

Land reform in Kenya: The history of an idea

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The great legal scholar Patrick McAuslan described the 1990s as inaugurating a new era of land law reform.¹ Land law reform has taken place on a significant scale since 1990: a total of 32 new national land laws have been enacted since 1990 in nearly 60 per cent of African states.² Land issues have been the cause of both simmering discontent and violent conflict throughout Kenya's colonial and post-colonial history.³ They remain a 'key fault line' in modern Kenya.⁴ Historians of Kenya and commentators on its politics continue to find patrimonialism, ethnic favouritism and corruption at play, nowhere more so than in the politics of land. Kenya's problems with land defy easy description: they remain complex and multi-faceted and include massive and worsening inequalities in access to land, a propensity to land grabbing and continuing conflicts over who is and who is not entitled to occupy land. Efforts to address these problems have since before independence been erratic at best.

In my lecture, I made the case for studying present day efforts at land reform in the long arc of Kenya's land history since independence. I argued

¹ Patrick McAuslan, *Land law reform in Eastern Africa: Traditional or transformative?*, Routledge, London, 2013.

² Liz Alden Wily, 'Customary tenure: Remaking property for the 21st Century' in Michele Graziadei and Lionel Smith (eds) *Comparative property law global perspectives*, Edward Elgar Publishing, Cheltenham, United Kingdom; Northampton, Massachusetts, 2017, 458–477.

³ Bethwell Ogot (ed), *Hadith 5: Economic and social history of East Africa*, 1976, Kenya Literature Bureau. HWO Okoth-Ogendo, 'Property theory and land use analysis: An essay in the political economy of ideas' *Journal of Eastern African Research and Development*, 1975, 37–53.

⁴ Charles Hornsby, *Kenya: A history since independence*, IB Tauris, London, 2012.

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that this can only be done by being both lawyer and historian by taking seriously the history of the idea of land reform, tracing its genealogies and understanding how it forms part of the vocabulary of struggle. It is critical to place modern day debates about land – by which I mean the debates, pressure and efforts of recent decades – in the context of Kenya’s long history of land reform. There are two reasons why I think this is an important task. Firstly, it is simply my response to what I perceive to be the existing patchy knowledge of the historical context within which we are debating contemporary land reform. A concrete illustration of this is the common finding that lawyers discussing the history of land reform in Kenya fail to cite key reports of commissions of inquiry and so present only a partial account of longstanding pressures for a constitutional response to land problems. Failing to bring together in one place the many long running reasons why land matters became so crucial an element of wider constitutional debates in this country risks dropping threads – failing to see connections, failing to see continuities, and failing therefore properly to understand land mischiefs in all their variety.

A second, more positive reason to rehearse the history of land reform as an idea, is our own Judiciary’s quite explicit work itself to explore history and to put the historical impetus for change, including constitutional change, at the centre of its jurisprudence. A leading example of this is the Supreme Court’s 2014 Advisory Opinion on the National Land Commission. In its judgment, the court argued that there is a ‘need for a historical and cultural perspective when interpreting the Constitution’ because it is only by this means that it can fulfil its mandate set out in Section 3 of the Supreme Court Act 2011⁵ to ‘develop rich jurisprudence that respects Kenya’s history and traditions and facilitates its social, economic and political growth’ and to ‘enable important constitutional and other legal matters, including matters relating to the transition from the former to the present constitutional dispensation, to be determined having due regard to the circumstances, history and cultures of the people of Kenya.’⁶ The Supreme Court, alert to its own legal history, here makes a commitment to bring history to bear in its decisions. In so doing, it draws on an earlier Advisory Opinion in which the Chief Justice, Willy Mutunga, sought to elaborate on his understanding of Section 3 of the Supreme Court Act:

...In my opinion, this provision grants the Supreme Court a near-limitless and substantially-elastic interpretive power. It allows the Court to explore interpretive space in the country’s history and memory...⁷

⁵ (Act No. 7 of 2011).

⁶ *Supreme Court Advisory Opinion 2 of 2014*, para 97.

⁷ *Supreme Court Advisory Opinion Reference No 2 of 2013*, para 157.

Put at its strongest, lawyers and judges must also be historians, especially when much of what confronts them in the court room can only be understood by reference to a radical historical break. A first incomplete liberation and a second ongoing liberation and both their histories are a central concern of the lawyer, the legal scholar, the jurist.

If 2000 marked the beginning of a period of intense debate and pressure over land reform, it must also be understood as the return of an idea to the political agenda. In one way or another, land reform has had its advocates in Kenya since as long ago as 1920. Indeed, land has often been the lens through which historians, political scientists and latterly lawyers, not to mention economists and students of development, have sought to understand the country's fraught politics and to propose solutions to its perceived ills.

Land and constitutional change

In recent years, as in the past, the struggle for land reform and for political and constitutional settlement - or reform - have been intricately related. Telling the story of land reform debates in Kenya leads us inevitably onto the ground of demands for political and constitutional change.

After a series of reports published by commissions of inquiry, it was the findings of the Ndung'u Commission⁸ that brought into sharper focus widespread and multi-faceted grievances that had nonetheless remained unarticulated in Kenyan official and public life, although not in the everyday talk of Kenyans. What Stephen Ellis called ordinary citizens' '*radio trottoir*' or pavement radio,⁹ the findings had long known and talked of wrongs associated with land. The Ndung'u report directed and gave shape to land-related anger. Its publication was an impetus for change, but the articulation of what we might call its 'land truths' was alone not enough to bring such change about. Only with the violence and upheaval of the 2007 election did significant pressure from civil society result in an official commitment to look again at Kenya's land grievances.¹⁰

⁸ Republic of Kenya, *Report of the Commission into Illegal and Irregular Allocations of Land*, 2009, Government Printers, Nairobi.

⁹ Stephen Ellis, 'Tuning in to pavement radio' 88(352) *African Affairs*, 1989, 321-330. Grace Musila, 'Navigating epistemic disarticulations' 116 (465) *African Affairs*, 2017, 692-704.

¹⁰ Republic of Kenya, *Report of the Commission into Post-Election Violence*, Government Printers, Nairobi, 2008. John Harbeson, 'Land and the quest for a democratic state in Kenya: Bringing citizens back' 55 *African Studies Review*, 2012, 15-30.

When a National Land Policy was agreed after sustained pressure by civil society groups,¹¹ long suppressed questions of land injustice, barely able to be articulated for the first thirty years of independence, slowly took shape in this progressive and some would say utopian policy document. The struggles of civil society and citizen engagement from the margins had created a rich but informal archive that had carefully recorded and remembered the injustice associated with land. In time, as the arc of Kenya's history bent towards her 'second liberation,' this informal archive had a profound influence on the process of negotiating, drafting and agreeing the National Land Policy.

Yash Ghai and Patrick McAuslan described the pattern of land and agrarian administration from 1902 as a 'dual policy.'¹² Between 1902 and 1960, law, policy and administrative practice maintained one policy for European settlements and another for African reserves. Racial exclusivity in the colony centred on European control of land in the Highlands. Towards the end of this period, Ghai and McAuslan show, 'there was a slow move away from the dual system' as Africans began to find representation in political institutions and the value of and need for African agriculture in its own right came to be recognised.¹³ But from 1902 until the Second World War, the demands of Europeans dominated – for land on attractive terms; for spatial controls on Africans and their herds and for policies to hinder their agricultural competitiveness with European farmers (predominantly in growing maize and coffee); and for cheap and plentiful labour.¹⁴

Kenyan land politics was in essence redistributive in this period. Redistribution of land occurred with colonial conquest: the colonisation of Kenya centred on the redistribution of land from Africans to Europeans, the banning of Africans from owning the most fertile and productive land, and the disbarment of Africans from growing cash crops that might compete with colonial agriculture. In particular, the racial exclusivity of the Highlands became 'sacrosanct.' Ghai and McAuslan describe it as 'the arc of the European covenant.'¹⁵ This political and economic project was underpinned by the creation and consolidation of bifurcated land policy and land law.

On this reading, efforts to address the resulting skewed ownership and control of land that was a legacy of colonialism were necessarily a part of the

¹¹ Jacqueline Klopp and Odenda Lumumba, 'Reform and counter-reform in Kenya's Land Governance' 44 (154) *Review of African Political Economy*, 2017, 577-594.

¹² Yash Ghai and Patrick McAuslan, *Public law and political change in Kenya*, Oxford University Press, New York, 80.

¹³ Yash Ghai and Patrick McAuslan, *Public law and political change in Kenya*, 124.

¹⁴ Yash Ghai and Patrick McAuslan, *Public law and political change in Kenya*.

¹⁵ Yash Ghai and Patrick McAuslan, *Public law and political change in Kenya*, 102.

political settlement entailed by decolonisation. It was tied up with ending colonial subjugation, asserting rights to territorial space and, importantly, demanding ontological recognition. By this I mean that land reform demands in Kenya cannot be understood without some recognition of the ontological assault occasioned by colonialism. If the colonial project forcibly took land and deprived Kenyans of their livelihood, it also delegitimised ways of being, of seeing territory and of relating to land. Okoth-Ogendo reminded us continually that ways of relating to land that did not conform to western notions of ownership and exclusive possession, and that contained notions such as intergenerational rights and obligations were deliberately and forcefully deprecated.¹⁶ As an aside, this is an important context in which to understand law reform to recognise and protect customary (or communal) land rights as has happened in recent years.

In John Harbeson's magisterial book on land reform between 1954 and 1970, he identifies two distinct but related efforts at altering land relations.¹⁷ The first of these, beginning in 1953, is widely described a 'consolidation' aimed to provide Africans with individual legal title to land, encourage consolidation of land parcels and promote the use of collateral for loans to support cash crop farming. The arguments of economists and agriculturalists came to be heard when they seemed to offer an opportunity to solve a burning political problem. They were able to enrol the interests of the colonial authorities faced with an insurgency with land injustice at its heart.¹⁸ Their work paid off in 1954 when the first consolidation schemes were initiated. This was Kenya's first wave of land reform, reluctantly embraced by the colonial authorities rather too late, as land grievances gave rise to a nationalist movement. Agricultural development was the priority in this period, with technical education and direct loans provided to smallholder farmers as a way to address land hunger and the expressed anxieties over insecure tenure. The agricultural extension officer, Swynnerton, gave his name to the scheme.¹⁹ Kenya's first wave of land reform was endorsed by colonial politicians but driven by agricultural experts and economists.

¹⁶ HWO Okoth-Ogendo, 'Property theory and land use analysis: An essay in the political economy of ideas'.

¹⁷ John Harbeson, *Nation-building in Kenya: The role of land reform*, Northwestern University Press, Evanston, 1973.

¹⁸ Ambreena Manji, *The politics of land reform in Africa: From communal tenure to free markets*, Zed Books, London, 2006.

¹⁹ Brian Van Arkadie, 'Reflections on land policy and the independence settlement in Kenya,' 43 *Review of African Political Economy* (Special issue on Land, Liberation and Democracy: A Tribute to Lionel Cliffe), 2016.

A land resettlement programme followed hard on the heels of consolidation. Rolled out in haste, the programme was also reactive. Again, it offered economic solutions to a political problem, leading politicians by the nose as the latter sought an effective way to avert unrest, forestall political radicalism and prevent mass land grabs. A ready response to the announcement in 1960 that independence would be forthcoming in the near future²⁰ and promoted by ‘technocrats’ working in the Land Development and Settlement Boards, Kenya’s resettlement programme was rapidly constructed:

By the time that revolutionary forces from below and the pressures from Whitehall from above had made independence inevitable, the Department of Lands and Settlement had crafted plans for the transfer of lands from European to African ownership in such detail that they could be circulated in international capital markets, appraised, and funded— all within a few months’ time.²¹

The history of land is marked, from its beginnings, by exclusion and domination. Land reform was a ‘European-colonial defence strategy’ from the start.²² From that time on, the task has been to talk populist talk, but always to walk a conservative path. Navigating that path has taken some skill. How does one divert protest about landlessness and land shortage, or the migration of ethnic outsiders, and say just enough to garner electoral and wider support by decrying these ills, whilst in practice avoiding meaningful redistribution?

My argument is that in the present day too, solutions to land problems are again formulated to deliver just enough ‘to take the steam from the kettle’ to use a phrase from the period of land consolidation.²³ They seek to satisfy a long-running ‘strong egalitarian element in popular culture’²⁴ as regards land whilst at the same time avoiding more difficult debates about distributional choices. Still less are they centred on ideas of justice, equity, restitution and the putting right of past wrongs. Indeed, land policy in Kenya’s colonial and immediate post-independence period was forged with as much attention to its symbolic meaning as to its practical effect.

Taking racial form in the colonial period, after independence an African elite did not institute a radical break with this model of land relations, but instead

²⁰ Catherine Boone, ‘Land conflict and distributive politics in Kenya,’ 55(1) *African Studies Review*, 2012, 75-103.

²¹ Robert Bates, *Beyond the miracle of the market: The political economy of Agrarian development in Kenya*, Cambridge University Press, New York, 1989, 58.

²² John Harbeson, *Nation-building in Kenya: The role of land reform*, 329.

²³ John Harbeson, *Nation-building in Kenya: The role of land reform*.

²⁴ Charles Hornsby, *Kenya: A history since independence*.

maintained a significant continuity in which they sought to seal their power and domination with control of land. The nature of property law in the present day – the way in which social relations are structured and by whom –²⁵ cannot be understood apart from the country's conservative transition explored above. For Robert Bates, 'Kenya's conservative core runs very deep... it had been laid down in the very political struggles that brought the nation to independence.'²⁶ When modern day land reform was mooted and then finally embedded in a national land policy and a new constitution in 2010 (2010 Constitution) it was manifestly motivated by a desire amongst some to break with longstanding associations of land with domination. But given Kenya's long history of land policy changes favouring the powerful and being finely calibrated to deny the existence of land injustices, could modern land reform really have justice and fairness as its aim?

The limits of law

Kenya's recent efforts at land reform have failed to confront the material consequences of unequal access to land. In this, there are significant continuities with the past. Kenya continues to fail to confront skewed land ownership. If the skewing of ownership was racial in the colonial period, with European domination and control of the most fertile and productive areas of the White Highlands, after independence, an African elite replicated and deepened this skewing.²⁷ Why then has law been presented as the solution to these land problems?

Part of the answer lies in international approaches to land policy. In global land policy since the 1990s, law reform has been the favoured means of addressing contentious land issues. Bilateral and multilateral donors have promoted the rule of law, administrative justice, formalisation of tenure, promotion of individual title, encouragement of land markets and technical solutions. But land law reform has happened at the expense of substantive land reform. Still less has it resulted in justice in the land domain.

I think here a series of difficult question need to be asked: After adopting a progressive National Land Policy and new constitution, did Kenya miss an opportunity to enshrine their radical principles for land reform in new land laws when these were adopted in 2012? We have enacted a suite of new land laws but have legal changes been redistributive or transformative in a positive way?

²⁵ Max Gluckman, *The judicial process among the Barotse of Northern Rhodesia*, Manchester University Press, Manchester, 1955.

²⁶ Robert Bates, *Beyond the miracle of the market: The political economy of Agrarian development in Kenya*, 40.

²⁷ Catherine Boone, 'Land conflict and distributive politics in Kenya'.

The new land policy and the new constitution were the culmination of a decade of often fierce debate and civil society activism. They have been described by Harbeson as ‘two significant achievements [that] have inserted the interests of ordinary Kenyans into this constitutional moment in a way that elections and constitutional ratification alone would not have.’²⁸ The 2010 Constitution sought to address longstanding grievances over land, including the centralised, corrupt and inefficient system of land administration identified in a series of reports of inquiry during the 2000s. Article 40 (1) sets out the principles governing land policy. They include equitable access to land; security of land rights; sustainable and productive management of land resources; transparent and cost-effective administration of land; and elimination of gender discrimination in law, customs, and practice. The process of translating these principles into concrete land laws was widely seen as an opportunity to redress Kenya’s grossly skewed structure of land management and end predatory land practices by the state. It was one of the first, and certainly one of the most important, tests of the new constitution.²⁹

Despite the sense of expectation and optimism that surrounded the insertion of strong constitutional provisions on land, the drafting of the land law bills which were aimed at converting constitutional aspirations into concrete legal provisions was characterised by undue haste and a lack of genuine consultation and debate. Law-making was badly done. The draft land bills were flawed and weak and seemed to be almost entirely disconnected from their guiding documents. Not surprisingly, Kenya’s new land laws when they were passed came to embed these weaknesses in statute.

Legal scholars drew attention to incoherent drafting in the new laws; widespread borrowing of the provisions of other African countries without due attention to their relevance or suitability for Kenya; the failure to identify misconduct that the land laws needed to address; inconsistencies between the National Land Policy and the Constitution; and the failure to specify in detail the functions of devolved land administration bodies. As has occurred in land law reform elsewhere in East Africa, a technicist approach which was reliant on international best practice was prioritised over responding to political realities and local context. There was a marked absence of any useful explanation to citizens of what policies were being implemented, or how. This effectively defeated one of the most important principles of the Constitution, the participation of the people in law-making.³⁰

²⁸ John Harbeson, ‘Land and the quest for a democratic state in Kenya: Bringing citizens back,’ 15.

²⁹ John Harbeson, ‘Land and the quest for a democratic state in Kenya: Bringing citizens back’.

³⁰ For more see, Ambreena Manji, ‘The politics of land reform in Kenya,’ 57(1) *African Studies Review*,

The central concern of the laws is bureaucratic power and its control. They offer citizens some means to challenge bad administrative practices and it could be argued that for this reason they offered a means for citizens to retain access to land, although in a distended rather than immediate way. The land laws did not fully embody the prescriptions of the 2010 Constitution and the National Land Policy. They were neither equitable nor transformative of land relations, nor were many of the principles of the 2010 Constitution and the National Land Policy upheld.

Kenya's recent experience exemplifies critical shortcomings of land reform processes throughout East Africa. Since the 1990s, international financial institutions, donors and governments have embraced law reform as a means to address a range of land issues, with varying degrees of sincerity and commitment. In essence, land reform has come to mean *land law* reform. This approach was prompted by a rediscovery of the role that law might play in development. The emphasis on law is not new. In the 1960s, the 'law and development' movement held that law reform could promote economic development in newly independent countries. Interest subsequently waned due to scepticism as to the merits of this argument. The recent revival of law in development policy-making, and in particular the focus on the centrality of the rule of law to development, has had a major impact on how land issues have been addressed. Law has played a key role. Indeed, land reform in East Africa has taken place in an 'intellectual climate which rediscovered the importance of law as a major contributory factor in the international community's support and pressure for land law reform within countries in the region.'³¹

Kenya is a supreme example of David Kennedy's argument that there is an unarticulated hope among law and development practitioners and academics that working within a strictly legal framework can substitute for, and thus avoid confrontation with, 'perplexing political and economic choices.'³² Adopting this perspective, Kennedy argued, placed 'law, legal institution building, the techniques of legal policy-making and implementation – the "rule of law" broadly conceived – front and centre.'³³ Crucially, this approach has worked to dampen, rather than encourage, contestation over economic and political choices. There is an unarticulated hope that law might substitute for these choices. As a result,

2012, 115-130.

³¹ Patrick McAuslan, *Land law reform in Eastern Africa: Traditional or transformative?*, 2.

³² David Kennedy, 'Laws and developments' in John Hatchard and Amanda Perry-Kessaris (eds) *Law and development: Facing complexity in the 21st Century*, Cavendish, London.

³³ David Kennedy, 'Laws and developments', 17.

‘people... settle on the legal choices embedded in one legal regime as if they were the only alternative.’³⁴ In Kenya, there has been a significant gulf between land reform as an enduring idea and land reform as a practical achievement.

Architectures of governance

Perhaps the most significant characteristic of the most recent wave of land reform is the emphasis on the institutions of land governance. The emphasis of our current laws is on the architecture of land governance. This is not to say that the institutions of land governance have not in the past been the locus of debate and struggle. As Harbeson shows, the constitution drawn up at the Lancaster House Conference in 1962 sought to put in place a protective architecture in which Central Land Boards were given sole control over settlement programme areas.³⁵ How should we go about tracing and recording the history of these efforts?

Whereas in the past institutional change was envisaged in tandem with significant changes in the control and ownership of land, in the present day, debates over ‘getting the institutions right’³⁶ trump wider considerations, effectively suppressing redistributive demands by focusing on technicist and ameliorative changes to land governance architecture. Reform the structure of land institutions, the argument goes, and you will create a more transparent, efficient and fair system of land governance. This is informed by a wider, international context: today, the prioritisation of the rule of law has institutional reform at its heart. There is an abiding belief that if you get the institutions right, you will perforce address land wrongs.

If the first wave of land reform in Kenya discussed above ‘contemplated economic answers to what were in large measure political and social problems of [tenure] insecurity’³⁷ and so advocated land consolidation, modern land reform purports to provide *legal* answers to what remain political and social problems relating to land. Legal solutions and legal institutions predominate. Evidence of this is not difficult to find. The term ‘land administration and management’ is

³⁴ David Kennedy, ‘Laws and developments’, 9.

³⁵ John Harbeson, *Nation-building in Kenya: The role of land reform*.

³⁶ Catherine Boone, Alex Dyzenhaus, Seth Ouma, James Kabugu Owino, Catherine Gateri, Achiba Gargule, Jacqueline Klopp and Ambreena Manji, ‘Land law reform in Kenya: Devolution, veto players and the limits of an institutional fix’, *African Affairs*, 2019, 215-237.

³⁷ John Harbeson, ‘Land reforms and politics in Kenya, 1954-70’ 9(2) *Journal of Modern African Studies*, 231-251.

ubiquitous in current policy prescriptions and in the law.³⁸ It appears repeatedly in both constitutional and statutory provisions. Important examples include Articles 62, 63, and 67 of the 2010 Constitution; Sections 5 of National Land Commission Act;³⁹ and Section 8 of the Land Act.⁴⁰ But despite the ubiquity of this term, the precise meaning of land ‘administration and management’ is nowhere elaborated. How the architecture of land governance should look and what should be the roles and responsibilities of its various institutions turns out to be one of the great questions at the heart of modern land reform in Kenya. This question came to the Supreme Court in 2014 when an advisory opinion was needed to clarify the shape of Kenya’s land management institutions. In a landmark judgment, the court sought to adjudicate on this matter.

How have land institutions functioned, or not? Drawing on the literature on constitutional endurance,⁴¹ one might like to make similar assessments of land institutions. We can see that some of them are longstanding and have endured, some have had only short lives, some have evolved in structure and purpose over time. As regards endurance or survival, Kenyan land institutions can be set along a spectrum: some show remarkable endurance, others last for only a short time. At one end of the institutional spectrum, the Ministry for Land is the supreme example of an institution with an audacious ability to survive. It has gathered to itself significant powers and responsibilities over land. With tenacity, it has endured as an institution despite widespread public distrust and a widely known record of corruption and irregular dealings.

In contrast, an example of a Kenyan land institution which failed before it had begun properly to function is the Country Land Management Boards which, created under the Land Act 2012, lasted four years before being disbanded by the Land Laws (Amendment) Act 2016. Similarly, the likelihood of the National Land Commission surviving and thriving in its role as an independent land governance institution is difficult to predict. Created in 2012 and mandated by the 2010 Constitution, it has had a tumultuous youth. The ability of a land institution to endure or not, however, tells us little about the functioning and effectiveness of that institution. Indeed, the example of the Land Ministry suggests that longevity and proper functioning are inversely related.

³⁸ Republic of Kenya, *Sessional Paper 3 of 2009 on National Land Policy*, Government Printers, Nairobi.

³⁹ (Act No.5 of 2012).

⁴⁰ (Act No.6 of 2012).

⁴¹ See, Tom Ginsburg, ‘Constitutional endurance’ in (Tom Ginsburg and Rosalind Dixon (eds) *Comparative Constitutional Law*, Edward Elgar Publishing, Cheltenham, United Kingdom, 2011.

Conclusion

In his study, *Land law in Eastern Africa: Traditional or transformative?*, McAuslan set out an encouragement to scholars to develop a justice framework for understanding land issues in the region.⁴² In doing so, he argued that there has been a marked reluctance of scholars of Eastern African land issues to confront questions of justice and fairness in relation to land. McAuslan did not mark out any particular discipline for this criticism, but he was in my view directing his comments in particular at legal scholars who, distracted by the technical and the ameliorative, had neglected – perhaps avoided - to engage with the wider political and theoretical questions evoked by land inequality historically and in the present day. McAuslan contrasted what he saw as the dominant Eastern African approach with South African scholarship in which writing about the African National Congress land reform programme, the constitutional provisions on land, and the future of urban planning had manifestly committed to using a justice framework. He argued that what was needed in Eastern Africa was a ‘transformative’ rather than a merely ‘traditional’ approach to property.

In my view, McAuslan was not entirely correct to claim that land issues have not been framed in transformative terms in East Africa, or that justice has not been at the fore in land discussions. I think it would be more accurate to say that attempts to frame land matters as justice matters has been repeatedly and concertedly trumped at every stage. Marked by domination and exclusion from the start, with its roots in settler colonial priorities, the heavy work of presenting Kenyan land issues in a justice framework has been attempted repeatedly, been defeated, evolved and attempted again.

⁴² Patrick McAuslan, *Land law reform in Eastern Africa: Traditional or transformative?*