to examine and recommend necessary measures to enable the introduction of a system of tenure capable of application to all tribal areas in Kenya. The report of this Working Party led to what was termed the "necessary legislation under which the reforms permitted the measures to be applied to all the tribal agricultural areas of Kenya". Such measures included adjudication, registration and consolidation and were meant to facilitate the growing of cash-crops and use of new farming techniques.

It has been argued that one effect of these reforms was the transformation of land into a commodity that could be owned - initially by clans, then families and eventually by individuals and could then be sold (alienated) without consultation. This in turn led to a landless class and reduced the number of people who could own land (Kimani 1978:5).

Okoth-Ogendo (1975,1978) contends that the land tenure reforms resulted in a significant amount of land accumulation. The colonial land reforms were planned and imposed without regard to the customary land tenure system. Land reforms weakened rural social structures by destroying the role of land as an economic base. The functions of many such structures were taken over by the state. In pastoral areas, land reforms resulted in changes in the pattern of land use. Pastoralists were forced to adopt a sedentary mode of life to which they were unaccustomed.

By the end of the colonial era, a free enterprise economy rooted in individualism had already been established. This new economy affected different communities in different ways. For example, while the Maasai were pushed into the dry margins, the Kikuyu were obliged to depend on the sale of their labour to the White settlers.

At independence, one of the main challenges for the new government was to institute a smooth transfer of land from foreign to indigenous hands and effect the Africanisation of

agriculture. Further, the government emphasised maximum utilization of the land to increase production. The latter was not a new goal. Indeed the Swynnerton Plan of 1954 remained a blue print. The land tenure reforms advocated in this plan such as adjudication, registration and consolidation, which had only been successfully implemented in the Central Province by 1963, were extended countrywide.

Mbithi (1974) argues that adjudication, consolidation and registration were seen as necessary and were therefore implemented even after independence since they facilitated agricultural development through:

- (a) eliminating fragmentation via consolidation
- (b) reducing wastage of time and labour
- (c) boosting the creditworthiness of farmers
- (d) facilitating the introduction of appropriate systems of land use and farm planning
- (e) reducing the incidence of land disputes, and
- (f) increasing investment in land by individual owners.

These were considered to be the economic benefits of the new land reforms which had replaced the customary land tenure system. In addition the same measures were seen as necessary due to the fact that:

- (a) Kenya inherited a largely rural economy based on subsistence, and
- (b) it was important to institute market oriented agricultural production, essential for national economic growth in a economy whose mainstay was agriculture.

These ideas are expounded as official government policy as stated in the second Development Plan (Republic of Kenya, 1970:194).

4.4 *Land Reform and Agricultural Development: Government Policy Since 1960*

In addition to the aforementioned land reforms including land adjudication, registration and consolidation, the Kenya Government also implemented other land reform related programmes. The latter included settlement schemes, irrigation and land reclamation schemes.

Of importance among the various settlement programmes that were implemented was the "One Million Acre Settlement Scheme". Through this scheme, the Kenya Government assisted citizens to

purchase large tracts of land, formerly occupied by the White settlers. Additional sources of finance to finance this programme came from the British Government, among other overseas sources. The scheme was to settle 34,000 families on 135 settlement schemes covering about 500,000 hectares.

Of the 135 schemes, 35 were scheduled to be low density schemes where the average farm size was to be 15 hectares; while 84 were to be high density schemes with an average farm size of 11 hectares; and 16 were large scale cooperative farms or ranches. By 1968 the government had spent £Kenya 25 million on this programme.

As mentioned earlier, the new land tenure system - popularly known as English tenure - gave rise to a class of landless people. Many such people earned their livelihoods as squatters in the large plantations. By the time Kenya attained her independence, the problem of squatters required urgent attention by the government. In an attempt to alleviate it, the so-called "squatter settlement schemes" were started in 1965. The squatters were settled in schemes in Central, Coast, Eastern and Rift Valley Provinces. Unlike in the "One Million Acre Scheme", the average size of holding in settlements for squatters was 4.5 hectares as compared to 15 and 11 hectares in the former. The former squatters were also given small loans to enable them to start crop production using family labour.

The government also encouraged Kenyans to join hands to start the so called "harambee settlement schemes" in which members pooled resources to buy farms for sub-division into smallholdings. This movement should not be confused with cooperative farms or ranches which were bought by groups but continued to be managed on a cooperative basis.

In addition, the government also started various irrigation schemes where squatters were settled. Examples were the Mwea-Tebere Irrigation Scheme in Kirinyaga, Pekerra in Baringo and Galole in Tana River Districts.

Initially land tenure reform resulted in a fall in agricultural production, though it later picked up later. Further, the African settlers faced problems with loan repayments. The government also faced administrative and supervision problems in the implementation of the schemes. Subsequently it became clear that substantial amounts of money were used for land purchase rather than on programmes to increase agricultural productivity. Indeed, during the period of the second development plan (1970-

74), the government indicated its intention to reduce its expenditure on land transfers (Republic of Kenya 1970)

4.5 *Impact of Land Tenure Reform on Agricultural Development*

The Government of Kenya implemented the various land tenure reforms as a way of accelerating the rate of agricultural development. Land adjudication, consolidation and registration measures were introduced in Kenya before and after the country attained its independence. Various arguments were offered in support of the process; for example to facilitate borrowing for farm development (Njeru 1978, Shipton 1988). It was expected that farmers would be in a position to use their farm title as a collateral in negotiating with financial institutions. It was argued that land titles, by providing security of tenure, would act as an incentive for farmers to invest in their holdings. The issuing of titles would also be expected to reduce costly litigation, particularly in the densely settled areas. By facilitating land transactions, the titles were expected to pave the way for ambitious individuals to own and profitably utilize land. This, it was argued, would eventually increase productivity.

However, counter arguments have been raised with respect to land reform in Kenya. It has been noted that adjudication, registration and consolidation have led to landlessness on the one hand and the development of large unutilized holdings on the other. The land reforms in Kenya also gave rise to deep-seated disputes and conflicts some of which are costly and time consuming (Njeru 1978; Shipton 1988). Some people, for instance, have been forced to sell their undisputed pieces of land to generate funds to finance the settlement of other land disputes. Many of the conflicts and disputes referred to above have in fact threatened social integration at both the community and national levels. Family feuds and loss of lives are common concomitants of the land reforms. In general, the privatization of land ownership gave rise to landlessness and alienation as the land acquired a commodity status. Other consequences of the land reforms include inequality arising from the unequal distribution of land. The rich bought land over and above their normal allocations at the time of adjudication. This led to the concentration of the best land in very few hands. Quite often too, and in contradiction of expectations, smallholders failed to raise credit from public and private lenders for the development of their farms.

Land reform in Kenya, as it favoured men against women, also downplayed the status and role of women as the actual utilizers of land. It should also be noted that land tenure reform in Kenya only suited a sedentary mode of agriculture. It served to marginalize pastoral communities which lost access to key land resources during droughts.

The foregoing arguments tend to question the assumption that land reform has brought about agricultural development in Kenya. It is apparent that land reform has the potential both to retard and to accelerate development, both within and outside the agricultural sector. In the circumstances, policy makers and planners should be cautious about a full-scale and unqualified implementation of land tenure reforms that are modelled on the Western system.

5. **Recommendations and lessons from the Kenyan Experience**

- (a) Land tenure reform should take into account the social and economic circumstances of the various population groups. In Kenya, land reform has worked against the interests of pastoralists and women.
- (b) Land tenure reform is a slow process, often costly and creates the need for external finance and expert advice.
- (c) Countries that have had a history of colonial domination, should weigh their options carefully before adopting and implementing land tenure systems that are rooted in foreign cultural institutions. Land reform should comprehensively incorporate customary land tenure systems to minimise the subsequent social and economic costs.
- (d) To protect the poor from exploitation by the rich, the authorities should control land sales. Where sales must take place, prices should be subject to some form of control.
- (e) Measures should be instituted to effectively discourage sales that leave the sellers landless, thereby triggering a series of other socio-economic and political problems.
- (f) In the absence of the necessary supporting services for smallholder agriculture, land adjudication, registration and consolidation achieved little on their own. Security of individual land title is not a sufficient incentive for the development of land and agriculture.

- (g) National land reforms should avoid radically novel and disruptive consequences vis-a-vis the existing social structures and kinship institutions. The latter should be recognized and adequately harnessed to reduce the risk of landlessness and facilitate a smooth transition and the resolution of emerging conflicts.
- (h) Attempts at national land reform should be made within the context of the country's wider policy objectives on development.
- (i) Prior consultation between the policy making and implementing bodies and the target populations are prerequisites for the success of land reform. Paternalistic approaches and the imposition of reforms generate resentment. Lack of compliance still remains an unresolved problem in the pastoral areas of Kenya.
- (j) Concerted efforts still need to be made to rehabilitate the victims of the imposed land reforms. Such efforts could take the form of improved access to appropriate income-generating activities and or re-settlement.
- (k) In Kenya the traditional attitudes have not been completely displaced. The problem of fragmentation, for example, continues to recur even after consolidation. This is due to the belief that a son must inherit land from the father.
- (l) Individualization of land does not necessarily lead to increased utilization of land. Among other factors such as lack of capital and access to credit facilities, there is a tendency to hold large tracts of land solely for speculative purposes.

BIBLIOGRAPHY

- Breen, R. M. 1976. The Politics of Land: The Kenya Land Commission (1932-33) and its Effects on Land Policy in Kenya
Ph.D. Thesis - Michigan State University.
- Breen, R.M. 1972. The Kenya Land Commission (1932-33) and Dorobo Land Issues. Seminar Paper, Dept. of History University of Nairobi, Kenya.

- Friis-Hansen E. 1986. Changes in Land Tenure and Land Use Since Villagization and their Impact. Center for Development Research, Copenhagen.
- Hertz, Barbara Knapp 1974. Demographic Pressure and Economic Development. The Case of Kenyan Land Reforms Ph.D. Thesis, Yale University.
- Kimani Njeri, 1978: The Land Control Act of 1967 with Special Reference to Kandara Division. LLB. Dissertation, University of Nairobi.
- Kimani, N. and Kuria, Kamau, 1977. The Role of Customary Land Tenure in Rural Development in Kenya. Paper presented to the Seminar on Law and Development. Sunset Hotel, Kisumu, July 1977.
- Manore M. A. 1984. A Critique of the Legal Mechanisms for Land Acquisition in Colonial Kenya. LLM Thesis, University of Nairobi.
- Mooock, Joyce L. 1986. Understanding Africa's Rural Households and Farming Systems. Princeton: Westview: Boulder, Colorado.
- Mbithi P. M. 1974. Rural Sociology and rural Development: Its Application in Kenya. Nairobi: East African Literature Bureau.
- Mbithi P. M. and Barnes C. 1975. Spontaneous Settlement Problem in Kenya, Nairobi: East African Literature Bureau.
- Njeru, E. H. Nthia. 1978. Land Adjudication and Its Implications for the Social Organization of the Mbeere. Land Tenure Center, University of Wisconsin - Madison, Research Paper No. 73, Nov. 1978.
- Nyerere J. 1968. Ujamaa: Essays on Socialism Oxford University Press.
- H. W. O. Okoth-Ogendo 1975 "Property Theory and Land Use Analysis: A Theoretical Framework" In Were S. G. and Mutiso, G.C.M. (eds.). Journal of Eastern African Research and Development Vol.5, No.1. 1975; Nairobi: East African Literature Bureau.

H.W.O. Okoth-Ogendo The Perils of Land Tenure Reform: The Case of Kenya. Dept. of Public Law, Faculty of Law, University of Nairobi.

H.W.O. Okoth-Ogendo, 1978. The Political Economy of Land Law: An Essay in the Legal Organization of Underdevelopment in Kenya. 1895 - 1974. Ph.D. thesis, Yale University.

Republic of Kenya, 1970-74 Second Development Plan, Nairobi Government Printer.

Shipton, Parker, 1988. "The Kenyan Land Tenure Reform: Misunderstandings in the Public Creation of Private Property". In Downs, R.E and Reyna, S.P. (eds) Land and Society in Contemporary Africa. London: University Press of New England.

Sorrenson M. P. K. 1967. Land Reform in the Kikuyu Country. London: Oxford University Press.

West, Christopher et al. 1982. Concise Land Legislation Practice. London: Sweet & Maxwell.