

INAUGURAL LECTURE

**From Accumulation of Women and Children to “Land Grabbing”:
Agrarian Kleptocracy and the Land Question in Kenya**

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MOI UNIVERSITY
PRESS 



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Abstract

This lecture is about the genesis, development and consequences of land grabbing in Kenya as it relates to the land question. The land question is conceptualised as complex and dynamic; as tied to changes in marital, gender, class and ethnic relations; governance, and agricultural and economic development. The lecture uses a variety of concepts such as changes in perceptions about the landscape, land, marital relationships, power and meanings about being, and patron–client relationships, in their political economy context, to explain not only the simultaneous transformation of pre–colonial practices of polygyny and communal land tenure to monogamy and highly individualised land ownership and use. Also analysed are the consequences of colonial dual land policy, which, together with land grabbing by colonial settlers and the post–independence political elite resulted in widespread landlessness, environmental degradation, electoral despotism, ethnic/land conflicts, economic decline and agricultural crisis. These are seen as products of crises of governance. Colonial and immediate post–independence states’ attempts to resolve the land question through reforms such as the Swynnerton Plan and the Settlement Schemes are assessed and mostly found inadequate as they were primarily concerned with tenure rather than distributive aspects of the land question. The Njonjo Commission and the Ndungu Commission Reports are further assessed and found inadequate as they were limited by their terms of reference to inquire and report primarily on the legal status of public land and their illegal/irregular allocations. It is, however, concluded that the Draft National Land Policy, the provisions on land in the Constitution of Kenya, 2010, and the Land Act No 6 of 2012, if implemented, have the potential for positive resolution of the land question. They all

emphasise equity and due regard for women, children and individuals with disability in land distribution, the establishment of a National Land Commission, and decentralisation of land administration.

Citation

Peter Benedict Odhiambo Ndege was born to Mzee Martin Ndege Okech and Mama Masliana Otieno on April 10, 1952 in Kopyio Village, Kabondo, Homa-Bay County, Nyanza Province. He was educated in Kericho Township and Opanga in Diocese of Kisii Primary Schools from 1959 to 1965, being among the first group of students to take the Kenya Preliminary Examination in standard 7. He then went to Ringa and Isibania Secondary Schools and passed the East African Certificate of Education (incorporated in the University of Cambridge) in 1969 and proceeded to Kisii High School for the East African Advanced Certificate of Education (incorporated in Cambridge) in 1971. He taught briefly in Mawego Girls' Secondary School before joining Makerere University, Kampala in 1972 for a Bachelor of Arts Degree in History. He studied History, Political Science during his first year and History in the next two years and graduated with a Bachelor of Arts (Hons) in History, Second Class Upper Division, in 1975.

He taught History and General Paper in the following Secondary Schools: Homa-Bay High 1975; Cardinal Otunga, Mosoch, 1975 – 1978; Kisumu Boys, 1979-1980; and Nyakach Girls, 1983 – 1984. During the period he trained as an examiner with the East African Examination Council and became a member of the History Panel at the Kenya Institute of Education. He assisted in the development of both Ordinary and Advanced Level History curricula for Secondary Schools. He also taught Education Diploma Students in Kagumo Teachers College in 1986 – 1987.

In the course of his Secondary School teaching career, Professor Ndege joined the University of Nairobi from 1980–1981, for a Postgraduate Diploma in Education and a Master of Arts degree in History between 1984 and 1987 and West Virginia University, USA from 1990 to 1994 for the Doctor of Philosophy Degree in History.

He joined the service of Moi University in 1989 as a Graduate Assistant in the Department of History, and became a Tutorial Fellow in the course of the year. He rose to the following positions in subsequent years: lecturer (1989–1994), Senior Lecturer (1994–2000), and Associate Professor (2000–2010). He was promoted to the position of Full Professor in June 2010. This long career at Moi University, recognised with a long service award, has involved teaching, research, administration and extension.

Professor Ndege has taught both undergraduate and graduate courses in History, including History of Economic Thought to Economics Masters and Doctor of Philosophy students. He has mentored, supervised and examined many Master's and Doctoral students, including those in the School of Arts, Education and Environmental Studies, and other Universities in the country and the wider region. He has also served as an External Examiner of History in following Universities: University of Nairobi, Kenyatta University, Maseno University, Egerton University, Bondo University College, University of Dar-es-salaam, Tanzania, Makerere University, Kampala, and Midlands State University, Zimbabwe. In addition, Professor Ndege was Visiting Scholar at the University of Witwatersrand, Johannesburg, South Africa in 2010 and on Sabbatical leave in Masinde Muliro University of Science and Technology, during the 2010/2011 Academic Year.

Professor Ndege has carried out a number of research projects, among them, book writing projects which have produced texts for the teaching of various aspects of the history of Kenya; the writing of a biographies of Makers of Kenya's History, which resulted in his book on Olonana ole Mbatian, and ongoing works on James Gichuru and Ramogi Achieng Oneko. He has further done a project for the Centre for Refugee Studies' on land/ethnic clashes, which resulted in the book titled *Crises of Governance in Kenya*. Another project was for the Organization for Social Science Research in Eastern and Southern Africa (OSSREA) on the Assessment of Poverty Reduction Programmes in Africa, which detailed Kenya's experiences. In addition he has written a number of journal articles and book chapters on Kenya's economy, governance, commissions of inquiry, and other aspects of Kenya's history.

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Professor Ndege served in many Senate Committees, including that which recommended the establishment of the Income Generation Unit, that later morphed into the Privately Sponsored Students Programme (PSSP). He has been a Hostels Warden when he also served as Chairman of the Wardens' Committee.

Professor Ndege has served the community as a Board Member in a number of secondary schools and as a Vice Chairman of his Kasipul and Kabondo Constituency Educational Committee in charge of capacity building.

He is married and blessed with children.



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Introduction: The Complex and Dynamic Nature of the Land Question

Arguably, land is akin to a “black box” in Kenya’s social formation. It pervades the entire fabric of the country’s political economy. One can weave around it many colours and strands of strings such as Kikuyu women use to make *ciondo*. In other words, one can analyze almost all issues, big and mundane, social, economic and political, around and about land. In academic parlance many have written about the country’s “land question” whose answer has depended very much on the manner land is defined and how the question itself is posited or problematized. For some, land is a livelihood in its totality: a factor of production and reproduction, a place of residence, a place for ultimate retirement and burial, or rather a place of passage to the hereafter, and also the abode of the gods and ancestors. For these people, land is life itself, and more. For others, especially the economically minded, land is property whose possession is through willing buyer and willing seller. For these individuals land is valorised by market forces at the land market, whether or not the market has a physical location. For the legally conscious land is “the soil and everything above and below it ... including any estate or interest in (it) plus all permanent fixtures, and buildings ... passages, ways, waters, watercourses, liberties, privileges, easements, plantations and gardens thereon or there under”. In other words land is that which constitutes a legal entity as provided for in law, particularly derived from English jurisprudence.

Land, therefore, means many things to many people. So does the land question. Yet the “black box” as a metaphor for land must be given some specificity. Some scholars have over-constricted

the specificity of the land question. Others who have opened it up have discovered that the land question has a multiplicity of inextricably interconnected and almost infinite issues. This inaugural lecture has taken as its major frame of reference, the land grabbing mania, which has gripped and haunted the country like a spectre. The phenomenon is traced to the last few decades of the nineteenth century. It is argued that although in the pre-colonial period land was communally owned and its use and control were generally based on principles such as kinship/lineage, territoriality, gerontocracy, patriarchy and egalitarianism, in certain communities there were already the beginnings of individual land accumulation. There were already elements of land grabbing, among the Swahili at the Kenyan coast and among the Kikuyu in Central Kenya, which were carried out hand in hand with the accumulation of women and children. Generally as land was plentiful relative to labour polygyny, was widely practiced as a means of building up large families as a source of labour. The advent of British colonialism, which commenced in 1895, partially destroyed and restructured communal land ownership by formulating land, labour and commercial laws and policies, which were anchored on race, class, ethnicity, patronage, clientilism and internationalism. The colonial project found moral justification in Christian philosophy, which placed a premium on work and individual ownership and accumulation of wealth, trusteeship and the “indirect rule” policy, which defined both citizen and subject as determinants of land by and allocation to European settlers, colonial chiefs and educated African elites. Simultaneously, Western technology, dependent capitalism and population increase led to changes in perceptions about the landscape, land, material production, matrimonial relationships and children. Social and economic differentiation, ethnicity and land grabbing, often imitative, among Africans was aided and abetted by colonial land policy. The educated elites

who, as nationalists, succeeded colonial authorities, as rulers of independent Kenya, perfected and intensified the land grabbing mania with all its contagion and consequences. Alongside other factors such as population increase and the epidemiological crisis in the form of HIV/AIDS, land grabbing has affected the entire fabric of independent Kenya in many ways. It has led to a decline in the livelihood of many people through landlessness, environmental degradation, decline in agricultural production and loss of food security. Secondly, it has brought about crises of governance in the forms of electoral despotism and ethnic/land clashes. Finally, it has led to marital instability due to loss of women's property rights.

In Kenya and other former settler dominated countries like South Africa and Zimbabwe land became a site of struggles pitting European settlers against indigenous inhabitants, local elites against ordinary citizens, ethnic communities against one another, neighbour against neighbour and husband against wife (Berry, 2002: 639). Struggles over land therefore became part of the land question, which is itself "about power and the legitimacy of competing claims to authority, as about control of property *per se*", hence an issue which should be analysed within historical contexts and which is concerned with issues of access, terms of access and decision-making, and with productions of history (ibid.). To put it differently, the land question is embedded in discourses around rights, social justice and identity, livelihoods and economic growth (Walter, 2005: 807, Hauvenik, 1997: 4 and Orvis, 1997: 92-93). Karuti Kanyinga (2009:87) sums it thus regarding Kenya:

The land question comprises several dimensions: it concerns not only land use and economic production but also population movements and settlement patterns, territories and identities, inequalities and development. These issues have internal

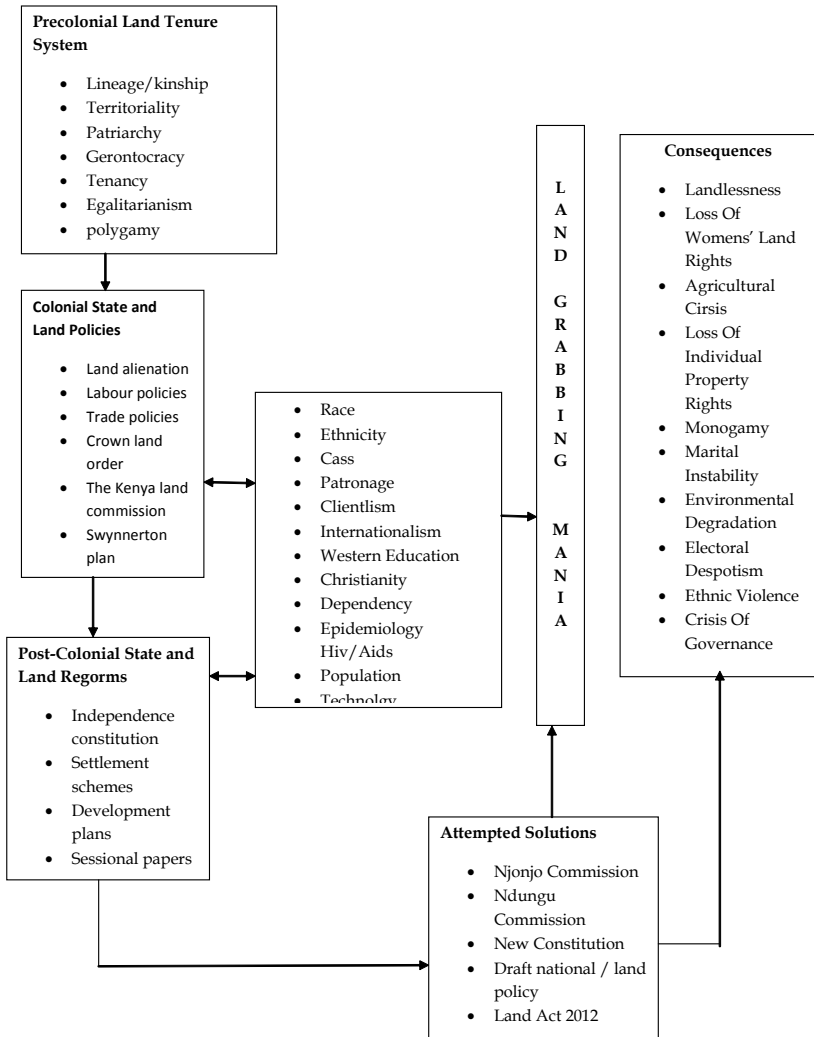
dynamics that affect access to and control of land, thereby making it an important social and economic resource in any agrarian society.

That is why the land grabbing mania must be understood in a broad context. Efforts to resolve the phenomenon must be multifaceted.

In this lecture land grabbing is used to mean wanton and illegal/irregular allocation, seizure of public and private lands in disregard of laid down law and procedure, and therefore a wrong doing, a corrupt and fraudulent practice, an economic and human rights crime (see for instance Republic of Kenya, 2004: 1). Those involved in it in colonial and post-colonial Kenya have included the state and individuals either in their public or private capacity.

The lecture, therefore considers land grabbing and its negative impact as a consequence of bad governance. Colonial and immediate post-independence states' attempts to resolve the land question through reforms such as the Swynnerton Plan and the Settlement Schemes are assessed and mostly found inadequate as they were primarily concerned with tenure, rather than distributive aspects of the land question. The Njonjo Commission and the Ndungu Commission Reports are further assessed and found inadequate as they were limited by their terms of reference to inquire and report primarily on the legal status of public land and their illegal/ irregular allocations. It is, however, concluded that the Draft National Land Policy, the provisions on land in the Constitution of Kenya, 2010, and the Land Act No 6 of 2012, if implemented, have the potential for positive resolution of the land question. They all emphasise equity and due regard for women, children and individuals with disability in land distribution, the establishment of a National Land Commission, and decentralisation of land administration.

Figure1. Conceptual framework for the analysis of causes and consequences of land grabbing



Land in Pre-Colonial Kenya

Although Kenya is a land of great ecological and ethnic diversity, pre-colonial land tenure systems among the country's communities were largely similar. This section uses a thematic approach to analyse the major principles that informed access to and control of land and its resources. The principles include those which influenced perceptions about landscapes and land and those on which actual access, control and use were based. These are issues that are often either glossed over in academic discourses and policy pronouncements or derogatively treated as obstacles to productive land use and transition to capitalism.

First, what were pre-colonial perceptions and meanings about land? We ought to start from perceptions about landscape of which land was part (for this perspective see Cohen and Atieno-Odhiambo, 1989, Atieno-Odhiambo, 2001 and Luig and Von Oppen, 1997). Landscape formed a larger entity as it referred to nature, cosmology, experience, life, being and the totality of a people's history. Landscape was perceived not only as a physical environment, the physiognomy of terrain, encompassing the physical land, its inhabitants and as something that symbolised collective heritage and posterity in aesthetic, metaphysical and cosmological senses. Landscape was therefore a dynamic entity, always in the process of being made and contested through physical, social and political practice. Landscape was thus imbued with its own internal and external meaning and power, which communities sought to understand through interactions with nature and fellow beings. It is within this broad perspective that land was variously understood to mean territory, home ground or place or residence and ultimate burial, productive soil,

place of the ancestors. Land was further divided into different categories for use: field for cultivation, salt licks for livestock, bush and forest, which provided building and herbal resources, the abode of ancestors and gods and place for venerating departed ancestors, and finally, wilderness which was unknown and even feared. Land was more than property. Principles regarding access to land were premised on this perception about landscape and land.

The principles that provided the charters for access to, control and use of land were territoriality, kinship and/or lineage, egalitarianism, polygynous and exogamous marriage, and tenancy. As shown in Figure Two below, for different communities territory was synonymous with country and land. Different communities, clans, sub-clans and households or families occupied known continuous territorial units. For example, among the Kikuyu, one or more *mbari* occupied one of the numerous ridges, which were the outstanding features of their highland abode close to Mount Kenya. The *mbari* was where different clans, which were not necessarily related geneologically had their land, *githaka*. So was the case with diverse Nandi and Kipsigis clans that occupied the same *pororiet*. It was here that every clan member had a right to use any part of the land so long as that member had staked prior interest. Among the Luo such clans mostly traced their ancestry from one eponymous founder and staked claims to land in what was variously called *keyo*, *hoso*, *lowo*, *gweng* and *piny*. The territorial units were the basis of political, social and economic organisation, where clan elders were charged with the responsibility of ensuring that every member had access to land. Clan elders also saw to it that there was law and order. They selected one leader from among themselves as their spokesman. The principle of territoriality sometimes superseded the principle of kinship as it did among

the Kikuyu and some Kalenjin communities. At other times as among the Luo, Kamba and the Gusii, they coincided.

Where they coincided one may characterise the kinship or the lineage system as constituting a mode of production. In such cases, as obtained among the Luo, the Gusii and the different Luyia communities, the lineages or kinship groups were the corporate landowning groups. Such groups held unified territories and as lineages grew as a result of population increase, they expanded their land holding through conquest or absorption of weaker or smaller lineages. Occasionally, there was also fission as single large lineages splintered. Usually, though not always, sub-sections of a lineage occupied parallel strips of land (Kitching, 1980: 282 and Shipton, 1984: 124) Among these communities, the presence of a living group of living agnates in the Luo *oganda*, Wanga *olukoba* or *olwashi* and Gusii *amasaga*, entitled the individual or family to cultivate land there. For all these communities, as has been argued by Judy Buttermann (1979: 50) regarding the Luo, "kinship relations served as (their) substructure, genealogy as (their) calculus, and the polygynous family as (their) prototype" As substructure, kinship was the basis of economic and social organization among almost all pre-colonial communities in Kenya. Members of such groups traced their ancestry to one real or fictive founder. Polygyny characterized most marriages and was a popular marital relationship as a consequence of simple technology. Technology which consisted of wooded and iron hoes, spears and clubs, within the context of relatively expansive land did not adequately serve as an efficient factor of production and accumulation. This necessitated the maximization of labour power through the marriage of many wives who in turn would produce children to increase the size of family labour (Buttermann, 1979: 52). Polygyny also enhanced men's social standing as more male children provided security. Thus among the Maasai and

the Samburu 23 and 28 per cent of men, respectively, had more than one wife (Sheriff, 1985: 9). The percentages were higher among the agricultural communities such as the Kikuyu, Luo and Luyia. Kinyanjui wa Gathirimu, a famous Kikuyu leader had 49 wives. Women obliged as marriage, whether polygynous or monogamous provided them with access to land. Among pre-colonial patrilineages, women obtained rights only through either fathers or husbands. Although women's positions were subordinated to men, polygyny afforded the older first wives some authority over younger wives whom they commanded. First wives also assisted the husband to manage the homestead (Butterman, 1979: 47). Marriages were also exogamous. Exogamy not only united different clans matrimonially; it ensured the diversification of genes for a stronger progeny.

More significantly, marriage was a means of establishing household and giving its sons and in some cases daughters' access to land. Among pre-colonial communities, families or households gained usufructuary land rights by patrilineal inheritance. Sons got access to land from their father but through their mother (Shipton, 1986: 125). A household, once allocated its land, remained in occupation of such land as long as it still used it or as long as the household patriarch desired. And as Kitching (1980:289) observes, it "made decisions regarding its use in a completely independent way". Families usually dispersed their cultivations to maximize access to and use of varied soil, vegetation and climatic conditions. Households often got together in work pertaining to the exploitation of resources on their lands through various forms of cooperative labour. Again this was meant to maximize labour. Individuals who were neither bona fide members of patrilineages and households were also provided with access to land through the principle of tenancy.

Forms of tenancy that were generally similar in substance and a little different in detail developed among pre-colonial Kenyan communities. As shown in **FigureTwo** the Kikuyu had many types of tenants, *ahoi*. The *muhoi* proper was a person allowed to occupy cultivation rights on the basis of friendship. He gave no payment in return but occasionally gave his benefactor some harvest and treated him to beer. Then there was the *muguri* who was given land in return for livestock. The *muthami* acquired land on which to build a house on a *githaka*, other than his own. And finally, a *muciarua* was often a foreigner who was adopted by a wealthy man and given a wife and access to land. His children would later belong to the adopted *mbari*. The phenomenon of the *ahoi* among the Kikuyu suggests elements of socio-economic differentiation, which were a little more developed than among the Luo, Luyia and Gusii. Among the Luo the tenant was known as a *jadak*, one who has come to stay. Such individuals usually left their own patrilineages as a result of land shortage or conflict. They were given access to land, but were always treated as strangers and subordinates to *weg lowo*, owners of the land. As Shipton (1984: 126) points out, they could be expelled for minor offences.

Figure Two: Table showing pre-colonial land tenure system among selected communities

	Kikuyu	Luo	Kalenjin/ Nandi	Luyia/Wanga	Kamba	Gusii
Territory/ Landscape/ Land	Githaka Mugunda	Piny Gweng Hoso Lowo	Emet Mbaret Kokwet Pororiet	Omukunda	Nzi Nthi Kisio	Mogondo
Clan/Lineage	Muhiriga Mbari	Oganda Dhoot Anyuola	Oret	Olukoba Olwashi	Mbai Uko	Amasaga
Council of Elders	Kiama kia athuri	Buch piny, Buch Oganda Buch gweng	Buiyabkok Busiegabkok	Abakhulundu belitala	Nzama ya atumia	
Clan Leaders	Muramati	Jodong piny Jodong gweng	Kirwogik	Abakhulundu bwolukoba		Abagaka bamasaga/ begeaku
Clan Land	Githaka	Lop oganda Lop anyuola	Pororietab Kapchepkendi	Emikunda chia bene olukoba	Nzi ya mbai	Mogondo bamasaga
Household / Homestead	Mucii	Dala	Kokwet	Litala	Nyomba	Enyomba
House	Nyumba	Ot	Got	Inzu		
Household Land		Lop dala	Mbaret ab gaa	Omukunda kwa inzu	Nzi ya nyumba	
Men's Cultivation	Mugunda wa muthuri	Mondo	Mbaret ab boisiek	Omukunda kwa mwenetala/ omusatsa		Emonga
Women's Cultivation	Mugunda wa mutumia / muiritu		Mbaret ab chebyosok	Omukunda kwa omukhasi		
Persons Adapted/ Absorbed (Clients)	Ahoi muthami muchiaruo	Jodak Jomotur Misumba Jamwa oche	Kumbunokik	Abamanya	Mbasyua	
Communal Land		Lek	Mbaret ab pororosiek	Olwayiro		

They were always placed in clan borderlands to provide security to their benefactors and were used as allies for purposes of clan expansion. The *abamenya* among the Wanga were treated in like manner. All this implies forms of differentiation emanating from unequal access to land among members of patrilineages and land tenants. Nonetheless, egalitarianism was an ideal principle that regulated access to land. Landlessness, therefore, was unheard of in pre-colonial times. The principles already analysed obviated land grabbing for purposes of individual aggrandisement. Other factors such as reciprocal redistribution through occasional communal ceremonies; fear of being branded a witch for enriching oneself excessively at the expense of one's neighbours, the vagaries or uncertainties of nature and limitations imposed by simple technology worked jointly to restrict extreme forms of individual wealth accumulation. More specifically, myths such as the primordial Nyamgondho Luo folktale narrated below provided ancestral charters, which regulated relations between individuals and men and their wives. Many other communities possessed variants of the tale.

Nyamgondho as ancestral charter

Long ago, in Gwassi, near the shores of Lake Victoria, there lived a poor widower called Nyamgondho, son of Ombare. One day as he was fishing in the lake he instead caught an old woman. He was astounded but the woman quickly pleaded with him to take her out of the cold water and marry her. Nyamgondho who was obviously shaken by this encounter soon recovered and did as the old woman requested. The couple worked very hard. Soon Nyamgondho became very wealthy. He possessed many granaries of grain, a large herd of livestock and many more wives and children. He was now a man of substance who invited his neighbours to feast at his home. His rich neighbours also

reciprocated. One night Nyamgondho returned home late from such a party, a bit inebriated than usual. He called more than once for the gate to be opened for him. But his family was deep asleep and did not answer immediately to the call. Annoyed, he uttered nasty words at his family, particularly his elderly wife. "Even the one I picked from the lake cannot open for me the gate!" he shouted in reference to her. The old woman came and opened the gate despite her extreme anger at the derogatory remarks. Early next morning she left and went back into the lake and all of Nyamgondho's other wives, children, livestock, grain and even chicken followed her there, despite his desperate pleas.

The Nyamgondho myth has many significations. A very poor man makes it through persistent personal efforts. Nyamgondho did not give up fishing. He became rich with the help of the woman he married. The story demonstrated that it is through human labour that the environment is tamed and people get material wealth. It also signifies the important role of women, and therefore their power in the accumulation and management of property. Women help in the production of grain which is exchanged for livestock. And the livestock is used to acquire more wives who reproduce more children and therefore more labour. The family is the primary unit of production and reproduction and therefore accumulation. Grain, livestock, wives and children are important factors in accumulation and indices of wealth and power. But this cycle of accumulation produces conflict between men and women, particularly when wealth gets so much in men's heads that they cease to be humble. The story therefore emphasizes the importance of men's humility particularly towards their wives who play a role in wealth creation. Nyamgondho loses everything in the end because he lacks this virtue. The Nyamgondho tale signifies, further, that women possessed property rights during the pre-colonial period, a right which if abused by men would lead to property's disappearance.

Women's property rights during the pre-colonial period

Many writers suggest that it is important to distinguish between *ownership, control, access* and *use* when analysing pre-colonial rights to land among African communities (Okoth-Ogendo, 1976, Pala, 1971 and Kanogo, 2005). In this respect, women did not own land and other property such as livestock, but they certainly had access to them through control and use (Kanogo, 2005: 42-43). Such rights were guaranteed by tradition and manifested in actual practice, which gave them considerable autonomy. Thus among the Luo, individual houses, which were owned by women as *de facto* heads were allocated land after they had attained the status of wife, following full payment of bride wealth by the husband (Pala, 1971:29). Women were also the guardians of patrimonial property, both livestock and land, later to be inherited by their sons according to patrilineal ideology (Pala, 1977: 50 and Masese, 2011 for practice among the Gusii). Matrimonial property was therefore transferred through the woman to her male children. Gunther Wagner (1939:9) also noted that among the Bukusu, unmarried girls were allocated their own portions of land at the age of 14 where they cultivated crops, which they stored in their own granaries. After marriage these granaries were ceremonially opened by their fathers-in law and served to give them a start in their own households. This practice was prevalent among many communities in western Kenya.

Pala (1977: 69-71) makes a statement about the Luo that is worth quoting at length as it best explains women's access to property among most pre-colonial communities in Kenya:

(T)he position of women in pre-colonial Luo society derived from specific characteristics of the pre-colonial political economy. First, the normative emphasis on usufructory rights as opposed to ownership of land and livestock

worked in favour of individual men and women and proved advantageous for women who as a group did not hold property. Secondly, the primacy of labour in productive work over absolute ownership ensured that as long as women invested in labour in a particular task commensurate with their normal capacity for work, they were guaranteed generalised access to products of land and livestock. Thirdly, the legal and political status of women derived from their structural position as wife and head of a house (*wuon ot*) and mothers. The import of the ideology of female power in procreation rested in its social meaning rather any truth value of a scientific character. It was indicative of the important role of women in society both with regard to food production and child bearing which for a subsistence economy represented the mainstay of society. While it may be true that these symbolic representations of female power may underline the fear by the male group of their dependency on women they did constitute real power in that they were resorted to by women as a way of asserting their autonomy and self-respect within the society's range of choice. The existence of actual or potential structural and symbolic power associated with women served to counteract the overt tendencies of Fourth, the manipulable kinship ideology which permitted a woman marriage - a legal fiction for extending the childbearing age of a woman - meant that in some instances women could have sons and direct the inheritance of their property through a male heir born by woman marriage, or *omo sihewo* (marriage of a brother's daughter to a woman's husband). Finally the legal and political obligations which governed the institution of marriage had the major objective of creating marital stability in order to ratify economic arrangements in society.

This did not mean that such rights were absolute. They were circumscribed by practices such as pawning, particularly during famines, when women were placed under the custody of another lineage or ethnic group in exchange for food, even as such marriages were sometimes rescinded through the redemption of pawns (Kanogo, 2005: 135). The fact that women never belonged to elders' councils also meant that they were sometimes unrepresented in the determination of certain issues that affected them. Never the less, among the Kikuyu, for instance, they had the opportunity to air them in their own councils (Kanogo, 2005:43).

The colonial situation introduced new discourses regarding landscapes and land, which undermined but did not completely replace the principles that undergirded pre-colonial social formations.

Colonial Conquest, Discourses on Land and Land Alienation

Much has been written about colonial conquest and the responses of African people to the onslaught of European imperialism. Much has equally been written about the consequences of European land alienation on African communities in Kenya. There is a vast lacuna or knowledge gap regarding the possibility that Africans reacted to colonialism in ways that imitated colonialism either to subvert its policies or merely to beat the colonial oppressors and exploiters in their own game. For how else does one account for African land grabbing during and after colonial rule? Or to pose the question differently: What was it about colonialism and colonial policies that transformed land into a commodity that could now be grabbed, if not pilfered by individuals, both European and African? What new discourses did colonial land policies spawn and how did they transform individuals' perceptions about landscapes and land in ways that were manifestly transformative of or even subversive towards pre-colonial discourses and perceptions? Who exemplified colonial land grabbing? How and why did all these happen? This section will, therefore, analyse colonial land policies not in legal and administrative terms as has been done before but to glean from them specific discourses and how they transformed perceptions about land. It will further analyse the activities of certain individuals that exemplify the changed perceptions, thereby make land grabbing seen quite normal despite its illegality and irregularity. Also discussed are the ways the colonial state itself abetted the phenomenon of land grabbing through the Kenya Land Commission of 1932-34, the Swynnerton Plan of 1954, the

Lancaster Constitutional Conferences between 1960 and 1963, and the Land Transfer Schemes during the transitional period to Kenya's independence.

Britain established its rule in Kenya in 1895, naming it the East Africa Protectorate. Effective rule was established on its behalf by the colonial state which was a conquest state in more senses than one. It quickly subdued local inhabitants into submission and alienated vast tracts of land for use by white settlers to defray the cost of railway construction and to cover administrative costs. Both the colonial state officials and the settlers brought with them British perceptions of nature and landscape for long shaped by centuries of feudalism and capitalism and imposed them on ill-conceived African realities, resulting in constructions of "colonial spaces" (Luig and von Oppen, 29-30). Discourses in official reports by early administrators like Sir Charles Eliot, John Ainsworth and C. W Hobley are replete with references of local African communities as "barbaric" and "uncivilised", the landscape as *tabula rasa*, land itself as either sparsely or largely "unoccupied" or grossly "underutilised" (Sorenson, 1968). Landscape and land within it was something to be appropriated and owned by individual settlers for capitalist accumulation on their own behalf and for the benefit of Britain.

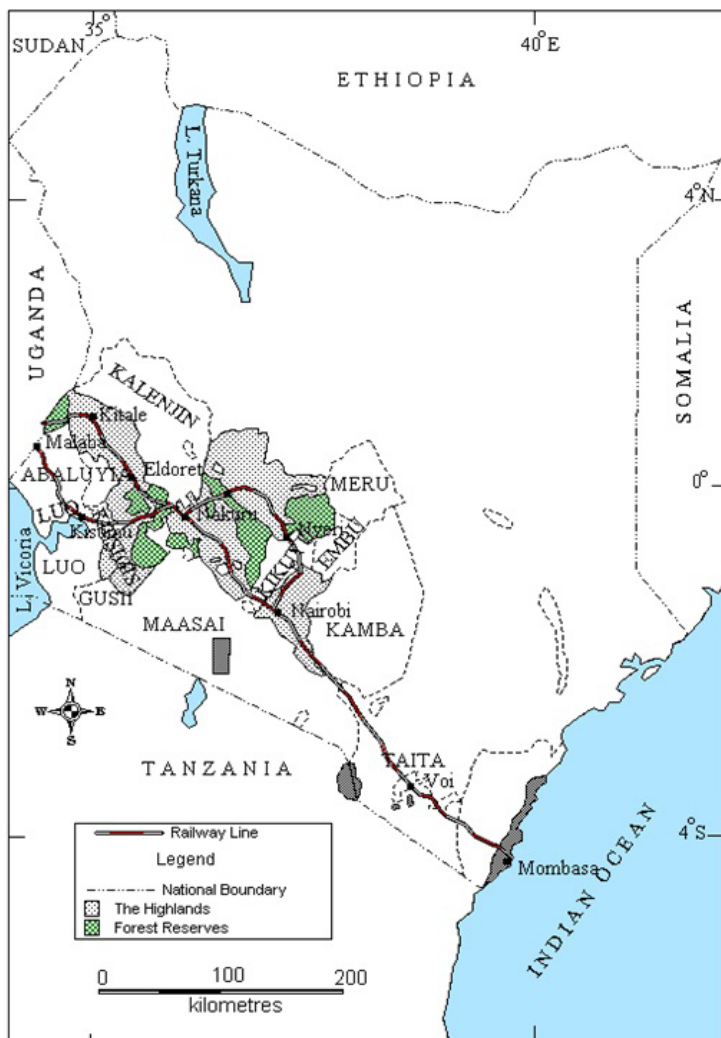
This was carried out through a battery of legislation that reflected the British proprietary concepts and favoured the White settlers who were considered the "engines of growth". These are summarised here as they have been elaborately analysed elsewhere (Sorenson, 1968; Ghai and McAuslan, 1970 and Okoth-Ogendo, 1991).

- Foreign Jurisdiction Act of 1890, which established control over waste and unoccupied land with no settled form of government.

- Land Order in Council of 1901, which transferred waste and unoccupied land to the crown.
- Crown Land Ordinance of 1902, which empowered the Commissioner to lease or sell freeholds in lots not exceeding 1000 acres.
- Crown Lands Ordinance of 1915, which made all land Crown Land, empowered the Governor the power to alienate land and grant lease of a maximum of 5000 acres for up to 999 years, and to create reserves for Africans determining their boundary.
- The change from Protectorate to Colonial status in 1920, which took away all rights Africans, might have on their holdings in the reserves.
- Kenya Order in Council of 1921, which vested land reserved for Africans in the Crown making them tenants of the Crown
- Native Lands Trust Ordinance of 1938, which designated all lands formerly known as native reserves as native lands that were now vested in the newly established Native Lands Trust Board consisting of the Chief Native Commissioner as Chairman, and one European and three Africans.

The immediate and long term implication of these legislations was to establish a dual economy and system of land tenure, one for settlers and the other for Africans. European access to land was individual while African access was communal. European tenure was regulated by English law while African land holding was guided by customary law and under the charge of Native Authorities. White settlers were granted secure rights while African rights, which were communal and the same time public remained insecure (Mamdani, 1996: 21-22 and 138-140). As will be argued below the dual policy had many internal contradictions.

Map 1 showing areas of European settlement



Source, Kanogo, Tabitha, *Squatters and the Roots of Mau Mau, 1905-1963*

European settlers and Land

European settlers' perceptions about land were largely similar to those of the colonial administrators. For them the vast and empty space that characterised the landscape in Kenya had to be transformed into "place" through individual appropriation and exploitation of the White Highlands, and possibly, the transformation of the entire colony into a White Man's Country. They shared the ideology of the colonial state that the development of the country was dependent on estate plantation agriculture. As David Anderson (2002: 156) puts it, the European settler master narrative was that they "were the guardians of sound land management, the defenders of future productivity and economic well-being (while) Africans were a threat to the very soil itself, responsible for erosion, degradation and the collapse of rural production". Imbued with this racist belief and favourable land legislations, European settlers came to Kenya to grab land. By 1944 about 7,000,000 acres of land was alienated to 2,000 settlers, which meant that 24 per cent of Kenya's arable land was owned by European settlers. The case of Ewart Grogan (Anderson, 2002 and Maxon, 2000) narrated below illustrates how some settlers acquired land.

Ewart Grogan

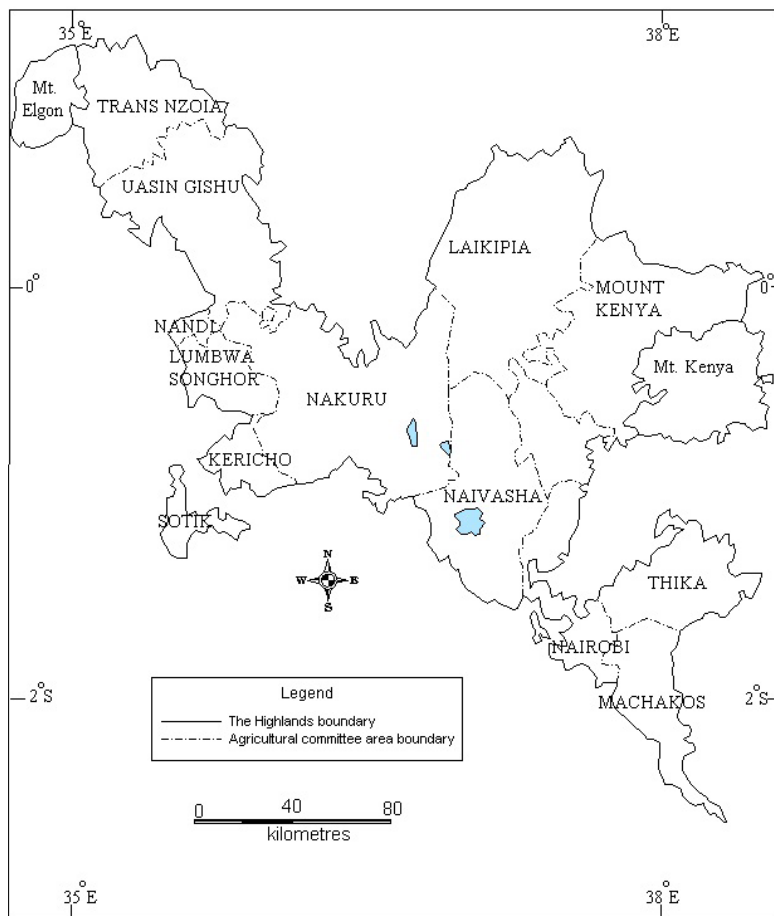
Explorer, farmer and entrepreneur, Grogan was born in London in 1873 and was educated at Winchester and Jesus College, Cambridge. He later travelled to South Africa where he settled. In 1896 he walked from the Cape to Cairo. In late 1903 he was sent to represent a timber company, Lingham and Neane of Johannesburg, to negotiate the award of a timber concession in the Rift Valley. Once in Kenya Grogan toured the Mau escarpment forests in June 1904 when "he also cast his entrepreneurial eye upon the undeveloped farmlands of the Uasin Gishu Plateau to

the north convincing himself that speculation in the development of the colony would bring considerable rewards” (Anderson, 2002: 235). Grogan was finally able to take advantage of his acquaintance with Commissioner Sir Charles Eliot and shortly later, Acting Commissioner Charles Hopley to acquire for himself two large blocks of land in Chiromo, Nairobi, 100 acres of prime land at Kilindini, Mombasa and approximately 100 square miles of land to the west of Eldama Ravine. The land at Kilindini was ideal for a wharfage for timber export while the huge concession in Lembus close to Eldama Ravine would be the source of timber. His acreages were acquired amidst much controversy and legal tussle, particularly the Lembus forest concession, which he won in spite of protestations by the Forest Department. Grogan would establish a lumbering company, Equator Sawmills, equipped with saw mills at Maji Mazuri, which he linked by constructing a 20 mile tramway, with the main railway station at Mau Summit. Although his timber concession led to the eviction of many local inhabitants he would glibly lie to the Kenya Land Commission that when he surveyed the area the land was uninhabited. Additionally, Grogan was a coffee and sisal grower. He joined local settler politics and became president of the Colonists Association and later Convention of Associations. He also served in the White dominated Legislative Council and as would be expected he used these positions to advocate for European supremacy. He resisted the granting of political rights to Asians and opposed the Lyttelton constitutional reforms which aimed at establishing multiracialism in Kenya.

Grogan, like Lord Delamere, was in a class of his own: a wealthy individual of aristocratic background. The vast majority of other European settlers were a poor lot, relatively small-scale farmers who relied on the financial support and protection of the colonial state to cultivate no more than ten per cent of their

holdings at any given time. Grogan had good education. He loved adventure, which exposed him to a variety of African landscapes. He also loved business and quickly understood how he would transform forest and other resources into commercial gain. He made acquaintances with those who mattered in colonial administration to further his entrepreneurial pursuits. Further, he was actively involved in settler politics to protect his interests. But his massive forest concession amounted to a form of agrarian kleptocracy, which resulted in the confinement of the Tugen herdsmen within a small area with devastating consequences to the people's livelihoods and land.

Map 2 showing agricultural districts where Europeans established farms



Source: Kanogo, Tabitha (1987), *Squatters and the Roots of Mau Mau*, p. xvii

Changes in African Discourses on Land and Imitative Land Grabbing

Colonial conquest and the land policy which enabled European settlers to acquire for themselves large tracts of land, together with the introduction of commercial crops brought about fundamental changes in African perceptions about land. Some individuals, particularly colonial chiefs and the educated elites appropriated European images of the landscape and techniques of land; for them the endowments of the land had to be exploited in new ways; “natural wilderness” had to be captured or grabbed and turned in to “cultivated land” with the help of imported technology and ideas and the subversion of the customary law (Cohen and Atieno Odhiambo, 1987, Luig and von Oppen, Donovan, 1996). This phenomenon was also the outcome of African people’s cognitive interpretations of the social and economic change around them, which they were part of. They led to landscapes of imagination and new uses of land. Part of the explanation is also to be found in the reproduction squeeze, which was the consequence of colonial taxation, land alienation, commodity production, and labour recruitment (Bernstein, 1979)

Simply stated, the reproduction squeeze refers to the pressures or stresses which made it difficult for people to sustain and reproduce economically and socially. This definition is, of course, premised on the assumption that individuals were primarily interested in their sustenance and self regeneration, and that they oriented their economic and social structures and norms to this end. The following cases of Harry Thuku (Kitching, 1980), Chief Musa Barare Nyandusi (Maxon, 1989 and Ochieng, 1975)

and Jacob arap Buogo (Donovan, 1996) illustrate the changes in African perceptions and subsequent engagement in land grabbing.

Harry Thuku

Thuku was born in the Kiambu area of Kiambu district in 1895, and was part of the Mbari wa Gathirimu, a descendant of Gathirimu, one of the most powerful Kikuyu leaders of the mid-nineteenth century. He obtained western formal education at the Gospel Missionary Society which arrived in Kiambu in 1902, and to which Thuku originally went as a boy of twelve in an attempt to get a job to save up for 'a cloth'. He was at the mission from 1907 to 1911, and had a series of part-time jobs there, but also received a basic education, was converted to Christianity and baptised. He went to Nairobi in 1911 to look for work but finding none went to jail for two years for attempting to forge a cheque. On release he worked as a hut counter in Suk and Turkana, and then as a compositor and machine-minder in Nairobi until 1917. This was followed by a spell as a Post Office telegraphist and despatch clerk also in Nairobi. His engagement in politics got him in trouble with the colonial authorities and led to his detention after the famous Thuku riots in Nairobi. He spent ten years in detention in various remote parts of Kenya: Kismayu, Lamu, Witu and Marsabit. In Marsabit he became a particular friend of the District Commissioner, Major Sharpe, who encouraged him to start farming on the good land immediately surrounding the station. He planted maize and sweet potatoes on a four acre farm, milled the maize which he sold. He used the proceeds to purchase two horses. He also planted trees, again on Sharpes' advice. After his release from detention in December 1930, he went back to Kiambu where he tried politics once again but was soon disillusioned. He became increasingly involved in farming

and acquisition of land. He got some land from his brother on his return from Kiambu and by 1935 he had some twenty-five acres and had turned *ahoi* away from other land in his possession. Throughout the 1930s and 1940s he accumulated ceaselessly, buying very small fragments if they were contiguous to his holding. ... His farm became a showpiece for the Agricultural Department. He practiced crop rotation, and soil conservation, and was the first Kikuyu to take to the intensive stall-feeding and rearing of grade dairy cows. During the Mau Mau revolt in the 1950s he distinguished himself as a loyalist and benefited enormously from rewards to loyalists. He was one of the first to have his considerable holdings consolidated with freehold title deeds. He engaged in coffee growing on a large scale, being exempted from the beginning from the limit of one hundred bushes. By the time of his death in 1970, he had fifty six acres of land under coffee alone, his own coffee factory and his own nursery, and his wife – whom he had sent to England for two years' education with an agricultural bias – was able to succeed him as farm manager.

As one of the earliest Kikuyu converts to Christianity and beneficiaries of western formal education, Thuku internalised the gospel of work and obedience to established authority. He, however, found the latter a bit overbearing due to British colonial authoritarian and discriminative rule. This led to his entry into Kenya's associational and ethnic anti-colonial politics, at least to rectify colonial excesses. His experience in detention and the influence of a friendly orderly transformed his attitude about land, which he now perceived as an object of personal appropriation and accumulation of wealth. This change of attitude blunted the once sharp edge of his nationalist radicalism. After his release he was quickly co-opted among Kikuyu colonial loyalists. It is notable that Jomo Kenyatta and other firebrand nationalists would experience political metamorphosis quite similar to Thuku's.

Chief Musa Barare Nyandusi

Musa Nyandusi was born about 1894 in Kitutu, Kisii. He attended the Seventh Day Adventist School in Nyanchwa, became a Christian and attained elementary education. Due to the closure of the mission station during the First World War, Nyandusi briefly went to work in Narok but resumed his schooling after the war. Thereafter he taught in an SDA out school and was promoted to inspector, a position he occupied until he joined colonial administration as an assistant chief. Nyandusi detested the amalgamation of his Nyaribari clan with their traditional rival, Kitutu and petitioned the Chief Native Commissioner for the separation of the two clans. In 1930 Nyaribari was granted locational autonomy and Nyandusi was promoted chief, a position he exploited for his own benefit and for Nyaribari. He appropriated a large portion of land for himself and brothers. Nyandusi, as member of the Kisii-Kuria Local Native Council, persuaded the local District Agricultural Officer to use his extensive farm to experiment coffee growing. This was commenced in 1934. His initial coffee trees were on an eight acre farm. A large proportion of his holding was used as demonstration blocks by individuals whose interest in coffee was not sustained. Nyandusi held on and planted the more resistant Blue Mountain coffee variety. In 1937 he was able to export the first ton of parchment coffee from the district. In addition to coffee, Nyandusi planted pyrethrum and maize. His success influenced a good number of individuals to emulate him, making Nyaribari a leading coffee growing location in Kisii. Nyandusi used the income from farming to establish a maize mill and purchased a lorry to transport his maize and flour for sale in Kisii town and other local markets and to Kendu Bay for export. He became the chairman of the Kisii Coffee Growers' Association in 1946 and when the African District Council was established in Kisii in 1962 he became its chairman.

The case of Nyandusi further illustrates the influence of Christian missionary proselytization of the gospel of work and obedience of established authority. But it also demonstrates the colonial tolerance and encouragement of land grabbing by colonial chiefs with whom colonial authorities established patron-client relations. They were in charge of Native Authorities and exercised almost dictatorial influence over customary land allocation in their locations. Nyandusi, like other colonial chiefs took advantage of his positions to accumulate land for himself, a privilege he extended to a few clients within his lineage. But as an accumulator, Nyandusi pioneered “modernization” among the Gusii.

Jacob arap Bwogo

Born about 1920 in Kapkasosio, in the south-east corner of Sigor location arap Buogo initially migrated to the Maasai plain to herd cattle. Soon he was persuaded by his *lemenyi*, Senior Chief arap Tengecha to look for farming land in Ndaraweta, a place that has a lot of uncultivated land under forest cover. Bwogo heeded this advice, went to survey the area and was convinced that the place was indeed ideal for farming. With his two wives he cleared a patch and settled at Kamabiriri after the *lugetab Talian* (the Second World War), in 1946. Shortly afterwards he travelled to Kabianga Farmers’ Training Centre near Kericho town where he enrolled in a two-month training course run by the district’s agricultural staff. At Kabianga he learned the rudiments of pasture plough rotation, paddocking and other progressive farming methods. When he returned to Kamabiriri he immediately engaged himself in the arduous task of clearing the bush. This involved cutting and stumping trees. He then planted maize acre by acre, year by year. He also planted exotic trees, mainly cypress and eucalyptus on the land he had cleared. He had obtained seeds

and seedlings from the agricultural officers in Kabianga and from the newly established tree nursery at Bomet. He also kept dairy cattle and carried sod from Soin, the grasslands to the west bank to Kabiriri to establish pasture. At the time Bwogo began planting, however, there were no fixed boundaries in Kamabiriri. He soon began to plant more trees to extend his farm from the top of the ridge where he has settled right down to *soaset*, the wetlands which begin and flow in the west-southerly direction along the southern edge of Kimabiriri. The trees enabled Bwogo to open up a new kind of agricultural space. This earned him a nickname by his neighbours: *Kipminget*. His early plantings were a constant source of conflict with his neighbours. He made no attempt to protect his saplings by fencing around them. Instead as his trees were destroyed by foraging goats, he would report their owners to the chief or the agricultural officer in Bomet. Such damage always resulted in heavy fines ranging between 10 and 20 shillings. Bwogo was also engaged in boundary disputes with many of his neighbours but he always won on account of the fact that his plot was fenced and planted with trees, maize and tea. He participated in a pilot program for Kipsigis tea growers which started in 1958. He was the third grower in Location 5, now Emkwen location, to receive a licence. He tried to extend his tea crop beyond the one-third acre limit, but the extension officer forced him to uproot his additional plants. It was not until much later after Kenya's independence that he managed to extend his tea plantation to eight acres. With earnings from his tea he built a shop, a *posho* mill and a store house and bought a Toyota pick-up to supply his shop.

Arap Bwogo's case illustrates, first the role influential chiefs, themselves accumulators, played in transforming other peoples' perceptions about land and "modernisation". Secondly, Bwogo and his wives shocked Ndaraweta inhabitants by doing the

unthinkable: clearing communal forest, the source of communally shared resources, to open space for settlement and rather extensive farming, and even fencing his rather large holding for his personal use, an object of economic utility. Thirdly, Bwogo's brief stint in Kabianga Farmers' Training Centre equipped him with new technology of appropriating and exploiting landscape and its resources. Finally, colonial authorities' restriction of the number of tea he would plant signified colonial attempts to stifle the advancement of African capitalism (Maxon, 1994).

Ansentus Akuku Ogwela (mostly derived from a pamphlet carrying his eulogy distributed during his burial which I attended out of curiosity, and conversations I had with some people there. The pamphlet's title is Celebrating the Life of Ansenthus Akuku Ogwela).

Born about 1918 in Kanyamwa Kwandiku, Akuku Danger, as he was popularly known, spent his early childhood with his parents who brought him up in a strict catholic faith. He was the second born in a family of seven siblings. As a teenager Akuku developed a liking for fashion and trained as a tailor in Kisii where he qualified in 1939. He initially worked for Indians in Migori and Sori but established his own tailoring business in the latter place. He used the proceeds of this enterprise to venture into agriculture acquiring plots in five different localities in which he established five homes. The homesteads were distributed at Aora Chuodho in Kwabwai, at Kanyamwa, and at Karungu East. He engaged in both subsistence farming and commodity production, cultivating sugar and maize for sale. He also owned *matatus*, passenger vehicles. At a time it was believed by many, of course without confirmation that he engaged in obscure business, including "sacking and selling people's blood", a *kachinja*. Akuku married his first wife in 1939 and was reputed to have married

many others in subsequent years. He is believed to have married over 100 wives. At the time of his death in 2010 he was survived by 22 wives. Some died; others took off. His family comprised 210 children, 104 daughters and 106 sons, some of whom died before him. He built a school for his family and is reputed to have been a strict disciplinarian. A number of his sons and daughters had good education and served as doctors, lawyers and teachers. A few others did not and joined the informal sector in different capacities, some as touts. Generally his many homesteads were self-sufficient in food and other basic needs. His married daughters usually reported to him whenever they visited their natal home. He expected them to return to their husbands as soon as possible or face forcible eviction from his homes. He held frequent and compulsory meetings with his family members at his office. Any of his wives and sons who failed to attend without good reason faced dire consequences. He summoned his dreaded gang to destroy the houses of errant wives whose livestock and other property he confiscated.

Akuku's case has a number of significations. First, his training as a tailor and love for fashion endowed him with a new form of power. He became a *jananga*, a wearer of western clothes, which was increasingly becoming a mark of modernity. Both enabled him to enter into business, accumulate wives and land. He became a straddle of tradition and modernity. His excessive polygyny should not simply be construed as matrimonial gluttony, as his more ardent catholic converts were wont to say, but as an attempt on Akuku's part to use traditional multiple marriages within the context of colonial mode of accumulation. For him many women meant many children and therefore more family labour and prestige. The willingness of so many women to become wives in the changed circumstances is easy to understand. It illustrates women's loss of property rights as

is argued in more detail below. Many women who were thereby affected married men of power like Akuku to get access to land. Akuku's case further illustrates the difficulties of managing an excessively large family. He certainly ruled his family with an iron hand. But that he seemed to manage the unimaginable led many to believe that he operated in the shadows as a *kachinja*, a phenomenon Luis White (1990) has attempted to explain.

By the late 1920s and early 1930s colonial land policy and its concomitant forms of accumulation had clearly led to crises and contradictions, which the colonial state attempted to handle with very little success. For instance, the 1920s were years of very mixed fortunes which saw the colonial state attempt to increase production by establishing ex-soldier schemes in Nanyuki, Thomson's Falls area (now Laikipia and Nyandarua) and Trans Nzoia, and settling European war veterans in these areas as a reward. The aim was to increase agricultural production. African labour was forcibly recruited through the Governments' decree. Nine years later the effects of the Great Depression spread to Kenya and forced the colonial state to press the expansion of production in African reserves as many European farmers were forced to abandon farming. These led to attempts at land reform as there were many claims that the dual policy was becoming a failure. African complained over loss of land and forced labour while the settlers were dissatisfied that the colonial state was not doing enough for them.

Crises of Accumulation and Coping with the Contradictions through Land Reforms

Bruce Berman and John Lonsdale have explained the crises of colonial accumulation and the colonial state's attempts to cope with the resultant contradictions during these years and afterwards. They rightly argue that the colonial state wanted to do too many things simultaneously: it wanted to reconcile the competing interests of metropolitan capitalists, European settlers, Indian merchants and African peasants increasingly differentiated in to social categories, not to mention its own interests as accumulator. Much as the colonial state tried to posture itself as an impartial arbiter and upholder of law and order, it largely failed in the end. It found it difficult to keep away the metropole from meddling with the internal affairs of the colony in matters to do with land alienation and labour, agricultural production for subsistence and export and the regulation of prices, settlers' economic and political privileges and relations with Africans and Indians. The failure of the colonial state to resolve the crisis of accumulation and the contradictions of governance would ultimately lead to its demise and the transfer of power to Africans at the behest of the metropolitan government. This section analyses how this was played out, leading to the establishment of the Kenya Land Commission, the upsurge of the Mau Mau revolt, the formulation of the Swynnerton Plan and Kenya's transition to independent statehood.

The Kenya Land Commission 1932–34

There is much debate about the merits and demerits of the dual land policy prior to the setting up of the Kenya Land Commission (KLC) in 1932. Sir Edward William Mcaley Grigg, the pro-settler governor between 1925 and 1930 defended the policy while individuals like Charles Speller were quite critical of its implications. Speller (1931) expressed his views in a Memorandum to the Joint Parliamentary Committee appointed in 1931 to consider the possibility of the East African Closer Union. These were published as an article in the *Journal of the Royal African Society*. Governor Grigg (1932) promptly wrote a rejoinder in the next issue of the *Journal*. The two contrasting positions provide interesting commentaries about the dual land policy and colonial economic policy in general.

Speller decried the absence of a comprehensive land policy, which classified land according to its characteristics, whether for African or European use and considered their needs in respect to food, water supplies, communication and other necessities (Speller, 1931: 377-380). He also pointed out that the majority of European farmers who had been granted land holdings did not have previous farming experience (ibid.). More eloquently Speller (1931: 380) elaborated:

The early grants of large areas of native lands in Kenya to syndicates and private individuals and the subsequent sales of land by the Crown at nominal values under very nominal development conditions were made without any consideration of the economic development of the country. This easy acquisition of land was responsible for the more or less organised speculation and increased European immigration. It was followed by an inflation of land values and prices in total disregard to the revenue-producing capacity of the land or of the economic laws, and more

practically, the market conditions governing increased agricultural production. Probably the most important factor in inducing sales of land was the commonly accepted statement that there was, and would always be, an abundance of cheap if not docile native labour.

Grigg (1931) countered Speller's criticisms, arguing that there was need to carry out proper investigations on the ground, which he stated the latter and other critics of the dual land policy never did. But he also admitted that proper surveys that could have determined the actual land size and other resources needed by the settler and African communities were not made possible because of financial constraints. He also reiterated his usual position that the dual land policy afforded Africans an opportunity to learn the economic value of individual land tenure even as this remained an unresolved issue well into the future. He failed to address the problem of growing landlessness and the scarcity of essential resources, including labour, in African reserves. These same issues prompted the establishment of the KLC as a response to the recommendations of the Joint Select Parliamentary Committee of 1931, which had urged that African complaints about loss of land, the definition of the White Highlands and the insecurity of land reserved for Africans, be examined.

Chaired by Sir Morris Carter, renowned for his pro-settler sentiments for having chaired a land commission in Southern Rhodesia (now Zimbabwe), which denied Africans there their land rights, the KLC whose other members were Captain Frank O'Brien Wilson who had controversially grabbed land in Ukambani and R. W Hemsted, retired Provincial Commissioner of Nyanza, totally failed to solve the African land problem. Mary Rita Breen (1976), an authority on the KLC, made the following conclusions about their finding and recommendations. The commissioners reaffirmed the critical role of the white settlers

in Kenya's economic development. They, therefore, accepted previous African land alienation as a *fait accompli* despite its contravention of natural justice. The commissioners, further, argued that problems such as soil erosion and congestion in African reserves were due to primitive tenure and population increase. They proceeded to recommend the use of communal labour and the culling of livestock in these areas as panacea to the problems. The commissioners, further, recommended the promulgation of the Native Lands Trust Ordinance that would lead to the creation of Native Reserves. Finally, they recommended the abolition of African tenancy on European farms so that squatters were treated as labourer in the conventional sense. KLC was, therefore, an exercise in public relations whose primary aim was to placate European settlers create the impression that something was being done to ameliorate the land problem in Kenya. The time the KLC was meant to buy was short indeed for persistent African landlessness and the deteriorating conditions formed a breeding ground for the upsurge of the Mau Mau revolt (Kanogo, 1987; Throup, 1988; Berman, 1990 and Maloba, 1993). The revolt led to a new land reform measure: the Swynnerton Plan.

The 1954 Swynnerton Plan

Mau Mau was a revolt, which erupted more openly in 1952 against the colonial dual land policy that alienated land at the expense of African communities and resulted in grievances, which the KLC had failed to resolve. It was also a revolt against Africans who had accumulated sizeable land, particularly in Central Province. It threatened the very edifice on which the colonial political economy was erected. This led to the declaration of a state of emergency and institution of draconian military operations against the movement. The colonial state also formulated the

Swynnerton Plan as another counter-revolutionary measure designed to establish stability and continuity for the regime (Harbeson, 1971; Okoth-Ogendo, 1976; Okoth-Ogendo, 1991; Orvis, 1997 and Kariuki, 2004) The Plan emphasised tenure reform rather than land redistribution. The former was certainly more moderate than the latter and was an assurance to the maintenance of the status quo. The Plan argued that at the root of the Mau Mau revolt was the issue of accessibility to land, which could be resolved by tenure reform and the improvement of the technology of African agricultural production. Tenure reform would be carried out by introducing in the African reserves individual consolidated land proprietorship that was secured by title. African agricultural production would be technologically intensified by allowing Africans to grow increased quantities of cash crops, providing them with adequate extension service, providing more credit to African traders and establishing for them more efficient agricultural produce marketing (Swynnerton, 1954 and Holmquist, Weaver and Ford, 1992). It was hoped that these would create a class of quiescent African land owners who instead of casting covetous eyes on European farms would help the colonial state fight the Mau Mau menace. As H. W. O. Okoth-Ogendo (1976: 163) explained, "this type of (African) middle class would be invaluable as a buffer between political mavericks hankering for redistribution of land and the settler community". The Plan suggested that Kikuyu colonial loyalists be rewarded by secure land titles.

The Plan further extolled the economic and legal virtues of individual land tenure, which colonial authorities had denied Africans, in contrast to communal ownership. It stated that the former would maximise returns to labour and time, stop land litigation, and contribute to greater capital investment among African title holders. It was also argued that although

landlessness among Africans would ensue, this was a normal and inevitable stage of development. The landless would provide the necessary labour to those who owned farms (Swynnerton, 1957). Finally, the Plan introduced a new discourse, which referred to middle class land grabbers as “progressive farmers”.

At any rate, new land laws were promulgated to implement the Plan. These were the 1956 Native Land Tenure Rules and the Native Lands Registration Ordinance of 1959, which provided for the demarcation, adjudication and consolidation of individual holdings, and their registration, respectively. The Rules were initially applied in Kiambu, Nyeri, Muranga, Meru and Embu and in a few selected areas in Nyanza and Western Provinces. The Plan had far-reaching effects, which added to others wrought by the colonial situation to erode women’s property rights as is discussed in the section below.

Colonialism, Changes in Marital Relations and the Erosion of Women's Property Rights

Factors, which simultaneously led to changes in marital relations and eroded women's property rights were well under way from the onset of colonialism but were accelerated by colonial land policy and reforms such as the Swynnerton Plan and land consolidation discussed above. They included land shortage, wage labour, taxation, and reduction in the number of livestock, conversion to Christianity and western education and colonial legislation on monogamy (Wagner, 1939; Pala, 1977; Robertson, 1997; Gwako, 1998; Kanogo, 2005; and Musalia, 2009). Taxation and other obligations such as purchasing imported consumption goods and land shortage in rural areas, factors which have been referred to above as constituting the reproduction squeeze, made polygyny relatively expensive. Wagner (1939: 47), for instance found out that paying school fees in boarding schools in Maragoli and other parts of western Kenya amounted to between 60 and 80 shillings plus 20-40 shillings for transport and clothing, which was the equivalent of 8 to 10 months of wage labour and 3 to 4 month's salary drawn by the average clerk of teacher. Kanogo (2005: 120) argues that apart from the decrease in the number of livestock due to their commercialisation and their fluctuating prices, the very task of purchasing them by a wage labourer, for payment of dowry was time consuming, given the frequent quarantines that were imposed by colonial livestock inspectors. In addition, the wage labourer's payment of taxes for his father's huts and his own waves' huts if he were to be a polygynist, was economically quite taxing. Wage labourers found it relatively

easier to hire labour for their holdings back home that marry many wives to increase domestic labour power. Some of these factors undermined women's property rights.

Colonial wage labour, for instance, overburdened women and children with farm work as men were absent from home for most of the time, particularly in labour producing areas of Nandi, Nyanza and Kiambu. (Tanui, 2010, Ndeda, 2011, Musalia, 2009: 198). Land shortage, increasing individualisation of land and other property, weakened women's access to these vital means of livelihood. According to Pala (1977: 199):

The overall tendency toward the dislocation of the lineage/household economic linkages work(ed) out itself in such a way as to split (or alienate) the locus of subsistence pursuits by men and women. As a result, over time men's productive activities (came) to acquire monetarized value quite rapidly and almost completely, while women preponderate(d) in the partial or non-monetarized sphere of production. Further, women's productive efforts, whether they generate(d) cash or not, tend(ed) to be absorbed by the household's food needs.

Women who were most affected by these changes were widows and those without son.

Women were more affected by the Swynnerton Plan and land consolidation and registration than their male counterparts. Statutory registration of land only partially replaced customary land tenure, which allowed patrilineal groups to exclude women's and children's land claims (Musalia, 2007: 198). According to Shipton (1988: 119 and Kariuki (2008: 144), after the reform program and the statutory registration of land had been completed women accounted to between 5 and 7 percent of total registered landowners. Polygynous marriages and

women's property rights would be further undermined with the intensification of male land grabbing during the post-colonial era. Women did not hesitate to respond to their marginalisation. These were sometimes accommodative; at others combative.

Accommodative and combative motherhood

Women's responses to their economic marginalisation were influenced by their experiences as wives, mothers and (re) producers. The translation of these experiences into conscious forms of action was, in turn, determined by structures of authority, patterns of the distribution of economic resources and competing ideologies within the household, the immediate community and the wider colonial world (Staudt, 1982: 150-152). Structures of authority reinforced exclusive identities and rights and disproportionately furthered male interests within and outside individual families. At the same time, it impeded the development of women's individual and collective consciousness and action in opposition to their subordination and exploitation. The distribution of economic resources, on the other hand, mostly favoured men. To their own disadvantage, women's trading activities were oriented and largely limited to the reproduction of household members even as this aided accumulation by males and the state.

Furthermore ideologies, which gained dominance within and outside the household justified women's exclusion from positions of authority during the colonial period and thereby undermined their access to economic resources. While these ideologies partly derived from pre-colonial patriarchal forms that were prevalent among Kenyan communities, the colonial situation reinforced their role in the subordination of women. For instance, according to Staudt, (1982: 152), "colonial and missionary officials introduced a domain of ideology that portrays women

as consumers, moral guardians of the home, and helpmates to the husband, rather than includes their active roles in trade and production". Men's greater access to colonial education availed them disproportionate political and economic opportunities and the ideology to rationalise their dominance. Moreover, the almost exclusive recruitment of men into wage labour led to the belief that it was proper for man only to travel away from home. As a result of these different modes of male and female socialisation and integration into the colonial system, men and women developed different perceptions about each other and to struggles over meaning, being and property. Often these led to a variety of marital instability, which women either accommodated or combated (Potash, 1976 and Silberschmidt, 1992).

The accommodative and combative modes of women's struggles have been captured by many scholars. The first is amply detailed by Claire C Robertson (1997) in her book appropriately titled *Trouble Showed the Way*. She has written about how many Kikuyu and Kamba women struggled to get initial capital, however little it was, to commence trade in dried staples, as a way of subsidising their meagre household incomes. Some of these women tolerated their husband's polygyny and sometimes drunkenness, and improvidence. Some of these women were able to accumulate sufficient funds to feed their families, buy land and build semi-permanent houses and educate their children, incidentally sons. A number of women also got initial capital from their husbands. Similar cases were prevalent in other parts of Kenya (Tanui, 2005 and Ndeda, 2011).

Luise White (1990) on the other hand analyses the combative response. She discusses cases where some married women ran away from distress in polygynous rural marriages and some monogamous homes, to urban Nairobi but failed to get employed by colonial authorities. The only option left for these women

was again in the words of the title of her book, to provide *The Comforts of Home* to male employees who were either unmarried, or who had left their husbands back home. Some of these women engaged in subsistence prostitution while the more enterprising were able to practice entrepreneurial sex work. Both categories often faced very harsh colonial urban regulations. The more enterprising sex workers were able to accumulate enough capital, which they either invested in houses and other business in Nairobi or in land back in their rural homes. Some of them married other women to get heirs to their property. Again the combative experiences of these women are repeated in many other colonial and post-colonial towns in throughout Kenya.

There are also the cases of women whose combative stance entailed the use of husband taming herbs (Goebel, 2002). Such women found their husbands a problem in many ways, including the misuse of money, sale of household land, the tendency to want to marry many more wives, and physical abuse. Such herbs were procured from experts who knew how to make concoctions, which were administered either with food or drinks. The effect of these herbs on men is that it made them dependent and obedient husbands. Some of the herbs, further transformed alcoholics into teetotallers. Few men who were overdosed by zealous wives either became zombies the rest of their lives or died. Cases of husband beating such as is currently common in Nyeri District in Central Province were rumoured. Some poor men also used women-taming herbs to sustain their rocky marriages.

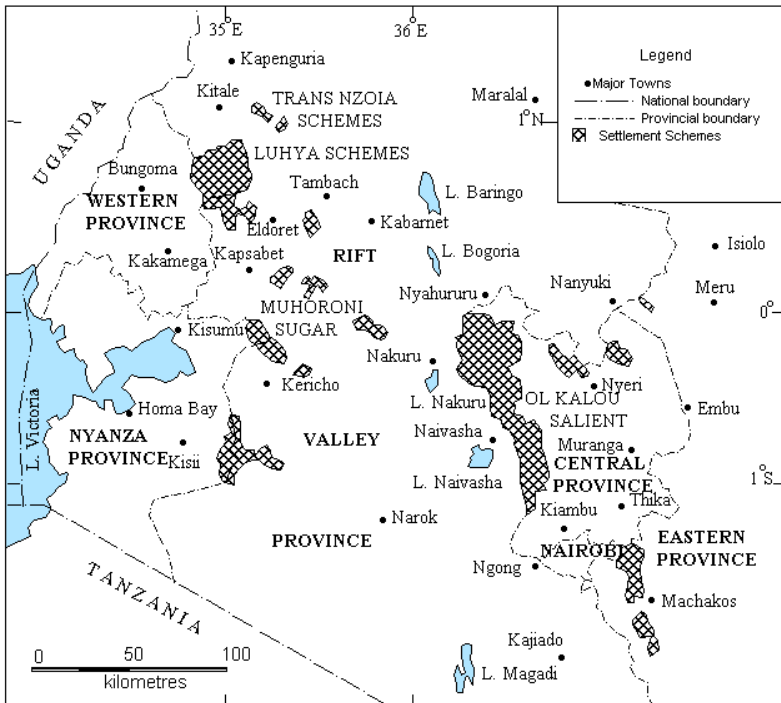
There were also women who divorced their husbands because marriages did not work for a variety of reasons. In Samia and other parts of western Kenya few women, tired of unworkable marital relations simply concluded that the best option was to “praise the lord and say no to men” (Cattell, 1992). In the words of Cynthia Hoehler-Fatton (1996) they became “*Women of Fire and Spirit*” after deep conversion to schismatic Christianity.

Post-Colonial Land Reforms and Intensification of African Land Grabbing

Land grabbing in post-colonial Kenya can be best understood within the context of how perceptions about land had continued to change. In the aftermath of the Swynnerton Plan, particularly between 1959 and 1963, land became a factor in the independence bargain. The land question was now centred around issues such as whether the White Highlands should be deracialized or Africanised to ensure the continuity of the colonial economic and political structures in independent Kenya, for the good of the country, and indeed, for Britain and international capital. It has been argued by Harbeson (1971), Wasserman (1973) and Holmquist, et al, (1994) that European settler politicians, the colonial state, Kenyan African nationalists and representatives of the World Bank finally reached a compromise to transform part of the land formerly occupied by European farmers into Settlement Schemes, ostensibly for purposes of settling African smallholders. The Million Acre Scheme was launched in 1962, just before Kenya's independence on terms quite favourable to European settlers whose payments were deposited in British banks. This initial scheme proved insufficient, forcing the Government to launch others: the Haraka, in 1965, Harambee in 1969 and Shirika in 1971. Even these failed to meet land hunger at the time and once more the Government transferred another 60,000 hectares of European farms to Africans. Unfortunately, all these schemes did not meet their intended objective, namely to settle largely small holders. The majority of the prospective smallholders did not meet the financial criteria required to acquire the farms. In the end African Cabinet ministers, Members of Parliament and

Senior Civil Servants constituted the majority of individuals who benefited. Besides, almost all the beneficiaries were from the Kikuyu community, thereby ethnicising the Scheme. This was the beginning of land grabbing in post-independent Kenya.

Map 3 showing Settlement Schemes in post-independent Kenya



Source: Oucho, John (2002), *Undercurrents of Ethnic Conflicts in Kenya*, p. 143.

During Kenyatta's regime, individuals like Kihika Kimani, G.G. Kariuki and the Gikuyu, Embu, Meru and Akamba (GEMA) leader, Njenga Karume formed land buying companies for the purpose of helping the land-hungry Kikuyu to get land elsewhere in the country. Political leaders used such tactics for self aggrandisement and maintenance of ethnic control over the state and its resources. The Settlement Schemes and the land buying companies, which were undoubtedly supported by the Kenyatta regime, constituted the means of land grabbing in post-independent Kenya.

Secondly, land became a factor of political and ideological contestation. It became the bone of contention between leaders of the Kenya African National Union (KANU) the Kenya African Democratic Union (KADU), respectively as KADU wanted to secure land in the Rift Valley for the minority communities in the region. After Kenya's independence in 1963, Jomo Kenyatta, the first president of the country would turn against his colleagues who, as radicals, were opposed to payments for settler lands in the Settlement Schemes. Kenyatta would also use land as patronage to co-opt members of KADU and KANU radicals who were opposed to his compromising stance regarding Kenya's relations with foreign capital. The transformation of land into a patronage resource, intensified land grabbing even more during Daniel arap Moi's regime (Christopher, 1984, Holmquist, et. al., 1994, Klopp, 2001 and Kanyinga, 2007). According to Carrel Rose (2002) the Kenyan political elite would engage in various forms of manoeuvre to grab land, including the manipulation of ambiguous rules and practices of land tenure, the use of their political and ministerial positions, and the advancement of their own ethnic and community interests.

The land grabbing mania had become so intensive during the Moi regime that the President himself appointed the Presidential Commission of Inquiry into the Land Law System of Kenya (Republic of Kenya, 2002) to inquire into the problem. The Commission, which was chaired by former Attorney General and Minister for Legal and Constitutional Affairs, revealingly pointed out that two Government ministries were involved in land grabbing: the Ministry of Lands and the Ministry of Local Government. The Commission, further noted that the following factors were responsible for the phenomenon: inefficient and corrupt institutional framework for land administration (pp viii and 102); the absence of a comprehensive land policy; the absolute powers of the state, and by implication the President, in the acquisition and distribution of land to individuals (p. 40-41), powers, which were once enjoyed by the colonial Governor; the protection of private property, especially land, by section 75 of the former constitution regardless of the manner in which it was acquired (p. 97).

When Mwai Kibaki came to power in 2002, the NARC regime appointed a Judicial Commission of Inquiry into the Illegal/Irregular Allocation of Public Lands under the chairmanship of Paul Ndiritu Ndungu on 30th June 2003 to commence fresh investigations. The Ndungu Commission Report (Republic of Kenya, 2004) detailed the grabbing of public land under specific headings as follows:

Urban Lands

- 1) Direct allocations by the President and/or Commissioner of Lands
- 2) Illegal surrenders of Ministries and State Corporation land and subsequent illegal allocations

- 3) Invasion of Government and Trust lands
- 4) Allocation of land reserved for use of State Corporations or Ministries
- 5) Allocation of lands reserved for public purposes, such as schools, playgrounds, hospitals, sewage and toilets

State Corporation Lands

- 1) Purchases of illegally acquired Public Lands by State Corporations, e.g. Kenya Ports Authority and National Social Security Fund
- 2) Sale of State Corporation Land to individuals at throw away prices
- 3) Loss of State Corporation Lands during legal splits
- 4) Invasion of State Corporation Lands by private cartels

Lands reserved for the use of Ministries and Department

- 1) Illegal allocation of Ministries' lands through surrender
- 2) Illegal allocation of Government land without reference to the respective ministries
- 3) Illegal allocation of Government houses and properties

Settlement Schemes

- 1) General deviation from original intent
- 2) Allocation of land to undeserving individuals

- 3) Absence of standard criterion for reserving public utility plots
- 4) Illegal establishment of settlement schemes on Agricultural Development Corporation farms

Trust Lands

- 1) Allocation of Trust Lands contrary to the Constitution and Land Adjudication Act

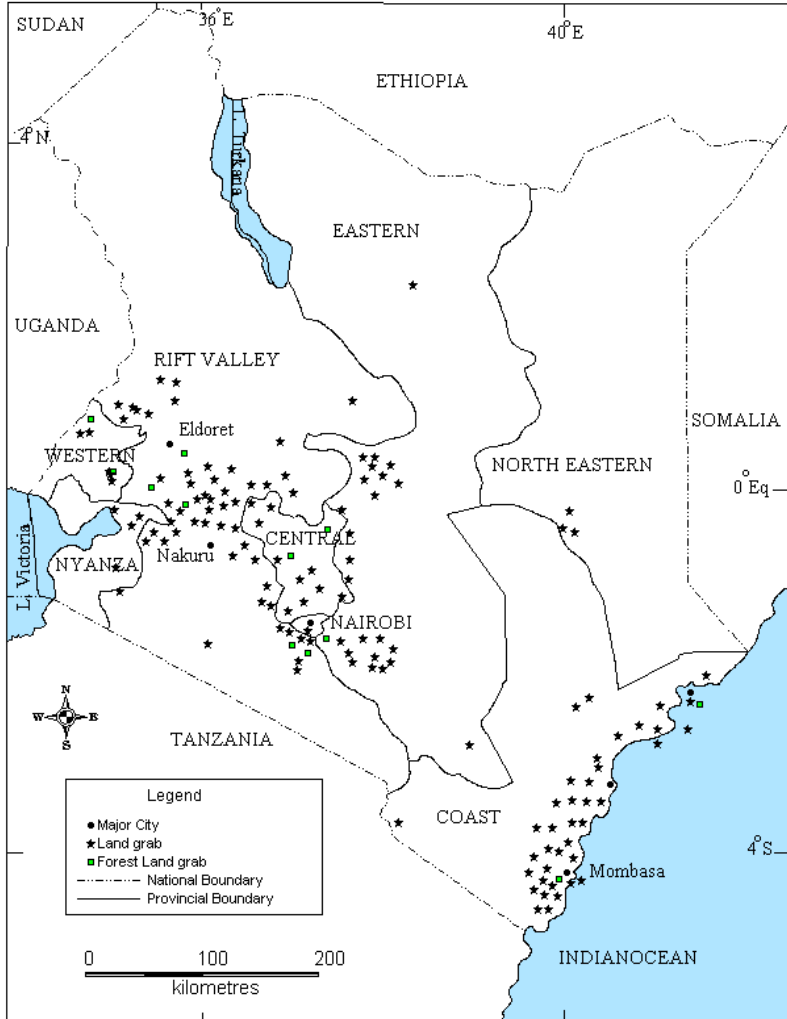
Forest Lands and Water Towers

- 1) Allocation through illegal excisions during the adjudication process
- 2) Disinheritance and displacement of forest dependent minorities like the Ogiek

Riparian Reserves

Game Reserves and National Parks

Map 4 showing Regional Distribution of Land Grabbing



Source: Klopp, Jacqueline M. *Electoral Despotism in Kenya*, p. 195.

The Ndungu Commission attributed the grabbing of public land to the “unbridled greed and complicity of Government officials” (p. 1) and “one of the most pronounced manifestations of corruption and moral decadence in our society, ... , (which) has demonstrated the loss of public responsibility for present and future generations by those entrusted with power” (p. 192) such as individuals in the President’s office, the Commissioner of Lands, Members of Parliament, and the Provincial Administration (p.14). This verdict can as well be made on other scum, like the Goldenburg scandal, which took place during the Moi regime and Anglo- Leasing, which involved prominent individuals in NARC, and the Grand Coalition’s National Hospital Insurance Fund (NHIF) saga, the unfolding of which may turn out to be equally scandalous.

The Consequences of Land Grabbing

Landlessness

Landlessness has deep roots in Kenya's colonial history as a result of massive land alienation for use by European settler farmers. Alila, Kinyanjui and Wanjohi (1985; 2-3) established that by 1930 well over 45,000 Kikuyu and more than 41,156 other Africans in the areas around Nakuru and Naivasha lost their land. The authors add that by 1945 there were more than 203,000 squatters and labourers on European farms, and by the end of the colonial period a total of over 7.5 million acres of land had been alienated by about 3,600 Europeans. They, further state that in 1976, there were 7.3 percent landless rural households in Kenya, most of them rural wage labourers with very low incomes. This leaves out many more thousands of landless people who were crowded in urban areas eking out a living in the growing informal sector.

Rapid increase in population has, undoubtedly, been an important factor in occasioning landlessness in the country but land grabbing together with state sponsored ethnic/land conflicts in 1992, 1997 and 2007/08 post-election violence seriously accelerated the problem. There is the need to undertake research today, similar to the one carried out by Alila, Kinyanjui and Wanjohi in 1983, to determine the extent, seriousness and to disaggregate the regional and gender incidence of landlessness.

Decline in agricultural production and food security

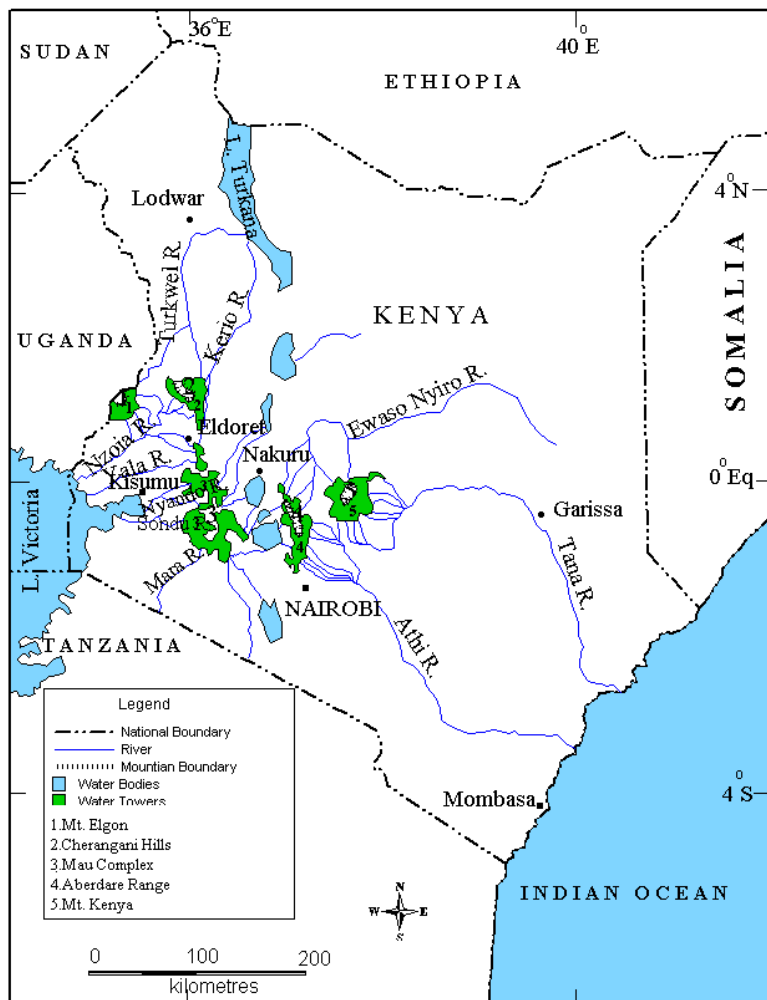
As in the case of landlessness, the crisis in agricultural production in most African countries including Kenya has been as a result of asymmetrical land distribution alongside many other factors.

According to Morgan and Solarz (1994), agrarian stagnation has also been caused by limited use of modern agricultural inputs, seasonal production bottlenecks, poverty and lack of capital, risks of depending on very fluctuating markets, and lack of adequate government financial support, competitive cheap food imports, and land tenure problems. These factors account for changes in the fortunes of agricultural production.

The country experienced very rapid economic and agricultural growth during the last one and a half decades to independence in 1963 and continued to do so up to the early 1970s (; Maxon and Ndege, 1995 and Ndege, 2000). The post-World War 2 boom and the incorporation of small-holder producers immediately prior to and after independence were responsible for this impressive but temporary performance. Thereafter, the economy's internal structural rigidities began to manifest themselves. The state began to pursue policies, which favoured large scale farmers, the land grabbers, who were at the helm of power, at the expense of small-holders. This was done through state loans and other support to large-scale farmers who, like most of their erstwhile European settler counterparts were inefficient farmers; inappropriate trade policies, which allowed these individuals to import maize and other food at low costs; domestic price distortions to assist large-scale farmers to accumulate surplus value from agriculture; and appointing these individuals to agricultural state corporations, which they corruptly and promptly run down (Nyagito, 1999; Argwings-Kodhek, 2001; Ndege, 2008; Karugia, Ndirangu, Nyagito and Suri, 2010; Winter -Nelson and Argwings-Kodhek, and Odhiambo, 2012). In a blatant exhibition of kleptocracy, the state used its patronage to intervene in the economy in various ways in favour of land grabbers to defend and help them access resources; including more land, rather than develop the country's agricultural resources (Berry, 1984: 96 and Southall, 1999; and

Klopp, 2000). It needs to be added here that the grabbing of land situated on forest reserves, which form part of Kenya's water towers, has led to serious environmental degradation that have altered rain patterns, which has in turn aggravated the agricultural crisis and food shortage in the country. As shown in the figure below land grabbing was hydrotropic as those who appropriated land preferred places close to sources of Kenya's main water drainage systems.

Map 5 showing water towers and the hydrotropic tendencies among land grabbers



Source: Kenya Institute For public Policy Research Analysis (2009), Kenya Economic Policy Report, 2009, p.121

Electoral despotism and ethnic/land conflicts

Land has further had political implications, which have led to crises of governance (Chelanga, Ndege and Singo, 2009, and Oucho, 2002 and 2010). These led to electoral despotism, ethnic/land clashes, and the recrudescence of Mau Mau-like movements such as *Mungiki*, the Sabaot Land Freedom Army, and the recent secessionist attempts by coastal people in Mombasa (Klopp, 2001, Mwangi-Omondi, 2011, Medard, 2010, Katumanga, 2008 and Atieno, 2007). These problems have roots in the colonial past. The coincidence of colonial administrative boundaries and the dual land policy with ethnic and racial groups led to the development of political tribalism. The various African communities customarily owned land in their own tribal districts. When they were permitted to engage in politics in was within their ethnic associations and other outfits like the Local Native Councils, and after the state of emergency was lifted in the late 1950s, district/tribal political parties.

These tribal parties later metamorphosed into KANU and KADU in the 1960s and into the parties that clamoured for change during the re-introduction of multi-party politics in the 1990s. The constitutional requirement that a presidential candidate gets 25 per cent in at least 5 provinces led to a spate of rallies in various parts of the Rift Valley in which the land issue was fed into the old *Majimbo* debate. The primary aim of the *Majimbo* advocates then was to ensure that the Kalenjin-dominated KANU regime attained electoral victory during the general elections in 1992 and 1997. Members of other communities who were perceived to belong to opposition parties were violently evicted from the Rift Valley with state complicity. These led to massive losses of land and the deaths of many individuals. The 2007 post-election violence was similarly spurred by the unresolved land question and widespread grievances regarding the flawed presidential

election. Both the previous KANU, and the NARC regimes utilised land, ethnicity and election rigging in patrimonial schemes to hold on to power, issues that will feature in future presidential elections in Kenya for a long time to come.

The neo-Mau Mau movements like *Mungiki* and the Sabaot Land Defence Force (SLDF) are about grievances associated with landlessness. The savage manner in which both movements act to ventilate their grievances and the state's brutal crackdown on them have both led to serious violations of human rights and compromise of democratic practice in the country. *Mungiki*'s membership is composed of landless and unemployed youth, a situation which is widely prevalent in other parts of the country. Most of them are descendants of those who were dispossessed of their land during colonial rule, some of whom were engaged in the Mau Mau revolt. Some of their songs and practices are, with a few additions, reminiscent of Mau Mau. They behead their opponents, circumcise women, racketeer, extort *matatu*, urban taxi business and are recruited as vigilante by politicians. John Michuki, the former Minister for Internal Security declared war on them. In a strongly worded statement he declared (as quoted in Atieno, 2007: 527):

We will straighten them and wipe them out. I cannot tell you today where those who have been arrested in connection with the recent killings are. What you will be hearing is that there will be burial tomorrow. If you use a gun to kill you are also required to be executed.

The country never got to know how many followers of *Mungiki* were summarily executed on the orders of the state. What is known is that this action did not wipe out the movement.

The SLDF came to public knowledge around 2006 when, as an armed militia, the armed group actively resisted government's attempt to evict squatters in Chepyuk, in the Mount Elgon area. Like their *Mungiki* counterparts, the SLDF killed an estimated 600 people, and kidnapped, tortured, raped and collected tax from individuals who owned land that they perceived as historically belonging to them but which had been allocated to individuals who do not belong to the area (Medard, 2010: 19-34 and Human Rights Watch, July 2008). During the 2007 General Elections certain individuals from the Mt. Elgon area used the militia as vigilante. The state's reaction against them was brutal. In March 2008 the Kenyan Army and the police were deployed to regain control of the Mount Elgon region, in the "Operation *Okoa Maisha*, Save Lives, but which resulted by the time it was completed, in the killing of an estimated 220 people, the detention of 4000 individuals and the jailing of 800 others), leading to complaints in the area that "all the men are gone" (Human Rights Watch, July 2008). *Mungiki*, SLDF and the state actions can but be simply termed, blatant violations of human rights - all because of land.

Secessionist sentiments presently expressed by members of the Mombasa Republican Council has a past deeply embedded in Kenya's pre-colonial, colonial and post-colonial history. Before the establishment of British colonial rule in the East Africa Protectorate, the Sultanate of Zanzibar controlled part of the coastal areas of the mainland. In March 1877, the Sultan of Zanzibar granted a 50 year concession of the 10-mile strip between river Uмба and Kipini to William Wilberforce, whose initial commercial outfit, the British East African Association would be renamed the Imperial British East Africa Company (IBEAC) in 1888 and be granted a Royal Charter by Britain. This meant that henceforth, IBEAC's commercial and political

operations in the area were carried out on Britain's behalf. In 1895 Britain assumed direct control of the area hitherto under IBEAC, which placed the 10-mile coastal strip under the Britain's "protection" and effective occupation. When in 1920 Britain changed the status of the East Africa's hinterland into a colony and named the country Kenya, the coast retained its protectorate status giving Kenya the unique status of being a colony and protectorate, the latter in reference to the Zanzibari sultan's domain. As Kenya's independence drew near coastal politicians established the Mwambao United Front (MUF) to struggle for the autonomy for the coastal strip and demanding union with Zanzibar, or better still, an independent state. The MUF was unsuccessful in this pursuit whereupon its political leaders joined KADU which advocated *Majimbo*, in early 1960s. But feelings of neglect in terms of development, and massive grants of prime coastal beaches to Kenyatta's allies, kept secessionist sentiments aflame, though clandestinely despite Kenyatta's and Mio's attempts to establish patron-client relations with some politicians there. The conflagrations would erupt during the multi-party era in the 1990s following unsuccessful attempts to have the Islamic Party of Kenya registered. The volatile nature of the land question at the coast is presently responsible for the cavalier way the state is treating the politics there now framed in terms *Pwani si Kenya*, the coast is not Kenya. Indeed such secessionist sentiments, would if they translated into successful action, lead to a the dismantling of Kenya as a territorial entity, that is, if the Somali of North Eastern Province revive their irredentism and if other communities like the Maasai and the Kuria on the one hand, and the Bukusu and Teso, on the other, opt to join their kith and kin in neighbouring Tanzania and Uganda, respectively.

Conclusion: An Assessment Recent Land Commissions

The foregoing has detailed, in a combination of the diachronic and synchronic approaches, the genesis, development, and complex and dynamic nature of the land question as primarily manifested in land grabbing. Woven around the land are colonial and post-colonial policies, which transformed both material but also marital relations, leading to landlessness, loss of property rights by women, environmental degradation, crises in agricultural production, and governance. In this section recent attempts by the government to curb, if not eradicate land grabbing are assessed to reflect on what the future holds for the majority of Kenya's people. The Kenya Government, very much like its predecessor, the colonial state, has attempted to resolve the land question through commissions of enquiry, land legislation and policies.

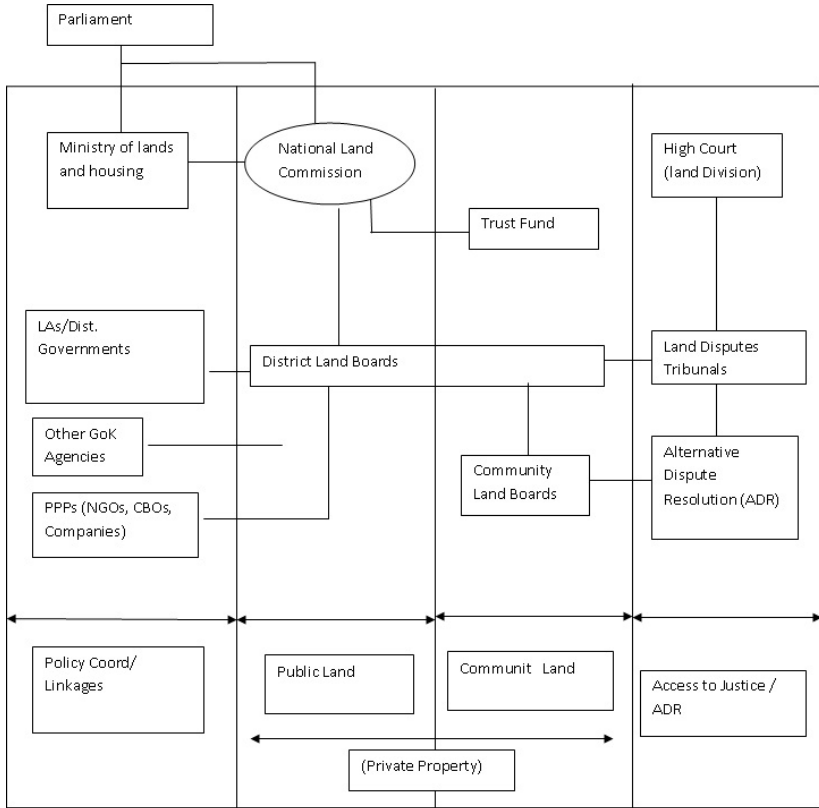
I have been very critical about the usefulness of commissions of inquiry in bringing about change. In particular reference to the Judicial Commission of Inquiry into ethnic clashes, which occurred in Kenya between 1992 and 1997, I argued that commissions are usually limited in scope by their terms of reference, which often trivialise the problems they are set to investigate (Ndege, 2008). As a consequence, commissions rarely conceptualise problems comprehensively. This critique applies to both the Njonjo and Ndungu commissions: the former inquired into and reported about "the land law system of Kenya and the new institutional framework for land administration" while the latter inquired into "the illegal/irregular allocation of public land". Their terms of reference were confined to these broad objectives. It is quite clear from my preceding analysis above that the land question in Kenya is much broader than the two commissions set out to

inquire and make recommendations. It is known that the different groups of the Kenyan populace –men, women and children - have important issues to raise about land beyond the land law system and illegal allocations of public land. Occasioned by the circumstances that prevailed when they were set up, it is logical to arrive at the conclusion that the two Commission's intentions were merely to serve as "official discourses" meant to confer on the respective regimes some "legitimacy (Ashforth, 1990)

Be that as in may, as measures to curb the land grabbing mania, the Njonjo Commission's recommendations were based on its findings that have already been detailed above. The recommendations of the Commission were not implemented as the Moi regime was soon replaced by the National Rainbow Alliance Coalition (NARC) after the 2002 elections. The Ndungu Commission Report, which followed recommended, *inter alia*, the nullification of illegal allocation; demolition of property erected on illegally allocated land; further investigation and possible prosecution of individuals, including professionals, responsible for the allocations; restitution; repossession of State Corporation, Ministry, Settlement Scheme and Trust lands and revocation of titles issued to them. Additionally it recommended the establishment of a Land Title Tribunal and a Land Commission, and the enhancement of their capacity; computerisation of land records; keeping an inventory of all Public Land; harmonisation of land legislation; and the establishment of a Land Division of the High Court, among others. Most of these recommendations have not been implemented: those of the Njonjo Commission possibly because of the change of regime; those of the Ndungu Commission, because of the highly and politically charged nature of the land issue and certainly because the implementers include those who are heavily implicated in the illegal allocations of public land (Southall, 2005 and Kariuki, 2008).

Certain aspects of the land question that were dealt with by the two commissions were also the concerns of the Constitutional Review Commission and a Committee responsible for the formulation of the Draft National Land Policy (DNLP). The DNLP appeared in 2006 and has not been finalised to date. It was, however, intended to guide the country towards efficient, sustainable, and equitable use of land as its aim was to produce a policy “whose vision is to guide the country towards a sustainable and equitable use of land” (DNLP, 2006: v). It therefore addresses issues that had hitherto been avoided, namely, equitable distribution of land, particularly to take care of women’s, children’s, minority groups’ and disabled persons’ land needs. It further insists on the need for a National Land Commission and proposes an organizational structure and established implementing institutions as shown in the figure below. The significance of the DNLP, even as it still awaits finalisation is its radical approach to land distribution and administration. It is significant to note that by adapting discourses such as “equity” and “sustainability”, the DNLP is advocating for a socially “distributive” rather than mere tenure reform. Besides, in its proposed land administration it is suggesting a devolved system that eliminates the highly centralised, personalised and autocratic powers once enjoyed by the President and the Commissioner of Lands.

Figure 3 DNLN's proposed organizational structure with new institutions



The Constitution of Kenya, 2010, unlike the old constitution, made provisions regarding land in its Chapter Five titled “Land and the Environment” elaborated in two parts (Republic of Kenya, 2010: 43-50). The Constitution provides, *inter alia*, for the holding, use and management of land. Like the DNLP, its discourses about land are new: equitability, efficiency, productivity, and sustainability. It classifies land into public, community and private and vests the State and Parliament with regulation of their ownership and use by members of the public, community and private individuals, respectively. The state is empowered to regulate the use of any land in the interest of defence, public safety, public order, morality and health. Parliament for its part is charged with the responsibility of “ensuring that investments in property benefit local communities and their economies ...”, and of “enacting legislation to prescribe minimum and maximum land holding acreages in respect to private land. The New Constitution reiterates the establishment of a National Land Commission.

Parliament has taken its responsibility seriously. It has promulgated The Land Act No 6 of 2012 (Republic of Kenya, 2012) in line with the broad provisions of the Chapter 5 of the Constitution. It details the manner in which the National Land Commission shall manage and administer public land with specific reference to issuance of licenses, payment of rent, charges and conditions of lease. The ultimate aim of the Land Act is to provide secure title and tenure and to circumvent the emergence of unscrupulous land buying and selling syndicates and cartels, which have in the past encouraged land grabbing. The success of these reform efforts will very much depend on the political will of Kenya’s political leaders to translate the Constitution and the Land Act into practice. For it is one thing to have a constitution and practice constitutionalism and the rule of law. It

also behoves the Civil Society and the entire populace to remain vigilant regarding attempts by the state and the political class to overstep their bounds. Recent announcements by line Ministries to the effect that funds will not be available for disbursement to County governments, and the President's appointment of County Commissioners to replace the Provincial Administration, have been interpreted as deliberate attempts to forestall the process of devolution.

Meanwhile, alternative discourses by popular musicians caution and sensitize Kenyan people about land as the one cited below by one from Kabondo, my home.

The admonitions of a musician (Ochieng Nelly Mengo)

Kabondo, rituru lowo

*Ya gini litna kaparo dalawa Komalawa x2
Uwito lowo ma kaparo Nelly awuoro pinywa ni
Jomatindo litna odong biro thagore
Lowo orumo kuomwa apimnue wach ma an go
Wichkuot kuomu kubiro bedo jotich jodak*

*Wanyuolo jogo ma kaneno biro konyo thuru ka
Ne wayudo lowo gadiera mabiro pidho nyithiwa
Nelly gini litna kaparo dalawa komalawa
Gini lit jowa weuru uso lowo jajuok
Gini okano jowa madongo ni ei lowo*

*Uwinjo nade kawauso dalawa ne oganda moko
To waseko temo ma wanyalo ma waloso thuruwa
Amedo kwayo ni kuwinjo da wariwo lwetwa te
Lowo orumo jowa mabiro gero iKabondo
Gino rach chutho weuru kelo jodak ei gweng*

*Donge uparo mos kaka ne wakedo gi jomoko
Joma ngeny olal kawaparo bur Opanga thuruwa ka
Joma lich otho kawaparo; gini ni erembwa te*

*Omiyo jokadana weuru uso remb yawu
Thuondi olal chutho ka gikedo ne oganda machine*

*Piny kworore anyisu yawa da waparo matut
Joma tindo ngeny kawuono mabiro dware pinygi
Omiyi jokadana rituru lowo ne nyithindwa
Thienyruok nono ubiro ywago mak ywagi*

Kabondo, protect the land

*It really pains me when I reflect about Komala our home
Nelly, when I reflect the way you throw away land
I am pained when I reflect way the youth will suffer
Let me tell you, we have no more land
Shame on you as you become foreigner's servants*

*We have produced those who will help our country
We rightfully acquired land to raise our children
Nelly, it really pains me when I reflect about our Komala our home
It really pains! Stop selling land! It is a wizard
Our famed ancestors are buried in the soil*

*How do you feel when we sell our land to foreigners?
After really trying to develop our home
I still beseech all of you; let us unite against this vice
There is no more land that will develop Kabondo
It is so painful! Do not bring foreigners in the neighbourhood*

*Do you remember how we fought for the land?
Many people perished at the Opanga fort
We remember, famous individuals perished and it is in our blood
So my grandmother's people do not sell your blood
Worriers died fighting for posterity*

*Let me tell you; the world rotates as we are deep in thought
Many will demand their country
So, my grandmother's people, save the land for our children
If you take it as a joke you will later cry helplessly*

**Source: The Tausi Jazz "73" C UND 10 Vol. 3, Chandarana Recordings,
Kericho, 1973-1985**

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