

The Impact of Colonial Land Tenure Policies on the Gusii People in Kenya

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Abstract

Different scholars have looked at the general economic impacts of the land reforms and legal implications at national level. However, a few studies have been done on economic history in Gusiiland. This study aimed at analyzing the impact of the colonial land tenure reforms on the Abagusii customary land tenure practices in Gusii, Kenya. This study used the articulation of modes of production theory to analyze the effects of land reforms on the Abagusii community from 1895 to 1963. Descriptive Survey Design was used to guide the study. Purposive and snowball sampling methods was instrumental in selected the respondents with a sample size of 61 informants. The primary sources of data were obtained from the archives, field interviews, observation and focus group discussions while secondary data was obtained from written sources like books, Journals, magazines, periodicals, Newspaper Articles, unpublished theses, seminar papers, and electronically stored information on the internet. Logical historical method was employed in the actual process of analyzing and interpreting the data gathered. The study established that land consolidation and the issuance of individual land owners with title deeds has increased land conflicts, land titling and issuance of individual titles has increased land speculation, and land tenure reforms have failed to solve land problems or improve the agricultural sector, as well as, failing to change the African mind set or behavior of the smallholder farmers in Gusii, Kenya.

Keywords: Colonial, Land reform, Land tenure, Land consolidation, Gusiiland, Impact, Policies

Introduction

Sections of the African continent have been identified with poor agricultural performance and declining food production per capita resulting from cumulative effects of processes and changes imposed on Africa's agriculture by colonial capitalism and the consequent reforms in land tenure systems. The integration of Africa's economy into the world capitalist system sparked off a process that gradually modified, destroyed, marginalized or subordinated the continent's agriculture. These effects were however not uniform across the whole of Africa. Some areas like Gusiiland were more important in agricultural production, thus the need for systematic local examination.

There has been a general need for new land tenure in Africa and Kenya in particular due to the increasing demand for land. New land reforms in Africa have been promoted by international institutions, such as, the World Bank, UN organizations, FAO and Donor countries like, United States of America, Britain and France. The reforms have aimed at stimulating economic growth by enhancing land use efficiency and investment Thus reducing poverty and promoting more sustainable land management.

1.2 Literature Review

The land tenure policies formulated by Swynnerton (1954) included the views that the proponents of the plan advanced and supported the individualization of tenure in Kenya to enhance agricultural production which the colonial government adopted and began to implement. The implementation of the Swynnerton plan marked the beginning of an evolution in Kenya's land tenure reform system with a major shift from traditional land tenure system to individual ownership. Land tenure individualization has expanded rapidly since independence from high agricultural potential zones to semi-arid agro-pastoral areas (Okuro, 2008).

According to Swynnerton (1954) the communal land tenure was discouraged and the colonial agricultural officers in Kenya advocated for land consolidation and individualization of titles. The colonial government viewed African customary land tenure as a major setback to greater agricultural production and proper land use practices and, therefore, proposed its replacement with Western style system which is based on individual land rights. The Swynnerton plan formed the basis for the colonial government land policies. The colonial land policies have exerted great impact on the land tenure system as experienced today in Kenya and in particular among the Abagusii people. Wafula (1981) examines the colonial land policy in the North Kavirondo African Reserve. He points out that the colonial land policy was mainly a metropolitan transplant designed to serve settler needs. Thus, the North Kavirondo reserve was created in order to ensure adequate labor supply

to settler farms. He further argues that the Kenya commission legitimized expropriation of Africans from their land, the most treasured asset.

Secure individual tenure has been promoted due to the belief that it will lead to higher levels of agricultural investment and productivity, thus, providing a firm basis for national growth and development (Quan, 2000). A title is defined as the degree of control, use and enjoyment that are required and protected by law. It has been argued that lack of a title in customary lands brings about insecurity because rights are not recognized and protected by law. Over 80% of lands in developing countries have no documentary evidence or confirmed tenure, making insecure land in Africa the majority. Land registration is the making and keeping of records relating to land transactions. Such records include information about land transactions, physical and abstract attributes. Land titling and registration make parcels of land known, definable and identifiable.

Neiquz (1971) examines the successful development of Gusii social organizations in terms of adaptive and evolutionary mechanisms and forms of organization of productive processes in Gusii agriculture, social change after permanent settlement in the highlands which was as a result of the formation of social relations around new production patterns which were necessitated by the shift from extensive cultivation to intensive cultivation. The shifts, in turn, were related to the increase in population and to the intervention of the British colonial government. Land became the crucial factor in the Gusii production process as the population continued to grow. Tribes and clans clashed in a continued struggle to secure more land and to maintain control over land already held. This led to the transitional phase from a pre-capitalist to a capitalist agricultural economy in a densely populated environment. Private ownership developed as a means of regulating competition over land while ensuring the increase in total productivity. The study sheds light on the Abagusii evolution and land utilization. One cannot understand the present land tenure systems without clearly getting the insight into the pre-colonial and colonial land tenure systems and their impacts.

Okoth and Hasting (1974) conducted research among the Abagusii and discussed land tenure reforms in relation to public resources allocation, pattern of land distribution, the farmer decision making, especially, in terms of the power of disposition after the communal land tenure was discredited and individualized title ownership which was new to Gusii region. The study has contributed to the current work since it handles the impact of land tenure reforms on smallholder farmers in Gusii land. The current study deals with the evolution of the land tenure systems during the pre-colonial and the colonial epochs.

The changes in the land law have consistently moved towards compatibility with the customary law. In 1968, the Land Act was revised

leading to the abandonment of the compulsory land consolidation (Okoth-Ogendo, 1986). The repealing of the land law, which was done by the Kenyan government in the early years of independence is a clear indication that, the determination and resolution of land matters were moved from the law courts to the administration and customary laws, this new system established local land boards which were under pressure to hear evidence from spouses, sons, and other parties with legitimate customary rights in the land, prior to authorizing any land sale. The changes were meant to restore the family participation in the land matters and give family members an opportunity to decide the sale of family land a fact which was not recognized by the colonial land practices.

Ensminger (1997) argues that over the years there have been efforts on the part of the Kenyan government to handle the perceived failings of the original land law, but these have never resulted in reversal of the general trend toward greater privatization. African customs assigned user rights at the household level, while transfer rights were assigned at a higher level, such as, the lineage, clan, or chiefdom. This lumps the land tenure in Africa into common property that is managed either by all members of the ethnic group or some recognized large subset, lineage controlled and chief-controlled. Generally, it was understood that the person who cleared the land first is entitled to use it and pass it down to his descendants through the male line in patrilineal systems and through the sister's son in matrilineal systems. The head of the lineage had authority to allocate land to those with need equally. This study shed light to the current work since it gives insights about the legal legislations that governed land in the various African communities and Gusii land is affected.

From the literature reviewed above indicates that the call to change the land tenure systems from customary to individual title in the African customary land systems prevailed was noble and well stipulated. The reasons advanced to necessitate the change included but were not limited to, promoting rural development, security of tenure, facilitation of credit and dispute reduction in Kenya were good and generally acceptable to the local communities. But the approach of implementation has resulted to serious social issues such as: landlessness, boundary disputes and land fragmentation. Therefore, the commission of the customary land system to individual title has not benefited the targeted groups and the end result of the land tenure reforms has brought negative consequences among the African communities instead of promoting rapid social and economic development of the regions. Scholars generally cited the following factors to explain the need for the land tenure reforms in many parts of the Africa. A number of issues including inequalities in distribution of land due to the discriminative colonial land policies, reforming current tenure systems to promote efficient land markets,

farm investment, modernization of agriculture and decentralize control of land resources. The government institutions are implementing such programs against a difficult background, statutory tenure systems inherited from a colonial past and often poorly implemented. Such colonial tenure systems are superimposed on customary tenure systems that have been in place for generations. Although these studies have been carried out, they have specifically not looked into the Gusii land tenure systems, but they have neither explored nor contributed to a fuller understanding of the Abagusii land tenure systems nor its dynamic nature, hence, the need for a study of this nature.

1.3 Research Context

Different scholars have looked at the general economic impacts of the land reforms and legal implications at national level (Wilson, 1971; Okoth-Ogendo, 1976; Wakhungu *et al.*, 2008; Henrysson & Joireman, 2009). A few studies have been done on economic history in Gusiiland. Omosa (1998) looked at the effects of population change on land use while Omwoyo (1990) discussed the colonial transformation of Gusii agriculture. Even though these studies have looked at agricultural changes in the region, they have not explored in detail a historical analysis of the Abagusii land tenure system and its dynamism, hence, the need for this study.

Given that most rural Gusii people depend on land for their livelihood, historical developments leading to commoditization of land and the creation of a land market have led to a rapidly growing social stratification, near landlessness, land fragmentation, land disputes and boundary disputes.

1.4 Research Objective

To analyze the impact of the colonial land tenure reforms on the Abagusii customary land tenure practices.

1.5 Theoretical Framework

This study used the articulation of modes of production theory to analyse the effects of land reforms on the Abagusii community from 1895 to 1963. The theory asserts that when the Capitalist Mode of Production (CMOP) was introduced in a non-capitalist mode of production, it does not automatically replace the existing mode of production. Rather the CMOP will gradually align with the non- capitalist modes of production and use them to its own benefits. This continuous process of subordination culminates in relation to the capitalist mode of production. Pre- capitalist mode of production may have continued to exist, though subordinated to the capitalist system, through a process of ‘preservation and destruction’ or ‘dissolution and conservation’.

Since articulation is a process by which the CMOP establishes dominance over the non- capitalist mode (Omwoyo 1990). This theory was employed to investigate the extent to which colonial reforms in land tenure system which is a product of capitalism affected the Abagusii traditional land tenure systems and food crop production.

2.0 Methodology

This study has used the Descriptive Survey Design method to carry out the study. A descriptive survey is an attempt to collect data from members of a given population so as to determine the current status of that particular population with respect to one or more variables. The research was done in Gusiiland, located in western Kenya, 50 kilometers east of Lake Victoria. The region is demarcated by the coordinates 0°30' and 1°00' S and 34°30' and 35°00' E.

According to 2009 census, Gusiiland had a population of 1,750 534 distributed in 7 clans and 47 sub-clans. The study population also included, chiefs, assistant chiefs, Members of County Assemblies, Ward Administrators and 7 clan and 47 sub-clan elders. Purposive sampling technique was used to source out a representative sample from the densely populated Gusiiland. Through the use of purposive and snowball sampling methods, the researcher picked on 61 key informants. These are individuals who are knowledgeable on the history of the Abagusii land tenure systems. The key informants assisted in recommending other knowledgeable persons they knew that would become an important source of data. The key informants were selected on the basis of their ability to recall knowledge from all over the District. The study also used focus group discussions. Two FGD's were conducted using focus group discussion guides. Discussion in each FGD session consisted of groups of 6 to 12 members representing selected clans and sub-clans. The primary sources of data were obtained from the archives and through field interviews. Archival materials were from the Kenya National Archives, County Archives, and Archives belonging to individual people, groups, churches, and Gusi Cultural Center Archives in Kisii town. Secondary data was obtained from written sources like books, Journals, magazines, periodicals, Newspaper Articles, unpublished theses, seminar papers, and electronically stored information on the internet. The researcher also used the observation, which allows the researcher to see for himself what people actually are and do rather than what they say they do and gain first hand experiences and record data as it occurs.

The study used the logical historical method in the actual process of analyzing and interpreting the data gathered. The logical historical method is necessary because inquiry into social economic phenomenon needs more than a mere knowledge of facts and events in their chronological order. The facts

need to be applied in order to establish the historical specificity of socio-economic phenomenon in terms of its constituent elements and the relations between these elements which determine and give its coherence.

Data analysis involved organizing the data collected into themes based on samples of collected data. Out of this process, historical focus was established and the emerging trends together with generalizations suggested by the data were determined and interpretation was done in the light of the objectives of the study.

3.0 Results/ Research Findings

A number of studies have been carried out to examine the impact of the land tenure reforms in Kenya (OkothOgendo, 1986; Bruce, *etal.*, 1994; Place & Migot-Adholla, 1998; Okuro, 2005). The evidence from these studies has shown that land titling has failed to achieve the anticipated outcomes especially in the agricultural sector, investment in agriculture and increased economic productivity. The reforms have failed totally to change the mind set and behavior among the smallholder farmers who still uphold the traditional land tenure systems.

Instead the study has found out that it has increased land speculations by outsiders instead of being used as collateral among the smallholder farmers. Although the government of Kenya has continued to encourage land titling since independence and the process has been completed in some areas like Gusii land, still some poor small holder farmers have not received their land titles. The previous studies have shown far reaching effects as a result of the introduction of colonial government sponsored land tenure reforms.

The colonial administration introduced the private land ownership starting from the early part of the twentieth century. This was considered to be the main solution to the non-economical land use practices among the Gusii people. The colonial land policies led to the introduction of individual land ownership and issuance of land title deeds on the names of principal land holders, which led to increased land conflicts because such new arrangements ignored the overlapping and multiple rights and uses of land at the local level, hence, it reinforced unequal access to land based on gender, age, ethnicity, and class (Okuro, 2011). In the local customary system of land tenure, access to land was based on being a member of the family that owned the said parcel of land. With registration of the family land in an individual's name the principal land owner was enabled to use land at his will irrespective of other's claim to the land (Okuro, 2011).

Increased level of disputes has been experienced in Gusii land resulting from individual rights being imposed on pre-existing system of multiple rights. Such European based tenure reforms that were introduced in Gusii land from 1950's by the British created greater uncertainties and conflicts between

the principal land holders who assumed exclusive individual rights in a given parcel of land and the women and children because their rights remained either secondary or usufructory (Okuro, 2011). Women in Gusii land have user rights to their husband's land and occasionally, if they are unmarried with a child, they have user rights to their father's land (Henrysson *et al.*, 2009). This is a continuation of the customary laws where women were often dispossessed of land in traditional patriarchal family ties, where women were considered as strangers because they were expected to get married and belonged to the husband's lineage.

There are land disputes due to increased scarcity of land, which is caused by population pressure and by rights conferred to land holders under land registration and titling. Traditionally, land had multiple rights and uses, but the weakening of the customary institutions and practices that balanced different interests on a parcel of land and always negotiated the arrangements established led to tensions and land disputes witnessed between those who claim rights to access and use. The disputes and tensions occur even between different family members and other clansmen as witnessed in the 1940s. These disputes happened in regard to land transfer, land sharing and loaning, land purchases and land exchange, land tenants, succession or inheritance of land rights, and boundary among the Gusii people. These disputes are witnessed today among the Abagusii resulting to fights, bitter quarrels and murder of family members or those who purchased land (Francis, 2015; Masese, 2014).

The land privatization interfered with the customary social organization in the way family members and other secondary holders of land rights accessed land. The traditional customary land tenure system was flexible, negotiable, overlapping and location specific. The customary practices provided that one could gain access to land though not being a land owner. Such type of arrangements allowed for share cropping, borrowing of land, tenancy, pledges, grazing on crop residues existed which provided access to land for use without undermining the flow of land through inheritance (Masese, 2015).

The mixture of colonial land practices and the traditional customary practices have resulted to an increased encroachment into traditionally prohibited lands such as forested land that were used as sacred sites, and wetlands that were preserved to provide communal resources such as thatching materials, white clay soil used for house decorations and livestock grazing areas. Such places (Ekerubo- swampy area) were communal grazing grounds where grazing rights were accessed by all clan members, but now have become contentious areas because the land registration processes have accorded individuals exclusive rights to access such parcels of land, or due to population pressure. Such parcels of land have been eroded and those who used to graze in such places have found it difficult to do so.

With the integration of Gusii land into the colonial economy, the Gusii land socio-economic and customary practices were restructured and modified and such changes affected the people's way of life including the way the Gusii people perceived of themselves, their property ownership, especially, the households where were forced to sell their cattle to pay taxes in cash. It was unheard of that a cow has been sold for cash but with the coming of colonialists and the demand for cash, such changes have occurred. As Okuro (2011) notes, money was needed among the African people for other services such as paying taxes, acquiring bride - wealth, purchasing clothes and other domestic needs.

The introduction of cash crop growing (coffee, and pyrethrum) by the colonialists and the growing of tea at the neighboring district of Kericho led to the change of land use. The adult male member of a family demanded for a parcel of land to plant the cash crops, while others moved out of Gusii land to provide labor at the tea plantations in Kericho District leaving behind their wives and children to get money to pay household taxes and provide for the family needs. This made the women to do masculine jobs that were traditionally known to be done by men.

A negative consequence was the creation of a group of landless people, as land became increasingly concentrated in the hands of a few people. These new land owners included, emerging African elite, farmers, businessmen, politicians and civil servants. The jostling and rush for land that is witnessed today is as a result of land reforms that were introduced by the colonialists in Kenya and Gusii land in particular. Land has become more significant in Gusii as a measure of wealth and therefore the acquisition of land is more important as opposed to livestock and wives which gave social status to men before the coming of Europeans into the region, (Masese, 2015; Rutten, 1997).

The land tenure reforms in Gusii land also resulted into land sales, land disputes, and denial of land rights particularly for the vulnerable groups such as women, children, widows, and orphans. Women have no formal claims to land as the title deed is in the name of the husband, the father, or the father-in-law. They are unable to use land as collateral for loan or to rent it out. The husbands or fathers control the household resources. Widows' rights are faced with challenges from relatives after the death of the spouse. Many factors determine the challenges widows face which include; gender and age of her children, the payment of bride price, her character and her HIV status.

The changes in land tenure disadvantaged the vulnerable groups. However, the traditional land customary practices protected such people and ensured they got their rightful share and place in the community. The principal land owners advance some reasons for selling their parcels or a portion of the piece of land. These include paying fees and educating children, paying bride price, building a good iron roofed house and paying medical bills. Other

reasons include migration to another land to avoid land disputes or fear of witch crafts or death of male children.

The land tenure reforms among the Abagusii people did not achieve the intended goal (increased agricultural productivity) since farmers had underdeveloped parcels of land and the degree of insecurity was not felt by the family heads, as they could usually count on the support of the elders in any dispute. Therefore, the incentive was unaffected by the reform agenda (Wilson, 1971; Okuro, 2011). The land holders did not venture into increasing the quality of land under cultivation as proposed by the early land reform initiators. Land scarcity is a recent problem, felt in only just over 30 years in Gusii land. When land was abundant and freely available, there was no much need to worry about security of land tenure, which was always assured by the Gusii cultural practices, rules and customs, as well as, norms pertaining to land.

Before registration of land, it was impossible to control dealings in land, but with implementation of land reform programmes, it is possible to use controls to achieve economic and social goals. To control the land disputes, the colonial government enacted and established Land Control (Special Area) Act. The subsequent Land Control Act of 1967 enacted by the post-colonial government which was established through the enactment of Land Control Act (Cap. 302) and Land Control Board (LCB) for the purposes of restricting and controlling the right to freely alienate land in agricultural areas by creating a local committee to vet all transfers (Okoth-Ogendo, 1976; Cladwell, 1976; Okuro, 2011). The Land Control Act was enacted to protect citizens from any potential threats of the system of formal land registration introduced by the colonial government, since the LCB was expected to uphold the customary norms and regulations relating to land ownership. It did not achieve the intended goal, leaving the local people challenged (Ngugi, 2004).

Weakening of customary rights, within households and between different social groups, resulted in diminished security of tenure for non-title holders especially women, children and landless farmers who can no longer rely on secondary claims or kinship ties to guarantee access to land resources. There is diminished food security and increased vulnerability to hunger amongst groups whose access to land has been diminished by the titling process. The land tenure reforms led to increased concentration of land ownership in the hands of the chosen few, especially, the recipients of the former white settler lands and those who were influential enough to manipulate the registration process to their advantage.

In summary, the study indicates that the indigenous land tenure systems tend to evolve under the influence of such factors like population growth and new market forces. The traditional tenure systems are not static and can be reformed without the input of state interventions. The

individualization sponsored reforms by the state have not realized the desired results especially on the behavior of the small farmers in regard to land usage, which still reflects adherence to the traditional cultural values of family and lineage.

The transfer of the final rights to dispose of land from a communal or lineage to an individual basis has major structural consequences. It has created a new legal basis for the control of the individual over land resources, because land is the basis of Gusii livelihood. In so far as the registered title holders are mainly men, the programme only modernizes the proprietary control over women by men. More specifically, it weakens the woman's ownership rights and neglects the position of right of childless women, or women with only daughters and widows.

4.0 Summary and Conclusions

Land consolidation and the issuance of individual land owners with title deeds has increased land conflicts because such arrangements ignored the traditional overlapping and multiple rights and uses of land, reduced land accessibility and rendering other family members landless. The mixture of traditional land tenure practices and the colonial land tenure system practices has failed to solve the Abagusii land problems but instead has encouraged human encroachment into prohibited lands such as forested land, swampy areas and mountain tops, which were considered to be sacred.

In conclusion, the paper clearly highlights on the major challenges that have been brought about as a result of the colonial land tenure policies. In particular among the Gusii people of Kenya. For example, land titling and issuance of individual titles has increased land speculation by outsiders. Additionally, the gradual land tenure reforms have failed to solve land problems or improve the agricultural sector, as well as, failed to change the African mind set or behavior of the smallholder farmers in among the Gusii people.

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