

LAND TENURE REFORM AND

AFRICANISATION OF THE 'WHITE HIGHLANDS' 1956 - 1970

This dissertation covers the land problem in Kenya and how the colonial and the Independent African Governments tried to solve these problems through tenure reform and Africanisation through settlement schemes. I have not exhausted the subject. Much more could be written.

This work is the result of about one year research on the subject. My particular thanks go to my supervisor Mr. Simon Gogundu, lecturer in the faculty of law, who from the very beginning gave me unwaveringly encouragement, advice and

A dissertation in Partial fulfillment of the Requirements for the LL.B degree, University of Nairobi in its final form.

Also, I wish to express my sincere thanks and gratitude to the Daffinid Secretary who typed this work. Through her skilled typing, she was able to turn my otherwise poor and almost illegible handwriting into a neat and readable script.

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Needless to say, the final responsibility in relation to this work rests with the author.

Nairobi May 1981

PREFACE:

This dissertation covers the land problems in Kenya. It's an attempt to look into the causes of the land problems and how the colonial and the Independent African Governments tried to solve these problems through tenure reform and Africanisation through settlement schemes. I have not exhausted the subject. Much more could be written.

This work is the result of about one year research on the subject. My particular thanks go to my supervisor Mr. ^{Shem} Ong'ondo, lecturer in the faculty of law, who from the ^{shame} very beginning gave me comradely encouragement, advice and dedicated guidance. His rigorous and Scholarly Comments on the work as it progressed helped greatly to put it into the shape it has taken in its final form.

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Culturally land is significant in that it serves as a basis of identity with ones kind. Since land is inherited from the family or clan it links the holder with his forefathers whose graves are on that land. However, this is changing with the attainment of Education which allows a person to buy land from any person who need not be a member of that clan or family.

Politically, land issues have always been very sensitive. For instance when the British Colonists came to colonize Kenya they took up the lands occupied by Africans in the Highlands. They kept the Africans in small insecure Reserves which served as a labour Reservoir for the white settler farmers. In the small reserves problems of landlessness, persecution, land disputes, famines and diseases arose. These problems led to land rise

LAND TENURE REFORM AND AFRICANISATION OF THE WHITE HIGHLANDS

INTRODUCTION

In Kenya land has always been and is of great Social, Economic, cultural and political importance.

Socially, land is a measure of one's wealth and status in the Society. Any person without land occupies the lowest Ranks in the Social Stratum of a particular community e.g. the landless 'ahoi' among the Kikuyu.

Economically, land is a means of survival. ~~in~~ Kenya being an agricultural country, land is the only source of income and means of subsistence for the majority of the African families. Without land one faces a threat of hunger and his very existence.

Culturally, land is significant in that it serves as a basis of identity with one's kins. Since land is inherited from the family or clan it links the holder with his forefathers whose graves are on that land. However, this is changing with the entrenchment of Capitalism which allows a person to buy land from any person who need not be a member of that clan or family.

Politically, land issues have always been very sensitive. For instance, when the British Colonists came to colonise Kenya they took up the lands occupied by Africans in the Highlands. They kept the Africans in small insecure Reserves which served as a labour Reservoir for the white settler farmers. In the small reserves problems of landlessness, parcellation, land disputes, famines and diseases arose. These problems led to the rise

of African Nationalism which culminated in a bitter armed struggle between the forces of the colonial dictatorship and the heroic mau mau army for land and freedom. The colonial Government which never intended to return the lands seized declared Emergency and started punishing the mau mau Guerillas and their sympathisers. This was done in the process of land Tenure Reform. The guerillas and their sympathisers either in prison, detention or in the so called protected villages lost their lands which was forfeited to Reward the loyal chiefs and their homeguards. This was done under the Emergency rule and could not be questioned. The Government argued that it was necessary to replace customary land Tenure which was alleged to have caused all the problems in the Reserves with an individual land tenure system which was said to be necessary to solve the problems in the over crowded reserves. This arguement was intended to cover up the true purpose of land tenure reform. The reform was a counter-revolutionary measure intended to punish and defeat mau mau and their sympathisers and to creat a conservative landed middle class which would not challenge the colonial political and Economic Status quo.

When Independence was just about to be given Africanisation and multiracial policies were began so that the colonial status quo can be protected even after the announcement of the political Independence. At first the European leaseholds were turned into free hold titles and then the highlands were opened up for Africans to buy some parts of the highlands. At first only a few Africans could buy and so it was found necessary to start low density settlement schemes to allow more people in the highlands. The aim of these schemes was to bring into the highlands an african middle class of loyal chiefs, opportunist African politicians and the civil servants who had been on the side of the Colonial Government during the

Mau Mau War. The colonial government was ready to give up political power to these moderate and reactionary Africans and by giving them land in some parts of the white Highlands they assured that the new African government would be ready to protect British and white settler interests in future. The schemes were began around 1961 but in 1962 it became clear that the masses of the landless and unemployed would threaten the smooth transfer of power and even if power was transferred the new African Government would face an uprising in future. So Britain was urged by the moderate African politicians to finance more settlement schemes to settle the African landless and unemployed. This was done and Britain announced the million acre settlement schemes just before Independence. Under the scheme a part of the highlands left vacant by departing conservative European Settlers would be bought using British funds for the landless Africans who were expected to repay the loans after a specified period. Not the whole of the Highlands were to be given back to Africans because the government had no intention of expelling all the white settlers in Kenya. Also no land was to be given free because the schemes were not intended to meet the Historical demands of African Nationalism which had always emphasised on the expulsion of all white settlers and the Return of the white highlands without paying for it. They were schemes intended to facilitate a smooth transfer of power to an african neo-colonial government and to prevent any future uprising against such a government which was expected to join the neocolonial commonwealth and to continue its colonial role of providing Britain with Raw Materials and markets. Some radical African politicians like Kaggia and Odinga opposed these neocolonial arrangements. They opposed the buying of land through Settlement Schemes and were against close ties with the British Imperialist Government which had oppressed Africans for many decades. They were in a

minority and as we shall see in the course of the dissertation these patriots were isolated by the moderate and conservative african politicians in KANU (Kenya African National Union) and KADU (Kenya African Democratic Union) and they had to form an opposition party, the Kenya Peoples Union (K.P.U.) in 1966 to champion the interests of the landless and unemployed. This party proved to be popular among the poor and landless and after years of political crisis it was banned in 1969 and some of its leaders detained.

The 1966 political crisis indicated that the essentially conservative and neo-colonial Government led by KANU was not secure. It had to consolidate itself by isolating and banning K.P.U. and then giving another portion of the largely white Highlands to the landless and poor who had now indicated that they could support the progressive K.P.U. This was done by starting more settlement schemes financed by Britain which came to aid the Conservative Government during the crisis. At the same time the Government went ahead to consolidate its positions among the peasantry already given land in the million acre schemes. This was done by starting a new scheme called the individual transfer schemes. Under this schemes the civil servants, former chiefs, party leaders and businessmen were given loans to buy lands and European houses surrounding the million acre schemes. These leaders were expected to provide leadership to the peasantry in the million acre schemes, to moderate them and to mobilise them to support the Government. These schemes were began in 1966 but after a short time it turned into grabbing. The leading politicians, businessmen and senior civil servants started taking up as much land as possible. Many of them inherited many squatters in those farms and today squatting is very common in most individually owned farms in the highlands. This squatting, plus the unemployment in the country and landlessness in the former african resources pose the greatest threat to the Government.

All these factors clearly indicate the political significance provided by land. Land problems were deliberately caused by a selfish racist government during colonial days but when problems arose the government turned to reform customary land tenure which never caused these land problems. No land problems were solved. The new African Government inherited these problems but instead of solving them it only gave part of the highlands and jealously protected the white settlers. It also continued with the colonial reform of customary land tenure. Today land problems still exist. White settlers and a few African Settlers holding miles and miles of land exist side by side with suffering landless and unemployed. Squatting continues in the highlands and parcellation of land and land disputes still exist in the former African Reserves.

This dissertation seeks to expose the causes of land problems and how the colonial Government and its successor ignored the problems and embarked on dishonest land policies like Tenure Reform and limited Africanisation of the European highlands with the aim of protecting the political and Economic status quo set up by the colonial masters.

The dissertation has got four chapters the last being a conclusion. Chapter 1 seeks to show the origin of the land problems. All the colonial land policies relating to alienation of land for white settlers, the creation of Reserves and the labour policies are discussed. In the same chapter the customary land tenure applying in the Reserves is discussed briefly.

Chapter 11 deals with the reform of customary land tenure. The reasons behind it and the process of reform are discussed up to the time of Independence.

Chapter 111 deals with Settlement Schemes which were began by the Colonial Government just before Independence and inherited by the Independent Government which took over in 1963. All the politics of the Settlement Schemes are considered up to about 1970. All problems in these schemes will be considered.

Chapter iv deals with the continuation of land tenure reform by the Independent Kenya Government and the Reasons given for the continuation of this tenure reform process which was began by the colonial government. In this chapter I will evaluate the successes, failures and problems of the tenure reform process in the light of the reasons given by the colonial government for tenure reform. It should be noted that settlement schemes discussed in chapter 111 and the tenure reform process after Independence were implemented side by side with each other with much emphasis on tenure reform. I will also show the problems caused by the Registered Land Act which replaced customary land law especially section 27 of the Act. I will finally give my conclusions reached after considering all the land problems, land policies and the interests of the colonial and the Independent African Government which dictated the land policies during the period covered by this dissertation i.e. up to 1970.

LAND TENURE REFORM AND AFRICANISATION OF THE WHITE HIGHLANDS

CHAPTER 1

NATURE OF CUSTOMARY LAND TENURE AND THE COLONIAL LAND POLICIES

In this Chapter I will examine the Nature of customary land Tenure System before its eventual breakdown and replacement with individual land tenure system. The colonial land policies that preceded the Tenure Reform will also be examined.

(a) Customary Land Tenure

A Land Tenure System defines the process through which a member of the Society may have access to land, prescribes rights exercised by the entire community over such land and how the benefits accruing therefrom may be distributed. It is therefore within the Land Tenure System that one sees who may acquire land, from whom and on what terms, and the degree of control exercised by the community over such land. In summary, a land tenure system represents the relation of men in society with respect to that essential and often scarce commodity - land!¹

Before the customary land tenure was replaced with individual land tenure system customary land tenure was communal. Every member of the community had a right to claim land, by virtue of his membership of that social group, from the King, chief or other authority (e.g. clan heads, or elders) existing where there was no chiefly authority. The right of every member of the Social group to claim land is the principle aspect by which

one can correctly say that customary land tenure was communal. The communal ownership of land under customary law is well explained by Gluckman when he says that the:

"dominant right present in the so-called communal ownership is that every member of a certain social group can claim the right to be given a garden to work privately and to make certain use of public lands and waters. Once he take over products from these are his."²

These rights are incidental to one's political and social status. Thus, when one becomes a member of a social group he acquires the right to claim land for use and it was given by the heads of the social group. The nature and size of his rights to land was deterimened by his ~~esai~~ social status.

The fact that a member of the social group acquired a right to land by belonging to that group did not mean that he owned the land and could deal with it as he liked. The land belonged to the entire community and not to the individual. All the individual had was right to claim the communal land and use it like any other member. This is seen from the words of a learned scholar who puts it as follows:

"land is not owned in any absolute sense by the man and his household who live on it, or by the village group or by the chief, but by all of them together"³

Land belonged to the entire community and not to the individual.

The individual had the right to use it. One famous African leader *→ Nyame* simply summarises the situation as follows:

"To us in Africa, land was always recognised as belonging to the community. Each individual within one society had a right to use the land, because otherwise he could not earn a living. But the African's right to the land was simply the right to use it"⁴

Communal land ownership is based on the principle that land is a free gift of Nature and a common asset for all human beings. Every person has a right to use it and his rights are recognised by the community, a factor which gives maximum security to the individual. No superior could arbitrarily oust a junior from the land.

Individual rights to the land were determined by his social status in the group and by meeting obligations inherent in that status as well as terms of allocation. His rights exercised with the rights of the entire group. Ellias defines the nature of the relationship as follows:

"The relations between the group and the land is invariably complex in that rights of the individual member often co-exist with those of the group in the same parcel of land. But the individual member holds definitely ascertained and well recognised rights in the comprehensive holding of the group"⁵

This makes it clear that communal ownership of the entire land was not incompatible with individual ownership of lesser interests in land. Beneath the umbrella of this communal or group title there was progressive individualisation of interests specific to particular portions of the group owned lands. These rights were vested in the individuals. It is only the public lands which were under supervision of the appropriate group organisation but this still never prevented a member of the group from using it.

As we saw earlier the member claims land from either the King, chief or clan head or elders depending on the social and political organisation of the group. These heads never owned the land. In fact they couldn't dispose it by sale or get it for themselves. They had to request for it as any other member if in need of it. This is clearly seen in a Barotse saying that even "the King is also a beggar" as quoted by Gluckman.⁶

The chiefs, clanheads, elders or kings had had political rights of administering the land. They had powers to allocate land, control and regulate its use and to defend it against Trespassers. If any land fell vacant by death of holder and there was no person to succeed or if a person left and ceased to be a member of that community the land reverted back to the common pool and the leaders acting as trustees and not owners would allocate the land to the needy.⁷

The individual had powers to use the land and his rights to land existed so long as he followed the customary rules of land use. If he followed all rules of land use he couldn't be arbitrarily deprived of the land. He could continue using it and on his death it would go to his heirs who were also subject to the rules of land use. The land could not be sold or given out to persons outside the group.

In conclusion one distinguishes three distinct rights to land. Firstly there was the superior right of land ownership by the entire group. Every member had a right in the communally owned land. Secondly there were individual rights to use an ascertained and specific portion of the communal land. This right was exercised by every member of that group and the size of the holding would vary according to his social status. Thirdly the rights and powers of controlling use, allocating and distributing land to the needy lay with the group heads who would be either the king, the clan head or the elders depending on the socio-political organisation of the group. It should be noted that these leaders were not the owners of the land.⁸

The customary land tenure system is subject to certain limitations. It only operates effectively where land is plentiful and where the society has a firm grip in controlling land relations. If land is scarce and

traditional instruments of control have disintegrated the customary land tenure is bound to face problems. This happened in Kenya when colonial land grabbing and seizures for European Settlers created land shortage among the africans. Many problems arose in the small african reserves where customary law applied. The colonial authorities, instead of giving back the land they had taken from Africans, blamed customary land tenure and called for its replacement by individual land tenure system.

I will now move on to look into the colonial land policies which led to tenure reform but the tenure reform will be considered in the next chapter.

Colonial Land Policies

The acquisition of British East Africa Protectorate (present day Kenya) was part of the British Global Strategy⁹ to secure and protect her markets and raw materials sources mainly in India and the far east. These goods passed through the Suez Canal which Britain guarded from Egypt. This position remained without threat until late 19th century.

By 1880s the other European powers started competing for Raw materials and markets and carved out colonies in Africa. The Germans established the colony of Tanganyika while the French conquered the entire Sahara desert and moved towards the Nile Valley which provided irrigation waters to the British growing cotton in Egypt. The cotton was necessary for British Industries. Britain feared that if the Nile was taken over by other Imperialist powers she would be forced out of Egypt where she grew cotton and guarded the Suez Canal - a gate way to her sources of Raw Materials in the East. She had to ensure that the Germans and French, who had the technology to divert the Nile waters elsewhere, did not take the Nile Valley from its source in Uganda up to Egypt.

In securing the Nile source Britain had to pass through the East Coast of Africa. It was while the British were going to Uganda that they passed through a corridor of land (later to be called Kenya) that they established a colony called the British East Africa Protectorate there. It was placed under the imperial British East Africa ~~Protectorate~~ Company (I.B.E.A.) and they went a head to secure treaties with Kabaka. Treaties were signed and the source of Nile came under the British control.

After securing the source of Nile the British had to go ahead Northwards to get the Nile Valley. It was now under the threat of French forces which were advancing Eastwards and Mahdist's nationalists of Sudan. These forces had to be defeated. So Britain decided in 1896 to build a Railway from Mombasa to Lake Victoria through which troops and supplies would be transported to conquer the middle Nile Valley. This Railway was built but before completion the Nile Valley had fallen to the British. An unused Railway guarded by a protectorate administration in British East Africa were left under British control.

The British Government could not leave the new colony. Decisions were made to establish commercial agriculture in the highlands which had proved to be fertile and cool in the course of building the Railway. This was expected to raise Revenue to pay for costs of building the Railway and to maintain the Protectorate administration. The next question was who was to carry out agriculture.

The issue was decided in favour of European agriculture. It was argued that the Africans were 'primitive' and with their 'archaic primitive subsistence economy' it would take many centuries before they changed to commercial agriculture. It was said that commercial agriculture was badly

needed and the colonial administration could not wait for such a long time. Britain therefore called on the European Settlers to come and settle and develop commercial agriculture in the protectorate.

The European settlement proposals further raised another important issue. The issue was whether the British Crown had rights to the lands in the protectorate to give it to its citizens. Some law officers of the crown argued that the crown had no rights in the protectorates while others said that the crown had rights to deal with protectorate lands under the Foreign Jurisdiction Act 1890. This issue was not settled until 1899.

In the meantime, settlers from Europe started arriving in the protectorate. African lands in the cool and fertile highlands were seized without compensation and given to European settlers. The colonial officers argued that the land was vacant or 'no mans land' and the giving of these 'vast and unoccupied gardens' to the European settlers was justified as an administrative act. Many white settlers got land under the 1897 land Regulations. These Regulations never gave freehold titles to settlers and made settlers to lodge complaints to the Commissioner of the protectorate. They waited ^{for} the crown to take over the land and give it out as freehold to settlers.

It was in 1899 that the law officers of the crown gave a Report which gave the crown power to deal with the so called 'unoccupied lands'. The report said that the right to deal with 'unoccupied lands.

"accrues to her Majesty by virtue of her right in the protectorate. Her Majesty might if she pleased declare them crown lands or make grants out of them to individuals in fee or for any term."¹²

This report opened way for the declaration of crown lands. In 1901 the East Africa (lands) order in council was enacted to legalise the lands already acquired and other unoccupied lands. All these lands were declared 'public lands' and could be alienated for European settlers. This order ~~was~~ followed by the 1902 crown lands ordinance enacted to regulate the alienation of the so called public lands. Most of the land taken was actually in the occupation of the Africans but when it was taken they were neither consulted nor compensated.

Having acquired crown lands the commissioner of the protectorate went ahead to campaign for the establishment of a 'white mans country' in Kenya. His hope was to see a white Dominion like Canada, South Africa or Australia in Kenya. This idea was not accepted by the British Government but the settlers went ahead with their plans to establish a white Dominion. 'Agreements' were reached with the maasai in 1904 and 1911 and the maasai were removed from the highlands and kept in reserves. Even though Britain was not consulted by the settlers she never helped the maasai when they protested.¹³

The colonial land policies aimed at the creation of a white Dominion. were characterised by alienation of African lands for European settlers by the colonial authorities who ensured that they had all the necessary legal power to grant land to settlers on sufficiently attractive terms. This was followed by provisions, Regulating where the African inhabitants should be allowed to cultivate and tend their herds. Finally decisions had to ^{be} taken and if necessary implemented as to whether Africans should be encouraged to work for the incoming settlers.¹⁴ These policies continued throughout the colonial period. They will be considered briefly below.

Firstly, the colonial authorities got the necessary legal power to give land to settlers on attractive terms. This was done by enactment of the 1915 crown lands ordinance. This ordinance declared all lands in the protectorate as crown land and settlers were given freehold titles to land, 999 year leases and licences. To the settlers the terms were good but to the Africans it was a tragedy. The ordinance declared all land including that occupied by the Africans as crown land. In effect the Africans became tenants at will of the crown. Apparently the ordinance seemed to protect Africans where it said that land under African occupation could not be alienated but the same act quickly withdrew the protection by saying that the lands under African occupation could be alienated for 'public purposes.' The term 'public purposes' was a vague term which was used by the colonial authorities to get land occupied by Africans for European Settlements. In 1919 for Example land was taken for 'public purposes' from African Reserves and given to Ex-Service men who had fought in the second world war.¹⁵

Secondly, various provisions were made to regulate where Africans were to stay and practise their subsistence farming. These provisions related to the so-called Reserves. The Reserves were small areas of land where Africans were confined after most of their land was taken for European Settlement. They were small and over-crowded concentrations of African population. The first Reserves were created in 1906 but it was not until 1915 that they were given legal 'protection' by the crown lands ordinance of that year. Under the ordinance the commissioner of the protectorate was given powers to declare reserves for the various ethnic ^{groups} in the protectorate. In 1926 24 Reserves were declared. These Reserves continued to shrink as more land was got from them for the incoming settlers. This created problems of over-population, erosion, fragmentation, and parcellation in the reserves. There was insecurity for the settlers always looked in to these reserves for more land.

It was because of these problems that the Government appointed the 1934 Kenya Land Commission to give a 'final solution' to the Reserve problems. The commission recommended that the major problems in the reserves were not caused by shortage of land but by the customary land tenure system which the government should guide progressively towards individual tenure. It also recommended that some more land blocks should be added to the reserves to cater for any future african land demands. This would provide the final solution to the land problems in the reserves. This final solution was put in form of legislations which fixed the boundaries of the reserves and the White Highlands which were intended to remain forever. If critically considered one can say that the legislation aimed at consolidating the already existing dual agrarian policies based on discrimination and segregation of races. One contemporary Historian summarises the commissions recommendations as follows:

"The Commissions' Recommendations Implied that Kenya was to be partitioned into two racial blocks, African and European. And in the African sector all Economic, Social and political developments were to be on tribal lines. Racialism became Institutionalised" 18

Thirdly, decisions were reached that Africans should provide the European Settlers with labour. This was first done by creating small and insecure reserves where Africans could not grow cash crops. They were expected to move out of these small reserves to provide labour to the European farmers. At first there were very few Africans who were willing to go and provide labour. So the colonial government took several measures to induce africans to move into the European farms and provide labour. In 1901, for example, the Hut Tax was introduced as a financial inducement. The Africans were taxed and the only way by which they could get money for paying taxes was by providing labour to European farmers. This never attracted many Africans and so in 1906 the master-servant ordinance was

passed to allow the Africans to work on the European farms on contract basis in return for payment. This did not provide enough labour and so to get more African labourers the 'Kaffir' system of farming was introduced and incorporated in the 1918 Resident Natives (Squatters) ordinance. Under the Kaffir system, the Africans were allowed to live on settlers farms and provide labour. In return they were given small plots of land on which they grew subsistence crops and keep livestock. This attracted thousands of squatters who were ready to get out of the problems infested reserves.

By early 1920s there were more African squatters in the European farms than there were European settlers. The outnumbered settlers started fearing that these squatters may acquire tenancy rights over the small plots they were given. This fear was confirmed in the case of THATHI ^{MBATE} 19 where it was held that squatters who entered European farms under the 1918 ordinance acquired Tenancy Rights over the small pieces of land they were given on settlers farms. To protect their land rights from Africans the settlers put pressure on the colonial government which passed the Resident Labourers ordinance in 1938. This ordinance gave settlers and magistrates powers to expel some African Squatters and Reduce their livestock in the European farms. It was under this ordinance that many thousands of African Squatters were expelled from the White Highlands in 1940s. Most of them resisted and organised riots in protest but finally they had to go back to the overcrowded reserves.

In those reserves landlessness, overcro^wding, fragmentation, parcellat land disputes and litigations and quarells were common. Due to much farmin of the small fragmented uneconomical land units there was soil exhaustion and erosion. This led to a drop in production which caused famines and diseases. Many landless and unemployed Africans moved about in the reserves and urban areas with nothing to do. ²¹

These problems could only be solved by the return of the lands seized from the Africans for European settlers. The existing land tenure (customary land tenure) did not cause the problems and similarly it could not solve them. The existing traditional institutions of control had been broken by contact with and interference by Europeans. One scholar sadly observes:

"There was... rapid disintegration of those aspects of social and cultural institutions relating to control that could be mobilised to cure the general malaise."²²

In summary, one can say that the situation in the reserves was one characterised by frustration and discontent among the peasant population. It could only be saved from further deterioration by the giving back of the European highlands to the Africans.

But instead of giving back the highlands to the Africans the colonial Government blamed customary land tenure for all the problems. Customary land tenure was alleged to have caused landlessness, parcellation, land disputes and litigation, and fragmentation. This conclusion was reached by the colonial government after receiving several reports and recommendations from colonial officers, committees and commissions.²² The reports recommended that customary land tenure should be replaced with individual land tenure system so that the individual may get titles with which he could secure loans for developing the land and raising his standard of living.

These recommendations were not implemented because the government feared that a change in land tenure would cause an uprising. Instead the colonial government preserved the customary land tenure and went ahead to implement conservation programmes aimed at improving farming methods ^{and} reducing erosion, Reconditioning the soil, terracing and

agricultural advice by extension officers. This programme was placed under the African land development board (ALDEV) formed in 1948. When implementation began the Africans resisted and opposed it. They wanted nothing but the return of the African lands taken by the settlers. Agricultural officers were beaten up in some areas and this led to the dropping of the programme.

By 1950 oathings had begun and the Mau Mau land and freedom army had begun its activities in Central Province to take over the highlands by use of arms. Urban workers and religious sects supported the Mau Mau guerillas. In 1952 Emergency was declared. It was during the Emergency period that customary land tenure was changed and replaced with individual land tenure for reasons to be seen in the next chapter.

CHAPTER II

RATIONALE AND THE PROCESS OF LAND TENURE

REFORM UNDER THE COLONIAL GOVERNMENT

Land Tenure Reform involved the replacement of the communal customary land tenure system with an individual land tenure system. It involved the process of adjudication of existing land rights, the consolidation of land fragments, demarcation, enclosure and the giving of individual titles.

This chapter examines the Reasons behind the tenure reforms under the colonial government and how this was done up to the time of declaration of political independence.

(a) Rational of Land Tenure Reform

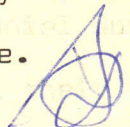
The individual land tenure system came with the European colonisers at the beginning of the twentieth century and until its imposition on the Africans in the reserves in the mid-1950s it was confined to the 'White Highlands'.

The colonial Government had been receiving recommendations that it should introduce individual land tenure to the African reserves to replace customary land tenure but it never attempted to introduce it partly because it feared that a change of tenure system would cause disruption which would cause a Rebellion by the Africans and partly because it would be too costly for the weak Economy which was just recovering from the Economy problems caused by the second world war. The most popular recommendations had come in 1934 from the Kenya Land Commission. The commission

recommended that:

"It is the task of the administration to guide the native customs progressively in the direction of individual tenure from group and family to individual holding."²

This commission saw the problems of land shortage, parcellation, fragmentation, soil erosion, famines diseases etc. as problems arising from customary land tenure and that is why it recommended its replacement with individual land tenure system. This was wrong because most of these problems had been caused by the colonial land policies which were geared to seizing of African lands especially in the highlands forcing them to live in small and overcrowded reserves. In these small reserves there was over-population, landlessness, land disputes, soil erosion famines and diseases. These problems were not caused by customary land tenure which these colonial recommendations sought to replace.



The colonial government never implemented these recommendations until 1954 when it did so for political reasons as we shall see later. Instead it embarked on two land policies. Firstly, it protected customary land tenure in the African reserves. This was justified by the colonial government as necessary because as a government it has a moral duty to restore communal feelings and instil a new sense of responsibility to the individual.³

It is difficult to see how a colonial government which had caused all the problems in the reserves could have a moral duty to restore communal feelings to the oppressed African masses in the African Reserves.

Secondly, the Government stated a land conservation programme intended to cure the problems of soil erosion by terracing and contour farming. The programme was placed under ALDEV which failed to get cooperation from ^{the} now politically aware African people who wanted nothing less than the return of the entire highlands and the end of British colonialism and settler discriminat

Their harsh methods of implementation (which included forced labour) the colonial authorities ^{met} opposition from Kenya African Union (KAU) politicians and the deep hatred of the racist Government by the majority of the Africans made the programme extremely unpopular that it had to be dropped. The Africans were not ready to accept half-baked colonial solutions to their land problems which never hit at the cause of the problem i.e. the seized African lands. They were ready to fight and get their lands and freedom back rather than accept the colonial programmes which aimed at maintaining the colonial political and economic status quo.

By 1950 the Africans had been mobilised for the struggle and the land and freedom Army (Mau Mau Guerillas) had been formed. They were mostly active in Central Province. The aim of these armed patriots was to get back all the lands seized by the colonial Government for white settlers (i.e. the White Highlands) and to get back their freedom and independence. This meant that the colonial Economic and political arrangements which were operating against Africans and in favour of the white settlers had to be eliminated.

To maintain the political and Economic status quo in Kenya the racist government took several steps all aimed at defeating the Mau Mau guerillas who were now threatening the status quo.

Firstly, Emergency was declared in 1952 and under Emergency rules all African politicians and civilians who supported Mau Mau were detained. This made sure that the colonial activities during the Emergency period were not to be challenged by any organised politicians or Mau Mau-supporting civilians. Secondly, the colonial government got more funds and soldiers from the British government and together with African traitors like home guards and chiefs

What an insult these guys are not home guards. their are! } * Charles Rebia * Kenneth Matiba * ...
 you don't understand anything being Reason are just mess

appointed by the colonial government, military operations aimed at defeating the heroic Mau Mau were begun in Central Province and the surrounding areas.

Thirdly, villagisation programme was begun in 1954 in all area of Mau Mau activities. The aim was to keep the African masses in big villages from where they could not give military or food supplies to the Mau Mau guerillas. It was hoped that this would finally lead to disintegration and final defeat of the Mau Mau guerillas.

Finally, land tenure reform was begun in Central Province in 1954. This was a counter-revolutionary measure against Mau Mau. The colonial government used the tenure reform to punish all Mau Mau guerillas, their passive or active supporters in the villages or in detention and the detained African leaders by forfeiting all their small pieces of land in the reserves. This land was to go to the government or rewarded to the colonial chiefs and the reactionary homeguards who supported the colonial government. It is with this background one can really explain the reasons behind the land tenure reform. The government had been reluctant to implement land tenure reform but now it decided to implement it as a matter of urgency for political purposes.

The Colonial Government defended the land tenure reform in the reserves as an Economic Measure to end land disputes and the problems of fragmentation and parcellation of land. It was argued in the government quarters that when this happened titles would be given to the registered owners of land and with these titles credit could be secured with which agriculture would be developed to raise incomes and standards of living of the Africans in the reserves. These arguments, even though publicly

stated, were nothing but a smokescreen to hide the true purposes of the scheme. The colonial Government was not a welfare government to get concerned with the well being of its subjects. These economic arguments for land tenure reform were only intended for public consumption.

As a counter-revolutionary measure land tenure reform was not only intended to punish all Mau Mau and their sympathisers in the villages and detention. But also it was intended to lure back the fighting patriots from the forests. They were expected to come back from the forest (and forget their armed struggle) to defend their small plots of land from falling into the hands of others. This would in the end demoralise the Mau Mau guerillas and end the war.

It was also expected that the process of rewarding loyalists would increase the number of government supporters and this would reduce the Mau Mau supporters.

Finally, all these landed loyalists would form a stable middle class of landed conservatives who would be too busy on their farms to bother about agitation. It would be a contented group of land owners who would act as a barrier or counterpoise against any future re-emergency of militant nationalism. They would provide a guarantee to the survival of the white highlands and the political status quo.

Since the KAU politicians and other patriots had been detained and the Mau Mau guerillas were in the forests, and the civilians were in the so called 'protected' villages the government had to act quickly in all Mau Mau areas especially in Central Province and inflict the punishments.

The Government had to 'strike when the Iron was hot'⁵ to crush the Mau Mau movement once and for all.

All these political manouvres were kept secret. Instead, all public documents said that the tenure reform was an Economic Measure intended to improve the welfare of the Africans in the reserves. The Department of Agriculture for example argued that the change of customary land tenure would improve the farming methods and standards of living. This can be seen from the famous ^wsurynerton plan 'to intensify the development of agriculture in Kenya'. It was issued by Mr. Suryneron, an agricultural officer and in connection with land tenure and economic development it said that:

"Sound agricultural development is dependant upon a system of land tenure which will make available to the African farmer a unit of land and a system of farming whose production will support his family at a level of taking into account prerequisites derived from the farm comparable with other occupations. He must be provided with such security of tenure through an indefeasible title - as will encourage him to offer it as security against such financial credit, as he may wish to secure from such sources as may be open to him."⁶

This plan failed to look into the land shortage in the reserves. It never mentioned the giving back of the white highlands to the Africans. To the departments of agriculture it was a simple case of changing customary land tenure system and giving of individual titles. This was expected to raise the productivity in the already overcrowded reserves and improve the standards^d of living of the Africans.

The plan was an ambitious one which was highly capitalistic. It emphasised on the issue of land titles and ignored the core of all the land problems in the reserves i.e. land shortage. It was motivated by the political situation in Kenya and was highly political. This can be seen

from paragraph 12 of the plan which stated that:

"In the long run the greatest gain from participation of the African Community in running its own agricultural industries is a politically contended and stable community."

This was a repetition of words of JOHNSON, an agricultural officer who justified land tenure reform as a means of creating a landed class which would not revive Mau Mau. That's why the plan emphasised on tenure reform in the highly potential areas in Central Province which were infact Mau Mau strongholds.

All these political objectives were kept secret by the colonial government. They were disguised 'in a welter of good agricultural and legal intentions' All the official papers praised the land tenure reform programme as a necessary Economic Measure to eliminate land fragmentation, parcellation, disputes and time wasting quarrelles over land. An example of such a document is the EAST AFRICAN ROYAL COMMISSION Report of 1955. The paper recommended that customary land tenure should be reformed to individual land tenure. An indefeasible Title should then be granted with which the farmers would use as security to raise loans for agricultural development. Thus all obstacles to better use of land (alleged to be caused by customary land tenure system) were to be removed by individualisation of land tenure through the process of land adjudication, consolidation and registration followed with the issue of indefeasible titles.⁷

The commission was only supporting the political and Economic status quo and that is why it never had a provision for the return of the lands under settler occupation. It sought to 'solve' the land problems in the reserves within the framwwork of imperialism. It clearly shows that the

colonial government (which accepted the report) was not ready to give in to the demands of African Nationalists. The White Highlands were to remain intact and not a single inch was to be given back to the Africans.

(b) The Process of Land Tenure Reform:

The Land Tenure reform was meant to replace the communal land tenure system in the reserves with an individualistic tenure system. In the process Mau Mau would be defeated and the colonial order would be maintained. It took the form of ascertainment of land rights by committees (adjudication), consolidation of land fragments and the registration of the land. It started in Nyeri in 1954 and spread to all other districts in Central Province and since it was politically motivated it was implemented with speed in all areas under Mau Mau influence.

Adjudication of land rights was done by the adjudication committees. They were mainly composed of loyalist chiefs, homeguards and other anti-Mau Mau elements. They ascertained and recorded the rights the individual had over a piece of land. It was during this process that lands belonging to Mau Mau Guerillas, those in detention and other Mau Mau sympathisers were taken by the government or given to the loyalists as a reward for their anti-Mau Mau activities.

Then there was the process of consolidation. This involved the bringing together of all land fragments into a single holding. This was done by adding up the sizes of individual fragments and demarcating the total size of the holding in one area. The process involved mapping and surveying. Finally the land was registered and a certificate was issued. These processes

went on unhindered because of Emergency rules and the Africans now living in the villages had vacated the land.

Since there was no legislation validating the tenure reform programme the government took several measures to prevent any legal challenge to the programme.

Firstly, the colonial government enacted the forfeiture of lands ordinance in 1954.⁸ Under the ordinance any land belonging to any person who from October 20th 1952 (the day Emergency was declared) had led, organised or armed, or was leading, organising or arming those opposed to forces of law and order was to be confiscated.⁹ This could not be challenged in any court in the colony. This meant that all land that was confiscated or was to be confiscated from the nationalists was legally confiscated and this situation could not be challenged in the courts of law. The nationalists now lost their lands permanently to the loyalists and the public authorities. They could not claim it back through the courts.

Secondly, the land tenure rules were promulgated in 1956. These rules governed the adjudication, consolidation and the registration process. The regulations validated the process which had taken place before 1956 and their continuation in future. The regulations also covered demarcation, surveying as well as control of land transactions by land control boards. All land transactions had to go through land control boards for consent and any transaction which was not consented by the boards were to be null and void.

Finally, the government enacted the African Courts (suspension of land Suits) ordinance in 1956.¹⁰ Under the ordinance no land suit could be instituted or continued and no African Court could determine the ownership of

and new subdivisions and the issue of freehold titles to individuals interest in land for 3 years where consolidation was taking place.¹¹ It also created new interests in land e.g. leases, profits and easements. This automatically disqualified the African Nationalists from filing suits against the loyalists or the government to whom their confiscated lands went. It also prevented any land suits which might disrupt the tenure reform programme.

By 1957 the Land Tenure Reform programme had affected the entire central province. In some areas it had been completed but at this same period it was discovered that the 1956 Land Tenure Rules had been insufficient as substantive legislation for the programme. Therefore the Government appointed a working party on African Land Tenure to draft substantive law of land adjudication, consolidation, registration and control. It was instructed to look into the nature of new titles and to provide rules to govern matters of succession.

The party was composed of colonial land experts and there was no African representatives. It used the East African Royal Commission Report, the Surynerton Plan, Report of African Land Tenure conference held in Arusha in 1956 and the 1956 Land Tenure rules to give a final report. In its final report it drafted two Bills which were enacted as ordinances in 1959. These were the Native Lands (Registration) Bill which became an ordinance in 1959 and the Land Control (Native Areas) Bill which was also enacted as an ordinance in 1959. The land control (Native areas) ordinance was based on the land control ordinance of 1944¹² which applied to the White Highlands. Under the ordinance all transaction in land (e.g. transfers, sales, leases, subdivisions etc) had to get consent of divisional land control boards established in the various districts where land tenure had been changed.

The native lands registration ordinance contained substantive rules of adjudication, consolidation, demarcation, enclosure, registration, maps

and plans, arbitrations and the issue of freehold titles to individuals. It also created new interests in land e.g. leases, profits and easements. These two ordinances were adopted by the independent Kenya Government despite the fact that the Africans who form the majority were not represented in the working party that drafted them.

The two ordinances were intended to put an end to land fragmentation, parcellation (subdivisions) land speculation, landlessness and transactions involving small uneconomical land units.

They finally replaced customary land law principles with principles of English land law. The only weakness was that the ordinances failed to provide for laws of succession. Customary law of succession was to continue to apply and the only safeguard to prevent uneconomic subdivisions of land were the land control boards. These boards, established under the land control Ordinance were given powers to refuse consent ^{to} any subdivision of land by heirs into uneconomic units. This safeguard as we shall see later proved to be a weak safeguard because the land control boards continued applying customary law of succession without caring about the sizes of land got by heirs. It is common today to see many uneconomic land units which received the consent of land control boards.

By 1960 Land Tenure Reform in Central Province with the exception of Fort Hall District¹³ (where there were errors) had been completed. The problem of landlessness was not solved. Instead, many people were left

landless and this problem was aggravated by the arrival of ex-detainees, 'ahoi' (the landless), Mau Mau Guerillas, and all who had been rendered landless in absentia during consolidation programme. This was because of

errors made during the programme implementation deliberately by the corrupt elders, loyalists and colonial officers could not be rectified.¹⁴

In other areas of Kenya Tenure Reform was also taking place but it took the form of enclosures and registration only. This was because there was no problem of fragmentation. In Kipsigis country the process of enclosure was completed in late 1950s¹⁵ while other Kalenjin tribes completed enclosures in 1960. It was only in Luo land that resistance to consolidation programme was ~~left~~^{met} but later tenure reform was done on basis of voluntary exchange of land fragments. ~~later they accepted these conditions as is to get political power. It was a price they had to pay for independence. They agreed.~~

In 1960 the political situation in Kenya was changing. The British Government announced that it was ready to give independence to Kenya Africans. They wanted a multiracial government which would work on colonial status quo. The white highlands were opened up for all races by a special order in council¹⁶ although, as we shall see later, only a few Africans could afford to buy the lands in the Highlands. Most of them were African Civil Servants, loyalists, and a few African politicians who were now coming back from exile or from detention. ~~had to do so by collecting large repayments from the Africans who got land through the settlement schemes. These~~

~~*~~ As independence approached landless Africans increased as many detainees and guerillas fighters came back to the reserves. This problem was further aggravated by the industrial decline caused by political uncer~~t~~^xtainities which rendered many thousands unemployed.

~~*~~ It was expected by the nationalists that the African politicians would put the case of the landless and unemployed to the Colonial Government so that this group may be given free land in the Highlands. This never happened. The African politicians bought for themselves as much land as possible from departing settlers and cooled down forgetting the landless. They now wanted

political powers and were ready to accept the colonial imposed conditions that the White Highlands was to be given back to Africans by departing settlers if only the Africans ^{were able!} agreed to buy it. This is evidenced in the Lancaster Conferences where KANU and KADU agreed that land will have to be bought for the landless and unemployed Africans. They accepted the minority protecting constitutions which provided for prompt and adequate compensation of settlers who wanted to leave Kenya.

This was a total betrayal of African cause by the African politicians but as we shall see later they accepted these conditions so as to get political power. It was a price they had to pay for independence. They ignored the interests of the masses who had been fighting for land for many years.

The landless and unemployed had to get land through settlement schemes. The schemes involved the sale of farms belonging to European settlers and the transfer of the same to Africans. The funds were provided by Britain in form of loans which were to be repaid by the Kenya Government headed by Africans. This new Government had to do so by collecting loan repayments from the Africans who got land through the settlement schemes. These settlement schemes are discussed in the next chapter.

Also some few moderate African politicians were taken to Parliament. Also it was decided that a part of the white highlands had to be given to some few Africans. The long term objective was to maintain political stability because it was assumed that the giving of political power along with giving out of parts of the highlands would make Africans forget fighting for the return of the entire highlands and the removal of the colonial settlers and their political structures from Kenya.

CHAPTER IIIAFRICANISATION OF THE WHITE HIGHLANDS

In the last two chapters we saw how the colonial government seized the Kenya highlands for settlers of European origin and created small overcrowded reserves for the Africans. The problems in these reserves caused a war between the colonial forces and the patriotic forces of the land and Freedom Army (the Mau Mau Guerillas). We also saw how the colonial dictatorship imposed Emergency rule and started customary land tenure reform to punish the Mau Mau Guerillas and all their sympathisers. These patriots lost their lands to the loyalists who got it as a reward for betraying the patriotic cause i.e. the return of all the seized lands, the return to freedom and the removal of all colonialists from Kenya. The Africans were betrayed by those who accepted the rewards of the colonial government. The aim of the colonial government was to create a landed group of loyalists who would never change the colonial political and economic status quo.

By 1959 the tide of politics was changing in Kenya. The war had taught the Europeans that they could not maintain their economic and political privilege when a large group of Africans went landless and still living in colonial imposed poverty. They started the multiracial policies under which some few moderate African politicians were taken to represent in Parliament. Also it was decided that a part of the white highlands had to be given to some few Africans. The long term objective was to maintain political stability because it was assumed that the giving of political power coupled with giving out of parts of the Highlands would make Africans forget fighting for the return of the entire Highlands and the removal of the colonial settlers and their political structures from Kenya.

forward
So, in 1959 the European settlers had their leases turned into freeholds¹ and in the following year an order in council² was passed opening the white highlands to all races. Any body who wanted land could buy it in the highlands. It should be noted that only the loyalists and a few African politicians had money to buy land. The masses of the Africans who had been rendered landless could not afford to buy land for they had made no fortune by joining the rebel side. The move to absorb a small group into the highlands only helped the colonialists in getting the African middle class into the highlands and never was it intended to serve the interests of African Nationalism. In fact it broke the ranks of African Nationalism because it gave some African politicians a chance to get land in the highlands. By doing so they acquired a stake in the status quo and this made them moderates. They no longer made radical demands against colonial authorities. Their only demand was political independence.

The parties agreed to set up low density settlement schemes in the country
In 1960 Britain announced that Kenya would soon become independent. A conference was called at Lancaster in London to discuss the constitutional matters. The conference was attended by Kenyan African National Union (KANU) and the minority African group later called Kenya African Democratic Union. The European settlers came in two groups. There was one which was led by Michael Blundell (the New Kenya Party) and another led by Bentick-Cavedish called the Kenya Coalition. At the conference it was decided that Kenya would become a self governing nation based on "parliamentary institutions of a westminister model."³ It would be a multiracial government where all races would have to be treated equally. The European settlers would have reserved seats in parliament while at the same time low density settlement schemes were to be started to absorb the African land and those who became unemployed after industrial decline caused by political uncertainties.

The African groups accepted these plans and they got support from Blundell's N.K.P. Blundell led a moderate settler group which was willing to stay in Kenya even after achievement of political independence because they had much land in the highlands. They were ready to adjust and become citizens of Kenya. The other settler group was led by CAVEDISH. It was fighting conservative ^{Settler} ~~native~~ group which feared that the self government would end racial discrimination and the European privileges. It was against self government and the entry of Africans in the highlands through settlement schemes. At the conference they resorted to blackmail saying that the land transfer would only be accepted by them if their land was bought by the British government and if they are allowed to leave Kenya with the full proceeds of the sale.

The Cavedish group's views of land sales prevailed in the conference. The parties agreed to set up low density settlement schemes as the country prepared for self government. * 6,000 families and were of five categories.

(a) The Low Density Schemes:

These were started by the end of 1960. The finances were to be provided by the British Government through the World Bank (IBRD) and the Commonwealth Development Corporation (C.D.C). These bodies were to lend money to the colonial government to finance the buying of land at 1959 market prices from departing European settlers. This money was to be repaid by the Kenya Government from the repayments made to it by those who acquired land through the low density schemes.

Thirdly there was the associated owner scheme. It involved the buying of European land. The low density schemes were to protect the interest of European owners and development capital some of which they could get from the land bank. The rest was to come from the IBRD and C.D.C.

settlers who wanted to stay in Kenya. Their land was not to be taken. Instead land was to be bought from departing conservative settlers and a new group of Africans would replace them. These new settlers were to create an impression that things have changed and therefore political agitation was not necessary. This would secure the survival of moderate European settler interests in Kenya.

To cover up these intentions the Minister of Agriculture McKenzie said that these schemes were necessary to relief social problems in the African reserves, to maintain Kenya's economy and to establish confidence. He appealed to European settlers to stay in Kenya and contribute to the economy.

Implementation was done by the land development and settlement board (LDSB) with the help of the Ministry of Agriculture. The schemes were intended to accommodate about 6,000 families and were of five categories.

Firstly, there was the YEOMAN FARMER SCHEME. This was intended to settle 1,800 African families who had the initial capital of £2000 to develop their new farms. They had to have proven knowledge in modern farming.

Secondly there was the TENANT SCHEME. Under this scheme the squatters living in the lands belonging to leaving european settlers were to buy the land with the help of the IBRD and CDC loans provided by the LDSB.

Thirdly, there was the assisted owner scheme. It involved the buying of European farms by qualified Africans who provided $\frac{1}{3}$ of the purchase price and development capital some of which they could get from the land bank. The rest $\frac{2}{3}$ was to come from the IBRD and CDC.

Fourthly there was the DIRECT purchase scheme which involved the rich Africans. They were expected to produce $\frac{1}{3}$ of the purchase capital while the rest would come from IBRD and CDC. Many African loyalists and politicians found their way into the highlands through these type of schemes.

Finally there was the peasant scheme. It was for the landless and unemployed Africans. The objective was to settle 4,500 African families on 60,000 acres set aside or bought with IBRD and CDC finances. Farmers were provided with £50 development capital to develop the small plots of land got after subdivision.

These were the only schemes that the colonial government was ready to undertake. They absorbed only a small section of the African landless. This is because they were not intended to dismantle European domination in the highlands. They were intended to protect the existing order and this had to be done by getting a few Africans to avoid Turmoil which would destroy the status quo. The Africans were not expected to come into the highlands in large numbers and this was ensured by the capital and farming qualifications which only a few Africans had.

The schemes are significant in that they managed to polarise the African community into two. The majority of landless and unemployed Africans with the support of KANU left leaning radicals like Oginga and Kaggia were left out while the middle class Africans who has sympathies of KANU moderates were absorbed into the highlands to strengthen the colonial status quo.

In 1961 many detainees were released. This increased the problem of landlessness and unemployment. Many more became unemployed after the fall in investments in industry. This big group had no place in the highlands

for the low density schemes could accommodate only a few Africans. They now posed the biggest threat to the Government. It was feared that this group might take over the highlands using force. This fear was confirmed in 1961 when the land and freedom army was revived in and around the white highlands. This was accompanied by the Kenya African Landless Union (K.A.L.U.) formed in Muranga at the same time. This was a political pressure group which criticised Kenyatta for accepting the sale of the white highlands to the Africans. A spokesman of K.A.L.U. once asked about Kenyatta:

"Does it mean that he has been deceiving Africans for 40 years. If not, he should say openly that no land should be sold to Africans by Europeans."

This clearly indicates the African feelings about land. They had been fighting for it and they wanted it free.

The land issue and the need for a constitution for independent Kenya led to the Lancaster conference in 1962. All parties involved (i.e. K.A.N.U., K.A.D.U., N.K.P. and K.C.) participated. KADU had been formed by the minority Kenya tribes and were campaigning for regional government where the land and titles for those minority tribes would be protected in a constitution. They feared KANU tribes which were in a majority and needed land for their people. KANU wanted a unitary Government, the N.K.P. wanted settlers to get citizenship and property titles guaranteed while the conservative Kenya coalition party wanted Britain to buy the farms belonging to departing settlers. A final document was finally drawn up after the conference. It embodied the ideas of KADU, NKP and KC party but KANU leaders accepted it knowing that failure to accept the arrangement would keep them out of political power which was about to come with independence.

Under the constitutional arrangements Kenya was to be independent with a multi-party parliamentary system. It was to be regional government having six regions each with a regional assembly. There was to be a Central Government authority with 2 houses of parliament. Bill of Rights were ~~was~~ guaranteed and incorporated the protection of private property including land and full and prompt compensation for those lands which were to be taken. Land in each region was to be under the respective region and all settlement schemes to be established were to be for the ethnic groups in the regions. They were to be under the control of Regional and Central Government concurrently and their administration was placed under the Central land board. Britain was to supply funds to buy out land belonging to the settlers who wished to leave.

These arrangements were victory to all the other parties except K.A.N.U. KANU accepted them as a price for independence even if they never embodied any demands of African Nationalism. KANU had to accept it to facilitate the transfer of political power to the Africans. It was a party for majority tribes and was guaranteed of winning elections which were to be followed by independence.

The KANU radical wing of Kaggia and Odinga criticised the deal. They had always stood by the demands of African Nationalism. They criticised Kenyatta for his moderation after his release from ~~independence~~ ^{detention}. Kenyatta led a moderate and largely conservative KANU wing which accepted the idea of selling the European lands to Africans. This marked the beginning of the split in KANU. The moderate members saw the demands of Kaggia and Odinga as an obstacle to political independence and immediately they started isolating the two men. This continued after independence and culminated in the formation of an opposition party, the Kenya Peoples Union (K.P.U.)

by the KANU radicals. This party was finally disbanded in 1969 and some of the leaders detained.

After the conference the political atmosphere became tense. There were incidents of landless people moving into the white farms, and the threatening to take over the lands in the highlands. The land and freedom army began getting more supporters from among the landless and unemployed. There was fear especially among KANU moderates that an insurrection may break out and this would delay independence or bring the freedom fighters to power. Such a government would definitely nationalise the entire white highlands and give no compensation to the settlers. It would finally end British presence in Kenya. It is for these that Kenyatta urged the government to settle the landless and unemployed. At one time he made this call in the legico where he said that:

"...the present government should settle down to work the realities and help landless and unemployed Africans."⁵

This fear was shared by all other political parties. They started calling upon the British Government to honour the promises it made at Lancaster and start financing land resettlement programmes for the landless and unemployed Africans. Britain had to choose either the moderate African leaders who had proved to be sympathetic to capitalism and ready to protect British and settler interests in Kenya or the radical forest fighters, radical politicians and detainees who were not ready to protect British settlers interest in Kenya especially the sale of land in the white highlands.

Naturally Britain choose to help the moderate African politicians who were praying for finances to set up settlement schemes. On July 1st 1962 Britain announced the million acre settlement scheme. It was ready to finance the scheme which was expected to take a period of 6 years. The object was to

transfer about 1 million acres to 35,000 families of Africans who were landless and unemployed.

c) The Million Acre Settlement Scheme

(b) The million acre scheme was established to cater for the interest of the African leaders, the British Government and European settlers. It was a move to allow the smooth transfer of power to African leaders and to allow settlers to get money for the land they occupied.

As the they had bought the land in the 1st place!

Firstly, Britain was to give independence to Africans if their leaders accepted the sale of European farms. This was accepted by African politicians who wanted speedy transfer of power. The European settlers were to get full compensation for the lands taken from them. Britain was to help to buy them out while the Kenya Government was to settle the landless and unemployed and collect loan repayments from them with 6 $\frac{1}{2}$ % interest.

Secondly, the million acre scheme had a long term political objective. It was aimed at preventing a future insurrection from landless and unemployed. The absorption of this group into the highlands was necessary not because they needed land but because being landless they would quickly and effectively turn against the African government and take over. This would destroy all the colonial structure which the African leaders and Britain especially were determined to preserve.⁶

These factors explain in whose interest the schemes were to operate. They defeated the ^{African} historical demands of free land because they were not intended for the realisation of African Nationalism. It was after the objectives were ^{achieved} adhered that the new African Government was ready to criticize the schemes as uneconomical. As we shall see later the criticisms began around 1965 when a large group of Africans had got land and the threat to insurrection had subsided. The European settlers still held about 6.5

million acres which were supported by the argument that this was necessary for the economy.

The settlement schemes were supported by KANU in its manifesto during 1963 elections. The manifesto pledged that if a KANU government came to power it would give resettlement a priority. It stated that:

"Resettlement will ... be KANU's fore most problem: Resettlement not at the cost of agriculture already attained but definitely at the expenses of absentee, landlordism, of individuals owning large square miles while neighbouring Africans jostle in small areas."

The manifesto indicates clearly that the KANU Government was not going to transfer land to Africans if that was to interfere with production. It established that each settler was to get about 25 acres. The object was to settle 2,374 families whose net income was estimated to be about £100.

Under the million acre settlement scheme only 1 million out of 7.5 million acres were to be transferred to Africans. These 1 million acres were to be sub-divided among about 35,000 Africans. It was financed mainly by the British Government although the C.D.C. and the KREDITANSTALT FUR WIEDERUFBALL of West Germany provided some funds. The purchase loan was to be repaid after 6 months of settlement for a period of 30 years at 6½% interest. Payments were to start only 6 months after settlement and the average net income expected from every farmer was about £25 to £27.

The farmers also got development loans repayable for a period of 10 years at 6½% rate of interest. This was to be used in fencing and cultivation. The settlers were threatening

The million acre scheme was placed under the Central Land Board (C.L.B.) and the settlement fund trustees. The trustees were composed of Ministers of Finance, Minister of Lands and Settlement and the Minister of Agriculture.

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Liko Seb on the same*

19/10/63

The C.L.B. got the British loans from the Kenya Government while the Trustees managed the approved schemes. The Ministry of Lands and Settlement was responsible for administration, planning, coordinating and executing the schemes. It also dealt with the legal and financial aspects of the schemes.

There were 3 types of schemes covered by the million acre settlement programme. Firstly there were the High Density Schemes. These were mainly got out of Mixed Farms in High potential zones. It was hoped that, under the programme about 84 High Density Schemes would be established. Each farmer was to get an average of 27 acres. Most of these schemes were in Nyandarua District. Secondly there were Low Density Schemes. These were located in areas of low potential and it was hoped that about 35 such schemes were to be established. Each settler was to get about 35 acres. The object was to settle 5,374 families whose net income was estimated to be about £100. Most of the schemes were in Rift Valley, Nyandarua and around Nyeri in the central region.

Finally, there were the Cooperative Schemes. These were located in areas of poor soil. Since most of them were not suitable for subdivision they were held on cooperative basis by members. Each farm was to be of about 130 to 4000 acres. The target was to settle about 1052 members in some 135 farms. Such schemes are like Ol Kalou Salient and Sotik.⁷

Implementation of the million acre scheme began in late 1963 just before independence was announced. It was done in a hurry in the central region where insecurity and violence had erupted. The squatters were threatening to take over farms in Nyandarua while violence erupted in Nakuru. Many squatters had joined the land and freedom army and incidents of clash between the members and the security forces were common in the Rift Valley and Nyandarua.⁸ This threatened the smooth transfer of power and so Kenyatta had

to act. He ordered the setting up of three schemes: Firstly there was accelerated Kikuyu settlement scheme and secondly there was set up the Jet schemes. These were set up in Nyandarua and were covered by the million acre scheme. About 10,000 people were settled in Nyandarua in 3 weeks before independence. Were it not for this relief it was possible that farms could have been seized by the squatters and the former Mau Mau Guerillas and if this was to involve violence, independence could have been delayed.

After the Nyandarua schemes and independence the Government extended the schemes to all the regions in the country where land was being sold by European settlers. The scheme had to be either cooperatives, low density schemes or high density schemes depending on the agricultural potential of an area. Preference was given to the landless and unemployed people of the ethnic group in the region. This was done in accordance with the Regional (Majimbo) Constitution. In Ukambani there was established the MUA high density scheme while the Kisii occupied the Lietego scheme. Luhya had some schemes around Uasin Gishu while the Kikuyu occupied the schemes in Nyandarua, Mweiga and Naro Moru. The Luo had the Sugar Schemes in Nyanza region.

By March 1964 about 13,000 families had occupied Nyandarua⁹ while at the end of 1965 there were 30,000 families living in the million acre schemes all over the country. Of these, 20,606 were in High density schemes whose target was to settle about 25,896 families. About 3,311 had been settled in low density scheme whose target was to settle 5,347 families. The cooperative schemes had settled about 626 members in these schemes whose target was to settle about 1,052 members. In 1966 the target of settling about 35,000 families was about to be completed.¹⁰

There were several steps in implementation of the schemes. These were: land purchase, planning stage, the drawing of model budgets, selection of settlers and the supply of administrative staff.

Land purchase from departing European settlers was done by C.L.B. and settlement fund trustees. They negotiated and valued the land. Then the Provincial Agricultural Committee had to decide whether the land would be a low density, high density or cooperative scheme. This was done after technical and ecological study of the area. The only problem encountered in the land purchase were historical claims by some tribes. It happened in Nyandarua where the Maasai tribe claimed as theirs even before the coming of the colonisers. This claim failed when Nyandarua became part of Central Province and occupied by the Kikuyu.

The next stage after land purchase was the planning stage. The schemes were demarcated in the areas where land was bought, sub division plans prepared and layouts of individual plots, towns centres, schools, dispensaries, provision of water, cattle dips and cooperatives were all prepared. Most high density schemes covered 1000 acres each while low density schemes covered about 5,000 acres each. Each scheme had its soil classified, water surveyed, roads demarcated and land use interpretations made. The major problem that arose in planning is the poor planning in some areas which left many plots inaccessible or far away from social amenities.

The third stage was for making of model budgets for the schemes. This was done by the Ministry of Agriculture. Each budget indicated the size of the holding, the cropping programme, income targets, developments loan offered to each settler and all conditions and time for all loan repayments. A guide was also provided to show farmers how to allocate development loans to livestock development, crop growing and fencing. The major problem with

the budgets was that most of them were too optimistic. They couldn't work at the beginning because the African settlers faced many financial problems at the beginning. It took a long ^{period} before farmers got first crops to sell and get incomes. Even when crops were sold most of the income went to loan repayments leaving the farmer with nothing. Those who defaulted had to use their development loans to repay purchase loans and this deprived them capital necessary to develop their farms.

The fourth stage involved the selection of settlers. The responsibility lay with the provincial administration under the regional constitution. The settlers were to be selected from the Region's landless and unemployed and this was usually done at the District Headquarters. The District Commissioner would give a notice of the new scheme and invite applicants. They had to be landless or unemployed. No Educational or financial qualifications were required. They had only to pay about 10% land purchase money and some legal fees. When selection was done the lucky would be given letters of allotment indicating plot number, the loan and farming requirements and a condition that the farmer become a member of the Cooperative Societies in the Schemes.

The selection had two major problems. Firstly they were done on Regional basis. Ethnic groups outside a region with a scheme could not get the chance. This was a big problem especially to the densely populated regions where there was no room for settlement schemes. Many people remained landless just because they couldn't move to the neighbouring regions.

Secondly the selection by District Committee was accompanied by some corrupt practices. Some members of these committees used their positions to select their landed friends and relatives instead of the landless persons.

Finally the field officers were supplied by the Ministry of Agriculture. They were placed under the Ministry of Land and Settlement. These were the settlement officers to administer each scheme and to issue development loans, supervise tractor hire purchases, maintain cattle dips supervise artificial insemination services and to organise cooperatives. The other officers were Agricultural extension officers, veterinary assistants, public health assistants, artificial insemination scouts, chiefs and tribal police to maintain law and order.¹¹ These were provided but the problem of shortage of these personnel exists. Mainly due to little support of the settlement schemes by the Government.

Each settlement scheme had to have a cooperative society. Each settler was required to participate. The major function of these schemes was to collect and sell produce, to provide agricultural supplies, manage cattle dips and artificial insemination, hire machine contractors and tractors and get loan repayments for the Government.

~~These~~ These cooperatives have been facing problems of corruption, mismanagement, misappropriation and mistrust. This affects their functioning. Also there was little cooperative education among leaders and this affected their keeping of records and planning.

By 1965 about 30,000 African families from landless and unemployed class had been settled. The KANU government which now had been joined by KADU party had little fear of insurrection and was now moving against its radical members who might lead the remaining landless and unemployed persons. It began criticising the settlement schemes as uneconomical and costly and called for 'better' projects which would bring more employment and high standard of living. These criticisms were engineered by the settler dominated Ministry of Agriculture and the stamp mission ~~report~~ report 1965.¹

The Ministry of Agriculture headed by McKenzie and some European settlers argued and recommended that it was of no use to africanise the white highlands by transfer of lands because the funds used would be used elsewhere for the benefit of the economy especially to increase foreign exchange. This was strengthened by the report of stamp mission in 1965. The mission was sent by the British Government to investigate whether it was necessary for Britain to finance more land transfers after the million acre scheme. It reported that the schemes were costly and unproductive and Britain should divert these funds to other more economical and job creating schemes like land consolidation and registration. In reply Britain agreed to reduce the funds for land resettlement by giving $\frac{1}{3}$ of its loan promise of £18 million for 1966 to 1970 to settlement schemes and $\frac{2}{3}$ to land consolidation and registration. This agreement was reached in 1966 when the KANU government was facing a big political crisis with the opposition party, K.P.U, which had been formed by KANU radicals. The new party had supporters among the poor, landless and unemployed who were still many. It was for this reason that Britain spared a $\frac{1}{3}$ of the loans to settlement schemes. The government agreed to transfer 100,000 acres per year until 1970.

The KANU government's reliance on reports by colonial officers in the Ministry and its acceptance of the stamp report and the final isolation of the radical wing of KANU explains why it was against settlement schemes. It failed to see that the colonial civil servants in the Ministry were only protecting the lands still held by the settlers, and the stamp mission was out to reduce the financial burdens caused by the settlement schemes on the British Government.

Sessional Paper No. 10 of 1965 and the 1966-70 Development Plan clearly indicate that the Government was ready to slow down the land transfers. It was argued in these government documents that the settlement schemes never

created much employment and only benefitted a few. The sessional paper for example stated that:

"Africanisation ... is not an answer... it only means that a minority of Africans would become privileged members of the Economy."

This was tantamount to denying the landless and unemployed ^{rights} to the highlands. The paper instead emphasised on individualisation of tenure by registration in the reserves. This is enough to question extent to which the paper claimed to be socialist.¹³

The 1966-1970 Development Plan also had the anti-settlement statements. The plan alleged that the schemes were very expensive and contributed little to creation of jobs. It stated that land consolidation, registration and fencing was to provide more jobs and so government funds would be diverted to those projects including the promotion of free enterprise and foreign investments. This was the government's solution to landlessness and unemployment.¹⁴

These arguments from the Government are significant. They indicate that the government had no sympathy with the settlement schemes. They had served their purpose and there was no threat of insurrection. It was not ready to sympathise with the demands of African Nationalism which had called for the free and unconditional return of all lands under the settler occupation and their total withdrawal from Kenya. It had a naive argument which saw solutions to landlessness lying in mere giving of titles and fencing. It emphasised on private enterprise and foreign investments most of which ^{could} not accommodate as many landless and unemployed as those taken by the settlement schemes.

From 1966 onwards the establishment of settlement schemes slowed down to give way to what the government described as economical and job creating projects. The only settlement schemes that came later were individual schemes and low density schemes like Shirika, Haraka, Harambee and the state lands and trust lands settlement schemes.

(c) Land Transfers to Individuals

This was encouraged by the Government after 1966 and continues to the present day. Land belonging to European settlers was bought by the individual on willing buyer-willing seller basis. The individual was required to pay 10,000/- in cash initially while the rest of the money was provided by the Agricultural Finance Corporation. The land bought was not for subdivision.

Although the Government justified these transfers of intact farms and the so called 'Z' plots surrounding European ~~farms~~^{houses} on economic grounds i.e they should/be subdivided for that would render them uneconomical, they were started for a political purpose. The transfers were intended to bring into the highlands some politicians, party leaders and influential civil servants who would provide leadership to the peasants already settled in the highlands under the million acre schemes. These leaders together with those landed peasants would support the government, the constitutions which protected their land and oppose any form of agitation directed against the government. It was a strategy to increase the conservative landed gentry which was inherited by the new African government from the colonialists. The long term objective was to create a stable landed class with a stake in the status quo. This is confirmed by the words of one J.W. Maina, the director of settlement in 1966

where he said that:

" We should aim at a land reform programme whose main ingredients are divorced from temporary political expedients and should endeavour to create a land owning stable rural society with enhanced social status, rights and privileges. In the long run this has the most important stabilising force upon which the rest of our nation can be built."¹⁵

These words echo the colonial objectives of land tenure reform which was aimed at creating a stable and conservative landed group which would not get concerned with agitation. It was a continuity of the colonial objectives.

By 1977 many farms had been taken by these leaders. About 200 hundred acre farms were in the hands of private individuals, ~~while many more acres of intact farms had also fallen to individuals.~~ These transfers were intensified in 1970s that it became land grabbing. Many got more than they needed and they started speculating on land sales. Absentee landlordism, keeping of squatters, and other feudal practices have increased. This has been happening when there has been much landlessness and unemployment in the Kenyan society.

(d) Shirika Settlement Schemes:

These schemes involve the buying of land by groups who contribute part of the purchase money and get the aid of A.F.C. and Government to pay for the rest of the amount. They were started as a response to the individual transfers. The poor had to organise themselves into groups so that they ^{could} raise the initial capital required. The loan given by the A.F.C. and Government was to be repaid in future.

Most of these settlement schemes covered mixed farms. The farms were subdivided among the group for their subsistence while in most cases some part of the farm (e.g. plantation or ranches) was left undivided to be worked by and to benefit all the people involved.

The schemes began in 1970 and by 1977 288,500 acres of land had been bought and were occupied by 13,500 families.¹⁷ Most of the schemes are around Nakuru and in Central Province.

(e) Haraka Settlement Scheme

This had been announced in 1960 but implementation began in 1970. It was intended to transfer about 17,000 acres of land to about 450 families. There are only two Haraka Settlement Schemes: the OI Arabel and LARIAK in Nyahururu.

By 1970 all the families had been settled with an expected income of about £40 to £70.¹⁸

(f) State Lands and Trust Lands Settlement Schemes

These schemes began in 1970. They were sponsored by the Kenya Government. All the government did was to give out some of the unused state or trust lands for subdivision among selected landless people especially the registered squatters. Most of these schemes are in the Coast Province.

By 1977 a scheme had been set up in Lamu (Lake Kenyatta Scheme) covering about 28,000 hectares for 3,200 settlers. The target is to settle 6,000 families. The second scheme was established at Chyulu Hills and is about to be completed. The target is the settlement of 3,200 squatters.¹⁹

These are the major settlement schemes which helped to resettle landless squatters and unemployed Africans. The million acre scheme alone helped to resettle about 35,000 families at a cost of £29 million while the other schemes have absorbed about 30,000 families. Haraka schemes for example settled 18,000 families.

(g) An Evaluation of the Settlement Schemes

The settlement schemes have had their successes, failures, and problems. Firstly the settlement schemes were ^a political success to the Kenya Government. The settlement schemes took many landless and unemployed people who could have prevented the smooth transfer of power to the African leaders. They also helped to maintain political stability needed by the new African Government. By giving some landless and unemployed Africans some land the threat to capitalism and the inherited colonial political, legal and economic structures was reduced if not eliminated.

To the British Government the settlement schemes helped to maintain her imperial interests. They helped to facilitate the transfers of power to a moderate African government tied to international capitalism and the neo-colonial commonwealth. It encouraged foreign investments and exploitation of raw materials. Britain was in need of markets, raw materials and areas to invest the accumulated capital. All these were catered for by the new Government. If some of the landless and unemployed were not given land the white highlands might have been taken over by force and a radical government less sympathetic to British neo-colonial demands established.

Firstly, there was a problem in selecting African settlers. The schemes however succeeded in settling a large section of the landless and unemployed African population. Some had become landless because their land was rewarded to the loyal chiefs and other traitors of the African cause when they were either fighting the colonial forces or in detention. Some families had become squatters after their lands were seized for the European settlers. Although they were expected to pay for it they at least got some small pieces of land to produce subsistence and cash crops.

These successes were accompanied by several failures.

Firstly the sale of land through settlement schemes was a betrayal and abandonment of the demands of African Nationalism. The white highlands had been seized from the Africans and the Africans continued fighting to get it back free but now they had to buy it. Those who negotiated the land transfers never put across the Nationalists' demands.

Secondly the settlement schemes never absorbed all the landless people in Kenya. Today we have thousands of them suffering when some European settlers, foreign companies and the African leaders hold miles of land most of which is held for speculative purposes. There has increased absentee landlords and squatting.

Together with the failures, the settlement schemes had several problems. These problems were mainly related to implementation, agriculture, marketing, loan conditions and defaults, the nature of some schemes and the problems facing cooperative societies in those schemes.

Firstly, there was a problem in selecting African settlers. Selection was at first done on regional basis according to the regional (Majimbo) Constitution. This method of selection kept tribes within their traditional regions some of which were already overpopulated. This method of selection operated unfairly to the tribes in such regions. It prevented migration of tribes from overpopulated regions. Some regions like the Rift Valley had ethnic groups which had no serious land problems and since the demand of settlement schemes was not high the European settlers there managed to stay with their colonial land holdings even after independence. In 1968 2/3 of the white highlands (most of it in Rift Valley) was still in the hands of European Settlers.

Secondly, there was a problem of agricultural potential of some schemes. Some schemes were located in dry and unproductive areas. These lands were largely undeveloped even by the European settlers because they had a very low potential. These farms were sold by these European settlers and given to Africans. The government should have bought farms in the high potential areas instead of letting European settlers to remain in such areas.

Thirdly, there were marketing problems. Some settlement schemes produced cash crops which could not be easily marketed especially during the first few years of settlement. The settlement schemes in Nyandarua for example produced a lot of pyrethrum but due to lack of processing machines and marketing facilities there was delay in sale of the crop. A more serious problem was faced by the sisal producing settlement schemes like Kabisi and Kabefwe. In 1960s sisal was replaced by synthetics in the world market. The farmers could not sell their income earning crop and this deprived them necessary incomes for loan repayments.

Fourthly, there was a problem of poor planning of the schemes. Some schemes were so poorly planned that some people were too far to or could not have access to social amenities, commercial centres and health clinics. Some have to travel long distances in search of these amenities. This problem could have been avoided by better planning. Either these amenities could have been distributed all over the schemes or the homesteads could have been located near these amenities even if this would amount to creation of village-like settlements.

Fifthly, there was the problem of defaulting loan repayments. The loan repayments conditions were very oppressive. Loan repayments were expected to start after six months of settlement. This period was too short for repayments of loans. Most of the crops from which the incomes were to be got were not mature. Some even had not settled or cleared their farms within the 6 months. This led to loan defaulting from the beginning. Many settlers automatically went into arrears at the very beginning. These debts have continued accumulating. In 1966-1968 period about 76 settlers were evicted for defaulting loans. While the victims of the period 1969-1979 were 14.²⁰ By 1970 44% of the loans were in arrears. Only 12 million shillings had been repaid. The total outstanding overdue stood at £3.1 million. These accumulation of debts created much indebtedness. At least a longer period should have been given before repayments was demanded.

Then there was a problem with cooperative societies in those schemes. They were led by weak, uneducated and often corrupt committee members who had no Cooperative Education. They could not ^{perform} their duties properly especially because of mismanagement/missappropriation of funds and mis- /and understanding. This was too bad for bodies which were expected to handle

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loan repayments, sale of produce, hiring tractor services and other essential services.

Finally there was the problem of land transfers to a few individuals on willing buyer-willing seller basis. These schemes benefitted only a few already landed politicians, party leaders, and senior civil servants. There has been much land grabbing, speculation and many absentee landlords which are too embarrassing for a country with thousands of landless and unemployed people who would benefit from such lands if made available to them.

The Government should have discouraged these transfers and abandon all economic arguments justifying them. It should establish land ceiling and distribute the remaining unused or under-utilised land to the needy.

Development plans.

The process of land tenure reform became a responsibility of the African Government after Britain announced that Kenya was free in 1963. At that time about 2.5 million acres of land had been registered. Most of it was in Central province where, as we saw in chapter I, it was intended to serve as a counter-revolutionary strategy against Mau Mau. Many Nationalists looked upon this land to the racist government and the traitors in the process. This process of tenure reform was justified as a means to end land fragmentation, parcelisation etc. but in reality it was directed against African Nationalism. After independence, the new Kenya Government now headed by Africans extended the tenure reform programme to other districts of Kenya. In districts where there was no fragmentation the tenure reform

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process took the form of enclosures of land units and subsequent registration of land followed by the issuing of individual titles. It was argued that with these titles the peasants detail and in the same chapter we saw how the Kenya Government would secure loans to develop their small plots and in the inherited and continued with the land tenure Reform process. process they would raise their standard of living. It is in that chapter that we saw how the government De-emphasised

settlement schemes and laid much emphasis on land Tenure Reform. By 1972 an additional 1.5 million hectares had been Much money was spent on consolidation, adjudication, Registration, registered and by 1977 it was reported that 16.7% of all enclosures and fencing. The reasons given by this new African registrable land in Kenya had been registered, 14% had been Government was similar to those given by their colonial predecessors. adjudicated and 66% was in the process of adjudication. It argued and reasoned that land Tenure reform was necessary to

eliminate the problems of landlessness, unemployment, uneconomic Subdivisions (parcellation) and would raise the living standards of the people. This can be seen in the various government papers and Development plans. In this concluding chapter, I will generally outline the achievements of the land Tenure reform process and the Africanisation of the land. All the problems will be shown especially the problem of the registered Land not Cap. 283 which replaced

customary land law, finally I will give my recommendations. The process of land Tenure reform became a responsibility of the african Government after Britain announced that Kenya was Much of what will be said about achievements and problems will appear in a general outline because much of these has been free in 1963. At that time about 2.5 million acres of land discussed in details in the preceding Chapters. had been registered. Most of it was in Central province where,

as we saw in chapter I, it was intended to serve as a counter-revolutionary strategy against Mau Mau. Many Nationalists lost their land to the racist government and the traitors in the process. This process of tenure reform was justified as a

means to end land fragmentation, parcellation etc but in reality it was directed against African Nationalism. After Independence, the new Kenya Government now headed by Africans extended the tenure reform programme to other districts of Kenya.

In districts where there was no fragmentation the Tenure reform was indeed a continuous supply of raw materials from Kenya and

process took the form of enclosures of land units and subsequent registration of land followed by the issuing of individual Titles. It was argued that with these titles the peasants would secure loans to develop their small plots and in the process they would raise their standard of living.

Side by side with these achievements, we have the issues. By 1972 an additional 1.5 million hectares had been registered and by 1977 it was reported that 16.7% of all registrable land in Kenya had been registered, 14% had been adjudicated and 66% was in the process of adjudication. In this concluding chapter, I will generally outline the achievements of the land Tenure reform process and the Africanisation policies. All the problems will be shown especially the problem of the registered Land Act Cap. 300 which replaced customary land law, finally I will give my recommendations. Much of what will be said about achievements and problems will appear in a general outline because much of these has been discussed in details in the preceding Chapters. (a) Achievements

In an Evaluation of Settlement Schemes we saw how the Government succeeded in settling thousands of landless and unemployed families on a part of the white Highlands vacated by conservative racist settlers. This facilitated a smooth transfer of power to a moderate african government committed to capitalism. It also prevented an insurrection against this government soon after Independence. Britain was now guaranteed a continuous supply of raw materials from Kenya and

and the issue of titles to the Africans holding small plots

of land in the former reserves.

a big market now guarded by an African Government. It was a government of free Enterprise and a member of the commonwealth of Nations.

As far as land tenure reform is concerned, we had had the colonialists used it as a weapon against African Nationalists.

They deceived the public by saying that the tenure reform was

Side by side with these achievements, we have the losses sustained by the Africans. Firstly, the Africans never got the land free. They had to pay for it at a high price fixed by the colonial government. The loans they got had to be repaid at a very high rate of interest. It was a Terrible blow to the African Nationalists who had always fought to get back

the white highlands free. It clearly shows that those African

Surprisingly, the African Government that assumed power in 1963 took over the land tenure reform programme started by the colonialists against African Nationalism. It also inherited the colonial reasons for the programme. It repeated that land tenure reform was necessary to end parcelisation,

Secondly, the settlement schemes never succeeded in removing all the white settlers from the white highlands.

The settlement schemes were established only in a part of the white highlands. The rest was left in the hands of white settlers who continued to hold miles of land. They had now acquired citizenships and enjoyed the protection enshrined in the British-imposed constitution. The African Government that took over power in 1963 encouraged them to stay to build the Nation. It discouraged the settlement schemes that could have removed these settlers from the white Highlands and directed much of its resources to land Tenure reform. In other words, the new Government never africanised the white highlands fully. It encouraged enclosures, fencing

and the issue of titles to the Africans holding small plots of land in the former reserves.

The Africans were in need of land and not findings, titles

As far as land Tenure reform is concerned, we saw how the colonialists used it as a weapon against African Nationalism.

They deceived the public by saying that the tenure reform was essential to end the so called problems of land parcellation, fragmentation, land disputes, landlessness and land speculation. The aim was to cover up their political intentions of defeating the african Nationalists who were fighting to end the oppressive colonial system.

land shortage created by the colonialists and they could have been solved by the return of the entire white

Surprisingly, the african Government that assumed power in 1963 took over the land tenure reform programme started

by the colonialists against African Nationalism. It also inherited the colonial reasons for the programme. It repeated

that land tenure reform was necessary to end parcellation, fragmentation, land disputes, landlessness etc. It should

be stated categorically that these problems were not caused by the customary land Tenure system ^{which} the colonial government and its african successor sought to reform. The land problems

were caused by the colonial land policies of taking African lands for racist European settlers which left many Africans landless or with very small pieces of land in the reserves.

With such small plots there was bound to be much subdivision, fragmentation, land disputes and landlessness. The African

Government that came in 1963 was not a nationalists Government and thats why it continued with the colonial land Tenure reform programme and the colonial reasoning that justified it.

changing customary land Tenure which was not to blame for the

The Africans were in need of land and not fencings, titles or demarcation. Some had nothing to enclose with fences. They needed no individual titles because they had no land.

It is well known that ^{the} publicised problems ^{Justifying} ~~for~~ land

^{by the colonialists} Tenure reform have not been eliminated by land Tenure reform. [^] It can only be [^] solved by giving out more [^] land to the Africans. This is because they were not caused by customary land Tenure which was replaced with individual Tenure system. The problems were caused by land shortage created by the colonialists and they could have been solved by the return of the entire white highlands to the Africans. The colonial Government and its successor were not ready to do that.

Parcellation of land has not been eliminated by land Tenure reform. This is because the customary land Tenure that was reformed never caused it. Parcellation of land is the sub-division of land among several people. Under customary law of succession land is subdivided among all heirs to the family land. Each heir is entitled to a share in the land and no rightful heir can be disinherited. This subdivision may become uneconomical especially where the land subjected to subdivision is small. This happened in Kenya when Africans were pushed into small reserves by the colonial Government. When customary law of succession was applied to the small plots in the reserves ^P uneconomical parcellation of land resulted. Instead of giving back the land to the Africans the colonial Government blamed customary land Tenure ^{System} ~~system~~. It began changing customary land Tenure which was not ~~to~~ blame for the

problem. This task of tenure reform was left to the African Government that came in 1963. This reform of customary land Tenure never solved the problem. Parcellation continues even after the giving of Titles. The problem is serious in overcrowded regions where land shortage is a big problem. It can only be solved by giving out more ~~land~~^{land} to the Africans. It cannot be prevented by the land control boards established under Land control Act to prevent uneconomical parcellation by refusal of consent. Infact these boards donot refuse subdivision of land however uneconomical it may be. They follows section 120 of the registered land act which allows the application of customary law of sucession. This law of sucession gives land to all heirs and gives no Economic consideration to the plots of land resulting after subdivision.

Secondly, land Tenure reform has not eliminated the problem of landlessness and land speculation. It was originally argued by the colonial Government that the problem of landlessness in the rural areas would be solved when titles were issued. The argument was that when those with land got titles they would get loans to develop their land and in the course of development by would employ the landless to provide labour. This has not been achieved. Titles were given to peasants but the plots were too small to require employed labour. The peasants rely on family labour and the landless labour has no place in such small plots. The problem of landlessness

Continues side by side with another problem of land speculation.
Land speculators, who are mainly foreign companies, settler
remnants and Africans holding high positions in the Government,
continue holding miles of land for speculative purposes. The
land control Boards established to prevent speculative
land dealings have failed to discharge this responsibility.
Some board members are corrupted by these powerful land speculators
and they easily give consent to speculative land dealings.
The problem of land speculation therefore continues. To solve
the problem of landlessness it is necessary to give land to
the landless especially that land held uncultivated by the
land speculators. Tenure reform has not helped.

Thirdly, land Tenure reform has not ended land disputes
as the colonialists argued. They argued that customary land
tenure system was too uncertain in relation to individual
rights to land and as such it should be done away with for
it had caused endless land disputes and costly litigations.

To the colonialists, the alleged uncertainty and land
disputes would be eliminated by a change in land Tenure.

This would involve ascertainment of individual rights,
enclosures and the issue of indefeasible titles.
These titles have not ended land disputes. This is because
land disputes were not caused by African desire for
individual titles but by land shortage that existed the reserves.

When the population in the small reserves increased, disputes
rights and privileges belonging and appurtenant thereto.

His title is indefeasible. This means that when the family

began to come up in sharing of the small pieces of land. This problem of land disputes could have been solved if the land taken by the colonial government was returned to the Africans. In fact, the introduction of titles increased land disputes and introduced some disputes which were formerly unknown to the African communities. The indefeasible title, for example, were given to only to a single individual in the family. The other family members who got no titles were left at the mercy of the title holders. These holders of indefeasible titles got security to evict their sons, brothers, and wives claiming that these family members were trespassers. This idea of indefeasible titles is unknown under customary law. Under the customary law all family members have a right to the family land and are not trespassers. It is this idea of giving one person the title to the family land has been the major cause of land disputes. Land disputes were not caused by customary land Tenure system as the colonialists and their neo-colonial successors would like us to believe.

(b) The problem of the ^{Registered} ~~registered~~ land act, Cap. 300

We have seen how indefeasible titles were introduced the injustice that was brought to the family members whose rights were not recognised. The idea of indefeasible title was enshrined in section 27 of the registered Land Act. Under the section the registered proprietor of land all rights and privileges belonging and appurtenant thereto. His title is undefeasible. This means that when the family

land is registered in the name of one member of the family he acquires all the rights and privileges relating to that land and they cannot be defeated. Other members of the family whose rights under customary law are not registered lose all their rights in relation to that land. Their rights are not recognised by the registered Land Act and are not even among the overriding interests listed under section 30 of the Same Act. The unregistered members are treated as trespassers. This unfair and unjust treatment given to innocent family members is one of the major problems embodied in the Registered Land Act.

The application of this Act and the resulting injustice is evidenced in several court decisions in this country.

A good Example is the case of OBIERO v OPIYO. In this case, there was a man who had several wives and sons. He lived with them on a piece of land which was later registered

under his name. Soon afterwards he claimed that the wives and sons lost all their customary rights to this land

when it was registered in his name. He argued that he had an indefeasible title and the customary land rights of his wives and sons had disappeared on registration of the land. The court decided the case in his favour. It held

that once the land was registered the husband acquired an indefeasible title. It went on to say that the wives and sons had no rights to the land. This case was followed

in trust for them and cannot deny them their rights or treat

by the case of ESIROYO V ESIROYO which reached a similar conclusion.

These two cases are among the many unfair decisions made by the Kenya High Court. They clearly show how individual tenure system prevails over the customary land tenure ~~system~~ ^{system}.

Any person holding rights under customary law is bound to loose his rights just because they are not recognised by the individual land law system as enacted in the Registered land Act. The Act does not recognise them as overriding interests. Had the Act included such rights in the list of overriding interests they could bind the registered proprietors. This would give the unregistered members of the family some protection.

To overcome this problem some judges have used a proviso under section 28 of the registered land Act to protect those members of the family who are not Registered as proprietors of the land. Under the proviso all trusts to land are recognised and will bind the registered proprietor of land. What the judges have done is to extend the idea of trusts in that proviso to make them cover unregistered customary land rights held by the other members of the family.

Their interests are treated as trusts in land and they will bind the registered proprietor. He will hold their interests in trust for them and cannot deny them their rights or treat

Government. This left the colonial system intact. It is only in early 60s that the colonialists accepted that a part of of the white highlands was to be given to Africans

so that power may be smoothly transferred to african capitalists sympathetic to Britain. This Government set up settlement schemes in that part of the highlands to ensure that a small group of landless and unemployed who might bring about an uprising against the neo-colonial Government were given land and therefore silenced. This left the inherited colonial structures intact and under the management of African leaders.

The policies of land Tenure reform and Africanisation

have not eliminated the problem of landlessness in Kenya. There are many landless people living as squatters in urban slums or in the big farms owned by foreign companies, African absentee landlords and some European settlers. This group of landed own miles of land while thousands of people suffer from landlessness or hold very small pieces of land for subsistence.

My recommendations on land policies are based on the existing politico-Economic ideology which is capitalism. Socialistic inclined recommendations like the abolition of private ownership of land and collectivisation would bring justice and benefit the Kenyan Masses but they would definitely meet opposition from the African leaders,

*You are a
trickster
Consider the
changing
circumstances
How is
lower
State
Can you
give me
one of your
points!*

*(Talk of
Reducing the land
of the
hills of 10,000
Acres
Even you!
Don't remember
economic changes*

foreign companies and even some sections of the landed peasantry.

Therefore my recommendations are rather moderate and pragmatic.

radical and myopic

My first recommendation then, is that the Government should de-emphasis on land tenure reform, fencing and giving of titles and direct its resources towards land transfers from foreign companies and European Settler to the African landless and unemployed. ^{Do you know what?} These lands should be bought by the government for the landless and unemployed people. It should also give out all the so called state lands to the landless. It is only after doing this that titles should be given and have some significance. Free land transfers should come first.

No!! You can't think: Niprene could succeed after

Secondly, the Government should put up a land ceiling indicating the maximum acres of land every individual in Kenya should have, It cannot be disputed that many leading personalities in the Government together with European settlers and foreign companies hold thousands of acres of land. Much of this land is uncultivated and fertile ^{and can be} ~~for~~ used by the landless. If a land ceiling ^{is put,} these unused lands would be ^{made} available to the landless and unemployed people. My argument is that there is enough land for all Kenyans and all that lacks is an equitable distribution of land, land ceiling should be introduced to enable all Kenyans to contribute to the so called Nation building.

In conclusion, I may say that these few but moderate recommendations may be simple to state but very difficult to implement. This is because those who are in a position to implement ^{them} are the same persons who hold miles of land ~~much~~ of which is unused. They are too tied to foreign companies and European settlers that they can't understand why these foreign companies and European settlers should be deprived of 'their' land in favour of the landless Africans. They always oppose such motions in parliament. Much of this opposition is based on section 75 of the constitution which jealously protects private property and foreigners. They even call such motions "foreign ideologies" This shows that they are not ready to work against their class interests. This leaves one with ~~with~~ the ~~the~~ conclusion that it is upon the landless and peasants to bring about justice. This will only be done effectively with the use of arms but it has to be accompanied by a workers uprising against foreign monopolies. There has to be a revolutionary vanguard. In the meantime, the struggle continues.

you sound like a Subbot warrior youth fu Kanu 62

- You thinking is leading

After such a good exposition of the historical circumstances that explain our ailing land how can you give such unrealistic recommendations. Why are we down to the earth of the '90s!

Poro', I agree with you but Kenya can't be an exception to a world inhabited by Garbachev's Perestroika and Gorbach.

~~71~~ 72

Footnotes : chr I

1. Kwamen Betsi - Fuchile "Do African System of Land Tenure Require a Special Terminology" 9 JAL 144, See Generally.
2. Gluckman: Ideas in Barotse Jurisprudence : p. 80
3. WILSON : Land Rights of Individuals among Nyakyusa of Tanganyika p. 39 (1938 Edition)
4. J. K. NYerere: "Ujamaa: The basis of African Socialism"
5. O. Ellias: "Nature of African Customary Law" p. 164
6. Gluckman: Page 80.
7. p. 78
8. Machyo Chango: "African Land Tenure, Concept and Development" p. 23.
9. Sorrenson O.M.P.K.: Origins of European Settlement in Kenya
Chapter 1: On Strategy and Communications
Harbeson : Nation Building in Kenya Chapter 1
10. Sorrenson: Origins.....Chapter 1
11. See F.D. Lugard: "The Rise of our East African Empire"
p. 28 "...The fact is, that land in Africa
is no mans land, and a neighbouring village
headman, have no claim over it than you or I"

12. Foreign Office: Confidential Print, 7403 No. 101 6th Feb. 1900.
13. See DL LE Njogo's Case 1914 EALR 70.
14. Ghai & McAuslan: Public law and political change in Kenya p. 79.
15. See Disenarged Soldiers Settlement Ordinance 1919 set up Land Resettlement Commission in charge of settling the soldiers in the Highlands.
16. G.N. 394/1926
17. 1938 Kenya (Highlands) Order in Council
1939 Native Lands Order in Council
18. Oginga Odinga: Not Yet Uhuru: P.105-106
19. 1923 9KLR 1
20. In 1948 Some Squatters refused to get out of Rift Valley and refused to provide labour. Boycotts of Indian shops were organised in MOLO, MAJI MAZURI, GILGIL, NAIVASHA, ELBURGON and NJORO with the aim of Crippling the Colonial Economy.
21. This group was discontented and was the first to give support to Mau Mau in Urban and Rural areas. See RICHARD FROST: 'Race against time' page 42.

22. These were in

1910:- GIROUND Proposed the granting of individual titles

1920:- AINSWORTH gave a similar recommendations

1929:- MAXWELL COMMITTEE on Kikuyu Land Tenure called for the giving of individual titles

1934:- KENYA LAND COMMISSION Recommended the progressive development of individual land tenure.

1939:- Kenya Law Society urged the Government to Register Individual Titles.

Kenya Land Commission Report 1934
Kenya Land Commission Report 1939

Kenya Land Commission Report 1934
Kenya Land Commission Report 1939

Kenya Land Commission Report 1934
Kenya Land Commission Report 1939

Kenya Land Commission Report 1934
Kenya Land Commission Report 1939

FOOTNOTES: ch. II

9. Section 3(1)(h)
1. Eg- Giround in 1912 - Recommended that the Government should give individual titles after individualising of land tenure.
 - In 1920 Ainsworth, the Chief-Native Commissioner Gave similar recommendations.
 - In 1934 the Kenya Land Commission had recommendations to that effect.
 - 1939 Kenya Law Society made similar recommendations of the programme in the entire district.
2. Kenya Land Commission: Sect. 165
3. See S.H. Fazan to Chief Secretary L.O 30/12/1 18.10.1939
Committee experts Wachira Migwa. Ministry of Justice
4. - Harbeson: Nation Building in Kenya: Chapter 2
 - Aaron Segal: Politics of Land in East Africa P. 288
 - Sorenson NPK: Land Reform in Kikuyu Country
 - " " : Counter Revolution to Mau Mau
Land Consolidation in Kikuyu land 1952-60.
5. D.C. of Kiambu Mr. J.M. Golds made this Statement in 1955 to a group of settlers in Nyeri. He said that the programme "will have the effect of creating a solid middle class Kikuyu population anchored to land who have to loose by Reviving Mau Mau in a Different form."
P.O. Nyeri LND 33/3/11 June 1956.
Vol. 1 1962 pa. 4-14.
6. Suryneron Plan: Paragraph I
Kenya (Lands Order) in Council 1960.
7. Report of the East African Royal Commission paragraph 77
8. Ordinance No. 11 of 1954

- 9. Section 3(1)(b)
- 10. Ordinance No. 1 of 1957
- 11. Section 3
- 12. Ordinance No. 22 of 1944.
- 13. Native Lands Registration (Fort Hall District) (Special provisions) Ordinance. No. 56 of 1966, was passed authorising the Repeating of the programme in the entire district.
- 14. See: D.C. of Kiambu VR Exparte Njau 1960 EA 109
and D.C. of Nyeri VR, Chairman Kihuyo Land Consolidation Committee exparte Wachira Migwe. Ministry of Justice 273/12/7 No. 46 of 1960.

In both cases errors were discovered showing that some persons had been given smaller pieces of land than they had before consolidation. They appealed for alteration of Registers but the courts held that the Registers could not be allocated.

- 15. Kipsigis: The Social and Economic Consequences of Land Enclosure in Kipsigis Reserve. E.A.I.S.R. applied research unit.
- Also: Consolidation, Enclosure and Registration of Title in Kenya: J.A. Local Adm. overseas Vol. 1 1962 pp. 4-14.
- Kenya (Lands Order) in Council 1960.

Foot Notes: Chapter III

1. Sessional Paper No. 10 1958/59 and No. 6 of 1959/60
2. LN 589/1960
3. Ian Maclead: Great Britain colonial office
Report of the constitutional conference
Jan-Feb 1960.
4. East African Standard: 31-1-1962
5. Kenya Legco Debates 1962 LXXXXVIII 1405ff
6. See the IBRD Economic Survey Report 1962
7. Supra
8. E.A. Standard 15.3.1963. Reported an Incident in Nakuru
where the police raid discovered home made guns, and armonitions
They were in squatter houses.
9. Dept of Settlement Annual Report 1963/64
10. Dev. Plan 1966-1970
11. Harbeson: Nation Building in Kenya: Chapter 5 and 6-generally
Pagett: Land Resettlement Programme in Kenya-generally.

- 12. Confidential Report of the Stamp Mission 1965.
- 13. Sessional Paper No. 10 1965 Government Printer p. 28-29
- 14. ~~Kikuyu~~ ^{Kenya} Development Plan: 1966-1970
- 15. Department of Settlement: 1966
- 16. Wasserman: Continuity and Counter Insurgency: The role of land reform in decolonising Kenya.
- 17. Notes on Activities of Department of Settlement: Ministry of Lands and Settlement : By T.K. Patel . 1977
- 18. 1 bid
- 19. 1 bid
- 20. Department of Settlement Annual Reports 1966-1968 and 1968-69.

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(2) 1. A: See: Report on Economic Survey of Kenya, by
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- KANU Manifesto 1963 p.6

(4) Collin Leys: Underdevelopment in Kenya
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3. 1979 - 84 Development Plan

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4. 1972 EA 227

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6. HCCC No/ 377 of 1968

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(13) Ng'7.3: Supra
Continuity in land and agricultural
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(14) Ng'8.1: 8. Followed in: A Socio - Economic Study of the Kenya

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of the United Government.

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