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REPORT OF THE SELECT COMMITTEE
ON THE
ISSUE OF LAND OWNERSHIP ALONG
THE TEN-MILE COASTAL STRIP OF
KENYA

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REPORT OF THE SELECT COMMITTEE
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PREFACE

MR. SPEAKER,

On the 25th November, 1976, the following Members were appointed to be the Members of the Select Committee on the Issue of Land Ownership along the 10-mile Coastal Strip:—

The Hon. M. Mathai, M.P. (Chairman).
The Hon. M. Kubo, M.P.
The Hon. C. C. Murgor, M.P.
The Hon. K. Kinyanjui, M.P.
The Hon. J. K. Yeri, M.P.
The Hon. S. M. B. Mudavadi, M.P.
The Hon. P. C. Oloo-Aringo, M.P.
The Hon. Sharrif Nassir, M.P.
The Hon. N. K. Ngala, M.P.
The Hon. P. E. M. Ivuti, M.P.

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The resolution containing the terms of reference of this Committee was passed on 15th October, 1976 and is as follows:—

THAT, since land tenure system on the 10-mile strip along the Coast Province has created a lot of problems for the indigenous people in that they are regarded as squatters who have no right to own that land, this House resolves to set up a Select Committee—

- (a) To probe the origin of these problems;
- (b) To investigate the right to own the available land since the transfer of the administration of the strip from the then Sultan of Zanzibar; and
- (c) To write recommendations to the House on how to resolve these problems permanently.

Although the Committee was constituted in 1976, it was too late during the Session for it to start functioning. Therefore, it was during the 1977 Session that the Committee was revived and it embarked on the assignment.

The Select Committee heard oral and written evidence in Nairobi and the Coast Province. It interviewed the provincial administration, local politicians, squatters, landlords and other individuals giving evidence in their personal capacity including several from the university. The Committee received generous co-operation and assistance from all quarters and especially the Provincial Commissioner for the Coast and the District Commissioners from the four affected districts of Mombasa, Kwale, Kilifi and Lamu.

The Committee appreciates the co-operation it received from the officials of the Ministry of Lands and Settlement, particularly the Permanent Secretary with his staff who appeared at length before the Committee. The Committee is grateful to all these and to all others who contributed by giving evidence and submitting memoranda.

The problem of landlessness is an emotive issue. The Committee had considerable difficulty in coming to conclusions that were reasonable and fair to the Kenya we want. The Committee has been able to make a number of specific recommendations which it feels would be of great value in resolving or minimizing the problem of landlessness and it hopes that these will be given the urgent attention they deserve.

As Chairman of this Committee, it gives me special pleasure to be able to express my gratitude and appreciation to all the honourable Members who served on the Committee, who sacrificed so much of their time to give attention to the business of the Committee. The contributions made by the Members have substantially eased the task of preparing the report.

The Committee would also like to record its appreciation for the services of Mr. H. W. O. Okoth-Ogendo of the University of Nairobi who advised on land law intricacies. Finally, the Committee is grateful for the substantial support it received from the staff of the National Assembly.

In conclusion, I would like to thank again those without whose assistance the report could not be as elaborate as it is. The Committee presents its report to the House and looks forward to the Assembly giving this report its authority and blessing so as to enable the Government to accept and implement the recommendations contained therein.

MWANGI MATHAI,
Chairman.

28th April, 1978.

INTRODUCTION

1. *The Resolution of the Assembly*

On the 15th October, 1976, the National Assembly passed the following resolution:—

That since land tenure system in the 10-mile strip along the Coast Province has created a lot of problems for the indigenous people in that they are regarded as squatters who have no right to own that land, this HOUSE resolves to set up a Select Committee:—

- (a) to probe the origin of these problem;
- (b) to investigate the right to own the available land since the transfer of the administration of the strip from the then Sultan of Zanzibar; and
- (c) to write recommendations to the HOUSE on how to resolve these problems permanently.

2. *Interpretation*

By that resolution the Committee was required to do three things:—

- (a) To identify and probe the origins of the contemporary problems of land tenure in the ten-mile Coastal strip;
- (b) To investigate changes in the structure of ownership and patterns of distribution of land rights which have occurred within the ten-mile coastal strip since Kenya's independence;
- (c) To make recommendations for the permanent resolution of problems identified in (a) in the light of the ownership pattern described in (b) above.

For reasons which will emerge later, the Committee has not found it necessary to define who for purposes of this resolution the "indigenous" people are. Rather what we have done is simply to assess the nature and magnitude of the problem, identify those who are adversely affected by it, and to write recommendations

based on the conviction that this House has the duty to assist the state in the search for appropriate solutions to these problems.

3. *General Review of the Evidence*

Much of the evidence was collected in Nairobi, Kwale, Mombasa, Kilifi, Malindi and Lamu where both oral and written submissions were taken from members of the public, private institutions, and organs of government and the national party, KANU. As will become clearer later, all those who appeared before the Committee—whether land owners, "squatters" or government and party administrators—were agreed that problems of national significance exist which need urgent attention. The majority view clearly was that those problems although grave, must not be viewed in isolation from the general question of landlessness in the country as a whole. They have arisen from exactly the same historical process that caused similar problems in up-country Kenya. The only difference was that although attempts have been made since independence to deal with landlessness up-country, no clear policy has yet emerged in respect of the Coastal situation.

As would be expected, not all witnesses were agreed on what the origins of the land tenure problems of the 10-mile strip were. The Committee's view on this issue is set out in Chapter One below. It is based on a balanced assessment not only of the evidence given to us but also of the available historical material which was at our disposal. Despite sharp differences on the question of *origin*, we found general agreement on the question of *magnitude* and *consequences* of landlessness within the 10-mile strip. These are set out in Chapter Two of this report. Finally, the Committee received much assistance from those who appeared before it on how best to permanently resolve the land tenure problems within the 10-mile strip. These are discussed and evaluated in Chapter Three of this report. The recommendations we have arrived at have drawn heavily on this assistance and past experiences in this Country.

CHAPTER I.—THE NATURE AND ORIGINS OF THE COASTAL LAND PROBLEM

A. The Nature of the Problem

4. Overview

Land has always been and remains a politically sensitive issue in Kenya. Indeed it occupied settler politics throughout the colonial period and was the fundamental issue in the independence movement. The single most important reason for this was colonial displacement of indigenous people from their ancestral lands through administrative coercion and alien land laws. No corner of this country was spared during that process. It is estimated that over 3.4 million hectares representing 75 per cent of the most fertile land in the country were expropriated by individuals either in freeholds or leaseholds during the colonial period. In consequence an estimated over half a million men, women and children were, at independence, technically landless in the sense that they could neither produce nor obtain evidence of permanent ownership to the land they were in fact cultivating, or already, residing on as labourers.

Efforts after independence have severely reduced, although not entirely eliminated, landlessness in the former "White Highlands". As of 1976, over 350,000 landless people had been settled either in government schemes or through co-operative schemes in Eastern, Central, Rift, Nyanza and Western Provinces.

5 The Ten-Mile Strip

Although as we indicate below some attempt has been made to deal specifically with the ten-mile strip, nothing of the magnitude described above has yet been undertaken in this area. As a result the strip now has probably the largest single concentration of landless people, in the whole country. Most of these people live as "squatters", licensees and unprotected tenants on private or government land in the Coastal rural and urban areas. Because of in-migration particularly since independence, these people are no longer exclusively although still predominantly of Mijikenda, Taita or Pokomo origin. In this sense, therefore we believe that landlessness within the Coastal strip is of special concern for the nation.

B. The Origins of the Problem

6. Original Settlement

Although it was forcefully argued to the contrary, we are satisfied that Mijikenda, Taita and Pokomo presence within the ten-mile strip precedes that of any other ethnic or sub-national group, in the area. Under Mijikenda land law and indeed that of other indigenous peoples, the source of all land rights was evidence of first settlement. Whoever first cleared or tamed bush-land cultivated or grazed over it, obtained permanent use rights over it for himself and his people. Ownership evidenced by a piece of paper-title was not only unknown but also irrelevant to the cultural and moral system of these people. For the soil was not the subject of ownership by the individual. It belonged to the dead, the living and the unborn.

This was the general position until about the middle of the seventh century when a steady influx of Arabs from Arabia and Persia fundamentally altered the settlement pattern in the area. Although Arabs had been trading with the inhabitants of the East African

Coast from very early times, they had made no permanent settlements until this time. Although most of the Arabs that finally settled in the East African Coast are said to have been fugitives fleeing from religious persecution and local feuds in Arabia and Persia, their migration to the East African Coast in fact enabled them to consolidate trade links with the area.

7. Slavery

An important aspect of trade was the traffic in slaves to other parts of the Middle East. Since the evils of slavery and the factors that led to its abolition towards the end of the 19th century are well known, this committee has not found it necessary to go into its history in any great detail. The point to stress is that the consolidation of slave trade in the East African Coast led directly to the displacement of the Mijikenda, Taita, and Pokomo and eventual Arab control of land within the ten-mile strip. For not only were they sold into slavery or used extensively as agricultural labourers on land, but also escape was only possible by fleeing from the ten-mile strip into the Nyika plains. Thenceforward the Arabs regarded themselves as the original owners of the land. When in 1840 Seyyid Said transferred his capital from Muscat to Zanzibar and extended his sovereignty over the ten-mile strip Arab Control of the area was secured. Any further doubts were set at rest when in 1886 the British and the Germans entered into a treaty which, among other things, created "the Mwambao" with all land rights being vested in the Sultan. The area involved stretched from the mouth of the Ruvuma River (in what is now Tanzania) to the mouth of the Tana River extending inland for a distance of ten nautical miles measured from the high water mark.

8 The Imperial British East Africa Company

This situation was accepted by the British East Africa Association (B.E.A.A.) which was formed by Mackinnon in 1887 "to open up East Africa to British commerce and civilization". As a trading concern, however, B.E.A.A.—which became the Imperial British East African Company (IBEAC) in 1888—was only interested in the acquisition of trade concessions rather than sovereign rights over the land. Besides it would have been impolitic on B.E.A.A.'s part to challenge Arab presence within the ten-mile strip since the Arabs were subjects of the Sultan of Zanzibar whose sovereign authority over the area the British government had accepted. Hence the concession agreement that was signed in 1888 by the Sultan of Zanzibar and representatives of IBEAC only ceded for an initial period of fifty years, later extended to perpetuity;

"all the powers and authority to which (the former) is entitled on the mainland, the whole administration of which is placed in the hands of IBEAC to be carried out in his name under his flag and subject to his sovereign rights."

The effect of this agreement was that all rights to any land that had already been appropriated by the Sultan himself or other individuals were reserved. IBEAC's power to deal with land was therefore restricted only to what was then considered as "unoccupied".

9. *The objectives of Colonialism*

IBEAC did not prosper in East Africa. It has been said that it was "poorly conceived, badly managed and grossly undercapitalized". So in 1895 it surrendered its Charter and signed an administration agreement whereby its rights under the 1888 concessions were transferred to the British government. In other words, from the point of view of colonial law, when on 15th June 1895 the British Government declared what is now Kenya a protectorate, most of the *original* inhabitants of the ten-mile coastal strip—the Mijikenda, Taita, Pokomo etc.—were already regarded as squatters. For the British Government had acceded to and only those land rights that had been acquired by IBEAC during its vague overlordship at the Coast.

The primary aims of British colonialism, however, were much wider than those of IBEAC. Essentially colonialism was concerned with the exploitation of the natural and human resources of the colony for the benefit of the "mother" country. Trade was therefore a very small part of it. Early colonialists like Lugard and Ainsworth had no doubts that East Africa was rich in these resources. The coastal belt was suitable for the much sought-after cotton, rubber and coconut produce; the adjacent lowlands was abundant in sisal fibre; and the highlands suitable for just about everything. The question was who should and how to exploit this potential.

10. *The Land Titles Ordinance No. 11 of 1908*

The colonial administrators had no doubts that only people of European extraction were capable of exploiting the resources of East Africa. But this required a much more secure system of land tenure than existed in virtue of the administration agreement of 1895. For

not only were the boundaries of "private" lands difficult to ascertain, no procedure existed for identifying land available for disposal to prospective settlers. In fact most settlers were unwilling to take up land before those uncertainties were removed. This was the primary purpose of the Land Titles Ordinance, 1908 i.e. to enable colonial authorities to determine accurately how much land was actually "owned privately" so that the limits of "crown" land could be defined.

The Ordinance required all persons "being or claiming to be proprietors of, or having or claiming to have any interest whatsoever in immovable property" within the ten-mile strip to lodge their claims whether of title mortgage or other interest within six months with a Land Registration Court presided over by a Recorder of Titles. Where the Recorder was satisfied that a particular claim was valid he would then issue a certificate to that effect. Such certificate was "*conclusive evidence against all persons (including the Crown) of the several matters therein contained, and a certificate of ownership shall be conclusive proof that the person to whom such certificate is granted is the owner of the coconut trees, houses, and buildings on the land*". (This was fundamental departure from the position under both customary and Muslim laws which governed African and Arab relation respectively. Under these laws a clear distinction was always made between ownership of the soil and of the products therefore, the latter of which was always vested in the cultivator.)

11. *The Process of adjudication under the Ordinance*

As Table I indicates by 1914 the Ordinance had been applied to the whole of the ten-mile strip—

TABLE I—APPLICATION OF THE LAND TITLES ORDINANCE 1908 TO THE COASTAL STRIP

By the Official Gazette Notices the Governor applied the Land Titles Ordinance 1908 to various parts of the Coast as follows:—

<i>Date of Gazette Notice</i>	<i>Areas to which is is applied</i>
1-3-1909.. .. .	Malindi District in Seyidie Province with effect from 15-1-1909.
15-5-1911	Mombasa Island in Seyidie Province with effect from 1-7-1911.
1-3-1913.. .. .	Part of Tana River District which lie within the ten mile Coastal Strip with effect from 15-11-1913.
15-11-1913	Part of Tana River District between the Northern boundary of Seyidie Province and Southern Bank of the Ozi River in the Tana land Province.
3-6-1914.. .. .	All the area lying within the following boundaries in Seyidie Province. Area lying between Mombasa and Malindi-Kilifi-Kombani River Mwandu and Makonde with effect from 1-7-1914.
16-9-1914	The area lying between Mombasa and Uмба River and all the area South of Uganda Railway.

The procedure for adjudicating claims was very different from what happens in trust land areas to-day. Apart from the Recorder himself, the only other statutory officers were surveyors and administrative officers. The duties of the former included boundary surveys and the preparation of maps to be attached to certificates of ownership. The latter, however only received claims. They had no power to adjudicate them. The process of adjudication was thus left to only one man, the Recorder. Although in practice two intermediate committees were created to assist the Recorder the process remained essentially judicial i.e. summonses were issued, oaths administered and parties were invited to argue their claims either in person or through advocates.

The actual proceedings before the Recorder however, bore little resemblance to statutory requirements. No proper investigations were ever carried out nor rigorous standards of proof pursued. Most claims were accepted on the basis of old Arabic documents, or allegations of possession or inheritance that were mainly false. Where, as was often the case, no objections were raised or if the objector failed to appear altogether no further proof was ever asked for. The Mazrui Arabs are known to have made claims to bushland the boundaries to which they could not ever point. As a result approximately 18,000 hectares in Central Kilifi went to this Community under a trust. Over 95 per cent of land in Malindi went to Arabs also. Since very few claims were received in Lamu, most of the land was declared crown land. Although there were fewer claims in Kwale, much of the land was subsequently sold or granted in leaseholds to Indians, Europeans and other concessionaires interested in large-scale agriculture.

The fact that all the powers of adjudication were concentrated in the Recorder made the process slow and expensive. In consequence adjudication was suspended in 1922, by which time only 5,300 claims out of over 12,700 had been adjudicated, and the government had spent over £110,000 in costs and recovered less than one third of it in fees. Even when adjudication was resumed in 1956 the process remained slow and expensive even though only claims made before 1922 many of which were undisputed were to be dealt with. It was not until 1975 when adjudication under the 1908 Ordinance was completed. In Table II we have indicated what the final territorial allocations within the strip by the time when adjudication was over.

Table II Territorial Distribution of Land in the 10-mile strip

AREAS

The total area of the Coastal Strip in Square Kilometers is 5,480 sq. Km. or 2,116 Square Miles. This is made up of:—

Trust Land	1,749.82 Sq. Km. (Approx.)
National Reserve	63.40 ..
National Monument	0.43 ..
Government Reserves	292.67 ..
Leasehold Area	505.05 ..
Freehold Area	393.68 ..

Forest Reserves	397.17 Sq. Km. (Approx.)
Mombasa Municipality	204.61 ..
Township Reserves	204.61 ..
Settlement Schemes	563.00 ..
Un-Allienated	
Government Land	1,106.00 ..
	<hr/> 5,480.44 <hr/>

12. The Consequences of Adjudication

Adjudication of claims under the 1908 Ordinance is, in our view, the *primary* cause of landlessness by indigenous people in the ten-mile strip as we know it today. For it ruled out the possibility that these people and sections of non-Mazrui Arab communities could ever acquire title or guaranteed access to land during the colonial period.

The reasons why most indigenous coastals made no claims as required by the Ordinance are not difficult to understand. First of all, the indigenous people of the strip had no knowledge of the existence of the Ordinance. Even if they did they never understood its provisions. Secondly, as we have said earlier the Ordinance had no relevance to indigenous conceptions of land tenure. That they should be asked to lay claims upon the soil was a startling proposition. Thirdly, the Ordinance was clearly biased against these people. For the colonial government and courts believed that no African, whether as an individual or a community had any title to land. Hence for purposes of the 1908 and other colonial land Ordinances land occupied by Africans was always treated as ownerless. Fourthly, the actual investigation of claims was done mainly by Mudirs—usually Mazrui Arabs absorbed into colonial administration—who were generally unsympathetic to the indigenous people. Some witnesses who appeared before the Committee even alleged that in the very few cases where claims by indigenous people were allowed, the size of such land was deliberately reduced and the whole often set wholly within land owned by Arabs. Such people were soon evicted simply by fencing them in! Fifthly, the time limit within which claims could be made was extremely short. And indeed after 1922 claims would no longer be received at all. Besides when in 1926 three "native reserves" were established in Kwale and Kilifi any further doubts concerning the possibility of ever receiving claims from indigenous coastals were laid to rest. For with the exception of thirteen pockets of land in Kwale, land comprised within these reserves were deliberately delineated *outside* the ten-mile strip. New Legislations passed in 1938 extinguished any other rights that "natives" in Kenya as a whole might have had *outside* their respective reserves. Sixthly, because the Ordinance had introduced a basically British conception of land, i.e. that whatever is attached to the land becomes part of that land, these people also lost whatever rights to the product of the soil, e.g. coconuts etc., that they may have had under Muslim law and their own customary law. Although a few people were compensated for permanent improvements, the majority simply remained on the land in the belief that it was still theirs; a situation which was perpetuated by the fact that most of the new landowners were never resident on the land anyway.

CHAPTER II.—LAND RIGHTS IN THE TEN-MILE STRIP SINCE INDEPENDENCE

13. *Summary*

The most important point we want to make is that the problem of landlessness in the ten-mile strip is not a new one. It started *before* colonialism. The 1908 Land Titles Ordinance simply consolidated it; as did the fact that for all practical purposes continued in undisturbed occupation of and to develop the land in the belief that they still had some rights to it. It was not until the eve of independence when Arabs, Europeans and Asians started evicting them that these people realized *that they were and had always been landless after all.*

14. *Political Parties and Land*

There is no need to emphasize the fact that land distribution was of fundamental issue at independence. Both KANU and KADU among others expressed strong fears that unless there was agreement on the need to redistribute land to Africans the political future of the independent state might be jeopardized. This was one reason why landowners both in the Highlands and at the Coast retaliated by threatening to or actually evicting labourers "squatters" or tenants.

15. *The Effect of the independence Constitution*

The final constitutional agreement on the issue however, was based on wider concerns. The most important was the feeling that land redistribution should not be made at the expense of economic (mainly agricultural) stability. This was incorporated into the independence constitution through an article (now Art. 75) which provided *that all existing land rights irrespective of the manner in which they were acquired be confirmed and guaranteed.* This was perhaps the single most important provision in the Constitutional Settlement arrived at in Lancaster House. *For more than anything else in the history of this country it ruled out the possibility that historical claims would ever be the basis for land distribution after independence.* This applied to the country as a whole and not just the highlands. For by an agreement signed in 1963 between the British, Kenya and Zanzibar governments, the Sultan renounced sovereignty over "Mwambao" which thenceforth became fully integrated into independent Kenya.

16. *Post-Independence approaches to the Coastal land Problem*

As we have stated above, the Kenya Government has initiated a lot of schemes for the resettlement of landless people in this country. Most of these, however, have been mainly in the former highlands. At the Coast it has been assumed that solutions can be found in either reactivating old settlement schemes such as Gedi and Shimba Hills, or designing new ones on similar lines. Since independence such new schemes have been started as shown in Table III below.

TABLE III SETTLEMENT SCHEMES AT THE COAST

District	Scheme Name	Date Started	Size in Hectares
Kilifi	Tezo-Roka	1960	3,763
"	Mtwapa	1966	3,370
"	Ngerenyi	1968	5,235
"	Magarini	1968	40,469
"	Mtondia	1968	—
"	Matsangoni	—	798
"	Vipingo	—	1,051
Kwale	Ukunda	1968	600
"	Tembo Springs	1968	125
"	Sabharwal	—	120
Lamu	Lake Kenyatta	1971	14,800
"	Magogeni	—	10,000

SOURCES:

Annual Reports of the Ministry of Lands and Settlement Memorandum of the Land Use Secretariate District Development Plan 1974-78—Kilifi District.

Schemes of this kind, however, always were and remained national-level undertakings which could not be expected to eliminate or at least substantially reduce the coastal problem. They were not specifically directed at the landless coastals. Thus unlike in the Highlands the pattern of land distribution at the Coast did not change.

17. *The Presidential Committee 1972*

It was partly in recognition of this that in 1972 the President Mzee Jomo Kenyatta set up a Special Committee to look into the problems of the ten-mile strip. The Committee consisted of the following:—

The Minister for Lands and Settlement—
HON. J. H. ANGAINE (*Chairman*)

The Minister for Finance and Planning—
HON. M. KIBAKI

The late Minister for Power and Communications—
R. G. NGALA

The Minister for Agriculture—
HON. J. J. NYAGAH

The Attorney-General—
HON. C. NJONJO

The Permanent Secretary Office of the President—
MR. G. K. KARIITHI

The Permanent Secretary Ministry of Lands and Settlement—
MR. N. S. KUNG'U.

This Committee met several times in 1972 and made various recommendations which we have found of great assistance in our own investigations. But we were unable to find out what the fate of those recommendations were. Thus up to the time this Committee was appointed no systematic efforts had been made to solve the coastal land problem. In fact the vast changes in the economic and social system of the area which have occurred since independence have tended to aggravate rather than contain the situation.

B. Changes in Economy and Society at the Coast

18. Economic Changes

The central feature of economic change at the Coast has been the growth of tourism as an important industry. Apart from its significance as a foreign exchange earner, tourism also opened up lucrative investment opportunities for individuals and private consortiums. This was facilitated greatly by two factors namely, that until recently coastal land prices were relatively low in comparison to those upcountry, and Arab, Asian, and Europeans were by and large willing to sell. Thus an active land market particularly in first and second beach plots arose and continues to thrive within the area. (There is no standard definition of what a first or second beach plot is. This depends entirely on the shape and inland stretch of parcels in question.) In addition the tourist industry also stimulated a lot of auxiliary industries and small-scale enterprises that have greatly boosted the economy of the area. These have had the effect *inter alia* of extending land marketing even beyond the ten-mile strip.

19. Demographic Changes

Apart from tourism, the coastal belt has also become a major destination for migrants, in search of employment opportunities and land frontiers. On the latter issue the 1972 Presidential Special Committee estimated that between 5-33 per cent of those considered landless in that year had migrated into the area during the previous calendar year. Although no accurate figures exist we believe that this trend is continuing especially in Kwale South, parts of Kilifi North, Lamu and the Tana River basin. The relevance of this phenomenon is that it has slightly altered the magnitude and political content of the land problem. For there are signs particularly in Kwale, that tensions between immigrants and the indigenous people are beginning to emerge.

20. Changes in the Structure of land ownership

An important consequence of tourism and immigration has been that although the pattern of land distribution has remained unchanged, its ownership structure had fundamentally changed. In Lamu District for example, over 50 per cent of what was unalienated government land on the mainland has been turned over to private ranchers on leasehold terms as shown in table IV below:—

TABLE IV—LEASEHOLD GRANTS FOR RANCHING IN LAMU*

Name of Ranch	Hectares	Existing Livestock	Status	Remarks
1. Witu	32,000	29	Directed Agricultural Company.	Total membership 97. Has been approved by D.A.C. & P.A.B. letter of allotment has been issued by the Commissioner of Lands.
2. Amu Ranch ..	25,000	—	Co-operative Society	.. Membership 200 local residents. has been approved by D.A.C. and P.A.B. with letters of allotment issued by Commissioner of Lands.
3. Nairobi Ranch ..	21,000	4,000	Private Company Registered in 1974. A private company of 4 people, letter of allotment has been issued by the Commissioner of Lands.
4. Tullu Ranch ..	20,000	—	Private Company Approved by D.A.C. and P.A.B. on 28-6-76 Min. 14/26 of 1972 meeting held in PC's Board room. Letter of allotment has been given by Commissioner of Lands.
5. Bujras Ranch ..	8,000	—	Private Company Approved by D.A.C. and letter of allotment has been given by Commissioner of Lands.
6. E. N. Mungola E. A. Masini Coast Ranch Co. Ltd.	10,000	—	Private Company Approved by D.A.C. (9-12-75) No letter of allotment has been given Commissioner of Lands to date February, 1977.
7. Lamu County Council Ranch	22,000	—	County Council Approved by D.A.C. (9-12-75) and letter of allotment has been provided by Commissioner of Lands.
TOTAL ..	138,000	4,029		

*A further 110,025 hectares to be organized on similar lines is envisaged.

SOURCE:—Memorandum of the Land use Secretariat (a working Committee of Government Officers) April, 1977

In Kilifi, Mombasa and (to a smaller extent) Kwale Districts changes in ownership took the form of a rapid substitution of land owners of all races with local and up-country politicians, civil servants, managerial staff in private industry, forces personnel and multinational corporations. In the case of Kwale this also meant further displacement of the Wadigo from pockets of trustland in Diani, Galu-Kinondo, and Msambweni; and the Waduruma from grazing lands south of Kikoneni location.

21. Implications

Most of the changes described above are still going on. In fact within the last year or so, the process of land transfer has been accelerated. The implications of this for the political stability of the area should not be underestimated. For *inter alia* changes in the structure of land ownership in the area will have a direct bearing on the success or failure of any attempts to solve the initial problem of landless however well-intentioned this might be. The explanation for this is given below.

C. Contemporary Problems in the Ten-Mile Strip

22. The Magnitude of Landlessness

That landlessness within the ten-mile strip is increasing seems fairly obvious. Disagreements arise only in the assessment of the *magnitude* of the problem and nature of occupancy, of the landless. On the question of magnitude the Coast Province Regional Physical Development Plan estimated in 1971 that there were between 75,165 and 100,000 "squatters" occupying approximately 6.5 per cent of Government or private land in the Coast Province as a whole. Of these 61.5 per cent were in Kilifi District, 18.8 per cent in Kwale, 12.8 per cent in Mombasa and 6.9 per cent in Taita. No figures were available for Lamu and Tana River Districts. We believe that even for 1971 these figures are inaccurate. Senior administrators in Kilifi and Mombasa Districts estimated that there were at least 100,000 and 10,000 landless people in those areas respectively. These were given as *minimum* estimates only. By using the same district percentage distribution that the Regional Physical Development Plan gave in 1971 we arrive at a population of not less than 15,000 for Kwale District. Although no figures were available for Lamu District, considering that over 96 per cent of the land on the mainland is government land, it is more than likely that most of the indigenous people there are landless. This could add at least another 6,000 to the over-all "squatter" population. We believe that the number of landless people in the ten-mile strip exceeds 130,000 and may well be up to 10 per cent more than that if we allow for the migration factor and under-assessment by administrative officers.

23. The Nature of Occupancy

Although it is common to refer to landless people at the Coast as "squatters", we found this description rather misleading. The exact nature of occupancy varied widely from place to place. The vast majority of the people were on the land with the full knowledge and consent of the landowners. In the rural areas many were and had always been paying "Ijara" (rent) to or sharing the fruits of their labour with the landowners. The urban landless were also living on same kind of periodic tenancies subject to the same rental conditions. A few were bare licencees and even fewer were *pure*

squatters. But although such a situation ordinarily imports some measure of protection in law, only to the urban "squatter" has express protection been offered in the past. The consequent uncertainty and insecurity has not been conducive to the development of the area.

24. Mass Evictions

Many landowners, particularly the new ones have taken advantage of this situation to carry out mass evictions from their land. We received many complaints ranging from evictions via actions in trespass to general harassment and intimidation of resident "squatters". For example in Kilifi we were told that there were over 300 trespass cases pending in respect of farms that had recently changed hands. Apart from creating a lot of tension between landowners and the landless, mass evictions have raised a new the old question of the nature of the "squatter's" interest in permanent improvements made by him. The most important of these are cashew and coconut trees, and occasionally houses.

25. Claims over permanent improvements

We have explained above that according to the Land Titles Ordinance such improvements were presumed to belong to the registered landowner. When the cashew nut campaign began in the mid-1930s, however, a series of tripartite agreements were negotiated under customary and Muslim laws in 1937 between the landowners, the administration and the "squatters" the effect of which was that:—

- (i) as long as he continued to pay "Ijara" the "squatter" was permitted to plant and own the trees.
- (ii) as long as they continued to pay "Ijara" the children of the "squatter" were allowed to inherit the trees.
- (iii) no "squatter" was allowed to sell his trees to a third party except with the consent of the landowner and only after the latter had been given the right of first refusal.
- (iv) where the "squatter" was paid by the landowner to plant particular trees, those became the property of the latter and
- (v) where the "squatter" died without leaving an heir, his trees became the property of the landowner.

As late as 1962 this agreement was still being used as a basis for the resolution of claims between landowners and the "squatters". Although the 296 arbitration proceedings conducted between 1957-62 were biased against the landless, that they were held at all amounted to a recognition of the "squatter's" right to bring such claims. Over the last five years, however, squatter claims over permanent improvements have received rough treatment from landowners seeking to improve the value of their properties by insisting on vacant possession either before or soon after change of ownership.

26. Land Pricing

But the coastal land problem has become more than just a "squatter" problem. *The conduct* of land transactions in the area has become an important issue also. For apart from the fact that it is an obstacle to the resolution of the "squatter" problem, it has already become a major hindrance to land development in the area. For it is now clear that many of the people who have bought land within the ten-mile strip during the last seven years are primarily speculators. One result is that land prices have rocketed to such a level that very few people (and certainly not "squatters") can now afford to purchase. Although no accurate figures exist, we estimate that since 1972 the price of prime beach land per acre has gone up by more than 5,000 per cent. No attempt has so far been made not even by land control boards either to regulate or stabilize these prices. The basic problems of the control boards have been lack of clear statutory authority in the determination of prices, and political interference by buyers and sellers alike.

In or about 1974, an administrative directive was issued requiring all transactions involving first and second beach plots to receive presidential clearance, before they go to land control boards. This directive, however, has had little impact on land pricing particularly in Kwale District where *inter alia* it has been interpreted in such a way as to exclude former trustlands.

27. Summary

It is clear from what we have said in this Chapter that we are dealing with something more complex than a mere local problem. The nature and magnitude of landlessness and associated problems at the Coast are such that solutions can only be found in the overall context of Kenya's national land, agricultural and urban development policy. An attempt is made in the first part of the next Chapter to indicate what general guidelines are appropriate in this context.